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THE EXECUTIVE DOCUMENTS

OF THE

HOUSE OF REPRESENTATIVES

FOR THE

FIRST SESSION OF THE FIFTIETH CONGRESS.

1887-'88.

IN THIRTY-TWO VOLUMES.

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50TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. 1, Part 1.

PAPERS

RELATING TO THE

FOREIGN RELATIONS

OF

THE UNITED STATES,

FOR THE YEAR 1887,

TRANSMITTED TO CONGRESS,

WITH A MESSAGE OF THE PRESIDENT,

JUNE 26, 1888,

PRECEDED BY A

LIST OF PAPERS, WITH AN ANALYSIS OF THEIR CONTENTS, AND FOLLOWED BY AN ALPHABETICAL INDEX OF SUBJECTS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1888.

MESSAGE.

To the Congress of the United States:

You are confronted at the threshold of your legislative duties, with a condition of the national finances which imperatively demands immediate and careful consideration.

The amount of money annually exacted, through the operation of present laws, from the industries and necessities of the people, largely exceeds the sum necessary to meet the expenses of the Government.

When we consider that the theory of our institutions guarantees to every citizen the full enjoyment of all the fruits of his industry and enterprise, with only such deduction as may be his share towards the careful and economical maintenance of the Government which protects him, it is plain that the exaction of more than this is indefensible extortion, and a culpable betrayal of American fairness and justice. This wrong inflicted upon those who bear the burden of national taxation, like other wrongs, multiplies a brood of evil consequences. The public treasury, which should only exist as a conduit conveying the people's tribute to its legitimate objects of expenditure, becomes a hoarding-place for money needlessly withdrawn from trade and the people's use, thus crippling our national energies, suspending our country's development, preventing investment in productive enterprise, threatening financial disturbance, and inviting schemes of public plunder.

This condition of our treasury is not altogether new; and it has more than once of late been submitted to the people's representatives in the Congress, who alone can apply a remedy. And yet the situation still continues, with aggravated incidents, more than ever presaging financial convulsion and wide-spread disaster.

It will not do to neglect this situation because its dangers are not now palpably imminent and apparent. They exist none the less certainly, and await the unforeseen and unexpected occasion when suddenly they will be precipitated upon us.

On the 30th day of June, 1885, the excess of revenues over public expenditures after complying with the annual requirement of the sinking-fund act, was $17,859,735.84; during the year ended June

30, 1886, such excess amounted to $49,405,545.20; and during the year ended June 30, 1887, it reached the sum of $55,567,849.54.

The annual contributions to the sinking-fund during the three years above specified, amounting in the aggregate to $138,058,320.94, and deducted from the surplus as stated, were made by calling in for that purpose outstanding three per cent. bonds of the Government. During the six months prior to June 30, 1887, the surplus revenue had grown so large by repeated accumulations, and it was feared the withdrawal of this great sum of money needed by the people, would so affect the business of the country, that the sum of $79,864,100 of such surplus was applied to the payment of the principal and interest of the three per cent. bonds still outstanding, and which were then payable at the option of the Government. The precarious condition of financial affairs among the people still needing relief, immediately after the 30th day of June, 1887, the remainder of the three per cent. bonds then outstanding, amounting with principal and interest to the sum of $18,877,500, were called in and applied to the sinking-fund contribution for the current fiscal year. Notwithstanding these operations of the Treasury Department representations of distress in business circles not only continued but increased, and absolute peril seemed at hand. In these circumstances the contribution to the sinking fund for the current fiscal year was at once completed by the expenditure of $27,684,283.55 in the purchase of Government bonds not yet due bearing four and four and a-half per cent. interest, the premium paid thereon averaging about twenty-four per cent. for the former and eight per cent. for the latter. In addition to this the interest accruing during the current year upon the outstanding bonded indebtedness of the Government was to some extent anticipated, and banks selected as depositories of public money were permitted to somewhat increase their deposits.

While the expedients thus employed, to release to the people the money lying idle in the Treasury, served to avert immediate danger, our surplus revenues have continued to accumulate, the excess for the present year amounting on the 1st day of December to $55,258,701.19, and estimated to reach the sum of $113,000,000 on the 30th of June next, at which date it is expected that this sum, added to prior accumulations, will swell the surplus in the Treasury to $140,000,000.

There seems to be no assurance that, with such a withdrawal from use of the people's circulating medium, our business community may not in the near future be subjected to the same distress which was quite lately produced from the same cause. And while the

functions of our National Treasury should be few and simple, and while its best condition would be reached, I believe, by its entire disconnection with private business interests, yet when, by a perversion of its purposes, it idly holds money uselessly subtracted from the channels of trade, there seems to be reason for the claim that some legitimate means should be devised by the Government to restore in an emergency, without waste or extravagance, such money to its place among the people.

If such an emergency arises there now exists no clear and undoubted executive power of relief. Heretofore the redemption of three per cent. bonds, which were payable at the option of the Government, has afforded a means for the disbursement of the excess of our revenues; but these bonds have all been retired, and there are no bonds outstanding the payment of which we have the right to insist upon. The contribution to the sinking fund which furnishes the occasion for expenditure in the purchase of bonds has been already made for the current year, so that there is no outlet in that direction.

In the present state of legislation the only pretense of any existing executive power to restore, at this time, any part of our surplus revenues to the people by its expenditure, consists in the supposition that the Secretary of the Treasury may enter the market and purchase the bonds of the Government not yet due, at a rate of premium to be agreed upon. The only provision of law from which such a power could be derived is found in an appropriation bill passed a number of years ago; and it is subject to the suspicion that it was intended as temporary and limited in its application, instead of conferring a continuing discretion and authority. No condition ought to exist which would justify the grant of power to a single official, upon his judgment of its necessity, to withhold from or release to the business of the people, in an unusual manner, money held in the Treasury, and thus affect, at his will, the financial situation of the country; and if it is deemed wise to lodge in the Secretary of the Treasury the authority in the present juncture to purchase bonds, it should be plainly vested, and provided as far as possible, with such checks and limitations as will define this official's right and discretion, and at the same time relieve him from undue responsibility.

In considering the question of purchasing bonds as a means of restoring to circulation the surplus money accumulating in the Treasury, it should be borne in mind that premiums must of course be paid upon such purchase, that there may be a large part of these bonds held as investments which cannot be purchased at any price,

and that combinations among holders who are willing to sell, may unreasonably enhance the cost of such bonds to the Government.

It has been suggested that the present bonded debt might be refunded at a less rate of interest, and the difference between the old and new security paid in cash, thus finding use for the surplus in the Treasury. The success of this plan, it is apparent, must depend upon the volition of the holders of the present bonds; and it is not entirely certain that the inducement which must be offered them would result in more financial benefit to the Government than the purchase of bonds, while the latter proposition would reduce the principal of the debt by actual payment, instead of extending it.

The proposition to deposit the money held by the Government in banks throughout the country, for use by the people, is, it seems to me, exceedingly objectionable in principle, as establishing too close a relationship between the operations of the Government Treasury and the business of the country, and too extensive a commingling of their money, thus fostering an unnatural reliance in private business upon public funds. If this scheme should be adopted it should only be done as a temporary expedient to meet an urgent necessity. Legislative and executive effort should generally be in the opposite direction and should have a tendency to divorce, as much and as fast as can safely be done, the Treasury Department from private enterprise.

Of course it is not expected that unnecessary and extravagant appropriations will be made for the purpose of avoiding the accumulation of an excess of revenue. Such expenditure, beside the demoralization of all just conceptions of public duty which it entails, stimulates a habit of reckless improvidence not in the least consistent with the mission of our people or the high and beneficent purposes of our Government.

I have deemed it my duty to thus bring to the knowledge of my countrymen, as well as to the attention of their representatives charged with the responsibility of legislative relief, the gravity of our financial situation. The failure of the Congress heretofore to provide against the dangers which it was quite evident the very nature of the difficulty must necessarily produce, caused a condition of financial distress and apprehension since your last adjournment, which taxed to the utmost all the authority and expedients within executive control; and these appear now to be exhausted. If disaster results from the continued inaction of Congress, the responsibility must rest where it belongs.

Though the situation thus far considered is fraught with danger, which should be fully realized, and though it presents features of

wrong to the people as well as peril to the country, it is but a result growing out of a perfectly palpable and apparent cause, constantly reproducing the same alarming circumstances—a congested national treasury and a depleted monetary condition in the business of the country. It need hardly be stated that while the present situation demands a remedy, we can only be saved from a like predicament in the future by the removal of its cause.

Our scheme of taxation, by means of which this needless surplus is taken from the people and put into the public treasury, consists of a tariff or duty levied upon importations from abroad, and internal-revenue taxes levied upon the consumption of tobacco and spirituous and malt liquors. It must be conceded that none of the things subjected to internal-revenue taxation are, strictly speaking, necessaries; there appears to be no just complaint of this taxation by the consumers of these articles, and there seems to be nothing so well able to bear the burden without hardship to any portion of the people.

But our present tariff laws, the vicious, inequitable, and illogical source of unnecessary taxation, ought to be at once revised and amended. These laws, as their primary and plain effect, raise the price to consumers of all articles imported and subject to duty, by precisely the sum paid for such duties. Thus the amount of the duty measures the tax paid by those who purchase for use these imported articles. Many of these things, however, are raised or manufactured in our own country, and the duties now levied upon foreign goods and products are called protection to these home manufactures, because they render it possible for those of our people who are manufacturers, to make these taxed articles and sell them for a price equal to that demanded for the imported goods that have paid customs duty. So it happens that while comparatively a few use the imported articles, millions of our people, who never use and never saw any of the foreign products, purchase and use things of the same kind made in this country, and pay therefor nearly or quite the same enhanced price which the duty adds to the imported articles. Those who buy imports pay the duty charged thereon into the public treasury, but the great majority of our citizens, who buy domestic articles of the same class, pay a sum at least approximately equal to this duty to the home manufacturer. This reference to the operation of our tariff laws is not made by way of instruction, but in order that we may be constantly reminded of the manner in which they impose a burden upon those who consume domestic products as well as those who consume imported articles, and thus create a tax upon all our people.

It is not proposed to entirely relieve the country of this taxation. It must be extensively continued as the source of the Government's income; and in a readjustment of our tariff the interests of American labor engaged in manufacture should be carefully considered, as well as the preservation of our manufacturers. It may be called protection, or by any other name, but relief from the hardships and dangers of our present tariff laws, should be devised with especial precaution against imperiling the existence of our manufacturing interests. But this existence should not mean a condition which, without regard to the public welfare or a national exigency, must always insure the realization of immense profits instead of moderately profitable returns. As the volume and diversity of our national activities increase, new recruits are added to those who desire a continuation of the advantages which they conceive the present system of tariff taxation directly affords them. So stubbornly have all efforts to reform the present condition been resisted by those of our fellow-citizens thus engaged, that they can hardly complain of the suspicion, entertained to a certain extent, that there exists an organized combination all along the line to maintain their advantage.

We are in the midst of centennial celebrations, and with becoming pride we rejoice in American skill and ingenuity, in American energy and enterprise, and in the wonderful natural advantages and resources developed by a century's national growth. Yet when an attempt is made to justify a scheme which permits a tax to be laid upon every consumer in the land for the benefit of our manufacturers, quite beyond a reasonable demand for governmental regard, it suits the purposes of advocacy to call our manufactures infant industries, still needing the highest and greatest degree of favor and fostering care that can be wrung from Federal legislation.

It is also said that the increase in the price of domestic manufactures resulting from the present tariff is necessary in order that higher wages may be paid to our workingmen employed in manufactories, than are paid for what is called the pauper labor of Europe. All will acknowledge the force of an argument which involves the welfare and liberal compensation of our laboring people. Our labor is honorable in the eyes of every American citizen; and as it lies at the foundation of our development and progress, it is entitled, without affectation or hypocrisy, to the utmost regard. The standard of our laborers' life should not be measured by that of any other country less favored, and they are entitled to their full share of all our advantages.

By the last census it is made to appear that of the 17,392,099 of our population engaged in all kinds of industries 7,670,493 are em-

ployed in agriculture, 4,074,238 in professional and personal service, (2,934,876 of whom are domestic servants and laborers,) while 1,810,256 are employed in trade and transportation, and 3,837,112 are classed as employed in manufacturing and mining.

For present purposes however, the last number given should be considerably reduced. Without attempting to enumerate all, it will be conceded that there should be deducted from those which it includes 375,143 carpenters and joiners, 285,401 milliners, dressmakers, and seamstresses, 172,726 blacksmiths, 133,756 tailors and tailoresses, 102,473 masons, 76,241 butchers, 41,309 bakers, 22,083 plasterers, and 4,891 engaged in manufacturing agricultural implements, amounting in the aggregate to 1,214,023, leaving 2,623,089 persons employed in such manufacturing industries as are claimed to be benefited by a high tariff.

To these the appeal is made to save their employment and maintain their wages by resisting a change. There should be no disposition to answer such suggestions by the allegation that they are in a minority among those who labor, and therefore should forego an advantage, in the interest of low prices for the majority; their compensation, as it may be affected by the operation of tariff laws, should at all times be scrupulously kept in view; and yet with slight reflection they will not overlook the fact that they are consumers with the rest; that they, too, have their own wants and those of their families to supply from their earnings, and that the price of the necessaries of life, as well as the amount of their wages, will regulate the measure of their welfare and comfort.

But the reduction of taxation demanded should be so measured as not to necessitate or justify either the loss of employment by the working man nor the lessening of his wages; and the profits still remaining to the manufacturer, after a necessary readjustment, should furnish no excuse for the sacrifice of the interests of his employés either in their opportunity to work or in the diminution of their compensation. Nor can the worker in manufactures fail to understand that while a high tariff is claimed to be necessary to allow the payment of remunerative wages, it certainly results in a very large increase in the price of nearly all sorts of manufactures, which, in almost countless forms, he needs for the use of himself and his family. He receives at the desk of his employer his wages, and perhaps before he reaches his home is obliged, in a purchase for family use of an article which embraces his own labor, to return in the payment of the increase in price which the tariff permits, the hard-earned compensation of many days of toil.

The farmer and the agriculturist who manufacture nothing, but who pay the increased price which the tariff imposes, upon every agricultural implement, upon all he wears and upon all he uses and owns, except the increase of his flocks and herds and such things as his husbandry produces from the soil, is invited to aid in maintaining the present situation; and he is told that a high duty on imported wool is necessary for the benefit of those who have sheep to shear, in order that the price of their wool may be increased. They of course are not reminded that the farmer who has no sheep is by this scheme obliged, in his purchases of clothing and woolen goods, to pay a tribute to his fellow farmer as well as to the manufacturer and merchant; nor is any mention made of the fact that the sheep-owners themselves and their households, must wear clothing and use other articles manufactured from the wool they sell at tariff prices, and thus as consumers must return their share of this increased price to the tradesman.

I think it may be fairly assumed that a large proportion of the sheep owned by the farmers throughout the country are found in small flocks numbering from twenty-five to fifty. The duty on the grade of imported wool which these sheep yield, is ten cents each pound if of the value of thirty cents or less, and twelve cents if of the value of more than thirty cents. If the liberal estimate of six pounds be allowed for each fleece, the duty thereon would be sixty or seventy-two cents, and this may be taken as the utmost enhancement of its price to the farmer by reason of this duty. Eighteen dollars would thus represent the increased price of the wool from twenty-five sheep and thirty-six dollars that from the wool of fifty sheep; and at present values this addition would amount to about one-third of its price. If upon its sale the farmer receives this or a less tariff profit, the wool leaves his hands charged with precisely that sum, which in all its changes will adhere to it, until it reaches the consumer. When manufactured into cloth and other goods and material for use, its cost is not only increased to the extent of the farmer's tariff profit, but a further sum has been added for the benefit of the manufacturer under the operation of other tariff laws. In the mean time the day arrives when the farmer finds it necessary to purchase woolen goods and material to clothe himself and family for the winter. When he faces the tradesman for that purpose he discovers that he is obliged not only to return in the way of increased prices, his tariff profit on the wool he sold, and which then perhaps lies before him in manufactured form, but that he must add a considerable sum thereto to meet a further increase in cost caused by a tariff duty on the manufacture. Thus in the end he is aroused to

the fact that he has paid upon a moderate purchase, as a result of the tariff scheme, which, when he sold his wool seemed so profitable, an increase in price more than sufficient to sweep away all the tariff profit he received upon the wool he produced and sold.

When the number of farmers engaged in wool-raising is compared with all the farmers in the country, and the small proportion they bear to our population is considered; when it is made apparent that, in the case of a large part of those who own sheep, the benefit of the present tariff on wool is illusory; and, above all, when it must be conceded that the increase of the cost of living caused by such tariff, becomes a burden upon those with moderate means and the poor, the employed and unemployed, the sick and well, and the young and old, and that it constitutes a tax which, with relentless grasp, is fastened upon the clothing of every man, woman, and child in the land, reasons are suggested why the removal or reduction of this duty should be included in a revision of our tariff laws.

In speaking of the increased cost to the consumer of our home manufactures, resulting from a duty laid upon imported articles of the same description, the fact is not overlooked that competition among our domestic producers sometimes has the effect of keeping the price of their products below the highest limit allowed by such duty. But it is notorious that this competition is too often strangled by combinations quite prevalent at this time, and frequently called trusts, which have for their object the regulation of the supply and price of commodities made and sold by members of the combination. The people can hardly hope for any consideration in the operation of these selfish schemes.

If, however, in the absence of such combination, a healthy and free competition reduces the price of any particular dutiable article of home production, below the limit which it might otherwise reach under our tariff laws, and if, with such reduced price, its manufacture continues to thrive, it is entirely evident that one thing has been discovered which should be carefully scrutinized in an effort to reduce taxation.

The necessity of combination to maintain the price of any commodity to the tariff point, furnishes proof that some one is willing to accept lower prices for such commodity, and that such prices are remunerative; and lower prices produced by competition prove the same thing. Thus where either of these conditions exist, a case would seem to be presented for an easy reduction of taxation.

The considerations which have been presented touching our tariff laws are intended only to enforce an earnest recommendation that the surplus revenues of the Government be prevented by the reduc-

tion of our customs duties, and, at the same time, to emphasize a suggestion that in accomplishing this purpose, we may discharge a double duty to our people by granting to them a measure of relief from tariff taxation in quarters where it is most needed and from sources where it can be most fairly and justly accorded.

Nor can the presentation made of such considerations be, with any degree of fairness, regarded as evidence of unfriendliness toward our manufacturing interests, or of any lack of appreciation of their value and importance.

These interests constitute a leading and most substantial element of our national greatness and furnish the proud proof of our country's progress. But if in the emergency that presses upon us our manufacturers are asked to surrender something for the public good and to avert disaster, their patriotism, as well as a grateful recognition of advantages already afforded, should lead them to willing co-operation. No demand is made that they shall forego all the benefits of governmental regard; but they can not fail to be admonished of their duty, as well as their enlightened self-interest and safety, when they are reminded of the fact that financial panic and collapse, to which the present condition tends, afford no greater shelter or protection to our manufactures than to our other important enterprises. Opportunity for safe, careful, and deliberate reform is now offered; and none of us should be unmindful of a time when an abused and irritated people, heedless of those who have resisted timely and reasonable relief, may insist upon a radical and sweeping rectification of their wrongs.

The difficulty attending a wise and fair revision of our tariff laws is not underestimated. It will require on the part of the Congress great labor and care, and especially a broad and national contemplation of the subject, and a patriotic disregard of such local and selfish claims as are unreasonable and reckless of the welfare of the entire country.

Under our present laws more than four thousand articles are subject to duty. Many of these do not in any way compete with our own manufactures, and many are hardly worth attention as subjects of revenue. A considerable reduction can be made in the aggregate, by adding them to the free list. The taxation of luxuries presents no features of hardship; but the necessaries of life used and consumed by all the people, the duty upon which adds to the cost of living in every home, should be greatly cheapened.

The radical reduction of the duties imposed upon raw material used in manufactures, or its free importation, is of course an important factor in any effort to reduce the price of these necessaries; it

would not only relieve them from the increased cost caused by the tariff on such material, but the manufactured product being thus cheapened, that part of the tariff now laid upon such product, as a compensation to our manufacturers for the present price of raw material, could be accordingly modified. Such reduction, or free importation, would serve beside to largely reduce the revenue. It is not apparent how such a change can have any injurious effect upon our manufacturers. On the contrary, it would appear to give them a better chance in foreign markets with the manufacturers of other countries, who cheapen their wares by free material. Thus our people might have the opportunity of extending their sales beyond the limits of home consumption—saving them from the depression, interruption in business, and loss caused by a glutted domestic market, and affording their employés more certain and steady labor, with its resulting quiet and contentment.

The question thus imperatively presented for solution should be approached in a spirit higher than partisanship and considered in the light of that regard for patriotic duty which should characterize the action of those intrusted with the weal of a confiding people. But the obligation to declared party policy and principle is not wanting to urge prompt and effective action. Both of the great political parties now represented in the Government have, by repeated and authoritative declarations, condemned the condition of our laws which permit the collection from the people of unnecessary revenue, and have, in the most solemn manner, promised its correction; and neither as citizens or partisans are our countrymen in a mood to condone the deliberate violation of these pledges.

Our progress toward a wise conclusion will not be improved by dwelling upon the theories of protection and free trade. This savors too much of bandying epithets. It is a *condition* which confronts us—not a theory. Relief from this condition may involve a slight reduction of the advantages which we award our home productions, but the entire withdrawal of such advantages should not be contemplated. The question of free trade is absolutely irrelevant; and the persistent claim made in certain quarters, that all efforts to relieve the people from unjust and unnecessary taxation are schemes of so-called free-traders, is mischievous and far removed from any consideration for the public good.

The simple and plain duty which we owe the people is to reduce taxation to the necessary expenses of an economical operation of the Government, and to restore to the business of the country the money which we hold in the Treasury through the perversion of governmental powers. These things can and should be done with safety

to all our industries, without danger to the opportunity for remunerative labor which our workingmen need, and with benefit to them and all our people, by cheapening their means of subsistence and increasing the measure of their comforts.

The Constitution provides that the President "shall, from time to time, give to the Congress information of the state of the Union." It has been the custom of the Executive, in compliance with this provision, to annually exhibit to the Congress, at the opening of its session, the general condition of the country, and to detail, with some particularity, the operations of the different Executive Departments. It would be especially agreeable to follow this course at the present time, and to call attention to the valuable accomplishments of these Departments during the last fiscal year. But I am so much impressed with the paramount importance of the subject to which this communication has thus far been devoted, that I shall forego the addition of any other topic, and only urge upon your immediate consideration the "state of the Union" as shown in the present condition of our treasury and our general fiscal situation, upon which every element of our safety and prosperity depends.

The reports of the heads of Departments, which will be submitted, contain full and explicit information touching the transaction of the business intrusted to them, and such recommendations relating to legislation in the public interest as they deem advisable. I ask for these reports and recommendations the deliberate examination and action of the Legislative branch of the Government.

There are other subjects not embraced in the departmental reports demanding legislative consideration and which I should be glad to submit. Some of them, however, have been earnestly presented in previous messages, and as to them, I beg leave to repeat prior recommendations.

As the law makes no provision for any report from the Department of State, a brief history of the transactions of that important Department, together with other matters which it may hereafter be deemed essential to commend to the attention of the Congress, may furnish the occasion for a future communication.

GROVER CLEVELAND.

WASHINGTON,
December 6, 1887.

To the Senate and House of Representatives:

I transmit herewith a report from the Secretary of State, accompanied with selected correspondence relating to foreign affairs, for the year 1887.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, June 26, 1888.

To the President:

The Secretary of State has the honor to submit herewith, with a view to its transmission to Congress, certain correspondence for the year 1887 in relation to foreign affairs.

Since the commencement of the present session of Congress sundry reports have been made by this Department in response to resolutions of the House of Representatives and of the Senate respectively, and also in the absence of such requests as the public interest has required. The correspondence accompanying the reports referred to is now before Congress.

There are, however, other matters of general public interest upon which special report has not been made, but as to which it would appear to be desirable that Congress should be informed, in order that a connected and comprehensive view may be had of our foreign relations.

To this end the accompanying correspondence is respectfully submitted.

T. F. BAYARD.

DEPARTMENT OF STATE,
Washington, June 26, 1888.

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337	Mr. Bayard to Sir Lionel West.	May 7	Assisted emigration: Permission to land to Irish emigrants sent out at public expense and who have friends in the United States to help them would depend upon whether they were able to take care of themselves without becoming public charges; United States would look with disfavor upon the sending to this country of thriftless or unself-supporting persons.	520
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342	Sir Lionel West to Mr. Bayard.	July 18	Fisheries: Alleged inhospitable conduct of collector of customs at Shelburne, Nova Scotia, in refusing to allow captain of American vessel *Laura Sayward* to buy food for his crew; captain declares statements made in his affidavit of complaint are untrue; minutes of Privy Council of Canada and declaration of captain of the *Laura Sayward* retracting former statements inclosed.	540
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356	Mr. Bayard to Mr. Lainfiesta.	Nov. 9	Political: Recognition by Guatemalan Congress of dictatorship assumed by President of that country; acknowledges note of October 22.	557

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382	Mr. Carter to Mr. Bayard...	Sept. 23	Supplementary convention to limit duration of reciprocity treaty between Hawaii and the United States: Amendments made by Senate discussed, and views of United States as to construction to be placed upon them requested.	589
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413	Same to same (No. 302)	Mar. 8	Railways: Article from a British newspaper in Japan calling upon Japan to seek assistance of Englishmen in building proposed railroads, and article from Japanese paper advocating the establishment of a line of steamers between Japan and the United States inclosed.	659
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420	Mr. Manning to Mr. Bayard (No. 25).	Nov. 30	Matriculation of foreigners in Mexico: Notice by Mexico that Americans possessing real estate or having children born in Mexico will be considered Mexican citizens unless intention to retain their nationality is officially declared; foreign office informed that United States do not admit doctrine of involuntary change of allegiance; notice can not be held conclusive upon their citizens; note to foreign office and circular to consular officers in Mexico inclosed.	672
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559	Mr. Bayard to Mr. Buck (No. 112).	Nov. 30	Contracts of the Pierola and Iglesias Governments with foreigners: Their repudiation by Peruvian Congress; minister's presentation of views of United States and his action in declining to join with foreign representatives in joint representations approved.	925
560	Mr. Neill to Mr. Bayard (No. 188).	Dec. 20	Death of José Sevilla, a naturalized American at Lima, and his bequest of a large sum for the establishment of a benevolent institution in New York City for girls; portion of will having reference thereto inclosed.	925
561	Same to same (No. 189).....	Dec. 22	Contracts of the Pierola and Iglesias Governments: Act annuling interior acts of these Governments approved by Peruvian President.	926
562	Mr. Buck to Mr. Bayard (No. 210).	1887. Feb. 19	Contracts of the Pierola and Iglesias Governments with foreigners: Their repudiation by Peruvian Congress; exceptions taken by minister of foreign affairs to presentation of views of United States stated; probable reply of Mr. Buck outlined.	927
563	Same to same (No. 212).....	Feb. 28	Contracts of the Pierola and Iglesias Governments with foreigners: Their repudiation by Peruvian Congress; reply of minister of foreign affairs to representations of United States and rejoiner of Mr. Buck inclosed.	927
564	Same to same (No. 216).....	Mar. 19	Poll-tax to be levied in Peru: Note from foreign office requesting list of Americans residing in Lima, and reply of Mr. Buck, that as the United States do not require registry of their citizens he is unable to give information, inclosed; decree requiring registration also inclosed.	932
565	Mr. Bayard to Mr. Buck (No. 129).	Apr. 19	Poll-tax to be levied in Peru: While Peru may require registry of aliens, it can not require United States consuls to carry out the enactment; reply of minister to request of foreign office for alist of American citizens in Lima was appropriate.	933
566	Same to same (No. 130).....	Apr. 29	Contracts of the Pierola and Iglesias Governments with foreigners: Their repudiation by Peruvian Congress; views of United States having been announced, matter may now rest until some specific case affecting American interests arises.	934

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567	Mr. Lewis to Mr. Bayard (No. 88).	1887 Mar. 29	Macao: Protocol of a treaty between Portugal and China relative to, inclosed.	935
568	Mr. Bayard to Mr. Lewis (No. 52)	May 13	Passports (consular) required by Portuguese consul at Boston of travelers from the United States to the Azores, and not exacted of travelers from Europe: Case of Henry Watson; United States does not question propriety of a visa to American passports, but present case appears to ignore American passports; instructed to ascertain if action of vice-consul at Boston receives sanction at Portugal, and, if so, to protest.	935
569	Same to same (No. 55)	May 28	Passports (consular) required by Portuguese consul at Boston of travelers from the United States to the Azores: Case of Henry Watson; note from Portuguese minister, stating that Portuguese consular passport is required only in absence of a United States passport, inclosed.	936
570	Mr. Lewis to Mr. Bayard (No. 107).	July 9	Construction of a free port on the Tagus proposed by the Cortes: Opposition thereto in commercial circles of Lisbon.	936

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571	Mr. Bayard to Viscount das Nogueiras.	May 11	Passports (consular) required by Portuguese consul at Boston of travelers from the United States bound for the Azores: Case of Henry Watson; inquiries whether this exaction is authorized by Portuguese Government.	937
572	Viscount das Nogueiras to Mr. Bayard.	May 15	Passports (consular) required by Portuguese consul at Boston of travelers from the United States to the Azores: Portuguese consular passports are required only in absence of United States passports; all passports must be visaed at the consulates.	937
573	Mr. Bayard to Viscount das Nogueiras.	May 19	Passports (consular) required by the Portuguese consul at Boston of travelers from the United States to the Azores: Case of Henry Watson; requests that consul at Boston be instructed to conform to Portuguese consular code in the future.	938
574	Viscount das Nogueiras to Mr. Bayard.	May 25	Passports (consular) required by Portuguese consul at Boston of travelers from United States to the Azores: Consul has been instructed to conform to Portuguese consular code.	938

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575	Mr. Bayard to Mr. Taft..... (No. 13).	Mar. 25	Seizure and confiscation of the schooner *Eliza*, the property of an American citizen doing business in Japan, by the Russian cruiser *Razbornyk*; Claim of F. C. Spooner, the owner, submitted for presentation to the Russian Government; affidavits of the owner and others stating facts inclosed.	939
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576	Same to same (No. 65).....	Dec. 4	Seizure and confiscation of the American schooner *Henrietta* by the Russian corvette *Kreysser* in Behring Strait for fishing and trading in Russian waters: Instructed to apply for facts touching seizure and an explanation of the Russian claim; dispatch from consul at Nagasaki inclosed.	942
		1887.		
577	Mr. Lothrop to Mr. Bayard (No. 92).	Jan. 18	Imprisonment at Wlocklawek, Poland, of Adolph Lipszyc, charged with having become naturalized in the United States without permission of the Russian Government: Facts stated; action taken by minister; Russian law concerning unauthorized absence from the country inclosed.	943
578	Same to same (No. 95).....	Feb. 17	Seizure and confiscation of the American schooners *Henrietta* and *Eliza* rest on an administrative order prohibiting, after January 1, 1882, all fishing, hunting, and trading on Russian Pacific coasts without special license: Commission on whose judgment vessels were confiscated was composed of officers of vessels which made captures; note from foreign office inclosed.	945
579	Same to same (No. 96).....	Feb. 17	Seizure and confiscation of the American schooner *Eliza:* Note from foreign office inclosed; vessel was seized for trading in Russian waters with contraband articles of arms and liquors, and in violation of an administrative prohibitive regulation.	946
580	Mr. Bayard to Mr. Lothrop (No. 70).	Feb. 18	Citizenship status of naturalized Americans of Russian origin in Russia: Imprisonment of Adolph Lipszyc for obtaining American naturalization without Russian permission; claim of perpetual allegiance can not be assented to by United States; question of expatriation discussed at length; Russia has assented by treaty to right of expatriation; instructed to ask release of Lipszyc; Article X of treaty of 1832 with Russia and Article XIV of treaty of 1826 with Prussia inclosed.	948
581	Mr. Lothrop to Mr. Bayard (No. 98).	Feb. 23	Imprisonment of Abraham Thiessen, a naturalized American citizen, charged with emigrating without permission: Facts and action taken by minister stated; Thiessen released and ordered to leave Russia.	951
582	Mr. Lothrop to Mr. Bayard (No. 100).	Mar. 7	Seizure and confiscation of the American schooners *Henrietta* and *Eliza*; Notice relative to commerce on Russian Pacific coasts, under which vessels were seized, inclosed.	953

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584	Mr. Bayard to Mr. Lothrop (No. 74).	Mar. 16	Seizure and confiscation of the American schooners *Henrietta* and *Eliza*: Instructed to forward translation of Russian code of prize law of 1869, limiting jurisdictional waters of Russia to 3 miles from shore.	954
585	Same to same (No. 75).....	Mar. 16	Seizure and confiscation of the American schooner *Henrietta*: If seizure was made in Russian territorial waters, Russian authorities had jurisdiction; and if condemnation was by a competent court and on adequate evidence it can be sustained; if court before whom proceedings were had was composed of parties interested in seizure, condemnation can not be internationally sustained; redress would also arise if seizure was made for an offense committed outside of 3-mile zone; instructed to inquire as to constitution of court and locality of seizure.	954
586	Mr. Lothrop to Mr. Bayard (No. 103).	Mar. 17	Naturalization: Proposed modification of Russian law regarding; newspaper article inclosed.	955
587	Mr. Bayard to Mr. Lothrop (No. 78).	Mar. 23	Seizure and confiscation of the American schooners *Henrietta* and *Eliza*: Cases held under consideration awaiting further reports.	956
588	Mr. Lothrop to Mr. Bayard (No. 110).	Apr. 2	Imprisonment of Adolph Lipszyc: Lipszyc set at liberty on payment of bail; no Americans now under detention in Russia.	956
589	Mr. Bayard to Mr. Lothrop (No. 81).	Apr. 8	Naturalization: Proposed modification of the Russian law regarding; instructed to encourage disposition towards fuller recognition of right of expatriation.	956
590	Mr. Lothrop to Mr. Bayard (No. 111).	Apr. 11	Seizure of the American schooners *Henrietta* and *Eliza*: Article 21 of Russian prize law of 1869; right of making prizes is thereby claimed in the open seas and in the territorial waters of the enemy.	957
591	Mr. Bayard to Mr. Lothrop (No. 84).	Apr. 20	Expatriation: Rules to be issued for granting permission to Russians to become citizens or subjects of foreign powers; dispatch from consul at Odessa inclosed.	957
592	Mr. Lothrop to Mr. Bayard (No. 114).	May 10	Citizenship status of naturalized Americans of Russian origin in Russia: Case of Adolph Lipszyc: Lipszyc not free from legal restraint; Russia claims enforcement of laws against Russians naturalized in United States should be considered a matter of domestic concern and no grievance against United States; foreign office informed that United States can not assent to this view; correspondence with foreign office inclosed.	958
593	Same to same (No. 118).....	May 31	Acquisition and holding of real estate by foreigners in Russia: Imperial ukase relative to, inclosed.	963
594	Same to same (No. 119).....	June 1	Naturalization: Proposed law relative to; newspaper article inclosed.	964
595	Same to same (No. 122).....	June 6	Citizenship status of Emil Stucker: Son of a naturalized American who returned to Europe shortly after naturalization and died there; son has never been in the United States; passport denied him by minister on ground that he is not a citizen of the United States; instructions asked.	965
596	Mr. Bayard to Mr. Lothrop (No. 92).	June 18	Citizenship status of naturalized Americans of Russian origin in Russia: Case of Adolph Lipszyc: Rule of unalterable allegiance not in accord with freedom of social and commercial intercourse between nations; United States pleased to note apparent disposition of Russia to approach fuller consideration of subject.	965
597	Mr. Lothrop to Mr. Bayard (No. 126.)	June 22	Seizure and confiscation of the American schooners *Henrietta* and *Eliza*: Certification of facts by Russian officers as to seizure and confiscation inclosed; tribunals that confiscated vessels were composed of officers of vessel making capture.	966
598	Mr. Bayard to Mr. Lothrop (No. 93).	June 24	Naturalization: Proposed law relative to, considered an encouraging sign towards naturalization of Russians abroad.	967

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600	Mr. Lothrop to Mr. Bayard (No. 145).	Oct. 6	Petroleum trade of Russia: Entire exclusion of American petroleum sought; Russian newspaper article giving petroleum statistics inclosed.	968

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602	Mr. Bayard to Baron Rosen.	June 27	Fourth International Prison Conference to be held at St. Petersburg in 1890: Request that United States formulate questions they desire to submit for discussion; Congress has not yet taken necessary action to enable Department to respond thereto.	970
603	Same to same	Oct. 4	Documents relating to property of Jews in Russian Poland: Authentication of, requested.	971
604	Baron Rosen to Mr. Bayard.	Oct. 5	Documents relating to property of Jews in Russian Poland: Their authentication denied unless accompanied by passports or other documentary evidence that persons issuing them had left Russia with permission.	971

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605	Mr. Child to Mr. Bayard (No. 25).	1887. May 10	Liquors (spirituous): Law agreed to by the treaty powers to regulate the importation and sale of, in Siam; note from foreign office requesting agreement of United States to its enforcement from September 1, 1887, inclosed.	972
606	Mr. Bayard to Mr. Child. (No. 18).	July 1	Liquors (spirituous): Law to regulate the importation and sale of, in Siam: United States can not give assent to law, as its fourth section is a discrimination against beers and wines manufactured in United States and contrary to treaty with Siam of May 14, 1866.	973
607	Mr. Child to Mr. Bayard (No. 40).	Aug. 31	Liquors (spirituous): Law to regulate the importation and sale of, in Siam; fourth section of law altered by Siam to meet objection of United States.	974

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609	Mr. Curry to Mr. Bayard (No. 152).	Nov. 23	Marriages in Cuba and Porto Rica: Royal decree making civil marriages valid inclosed.	979
610	Mr. Bayard to Mr. Curry (No. 143).	Dec. 2	Commercial agreement: Mr. Curry's defense of position of United States approved.	981
611	Mr. Curry to Mr. Bayard (No. 157).	Dec. 15	Commercial agreement extended to March 31, 1887; agreement considered by Spain provisional and transitory.	982
612	Mr. Bayard to Mr. Curry (No. 157).	1887. Jan. 10	Tonnage dues paid by Spanish vessels in Cuban ports; Cuban customs tariff inclosed; equal treatment accorded thereby in the payment of tonnage and port dues to vessels of the United States.	982

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614	Mr. Bayard to Mr. Curry (telegram).	Mar. 11	Commercial agreement: United States accepts its extension until June 30, 1887.	984
615	Same to same (No. 180).....	Mar. 18	Passport system of Cuba: Dispatch from consul-general at Havana giving further instances of its vexatious operation on American citizens, and law concerning foreigners in Cuba inclosed.	985
616	Same to same (No. 181).....	Mar. 31	Passport system of Cuba: Dissatisfaction in Cuba with its exactions; Havana newspaper article inclosed.	991
617	Same to same (No. 182).....	Mar. 29	Differential duties exacted on the cargo of the American bark *Sarah A. Staples*: Dispatch from consul-general at Havana transmitting complaint of master and remonstrances made to governor-general inclosed.	992
618	Mr. Adee to Mr. Curry (No. 185).	Apr. 16	Passport system of Cuba: Inconveniences caused thereby to American citizens; dispatch from consul-general at Havana, explaining operation of system, inclosed.	994
619	Mr. Bayard to Mr. Curry (No. 187).	Apr. 25	Passport system of Cuba: Note from Spanish minister of April 15 inclosed.	995
620	Same to same (No. 198).....	May 31	Destitute seamen sent to United States by consul-general at Havana; formalities required by local authorities complained of; discharged American seamen in foreign ports are under direct charge of Government of the United States, which assumes duty of sending them home, independently of their citizenship; dispatch from consul-general at Havana inclosed.	995
621	Mr. Curry to Mr. Bayard (No. 222).	June 22	Commercial agreement: Foreign office informed of concurrence of the United States in its extension to December 31.	997
622	Mr. Bayard to Mr. Curry (No. 210).	July 6	Commercial agreement: Its extension to December 31; minister's action approved.	998
623	Mr. Strobel to Mr. Bayard (No. 241).	Aug. 19	Naturalized citizens of Spanish birth: Their liability for military service when visiting Spain; by Spanish law they are not only exempted from such service, but prohibited therefrom; law quoted.	998
624	Mr. Bayard to Mr. Strobel (telegram).	Sept. 20	Detention of British steamer *Utopia* at Malaga with cargo from New York: Information given concerning manifest for transmission to the British legation in Italy.	998
625	Mr. Strobel to Mr. Bayard (No. 248).	Sept. 21	Detention of British steamer *Utopia* at Malaga: Information regarding manifest communicated to British minister in Italy; detention due to law requiring vessels entering Spanish ports with tobacco in transit for foreign ports to give bond.	999
626	Mr. Bayard to Mr. Strobel (No. 228).	Oct. 20	Passport regulations (new) for Americans in Cuba: Americans thereby can enter island with any official document to prove identity without the visa of Spanish consul; dispatch from consul-general at Havana transmitting royal order and passport regulations inclosed.	999
627	Mr. Strobel to Mr. Bayard (No. 627).	Nov. 2	Passport system of Cuba: Note from foreign office reporting its modification inclosed.	1002

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628	Mr. Valera to Mr. Bayard ..	Feb. 19	Claim of Messrs. Larrache & Co. *vs.* United States for cotton seized during the civil war; former demands for reparation reviewed and reasons stated why, in the opinion of Spain, indemnity should be granted; speedy and just reparation requested; affidavits relative to seizure inclosed.	1003
629	Mr. Bayard to Mr. de Muruaga.	June 28	Claim of Messrs. Larrache & Co. *vs.* United States for cotton seized during the civil war: Facts stated; case one of private contract between claimants and the Southern Confederacy in contraband of war, subject to the vicissitudes of war, and resulting loss gives no basis for claim; rights of subjects of foreign powers domiciled in belligerent territory considered.	1006

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630	Mr. de Muruaga to Mr. Bayard.	Aug. 13	Claim of Messrs. Larrache & Co. *vs.* United States for cotton seized during the civil war: Its re-examination requested; arguments advanced to prove that cotton seized belonged to Spanish subjects who purchased it for legitimate commercial operations; cotton held to have been not contraband, and that it was seized after war had ended; exception to principle that foreigners domiciled in an enemy's country are to be considered as belligerents and their property subject to confiscation, cited; course pursued by United States in regard to claims arising from war stated.	1008
631	Mr. Bayard to Mr. de Muruaga.	Dec. 3	Claim of Messrs. Larrache & Co. *vs.* United States for cotton seized during the civil war: Positions taken in note of August 13 restated, and further arguments advanced to prove right of United States to seize the cotton; the cotton was contraband of war, and was seized before the close of war; liability of United States denied.	1015
632	Mr. de Muruaga to Mr. Bayard.	Dec. 14	Caroline Islands: Right to establish a naval station there renounced by Germany; sovereignty of Spain over entire territory unimpaired.	1023
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633	Same to same	Jan. 4	Tonnage dues (excessive) levied at New Orleans on Spanish steamer *Hernan Cortes* proceeding from Barcelona: Claims excess to be in violation of commercial agreement and asks its refund; report of deputy collector at New Orleans inclosed.	1023
634	Mr. Bayard to Mr. de Muruaga.	Feb. 5	Tonnage dues (excessive) levied at New Orleans on Spanish steamer *Herman Cortes* proceeding from Barcelona: Complaint that excess is a violation of commercial agreement; substance opinion of Secretary of the Treasury given; commercial agreement has no bearing on case, question not depending on nationality of vessel but on character of voyage and entry of vessel.	1024
635	Same to same	Mar. 3	Tax on passengers arriving in United States in Spanish vessels: Explanation of item relative to, in Spanish consular tariff of August 1, 1886, requested; hope expressed that it is not such a tax as should properly be regulated by laws of the United States.	1026
636	Mr. de Muruaga to Mr. Bayard.	Mar. 8	Neutrality of the United States: Intended violation of, by parties in Florida against the peace of Cuba reported; action to prevent requested.	1026
637	Mr. Bayard to Mr. de Muruaga.	Mar. 10	Neutrality of the United States: Intended violation of, by parties in Florida against the peace of Cuba; action taken to prevent.	1027
638	Same to same	Mar. 15	Neutrality of the United States: Intended violation of, by parties in Florida against the peace of Cuba; action taken by Treasury Department and Department of Justice to prevent, stated.	1028
639	Mr. de Muruaga to Mr. Bayard.	Mar. 18	Tax on passengers arriving in United States in Spanish vessels does not infringe upon laws of United States; operation of item relative to tax in Spanish consular tariff explained	1028
640	Mr. Bayard to Mr. de Muruaga.	Apr. 11	Neutrality of the United States: Intended violation of, by parties in Florida against the peace of Cuba; deputy collector at Tampa thinks any projected expedition from that place has failed.	1029
641	Same to same	Apr. 11	Passport system of Cuba: Inconveniences and annoyances to which American citizens are subjected thereby; exaction of a passport as a condition to leaving the island complained of; endeavors of minister to effect a change requested.	1030
642	Mr. de Muruaga to Mr. Bayard.	Apr. 15	Passport system of Cuba: Complaint against exaction of passport as a condition to leaving island communicated to Spain with the request that orders be issued to prevent molestation or inconvenience prejudicial to intercourse between the Antilles and the United States.	1030
643	Same to same	Apr. 15	Passport system of Cuba: Passports not required of foreigners for a month's travel; after that time they are necessary; minister has remonstrated against this to his government, and has instructed Spanish consuls in the United States to visa American passports at a cost of $1.	1031

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645	Mr. Bayard to Mr. de Muruaga.	Aug. 16	Commercial agreement of October 27, 1886: Proposal to extend its provisions to all Spanish possessions acceptable to the United States; modification suggested to make the two paragraphs of proposal correspond.	1032
646	Mr. de Muruaga to Mr. Bayard.	Aug. 23	Commercial agreement of October 27, 1886: Extension of its provisions to all Spanish possessions; modification suggested by the Secretary of State agreed to.	1032
647	Mr. Bayard to Mr. de Muruaga.	Aug. 31	Commercial agreement of October 27, 1886: Extension of its provisions to all Spanish possessions; asks that minister will suggest a time for signing the amended memorandum.	1033
648	Mr. de Muruaga to Mr. Bayard.	Sept. 1	Commercial agreement: Memorandum of agreement for the reciprocal and complete suspension of all discriminating duties of tonnage or imposts between the United States and Spain, returned with approval.	1033
649	Memorandum	Sept. 21	Memorandum of agreement between United States and Spain for the reciprocal and complete suspension of all discriminating duties of tonnage or imposts in their respective ports.	1034
650	Proclamation by the President.	Sept. 1	Suspending all discriminating tonnage duties and imposts on vessels of Spain, and the produce, manufactures, or merchandise imported in said vessels from Cuba, Porto Rico, the Philippines, and all other countries belonging to Spain, or from any other foreign country.	1034

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652	Same to same (No. 85)	May 24	Political: Tariff discussion and increased protection sentiment in Sweden.	1036
653	Same to same (No. 90)	July 14	Political: Import duties imposed on corn and cheese; American corn affected thereby.	1037

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654	Mr. de Reuterskiöld to Mr. Bayard.	Mar. 8	Discriminating tonnage dues: Same privileges for vessels from Sweden and Norway as are granted to vessels from certain localities by the shipping act of June 26, 1884, claimed under treaty of July 4, 1827.	1038
655	Mr. Bayard to Mr. de Reuterskiöld.	Mar. 29	Discriminating tonnage dues: Claim of Sweden and Norway, under treaty of 1827, to same privileges for vessels from those countries as are granted to vessels from certain localities by shipping act of June 26, 1884, can not be entertained by United States; act of 1884 admits all nations to its benefits, and its privileges can be enjoyed by Sweden and Norway upon the terms on which they are offered.	1039
656	Mr. de Reuterskiöld to Mr. Bayard.	Mar. 31	Discriminating tonnage dues: Claim of Sweden and Norway, under treaty of 1827, to same privileges for vessels from those countries as are granted to vessels from certain localities by shipping act of June 26, 1884; refusal of United States to entertain claim protested against.	1039
657	Same to same	June 30	Discriminating tonnage dues: Claim of Sweden and Norway, under treaty of 1827, to same privileges for vessels from those countries as are granted to vessels from certain localities by shipping act of June 26, 1884; arguments advanced to sustain claim; note from foreign minister of Sweden inclosed.	1040

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659	Mr. Bayard to Mr. de Reuterskiöld.	Dec. 20	Discriminating tonnage dues: Claim of Sweden and Norway, under treaty of 1827, to same privileges for vessels from those countries as are granted to vessels from certain localities by shipping acts of June 26, 1884, and June 19, 1886; contention of Sweden and Norway that acts conflict with article 8 of the treaty of 1827 discussed at length; confounding of terms "navigation" and "commerce" by minister of foreign affairs corrected; acts do not conflict with the treaty, and United States cannot assent to demand.	1043
660	Same to same	Dec. 20	Discriminating tonnage dues: Protest of Norway and Sweden against shipping acts of June 26, 1884, and June 19, 1886, as at variance with treaty of 1827 considered; objections of foreign office not specifically stated; question of consular fees discussed; same treatment in regard to tonnage dues is accorded to vessels of Norway and Sweden from specified localities as to American vessels; shipping act of 1884 directs opening of negotiations with other powers with a view to mutuality of treatment; protest not admitted.	1046
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661	Mr. de Reuterskiöld to Mr. Bayard.	Mar. 9	Discriminating tonnage dues: Claim of Sweden and Norway, under treaty of 1827, to same privileges for vessels from those countries as are granted to vessels from certain localities by shipping act of June 26, 1884; correspondence between Mr. Clay and the Swedish chargé, in 1828, inclosed to show that a similar claim then made by the United States was granted by Sweden and Norway; hope expressed that his Government will now receive similar favorable treatment.	1049

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663	Same to same (No. 97)	Feb. 4	Marriages of American citizens in Switzerland: Circular issued by United States legation not accepted by Swiss authorities in that it fails to declare the publication of bans, as required by Swiss law, is not demanded by law of country of origin; federal council will instruct cantonal officers to grant exemption in this respect when assured of the exact scope and intent of section 4082 Revised Statutes; circular issued by legation inclosed.	1057
664	Mr. Bayard to Mr. Winchester (No. 78).	Mar. 1	Marriages of American citizens in Switzerland: Questions asked in Mr. Winchester's No. 97 are answered by Department's circular of February 8, 1887, as to marriage certificates by consuls; obstacles which rules of Department may put in way of marriages of American citizens in Switzerland may be regretted, but more disastrous would it be to countenance issuing of certificates which might lead to marriages which might afterward be declared invalid.	1059
665	Mr. Winchester to Mr. Bayard (No. 105).	Mar. 11	Passport regulation of Switzerland requiring citizens of the United States to renew their passports every two years; request for instructions as to whether requirement should be complied with repeated.	1061

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667	Mr. Winchester to Mr. Bayard (No. 116).	Apr. 21	Citizenship status of Moritz Philipp Emden, who was naturalized in 1854, and has resided in Europe since 1859: Passport refused him on ground that he has no intention to reside in the United States; instructions asked.	1063
668	Same to same (No. 118).....	Apr. 23	Socialists (German) in Switzerland: Stringent measures to be taken against them.	1064
669	Mr. Bayard to Mr. Winchester (No. 86).	May 7	Citizenship status of Moritz Philipp Emden: Minister's action in refusing him a passport approved; Department expects its agents to exact unequivocal declaration of positive intent to return to United States to reside before issuing passports.	1065
670	Mr. Winchester to Mr. Bayard (No. 123).	May 11	Political: Matters before the Swiss Federal Assembly.	1065
671	Same to same (No. 137).....	June 4	Industrial property convention: May 30, 1887, accepted as date of accession of United States thereto; note from foreign office inclosed.	1067
672	Same to same (No. 147).....	Aug. 31	Industrial property; amendment favored by popular vote to Swiss constitution, authorizing federal assembly to enact a law for the protection of.	1068
673	Same to same (No. 153).....	Sept. 23	Citizenship status of Henry E. Kern, who was naturalized after a residence of four years and five months; asks whether a passport should be given him.	1068
674	Same to same (No. 154).....	Sept. 26	Citizenship status of naturalized Americans with large business interests in Switzerland who leave United States immediately upon naturalization and have no real *animus revertendi;* to procure extension of their passports they are willing to swear to an indefinite intent to return; difficulties of legation in such cases stated; legislation to amend naturalization laws necessary; case of Nathan Seligman cited as a case in point.	1069
675	Mr. Bayard to Mr. Winchester (No. 101).	Oct. 7	Citizenship status of Henry E. Kern: As he was naturalized before a sufficient residence in the United States and has violated requirements of naturalization laws, passport should be refused him.	1072
676	Same to same (No. 102).....	Oct. 12	Citizenship status of Americans who remain indefinitely abroad: They retain their domicile if they stay abroad for purposes of health, or as agents of American business houses; or if in Oriental lands they belong to American communities.	1073

CORRESPONDENCE WITH THE LEGATION OF SWITZERLAND AT WASHINGTON.

		1887.		
677	Mr. Frey to Mr. Bayard	Apr. 15	Protection of Swiss citizens by American representatives in countries where Switzerland has no representation: Status of persons protected discussed; position taken that they become, while under such protection, assimilated citizens of the United States, and should be treated as if they were such; protection not claimed as of right; information regarding the scope and nature of the protection guarantied to Swiss citizens requested.	1074
678	Mr. Bayard to Mr. Kloss ...	July 1	Protection of Swiss citizens by American representatives in countries where Switzerland has no representation: United States can use its good offices only with the consent of the governments to which its representatives are accredited, and such services are matters of pleasure; view that a Swiss so protected becomes assimilated to a citizen of the United States not accepted; precedents cited to show uniformity of position of United States on subject.	1076

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No.	From and to whom.	Date.	Subject.	Page.
679	Mr. Frey to Mr. Bayard	1887. Oct. 24	Protection of Swiss citizens by American representatives in countries where Switzerland has no representation: Switzerland unable to share view of United States as to nature and scope of relation between protecting state and persons commended to its protection; thanks for proffer of good offices of United States in behalf of Swiss citizens expressed.	1077

TURKEY.

680	Mr. King to Mr. Bayard (No. 257).	1886. Oct. 19	Religious intolerance: Interference with Rev. Mr. Herrick in performing religious service at Kastamouni; letters from Rev. Mr. Dwight stating facts, and representations made to the Sublime Porte inclosed.	1079
681	Mr. Bayard to Mr. King (No. 171).	Nov. 11	Religious intolerance: Interference with Rev. Mr. Herrick in performing religious service at Kastamouni probably due to ignorance of officer who ordered it; Sublime Porte has for years acquiesced in the exercise of religious functions by American missionaries; rebuke of local authority and measures to prevent recurrence of interference expected.	1082
682	Mr. King to Mr. Bayard, (No. 276.)	1887. Jan. 11	American schools in the Ottoman Empire: Orders to be issued not to interfere with them provided text-books, courses of study, and diplomas of teachers are submitted for examination; schools formerly closed to be reopened; Turkish law regarding schools, memorandum in regard to schools of American missionaries in Turkey, and correspondence with the foreign office and missionaries inclosed.	1083
683	Same to same (No. 277).....	Jan. 15	Colporteurs employed by American missionaries in Turkey: Interference with them by municipal authorities; note to foreign office asking the issuing of instructions to prevent, inclosed.	1089
684	Mr. Bayard to Mr. King, (No. 187.)	Feb. 2	Colporteurs employed by American missionaries in Turkey: Action taken by minister to prevent interference with them by local authorities approved.	1090
685	Mr. King to Mr. Bayard, (No. 286.)	Feb. 7	Religious intolerance: Interference with Rev. Mr. Herrick in performing religious service at Kastamouni; right to hold such service insisted on; correspondence with the Sublime Porte inclosed.	1090
686	Same to same (No. 307).....	Apr. 12	Books of the American Bible House: Complaint of Porte that police were not allowed to search for objectionable books; complaint shown to be unfounded; correspondence with Porte inclosed.	1091
687	Mr. Bayard to Mr. Straus, (No. 7.)	Apr. 20	Extraterritorial question: Historical review of; rights of American missionaries in Turkey discussed at length; these rights find abundant support in ancient usage and Turkish legislation prior and subsequent to treaties of Paris and Berlin, and rest on privileges of extraterritoriality granted to Christian foreigners in Turkey; gratification expressed at arrangement made with Turkish authorities by which missions can continue their work; extracts from documents on extraterritoriality, and an opinion of Edwin Pears on the naturalization treaty inclosed.	1094
688	Same to same (No. 13).....	May 4	Books of the American Bible House: Action of Mr. King in respect to the searching of the American Bible House book-store in Constantinople approved.	1114
689	Mr. King to Mr. Bayard, (No. 318.)	May 6	Religious intolerance: Interference with Rev. Mr. Herrick at Kastamouni; reply of Porte to Mr. King's request that local authority be instructed to prevent recurrence of interference; religious services of different creeds never having been hindered in the Empire, necessity for such instructions not seen by Porte; note from Porte and reply of Mr. King repeating request inclosed.	1114

TURKEY—Continued.

No.	From and to whom.	Date.	Subject.	Page.
		1887.		
690	Mr. Bayard to Mr. Straus, (No. 18).	June 2	Religious intolerance: Interference with Rev. Mr. Herrick; Mr. King's action approved.	1115
691	Same to same (No. 25).....	June 18	Books of the American Bible House: Obstacles interposed to their sale and circulation in Turkey complained of by the American Bible Society; complaint inclosed.	1115
692	Mr. Straus to Mr. Bayard (No. 14).	July 18	Books of the American Bible House: Obstacles interposed to their sale and circulation; seizure of books complained of by American Bible Society; books were returned to agent; not advisable to renew remonstrances until a new case arises; subject intrusted to a commission, with a view to making regulations for the sale of books; letter from Rev. E. M. Bliss inclosed.	1118
693	Mr. Porter to Mr. Straus (No. 33).	Aug. 4	Books of the American Bible House: Minister's dispatch No. 14 approved.	1120
694	Mr. Bayard to Mr. Straus (No. 37).	Aug. 11	Citizenship status of descendants of American citizens born in Turkey: Dispatch from consul at Smyrna, transmitting a memorial of such descendants, and reply of Department thereto inclosed; persons members of an American community do not lose American citizenship; this citizenship they impart to their descendants so long as such descendants form part of an American community; such descendants are regarded as born and continuing in the United States.	1120
695	Mr. Straus to Mr. Bayard (No. 20).	Aug. 20	Citizenship status of Alexander Hatchdoorian, son of a naturalized American who has lived in Turkey since 1856: Son was born in Turkey and has never been in the United States; passport denied him; instructions asked.	1126
696	Same to same (No. 24).....	Sept. 6	Colporteurs: Porte's projected law regarding, with amendments incorporated, and memorandum on law, inclosed.	1126
697	Mr. Bayard to Mr. Straus (No. 46).	Sept. 22	Colporteurs: Propose law for the regulation of; no objection to associating with British ambassador to secure satisfactory amendments; minister's course approved.	1131
698	Same to same (No. 48).....	Sept. 30	Citizenship status of Alexander Hatchdoorian: Minister's action in refusing him a passport approved; reasons stated.	1131

CIRCULARS.

		1887.		
699	To diplomatic and consular officers.	Feb. 8	Marriages of American citizens abroad: Diplomatic and consular officers forbidden to certify as to status of persons domiciled in United States, and as to laws of States regarding marriage; a marriage valid where contracted would be recognized as valid in the United States.	1133
700	To diplomatic officers.....	Feb. 23	Passport applications: Directions for securing uniformity in.	1134
701	To the same	July 9	Discriminating tonnage and port dues: Proposed reciprocal abolition of, on vessels from foreign countries and on American vessels in foreign ports, under provisions of shipping act of June 19, 1886; instructed to extend invitation to this end to foreign governments, and to report as to discrimination against United States vessels, in order that vessels of offending countries may be excluded; proclamation of April 22 abolishing dues on Netherlands vessels and shipping acts inclosed.	1135

CORRESPONDENCE.

ARGENTINE REPUBLIC.

No. 1.

Mr. Hanna to Mr. Bayard.

No. 52.] LEGATION OF THE UNITED STATES,
Buenos Ayres, October 14, 1886. (Received November 26.)

SIR: On the 12th instant, the executive term of Julio A. Roca closed, and Michael Juarez Celman, his successor, was duly installed President of the Argentine Republic for the ensuing six years.

The ceremonies were imposing and full of interest. The great personal popularity of General Roca, who has given this Republic its first six years of unbroken peace, his wise and efficient plans for the development of his country, encouragement of immigration, construction of railroads, establishment of a vast system of public schools, modeled after our own, under the direction of a number of thoroughly-trained normal school teachers, brought at large expense from the United States, and his new system for the dislodgment of Indian tribes from the territories by the encouragement of strong colonies to take their place, and the absorption of the Indians themselves in the industries of the country and its military service, were made the occasion for a succession of civic and military processions, festive entertainments, and laudatory speeches, participated in by representative citizens gathered from all parts of the country.

General Roca has unquestionably set this Government forward far in advance of its ordinary progress under the old régime. The popular opinion seems to be the administration of President Juarez will, in a large degree, be a continuation of the enlightened views and methods of his predecessor.

The inaugural address of President Juarez, and that of General Roca at the surrender of the presidential office, are given herewith in inclosures 1 and 2. The new cabinet is as follows: Interior, Dr. Wilde; foreign affairs, Dr. Quirno Costa; finance, Dr. Pacheco; education, Dr. Passe; war and navy, General Racedo. Popular sentiment very generally sustains the President in the wisdom of his selection of the distinguished gentlemen so soon to be his constitutional advisers.

I have, etc.,

BAYLESS W. HANNA.

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[Inclosure 1 in No. 52—Translation.]

Inaugural address of President Juarez.

GENTLEMEN, SENATORS, AND DEPUTIES: You are the witnesses of the oath which with tranquil and sincere conscience I have just taken. To act with loyalty and patriotism, to obey and exact obedience in matters of constitutional duty, are obligations of no slight significance. Happily loyalty, patriotism, and sentiments favorable to the observance of law are not the exclusive virtues of those in high places. Pardon me if I venture to express the hope the time may come when, before you as witnesses of my conduct and the whole country as judges of my acts, I shall be able to say, truthfully, I have been faithful to my obligations, I have guarded honestly the exalted trust committed to my charge, I have religiously respected the laws myself and caused them to be respected by others, and have secured to every citizen the free exercise of all his rights and liberties. Such results are at least my most earnest hope. The party which invited me to become its candidate for the high office, whose duties I am now about to enter upon, well knows I did not seek the honor, but rather avoided it, being conscious of the responsibilities incident to the station, and that I am doubtful of my ability to perform its duties. But having been elected legally and in honor, the ardor of the struggle having been softened and local antagonisms replaced by the elevated sentiment of nationality, I may now, relying upon the good will of my fellow-citizens, make the promises contained in this document, with the sincerity of one firm in his intentions to maintain himself within the law, with no other ambition than to secure the happiness of his country. The Argentine nation already occupies a high level in self-government through the nature of its institutions, and feels daily the result of the common effort, which one man alone can neither compel nor restrain. The Argentine people, like its great models, acts for itself, and does not tolerate mentors, self-consecrated to the task of marking out its political course. Modern societies which base their political system upon the free and conscientious vote of the people, have little need of extraordinary qualities in their magistrates, it being sufficient for their moral and material development that the laws should be respected equally by those who govern and those who are governed. The solidity of our institutions has ceased to be a problem among us; it is an indestructible fact, guarantied by the great benefits and fertile progress attained, and it may be added with strict truth that there is no authority within the nation which can make itself paramount to the law, nor is there a single citizen or inhabitant excluded from its protection. I make, then, mine the programme, which my illustrious predecessor compressed into the formula of "*peace and administration*," because it expresses the supreme aspirations of all true Argentines, and explains the prodigious transformation already accomplished in the economic life of our country. Consequent upon this declaration, I shall devote special attention to the financial situation of the nation, and seek to solve its difficult problem. The Republic is undergoing rapid transformation in the matter of labor and production. It has ceased to be exclusively pastoral, and is becoming agricultural, producing, on a large scale, sugar-cane, the vine, and the cereals. These industries have been protected under our constitution, imitating the example of civilized nations, and it would be just to extend similar protection to other new industries, avoiding exaggeration and the system of prohibitory duties. The country requires prompt and efficacious means for developing its internal commerce, which my government will seek to provide by constructing roads and railways, by removing obstacles to navigation, by improving our river communication, by forming ports and quays, and by adopting measures tending to put into Argentine hands the coasting trade, now almost entirely foreign. I shall continue to follow the tradition of preceding governments by fulfilling honorably the obligations of the treasury at home and abroad, which can be done without effort or sacrifice by dealing economically with our resources. With this view I intend to restrain the use of foreign credit for constructing new railways, as the national guaranties ought to be sufficient, when it is indispensable (sic), and the internal credit ought to suffice for public works of other kinds. The unification of the internal and foreign debt is an absolute necessity for the credit of the state. Such unification will also effect a saving and facilitate the service of the debt. I shall devote myself, relying upon your assistance, to the suppression of the evils arising from a forced currency. I consider that the state banks of the province of Buenos Ayres can not exist in the capital of the Republic without injury to the nation, by preventing it from controlling its finances and directing the money market, and I suggest that a solution of the question should be sought, which, without injuring any legitimate interests, will conciliate the great duties of the nation.

The promotion of education is an unavoidable necessity in a democratic government. The Argentine Republic has made great progress in this respect, and I shall endeavor to preserve the conquests obtained and to extend the benefit of education to the inhabitants generally, and thus to dissipate the clouds in which are formed or ger-

minated the seeds of anarchy and retrogression, and to lead the people to their high destinies and to make them know and love the institutions of their country. It will be my constant care to prevent politics or other hindering motive from disturbing our educational establishments in their fruitful mission.

I regard it as a duty of government to find means for increasing immigration into this country, and for this purpose we must offer to the foreigners who tread our soil the guaranties of a liberal education and a good administration of justice. We must have fundamental codes and an organization of federal justice which will give to the future inhabitants of our soil absolute security of belief, property, and life.

Our international relations shall be maintained and cultivated with the elevated views and the spirit of fraternity and justice observed by my predecessors. The citizen who to-day descends from power inaugurated his prosperous period of government under the auspices of one of the most transcendental legislative acts in the development of our constitutional life, the federalization of the capital, the basis and guaranty of the national unity demanded by the whole Republic. The new period to-day initiated will also have its historical point of departure in the catalogue of our greatest conquests. For the first time in our history, so full of painful experiences, the command is transferred in complete peace at home and abroad; for the first time the parties to the strife have remembered that free peoples admit discussion and the vote as the only legal source of preponderance; for the first time the chosen of the majority can eliminate with pleasure and profound satisfaction from his inaugural address that compulsory chapter in which my illustrious predecessors deplored the horrors of anarchy and rebellion, and can replace the just complaint with the assurances that peace is a fact in the Republic and that political struggles, energetic and violent as they may be, in the ordinary evolution of our constitutional life, will always be maintained as now within the limits of legality.

[Inclosure 2 in No. 52.—Translation.]

Farewell address of ex-President Roca.

Mr. PRESIDENT: I deliver to you the supreme command of the Republic in a prosperous and flourishing condition, without uncertainties or doubts, without internal fears or foreign suspicions, and without having had once in my six years of government to trust the fate of the country to the hazzard of battle. This period of peace has enabled us to strengthen the principle of authority, to arrange favorably our boundary questions with Chili, Brazil, and Bolivia, to rescue the country from financial chaos and endow it with powerful institutions of credit, to mark out and organize new federal territories in the vast region dominated by native tribes, to multiply telegraphs, extend railways, and undertake all kinds of public works for improving the provinces, to double immigration and international commerce, and to raise the general revenue from twenty-one to fifty millions; to give a powerful impulse to public education, to keep the army and navy faithful to their flag, and above all to maintain intact, in all conflicts and difficulties, the *imperium*, the sovereignty of the nation.

In a word, sir, I transmit the power to you, with the Republic richer, stronger, more vast, with more credit and with more love for stability and with more serene and promising prospects than when I received it from my illustrious predecessor, having to pass with grief, in order to arrive at the elevated seat which you are about to occupy under better auspices, over a field of death yet warm with the blood of hundreds of Argentines.

If I have committed faults, injustice, or errors, I trust they will be judged with benignity by my fellow citizens, because I have had in all my actions no other motive than the good of the country and the glory and luster of its name. The functions of the executive's national power in a new country with complicated institutions and having to contend against the want of habits of liberty and republican education, are difficult and troublesome. I pray, therefore, that the Divine Providence may give you energy to overcome them and may enlighten all your decisions.

Citizen Miguel Juarez Celman, Constitutional President of the Republic, receive the symbolical sash and staff which impose so many responsibilities, and with them the expression of my most profound respect and obedience to the authority with which you are thus invested.

No. 2.

Mr. Hanna to Mr. Bayard.

No. 58.] LEGATION OF THE UNITED STATES,
Buenos Ayres, December 3, 1886. (Received January 17, 1887.)

SIR: Your cable message of the 30th ultimo, in which you instruct me to "report particulars of cholera in the Argentine Republic," was duly received. I have had some doubts whether or not you desired me to make such report by wire, but as the situation is not alarming at present, send you the following report through the mails, with the assurance that if any serious emergency suddenly arises I will communicate it by cable.

There is no room for doubts as to the existence of Asiatic cholera here. It made its first appearance about five weeks ago, and was imported by the Italian ship *Perseo* plying between Genoa and Buenos Ayres. * * * * The testimony of passengers shows conclusively there was nearly a score of burials at sea of those who died of cholera on the voyage.

The Argentine Government instituted prompt investigation of the matter, * * * and turned its entire care to its arrest and confinement within its present limits. Dr. Wilde, the minister of the interior, and as such prime minister of the Government, from whose department the national board of health derives all its powers and efficiency, is himself a physician of much distinction, and has labored with heroic devotion in the employment of every agency tending to the rapid and complete accomplishment of his sanitary measures. He has at his disposal money, physicians, and police powers almost without limit, and is employing them all with great spirit and ability.

The exercise of sanitary measures has been so prompt and efficient, and the use of disinfectants and enforced cleanliness so widespread and rational, we venture to hope the disease will disappear before assuming an epidemical character. The people generally fully sympathize with the good intentions of the Government, and instead of interposing hinderances in the way of its sanitary plans help them on in every possible way.

For the month of November, just closed, the official reports of the cholera hospital in Buenos Ayres show there were 200 patients entered; 93 deaths, 34 cured, with 73 still under treatment.

Remembering the population of Buenos Ayres is fully 400,000, you will agree the showing thus far is not discouraging. And with the exercise of a little scrutiny even this exhibit may be much relieved of alarm, for of the 200 patients above enumerated, 130 were from the male and female lunatic asylums and 12 from the prisons, where people are greatly huddled together and hygienic conditions anything but favorable. This then leaves but 58 cases outside for an entire month.

The greater part of the cases have originated in the "Boca," where the infected ship *Perseo* landed, which is a scooped-out place, so deepened below the level of the River Plate that ships may enter and discharge. It is therefore, necessarily, a vast receptacle of filth, and there being no current to carry out its accumulations into the river beyond the sluggish action of the tide, it remains there a perpetual cess-pool. * * * The Government, however, is already busy at work there with an immense force, devising means to clear its waters by the use of powerful pumps and dredges.

The disease is most fatal at Rosario, a city of much commercial importance on the Paraná River, 200 miles away, where the most of the

Perseo's passengers and cargo were discharged. The reports from that locality are truly distressing. In a population of about 50,000 souls they are now having from 35 to 50 deaths per day. In their cholera hospital alone there were over 200 patients in November, of which more than one-half died; but there the disease has invaded the homes of the best and most prudent families of the city. Cordoba and other inland cities are also becoming infected.

The result of all this is, we are nearly cut off entirely from the commercial world. Uruguay, Brazil, Paraguay, the most of the European ports are quarantined against us, which fact has greatly disturbed the movement of the mails, and almost entirely suspended business. We have recently had some very cool weather, which has been favorable to us.

Nineteen years ago yesterday the first case of the great cholera epidemic of 1867–'68 was reported. Then the plague was mainly confined to the city and neighboring county of Buenos Ayres. It was very destructive, and did not die out until near the close of March, on the advent of winter.

Of course we are still in a state of anxious suspense, for if the hygienic expedients now in a rapid course of development do not eradicate the dreaded microbes of the plague, the hot season already upon us and to endure yet so long may plunge us into very serious disaster.

Business is virtually suspended in Buenos Ayres, and vast numbers of people have gone out into the country.

I have, etc.,

BAYLESS W. HANNA.

No. 3.

Mr. Hanna to Mr. Bayard.

No. 61.] LEGATION OF THE UNITED STATES,
Buenos Ayres, December 16, 1886. (Received January 25, 1887.)

SIR: Referring to my No. 58, under date of the 3d instant, I may add the cholera is on a steady increase here, and that it has assumed more deadly features. Thirty-six new cases were reported to the board of public assistance of Buenos Ayres yesterday, more than half of which died in a very few hours. The worst of all lies in the fact of its rapid spread throughout the outside provinces. This dreadful disease overleaps the prudence of quarantine, and breaks down every line of military cordon. It is still raging fiercely at Rosario, and has recently broken out at Cordoba, Tucuman, Larate, Bahia Blanca, and Azul, and, worse than that, has gained a foothold on the island of Martin Garcia, where 5,000 terrified immigrants are detained in quarantine, without sufficient food or shelter. We have great fears of appalling results there.

* * * * * *

Two persons connected with this legation showed symptoms of attack last night, but were almost instantly relieved by the administration of chlorodine. * * *

In cases of death the bodies not cremated are sent to the general burying ground, usually wrapped in sheets saturated with bichloride of mercury, in coffins filled with lime.

* * * * * *

I have, etc.,

BAYLESS W. HANNA.

No. 4.

Mr. Hanna to Mr. Bayard.

No. 65.] LEGATION OF THE UNITED STATES,
Buenos Ayres, January 1, 1887. (Received February 5.)

SIR: I have the honor to transmit herewith in inclosures (1 and 2) a copy of an unofficial correspondence recently held by our legation with the minister of foreign affairs of this Government in relation to a line of steamships which a number of enterprising citizens of the United States propose to operate between New York and Buenos Ayres.

Some time in September last Mr. W. P. Tisdel, representing a United States line of steamships, asked to be presented to his excellency the minister of foreign affairs of this Government, Dr. Don N. Quirno Costa, that he might ascertain what, if anything, his Government would be willing to do in the matter of putting on a line of ships "to run direct between New York and Buenos Ayres, without stops along the Brazilian coast."

It seemed to me to be a very desirable result to be reached by our people, and the presentation of Mr. Tisdel in an unofficial way was accordingly made. His reception was very cordial, but in consequence of the sudden appearance of cholera here, and its overshadowing importance in all the departments of this Government, the progress made in the negotiations was for a time much retarded. His proposition to the Government was substantially as follows:

To put on a monthly line of ships to ply between the United States and Buenos Ayres, and to make no stops on the voyage south of the equator. His offer was to perform this service for $100,000, Argentine gold, per annum, making twelve trips a year at $8,333.33⅓ each, performing the voyage without accidents beyond reasonable control in twenty-five days from New York to Buenos Ayres. He then succeeded in getting the written guaranty of the foreign office and the minister of the interior that they would favor and aid the enterprise. Recently, however, as will be seen from the annexed correspondence, the whole subject was discussed at a cabinet meeting, receiving the sanction of the President and all the ministers. This makes a finality of it, so far as this Government is concerned, and you will see the minister of the interior is authorized to pay $10,000 per trip, Argentine gold, which is worth about 3½ per cent. less than our standard. It is to be hoped the contract will be closed at once.

I have, etc.,

BAYLESS W. HANNA.

[Inclosure 1 in No. 65.]

Mr. Costa to Mr. Hanna.

DECEMBER 29, 1886.

The minister of foreign affairs of the Argentine Republic sends friendly greetings to his excellency, the minister resident of the United States, and has the satisfaction, in view of his deep personal interest in the matter, to inform him that the President of the Republic, at a recent cabinet meeting, presented for its consideration the pending project of Mr. W. P. Tisdel relative to a direct line of steamers from New York to Buenos Ayres, accepting it in general terms, and authorizing the minister of the interior to grant said line a subsidy not to exceed $10,000, Argentine gold, per month, the subsidy to continue for ten years. On the opening of Congress the President will submit the agreement to be made with the company represented by Mr. Tisdel, asking its approval.

[Inclosure 2 in No. 65.]

Mr. Hanna to Mr. Costa.

LEGATION OF THE UNITED STATES,
Buenos Ayres, Dec. 30, 1886.

MR. MINISTER:

Your esteemed communication of yesterday informing this legation of the action of His Excellency the President of the Argentine Republic, at a late cabinet meeting of his distinguished ministers, accepting the proposition of a United States steamship company, as represented by Mr. W. P. Tisdel, to put a line of vessels to be operated between New York and Buenos Ayres directly, has given me very great satisfaction.

This determination on the part of your enlightened Government not only furnishes additional proof of its broad and liberal spirit, but also of its undoubted good will towards the Government and people of the United States, and its desire to engage in freer and more enlarged commercial relations with them. Reciprocity is the gateway of our success, and it can and will be opened at last.

The United States and the Argentine Republic, one in the north and the other in the south of this vast continent, constructed on the same foundations, both free republics, which have won the respect of the civilized world for their achievements in the liberal education of the people, their triumphs in the arts of peace, and their combined and persistent efforts to elevate the standard of "all the governments of the people, by the people, and for the people," are thus united by a bond which must keep them close together, not only in respect, faith, and sympathy, but also in commercial reciprocity, the best and fullest expression of such decided affinities.

I have no doubt whatever that when our two countries have a better mail service, and more rapid and reliable methods of communication a new era will dawn upon us, and that every political barrier which now hinders our progress will be removed by mutual popular concessions, and that we will be in trade what we are in sentiment, essentially bound up together in the struggle and triumphs of a common destiny.

Allow me again to renew, etc.,

BAYLESS W. HANNA.

No. 5.

Mr. Hanna to Mr. Bayard.

No. 67.] LEGATION OF THE UNITED STATES,
Buenos Ayres, January 16, 1887. (Received March 14.)

SIR: It may prove instructive in a national sense to note the fact that the Argentine Government, having experimented in the construction and operation of a number of railroads, begins now to view the venture with disappointment and dissatisfaction.

In 1880 it had 2,318 kilometers, equal to 1,391 miles, of railroad in operation, and in 1886, 6,152 kilometers, or 3,691 miles. It first seemed these vast lines, mapped out by the Government when it had first choice of the territory to be traversed, would prove to be a safe and sure source of revenue, but pressing difficulties have recently interposed themselves. These vast properties have been scattered about, widely distant from each other, and so have been hard to manage economically and successfully, public supervision not having proved equal to private ownership and control. This seems to have been the difficulty. At all events there is apparently a strong inclination on the part of the new Government to sell its railroads, and in this it is now sustained by popular judgment.

The Andine Railway, now in operation from Villa Mercedes to San Juan, and a necessary link in the great line from Buenos Ayres to Valparaiso, Chili, called the "Transcontinental Railway," has just been sold to an English company for $24,000 per kilometer, equal to $40,000 per mile of our measurement. This valuable link is 324 miles in length.

The purchasers are rapidly constructing the road from this city to Villa Mercedes, so that within a year or two the entire line will be completed to the Pacific sea-board. It will unquestionably become a most valuable property and do the service at vastly reduced expense and in less than one-eighth of the time, now performed exclusively by a strong English company with steamships going around by sea through the hazardous Straits of Magellan to the Pacific coast, so if the Argentine Government has been willing to let this property pass out of its ownership it has probably reached the conclusion that Government railways are not practically what they have seemed to be in theory.

I have, etc.,

BAYLESS W. HANNA.

No. 6.

Mr. Hanna to Mr. Bayard.

No. 70.] LEGATION OF THE UNITED STATES,
Buenos Ayres, February 5, 1887. (Received March 28.)

SIR: I have the honor to report that another sharp contest has just closed here between some representatives of the United States and European manufacturers. This time the struggle was with Germany. One of the national railroads of this Government had asked for sealed bids on a large addition of railroad supplies—engines, passenger and sleeping coaches, freight cars, etc. The request was generous and the opportunity inviting.

The Harlan and Hollingsworth Company of Wilmington, Del., long known among the most standard and advanced manufacturers of railroad equipment in the world, were represented by Mr. W. * * *

The Baldwin Locomotive Works of Philadelphia, with a reputation for probity and efficiencey in their great handicraft which can not be successfully challenged, were represented by Mr. E.

Mr. E. found the competition comparatively weak in the sale of the engines, and at once sold 12 of them at asking prices and for cash. Mr. W., however, had a harder conflict, and, although not altogether defeated, has been only partially successful. He has closed a contract with this Government for 32 passenger coaches of the Harlan and Hollingsworth Company's make. The 150 freight cars to be supplied in the transaction went to Germany, they having most savagely cut under the standard prices. * * *

Mr. W. informs me the wheels and axles for the passenger coaches he has just contracted for, and for some 400 cars he sold here last year, were all made in England; that we have no manufacturers in the United States making the special patterns of wheels used on Argentine railroads, and that, even if we did have them, the English prices are so much lower than ours he will be forced to buy them, as heretofore, in England. These wheels will be shipped from England here, as our Government will not permit the Harlan and Hollingsworth Company to transport them to their shops in Delaware and there adjust them to their cars without the payment of a consuming tariff, even though they are for export. Thus through broken shipments—one part of the car going from the United States and another part from England—our manufacturers labor under a grievous embarrassment.

* * * * * * *

I have, etc.,

BAYLESS W. HANNA.

No. 7.

Mr. Hanna to Mr. Bayard.

No. 71.] LEGATION OF THE UNITED STATES,
Buenos Ayres, February 7, 1887. (Received March 28.)

SIR: In continuation of the report contained in my No. 61, of December 16, 1886, relative to the presence and progress of cholera in the Argentine Republic, I have now the satisfaction to say it seems to have run its course and finished its deadly work.

At all events this is clearly the fact in the outside provinces. We still have some cholera in Buenos Ayres, but, with a moderation of the very warm weather we have recently had, hope it will very soon disappear entirely. However, February is generally a pretty warm month, and cooler weather may not set in permanently before the middle of March.

In Rosario, Tucuman, Mendoza, and other interior localities, where it was so bad in December and January, it has almost entirely disappeared, and seems to have extended its deadly march beyond the mountains into Chili and Bolivia, where it is now raging with great fatality and causing widespread dismay.

Last month there were 596 cases in this city, of which number 336 were fatal.

* * * * * * *

The figures for the close of the month show a steady decline, which is still going on. It broke out in November, reached a maximum mortality in December, steadily declined in the last two weeks of January, so that now we venture to hope it may soon disappear altogether. During the three months just passed the figures are as follows in the city of Buenos Ayres:

Months.	Cases.	Deaths.
November	183	130
December	712	353
January	596	336
Total	1,491	819

This showing indicates that nearly 55 per cent. of the cases were fatal.

* * * * * * *

I have, etc.,

BAYLESS W. HANNA.

No. 8.

Mr. Bayard to Mr. Hanna.

No. 42.] DEPARTMENT OF STATE,
Washington, February 12, 1887.

SIR: I have received your interesting dispatch (No. 65) of the 1st ultimo, by which it appears that the Argentine Government will substantially aid a project which has been presented through the foreign office for the establishment of a direct line of steamships between New

York and Buenos Ayres. This is an encouraging step in the building up of a direct general intercourse with the Argentine Republic, and there can be no doubt of its great utility to the commerce of the two countries.

I am, etc.,

T. F. BAYARD.

No. 9.

Mr. Hanna to Mr. Bayard.

No. 74.] LEGATION OF THE UNITED STATES,
Buenos Ayres, February 23, 1887. (Received April 11.)

SIR: The suggestion is often made that "before our civil war of 1861–'65 the United States had a large and profitable trade with the Argentine Republic. Why is it we have so little now?" I have made repeated inquiries on this subject and have reached a conclusion which, if not yet altogether final, seems at least well sustained by reason.

The two great articles of export from this country are wool and hides, amounting to $35,950,000 in 1885 for the first, and $7,512,000 for the second. The United States were purchasers of hides in that year to the amount only of $2,300,000, and of wool but $1,180,000; the balance of this enormous shipment was made to Europe, creating a necessity for the marvelous movement of steam shipping to which I have before made reference, and in which, it seems to me, we should more liberally share.

It is quite clear that those markets which buy the wool of this country, and send out steamships to transport it, pay for the same with their manufactures, and the trade returns show it to be so. Indeed nothing could be more natural than that the ships which are sent for the wool should be freighted with merchandise to sell in exchange for it, and that the houses which ship it should sell this merchandise. The developments of trade always follow this line, as is well illustrated in the case of England and the Continent—the latter having become the best customer of Argentine products is pushing ahead in like manner in supplying its needs with valuable exports at the cost of English ascendency. Indeed, continental influence grows apace with continental increase in the absorption of this country's product.

The hides the United States buy here about cover their exports, and there our trade ends. It has been for some years our policy to enforce an import tax, amounting to a prohibition of Argentine wool, its great and growing export staple, and as a consequence it seeks Europe as its market, and European mills manufacture and return it to the Argentine Republic, and the balance in other merchandise.

The United States have made some advance looking towards a closer commercial intercourse with the Republics of South America, and whenever the subject has been taken up for discussion in the press or among leading minds of the country the action of the United States on wool duties has been brought forward and used to sustain the position taken by our competitors—that the United States want only such closer union as will serve their purposes. I do nothing more than present a fact which every American must meet in the discussion of this question. It is not my province to discuss the policy, but I trust I may be excused if I suggest whether the mills of the United States could not to advantage manufacture a good part of the enormous wool crop of this Repub-

lic and American merchants return the value thereof in its manufactures and food products. Can there be a question that the customers who purchase the great staple products of the country will supply its wants in general with exports, and the business thus fomented create and maintain successfully numerous steamship lines, as now between this shore and Europe?

May this point not be an important factor in the discussion of our commercial relations with this giant young Republic? Whether the United States shall practically cultivate closer relations is exclusively a question for its people and Government; but if it is attempted, I doubt whether we can shut our ports against its chief products and succeed.

I have, etc.,

BAYLESS W. HANNA.

No. 10.

Mr. Hanna to Mr. Bayard.

No. 75.] LEGATION OF THE UNITED STATES,
Buenos Ayres, March 12, 1887. (Received April 19.)

SIR: As will be seen by the accompanying correspondence, embraced in inclosures 1 and 2, I have the honor to inform you cholera has disappeared, that the ports have been re-opened, and that clean bills of health are again issued without hinderance to the entire marine service. The land is filled with joy, and business has resumed its sway.

I have, etc.,

BAYLESS W. HANNA.

[Inclosure 1 in No. 75.—Translation.]

Mr. Costa to Mr. Hanna.

DEPARTMENT OF FOREIGN AFFAIRS,
Buenos Ayres, March 10, 1887.

MR. MINISTER: I have the satisfaction to apprise your excellency the minister of the interior informs me, by note of this date, that the cholera epidemic, which has disturbed some localities of the Republic during the last three months, has disappeared.

The health authorities will give clean bills of health to all ships which sail from our ports.

Hoping that your excellency will have the kindness to transmit said notice to the Government you so worthily represent, I improve the occasion to extend the assurances of my distinguished consideration.

N. QUINO COSTA.

[Inclosure 2 in No. 75.]

Mr. Hanna to Mr. Costa.

BUENOS AYRES, *March* 12, 1887.

Mr. MINISTER: I have the honor to acknowledge the receipt of your communication of the 10th instant, furnishing the joyful intelligence that the cholera epidemic has disappeared from your shores, and that ships leaving Argentine ports would be given clean bills of health.

These facts will be at once transmitted to my Government, and I assure you the intelligence will cause very widespread rejoicing.

I have, etc.,

BAYLESS W. HANNA.

CORRESPONDENCE WITH THE LEGATION OF THE ARGENTINE REPUBLIC AT WASHINGTON.

No. 11.

Mr. Quesada to Mr. Bayard.

[Translation.]

ARGENTINE LEGATION,
Washington, April 11, 1887. (Received April 12.)

SIR: I have the honor to inform your excellency that I have received instructions from the minister of foreign affairs to communicate to your excellency, begging you to be so good as to lay it before the President, the great satisfaction with which was received the notice of your legation in the Argentine Republic being raised to the rank of a first-class mission; since my Government sees in it a proof of sympathy between the two nations, as well as a desire to strengthen the relations which unite them on the basis of reciprocity.

In carrying out these instructions I avail myself, etc.,

VICENTE G. QUESADA.

AUSTRIA-HUNGARY.

No. 12.

Mr. Lee to Mr. Bayard.

No. 211.] LEGATION OF THE UNITED STATES,
Vienna, October 4, 1886. (Received October 25.)

SIR: I have the honor to report that a short time since I received from Mr. Antonio Chirighin a petition, asking for the protection of the United States against an order of expulsion, a copy of which is inclosed, with a translation.

I also inclose a copy of a note which I at once addressed to the foreign office here, and to which I have as yet received no answer.

The inclosures present all the material facts as far as I have been made acquainted with them.

* * * * * * *

The order of expulsion admits the fact of American citizenship, and, by giving the alternative of leaving the country or reassuming the former status of Austrian citizenship, seems also to admit not only that Mr. Chirighin has committed no offense against the laws of the Empire since his return, but that he is a desirable person to have as a citizen.

His only offense appears, from these papers, to be that he became an American citizen without having fulfilled the obligations of the Austrian conscription laws, and returned to his former home.

The difficulty and delicacy of this class of cases arises from the undoubted legal rights possessed here by the chief local officers to decree, in the exercise of their police duties, the expulsion of any foreigner who disturbs, or who they believe will disturb, the public weal.

While I should not feel disposed to dispute the right of one government to expel the citizens of another country for cause, I do not see that we can accept as sufficient cause the doing of acts which our treaty provides shall be legal.

The order having been brought to my official notice, I deemed it proper to assert, in the broadest way, our treaty rights, * * * and I hope that the course pursued may meet with your approval.

I have, etc.,

JAMES FENNER LEE.

[Inclosure 1 in No. 211.—Translation.]

Order of expulsion of A. Chirighin.

To ANTONIO CHIRIGHIN, *of Girolomo, Merce:*

As a result of the suggestion of the 3d of September, 1886, which contained four propositions, the I. and R. district captain decides to inform you that, according to the interpretation of the last line of Article II of the state treaty of 20 September, 1870, B. L. I., 1871, No. 74, no penal procedure will be taken against you concerning your military (conscriptional) duties.

Considering, however, that the obtaining of the rights of American citizenship does not exclude the idea (point) that it was but a subterfuge to release you from the duties of the conscription which were imposed upon you by law as a citizen of Austria;

In view that the adoption of such a course might serve as a public scandal and suggest to others to follow the bad example:

I, by these presents, invite you to take *immediately* the steps necessary to reacquire your original (ancient) citizenship, and subsequently to present yourself voluntarily to answer the requirements of the law of conscription, or, on the other hand, to quit the countries represented in the councils of the Austrian Empire; to which end I name the 1st day of October of this year as the last day for your sojourn in those countries; this date having elapsed without your having departed, it will become my duty to proceed, out of respect for the public order, against you according to the fifth line of paragraph 2 of the law of July 27, 1871 (B. L. I., No. 88); that is to say, I must proceed to your expulsion from the above-named countries.

The inclosed 38 soldi are the residue of the money paid by you in advance for the purpose of telegraphing to the gendarmerie at San Pietro.

SPALATO, 3 *September*, 1886.

The I. and R. district captain, TRUXA.

Here follows a certificate that the above is a true copy.

[Inclosure 2 in No. 211.]

Mr. Lee to Count Kalnoky.

LEGATION OF THE UNITED STATES,
Vienna, September 25, 1886.

The charg6 d'affaires *ad interim* of the United States of America has the honor to invite the attention of his excellency Count Kalnoky, imperial and royal minister of foreign affairs and of the imperial household, president of the council, to the inclosed copy of an order of expulsion addressed to Mr. Antonio Chirighin, a naturalized citizen of the United States.

According to Mr. Chirighin's statement to this legation, he, an Austrian subject, left his country in 1868, emigrated to the United States, and after a residence of eleven years was naturalized and became a citizen of the United States;

Having some family business to attend to at Merce, in the island of Brazza, Dalmatia, he returned to Austria-Hungary, apparently quite recently, as his passport is dated at Washington, July 26, 1886.

His conduct does not appear to have been in any manner subject to criticism, and his only offense, as your excellency will see by the inclosed order of the local authorities, seems to have been that he has availed himself of the privileges distinctly accorded to the subjects of Austria-Hungary by the convention between Austria-Hungary and the United States of 1870 relating to naturalization.

The undersigned believes that on an examination of the subject his excellency the imperial and royal minister of foreign affairs will cause to be issued such instructions as will secure to Mr. Chirighin such hospitality and protection as is accorded by the United States to subjects of Austria-Hungary visiting that country for purposes of business or pleasure, and such as will enable him to transact freely and fully that business which caused his visit to the province of Dalmatia.

The undersigned avails, etc.,

JAMES FENNER LEE.

No. 13.

Mr. Lee to Mr. Bayard.

No. 217.] LEGATION OF THE UNITED STATES,
Vienna, October 24, 1886. (Received November 6.)

SIR: The petroleum question, which has been the source of trouble in the adjustment of the new treaty between Austria and Hungary, is one that has great interest for us.

The position of matters is as follows:

The treaty which went into force in 1877 established for petroleum a specific-gravity test based upon the relative specific gravity of American and Russian petroleum, the two rates of duty being 1.10 florins and 2 florins per 100 kilograms.

The basis of this standard was the relative amount of illuminating oil contained in each, to be ascertained by specific-gravity test.

The law worked well enough for us for a few years, when the Russian exporters, finding that they could not compete with the crude American product, began distilling their crude and shipping the result, colored with refuse and mixed in such a manner as to maintain the legal specific-gravity standard for the low rate of duty, while introducing an unfinished manufactured article containing nearly three times the quantity of illuminating oil as is contained in their natural petroleum.

Our trade in petroleum has naturally steadily declined.

* * * * * * *

The opposition to the renewal of the old treaty comes from two sources; on the one side the Galicians, who are, in a moderate way, petroleum producers, find their industry unprofitable under the competition of the Russian article; and on the other hand, the finance minister of Austria (that is, the Austrian division of Austria-Hungary).

Under the internal-revenue laws, the internal-revenue tax on refined petroleum is collected at the refinery, and nearly all the refineries are at Fiume, in the Hungarian division, so that the so-called consumption tax is collected there and goes into the Hungarian treasury, while the Austrian treasury loses what was formerly collected at Trieste on imported refined, as Fiume oil, on account of its disproportionate cheapness, has driven most other oil out of the Austrian market. The language of the law does not discriminate against American crude, but the interpretation of it by the customs officials, whereby the Russian semi-manufactured article, containing 85 per cent. of oil, pays a duty of 1.10 florins per 100 kilos and American crude, containing about 75 per cent. of oil, is made to pay 2 florins on the same quantity, discriminates.

There has been a disagreement between the Parliaments of Austria and Hungary on the subject of renewing the treaty of 1877 in that item referring to petroleum.

The Austrian ministry had decided to make the concession to Hungary, but the Austrian Parliament refused to ratify it, creating such a crisis as threatened either a resignation of the ministry or a dissolution.

The settlement will probably be made before March next, and may be compromised within a few weeks so as to place the result before the two Parliaments when they meet in December.

* * * * * * *

Within the next few days I shall have an interview with Count Kalnoky or Mr. Szögyènya, and shall represent verbally the injustice done to American interests, which I believe to be in contravention of the "most favored nation" clause of our treaty.

* * * * * * *

I have requested a statement of facts embodying the discriminative policy from our consular agent at Fiume, to be used as a basis of diplomatic action.

I have, etc.,

JAMES FENNER LEE.

No. 14.

Mr. Bayard to Mr. Lee.

No. 46.] DEPARTMENT OF STATE,
Washington, November 3, 1886.

SIR: Your dispatch No. 211, of the 4th ultimo, reporting your action in relation to the case of Mr. Antonio Chirighin, a naturalized American citizen who was expelled from Dalmatia by the local authorities, has been received.

In reply I have to inform you that your course is approved by the Department. * * *

I am, etc.,

T. F. BAYARD.

No. 15.

Mr. Porter to Mr. Lee.

No. 47.] DEPARTMENT OF STATE,
Washington, November 9, 1886.

SIR: I have to acknowledge your No. 217, of the 24th ultimo, giving your views and action in regard to the specific-gravity test of petroleum imported into Austria, and to say that your proposed presentation of the subject to the minister of foreign affairs is approved.

The Austro-Hungarian Government can be no less concerned than we are at the existence of a state of things which on the one hand permits the revenues of the state to be defrauded by the importation of so-called crude oil of 85 per cent. strength at the rates of duties intended to be assessed on a production of much lower grade, and which on the other permits a discrimination, in fact, against the American production which we can not for a moment suppose to have been intended, and against which, whether designedly established or not, we must feel called upon to remonstrate.

It is evident that the specific gravity test of crude petroleum is illusory, and a direct invitation to fraudulent evasion. It clearly needs to be replaced by a more modern and equitable test, resting on the percentage of illuminating oil, which is the only rational basis.

Modern processes necessarily work great changes and render obsolete tests which, at the time they were devised, may have been sufficient to protect the revenues, prevent fraud, and avert palpably unjust discriminations. An analogy is found in the color test of sugars, which for many years was adequate to determine the saccharine richness of the product and its real commercial value for the imposition of duties. But with the advance in mechanical methods of separation by the invention of the centrifugal treatment the color test became deprived of value, and so-called "crude" sugars, with a high crystallizable percentage, actually equal to low grades of refined sugars, were indistinguishable from pan sugars of very low grade, so that the aid of modern science had to be called in to apply the new test of the polariscope by which the true percentage of the crystallizable elements of the product is determined.

The Austrian specific-gravity test for petroleum has in like manner become untrustworthy, and needs to be replaced by a test which shall ascertain the intrinsic value of the illuminant element as the basis of taxing the crude oil intended for refining.

I am, etc.,

JAMES D. PORTER,
Acting Secretary.

No. 16.

Mr. Lee to Mr. Bayard.

No. 220.] LEGATION OF THE UNITED STATES,
Vienna, November 20, 1886. (Received December 13.)

SIR: Referring to my dispatch No. 217, concerning our petroleum interests, I have the honor to report that I have had with Baron Pasetti, of the foreign office, a very pleasant interview, in which he showed great interest, and said that he would have the question thoroughly examined and brought to the attention of the ministry if I would write him a personal letter on the subject.

I then suggested to Mr. Libby to write to me, and I now have the honor to inclose a copy of my letter to Baron Pasetti, in which I forwarded a similar copy of Mr. Libby's letter, inclosed.

The matter is now as much before this Government as if I had protested, and in a way much more likely to receive favorable consideration, as everything has been done in a personal and friendly way, with no antagonisms, such as a formal protest always produces.

* * * * * * *

I do not think for the present any further action is necessary beyond advising me of the views of our Government, until the compromise is reached between the Austrian and the Hungarian ministries. I ought then to be in a position to protest at once if a protest is to be made and is expected to accomplish anything before the compromise is ratified by the separate Parliaments.

I, however, believe that a compromise will be reached which will at least better our position even if it should not render it a perfectly equitable one.

* * * * * * *

I have, etc.,

JAMES FENNER LEE.

[Inclosure 1 in No. 220.]

Mr. Libby to Mr. Lee.

VIENNA, *October* 27, 1886.

SIR: Responding to your inquiries, I have the honor to define as follows the position of the American petroleum industry:

American petroleum has been gradually excluded from the markets of Austria-Hungary. Were this traceable to inferiority of product, geographic position, or to any other natural incident of competitive commerce, it would have been a source of regret, but not a ground for complaint, or had this exclusion been due to the protection of a home industry or an increase of the internal revenue it would have been again an occasion of regret, but again no ground for complaint.

The American industry has, however, a grievance, and it is an emphatic one, viz, a product coming from another foreign country (it matters not by what technical or trade name the said product may be designated), but which is practically and actually

a *semi-refined* petroleum, is admitted into Austria-Hungary upon the payment of about *one-half* the duty exacted from American crude, viz, 1.10 and 2 florins per 100 kilos, respectively.

In the full belief that this inequitable discrimination against the American product (and which has driven it from these markets, where it should naturally compete for public favor) is in conflict with the spirit and intent and language of the treaty existing between Austria-Hungary and the United States, the petroleum industry of America have solicited the friendly interposition of the Department of State in submitting their grievance to the Government of Austria-Hungary in the hope that its justice may be recognized and the discrimination complained of may be removed.

I have, etc.,

WM. H. LIBBY.

[Inclosure 2 in No. 220.]

Mr. Lee to Baron Pasetti.

LEGATION OF THE UNITED STATES,
Vienna, October 27, 1886.

EXCELLENCY: As suggested by you at an unofficial interview, I inclose in an entirely unofficial way a copy of a letter received by me from Mr. Libby concerning the effect which has been produced on our export trade in petroleum by the present rendering of existing laws.

Mr. Libby is in Europe in the interest of the American petroleum industry, and any statement of his with regard to that trade is entitled to attentive official consideration by me.

I venture to ask you in this unofficial way to look into the subject, because I believe that an investigation of the question at this particular time will develop so intimate a relation between the interests of this country and those of the American petroleum trade that any official action will become unnecessary on my part.

With assurances, etc.,

JAMES FENNER LEE.

No. 17.

Mr. Lee to Mr. Bayard.

No. 230.] LEGATION OF THE UNITED STATES,
Vienna, March 1, 1887. (Received March 16.)

SIR: Referring to my No. 211, dated October 4, 1886, on the subject of the order of expulsion directed against Mr. Antonio Chirighin, a naturalized citizen of the United States of Austro-Hungarian birth, I have the honor to report that my action in the case as therein reported has resulted in the rescinding of the said order of expulsion.

I have informed Mr. Chirighin of the result and cautioned him to be very prudent in his conduct, as I believed it would not be possible to secure a like result a second time in the same case.

I have, etc.,

JAMES FENNER LEE.

No. 18.

Mr. Lee to Mr. Bayard.

[Extract.]

No. 239.] LEGATION OF THE UNITED STATES,
Vienna, April 25, 1887. (Received May 7.)

SIR: I have the honor to report in the matter of the Austro-Hungarian petroleum tariff, that this Government still adheres to the specific gravity test, and has established its rates of duty at 2 florins per 100

kilos on light oils and 2 florins and 40 kreutzers on heavy oils. The crude and unfinished oils exported by the United States have heretofore ranked as heavy. My action has aided in securing this reduction in the proportionate discrimination between the two.

I have, etc.,

JAMES FENNER LEE.

No. 19.

Mr. Lee to Mr. Bayard.

No. 252.] LEGATION OF THE UNITED STATES,
Vienna, June 23, 1887. (Received July 9.)

SIR: I have the honor to inclose a copy of the application of Mr. Charles László for a passport, with the request that I may be instructed as to the proper action to be taken in the case. Admitting that the issue of naturalization papers and identity could be properly proven, his statement of facts raises the following doubts as to the bona fides of his intention to return to the United States with a purpose of residing and performing the duties of citizenship there.

Mr. László left his native land (Hungary) an outlaw, resided sixteen years in the United States, and was naturalized. At the first opportunity, viz, the proclamation of amnesty, he returned to his native land and has remained there uninterruptedly for twenty years, having what is apparently permanent employment. The desire to remove the legacy to his children from the jurisdiction of the United States to that of his native country does not suggest an early permanent return. One would also suppose that an indefinite intention of a permanent return on the part of a man now seventy-one years old was not very likely to be carried out. I may also add that his children, having been born in Hungary since his naturalization, will depend for their status upon that now accorded to the father by the Department of State, and I consider it important for this legation that the case should now receive the attention of the Government.

I have, etc.,

JAMES FENNER LEE.

[Inclosure in No. 252.]

Mr. László to Mr. Lee.

DEAR SIR: I, undersigned, a born Hungarian, but adopted citizen of the United States, lived and had business there for sixteen years. In 1867, amnesty having been proclaimed, I returned to Hungary with my American wife with the intention to take out with me my aged mother, at that time seventy-two years old, but as she did not want to leave Hungary, I remained here with her to support her for the few years. I thought she would live, and to return to the United States. But my mother lived until last year, when she was ninety years old, and during that time I became father of three children, and I am employed at a Theiss regulating private company as director or engineer; and I still think of returning with my family to the United States as soon as my circumstances will allow me to do so.

Joseph Gressak, also an adopted citizen of the United States, who was the godfather of one of my children, and died in New York, June 26, last year, before his death left by testament to my children $900 (as I am informed by the executor of his last will, a notary public). As I think the simplest way to get this money would be for me to go to New York personally, I beg you, dear sir, to do me the great favor of giving me a new passport instead of this old one, which inclosed I send into your hands, and send it to me by mail, 20 florins, as charges to be collected by post-office on delivery, and I will be thankful to you.

You most obedient servant,

CHAS. LÁSZLÓ.

P. S.—I will send you, if needed, my naturalization paper.

No. 20.

Mr. Lee to Mr. Bayard.

No. 253.] LEGATION OF THE UNITED STATES,
Vienna, June 30, 1887. (Received July 18.)

SIR: I have the honor to inclose the application for a passport of Mrs. Antonia Mundé, and the papers submitted to establish her claim thereto.

Mrs. Mundé's right to the protection of the Government of the United States depends upon the international status of her husband at the time of his death.

She was a Bavarian, married in Switzerland, and has never been in the United States. The papers which she submits to the legation show, provided they be correct, which is not at all proved, that Dr. Mundé, after having resided in the United States for several years, became a citizen of Northampton, Mass., having originally been a citizen of Saxony, a part of Germany, and that in 1866 he returned to Europe and resided in Würzburg, Stuttgart, and subsequently in Switzerland, where he married the applicant.

As far as I can gather from the papers, there does not appear ever to have been any intention to return to the United States, but, on the contrary, the fact of becoming the purchaser of a home in Goritz when nearly eighty years of age, would appear to indicate an intention not to return, and would seem, on general principles, to raise the presumption that he had renounced his acquired citizenship in the United States.

But the fact that residence renewed in Würzburg and Stuttgart (both in Germany), without any evidence that the intent to return to America ever existed, would seem to be sufficient to show that his naturalization in the United States had been renounced. See treaty of 1868 with North Germany, Article IV.

The correspondence will show that I have refused passport. There are many technical links wanting in the evidence which could, however, probably be supplied, but if my view of the law is correct it is not worth while putting the lady to the expense.

I request that the papers submitted, being the original, be returned to this legation with the decision of the Department in the case.

I have, etc.,

JAMES FENNER LEE.

[Inclosure 1 in No. 253.]

Application for passport.

NATURALIZED.

No. 1. Issued May 18, 1887.

Applicant: Antonia Mundé.

I hereby apply to the consulate of the United States at Trieste for a passport for myself and minor child, as follows: I was born at Nuremburg (Bavaria) on the 6th day of April, 1850, and was married to Dr. Charles Mundé at Aigle, Switzerland, in the year 1874. The minor child, Erich R. J., was born in Goritz (Austria) in 1880.

In support of the above application I do solemnly swear that I was born at ——— ——— on or about the ——— day of ———, 18——; that I emigrated to the United States on or about the ——— day of ———, 18——, sailing on board the ——— ——— from ——— ——— the ——— day of ———, 18——; and arriving at ——— ——— the ——— day of ———, 18——; that I resided five years uninterruptedly in the United States, from ——— ——— to ——— ——— at ——— ———; that I was naturalized

as a citizen of the United States before the ——— court of ——— at ——— on the ——— day of ———, 18——, as shown by the accompanying certificate of naturalization; that I am the bearer of passport No. 33, issued by John M. Francis on the 21st day of May, A. D. 1885, which is returned herewith; that I am the identical person referred to in said certificate and passport; that I last left the United States on the ——— day of ——— 18——, on board the ——— ———, arriving in ——— ——— the ——— day of ———,18——; that I have resided in ——— ——— since the ——— day of ———,18——; that I am now temporarily residing at Goritz, and that I intend to return to the United States in about fifteen years with a purpose of residing and performing the duties of citizenship there.

I desire the passport for the purpose of residing at Goritz, Austria.

Oath of allegiance.

Further, I do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without mental reservation or purpose of evasion: So help me God.

ANTONIA MUNDÉ.

CONSULATE OF THE UNITED STATES AT TRIESTE.

Sworn to before me this 18th day of May, 1887.

HENRY W. GILBERT, *Consul.*

Description of applicant.

Age: 37 years.	Mouth: Small.
Stature: 5 feet 3½ inches.	Chin: Round.
Forehead: Low.	Hair: Brown.
Eyes: Brown.	Complexion. Light.
Nose: Straight.	Face: Round.

Identification.

TRIESTE, AUSTRIA, *May* 18, 1887.

I hereby certify that I know the above named Antonia Mundé personally, and know her to be the identical person referred to in passport No. 33, and that the facts stated in her affidavit are true to the best of my knowledge and belief.

HENRY W. GILBERT, *Consul.*

[Inclosure 2 in No. 253.]

Mr. Vervega to Mr. Gilbert.

GORITZ, *June* 17, 1887.

DEAR SIR: Mrs. Mundé has shown me the correspondence with the United States consulate about her passport. I have explained to her the purport of the same. I believe the papers which she will hand you will satisfy the United States legation at Vienna. I have never met the late Dr. Charles Mundé in the United States, but knew him here for years, and we had many conversations about New York. He seemed well posted up in politics, and knew well some leading men in the State. His son is a well-known medical authority in New York, and has a very large practice. I have no doubt that the Dr. Mundé who died here is the one and same Dr. Mundé described. I give this letter to Mrs. Mundé in the hope it may add, if needed (which I very much doubt), to her proving the identity of the late Dr. Mundé.

I am, etc.,

R. M. VERVEGA.

[Inclosure 3 in No. 253.]

Mr. Lee to Mr. Jussen.

VIENNA, *May* 25, 1887.

SIR: In the matter of Mrs. Antonia Munde's application, I beg to say that this legation declines to issue a passport upon the statement of facts and papers presented in this case.

It is material that all the dates connected with Dr. Charles Mundé's emigration to he United States, the location of his domicil, the length of his stay therein, the date of his departure therefrom, the location and duration of his stay abroad, the object of his absence, and his occupation, if any, while abroad—everything, in fact, from which intention can be ascertained—should be obtained.

Mrs. Mundé's right to the protection of the United States depends entirely upon the international status of her deceased husband at the time of his death, and everything that can throw any light on that subject should be gone into thoroughly now, in order to protect both this legation and the child "Erich" from future difficulties when he arrives at the age at which this Government calls upon its citizens to do military duty. *Prima facie*, the child being born under the Austrian jurisdiction, under the laws of this country would be an Austrian, and the onus would be upon him to prove his right to citizenship in another country. Further, there should be convincing evidence of the identity of the Dr. Mundé, deceased, in Goritz, with the Dr. Mundé, of Northampton, Mass., mentioned in the exhibited certificate of naturalization; also convincing evidence of a legal marriage between the said Dr. Charles Mundé and the present applicant for a passport, and sufficient evidence that the said Mundé had not, during his long absence, forfeited his acquired citizenship. It is better that the identification should be by some person other than the consul. When presented in such a manner I will submit the question to the Department of State to decide upon the sufficiency of the evidence and the propriety of granting a passport. I beg, herewith, to return both the certificate of naturalization and the old passport issued by Mr. Francis, also the sum of 13 florins.

I am, etc.,

JAMES FENNER LEE.

[Inclosure 4 in No. 253.]

Mr. Lee to Mr. Jussen.

VIENNA, *June* 27, 1887.

SIR: Your favor inclosing papers in the matter of the application for a passport of Mrs. Mundé is received.

I will forward the matter to Washington for the decision of the Department of State as to whether a passport should issue in this case or not. I am decidedly of the opinion that it should not, but will give Mrs. Mundé the opportunity of having the case passed on by the Department.

I note what Mr. Gilbert says with regard to the indentification of applicants for passports by the officer through whom the application is made. While such officer may be a competent witness, it is contrary to the practice in the United States that he should testify in a case in which he is acting in a judicial capacity, and such action is open to several objections which it is not necessary that I should at present consider in detail, as within a short period the direction of this legation will be in other hands, and it seems unnecessary for the short time that remains to me here to issue any general instruction on the subject.

Respectfully,

JAMES FENNER LEE.

P. S.—I return herewith the inclosure marked 13 florins.

[Inclosure 5 in No. 253.]

Mr. Gilbert to Mr. Jussen.

TRIESTE, *June* 22, 1887.

SIR: I have the honor to transmit herewith inclosed papers relating to the application for a passport lately made by Mrs. Charles Mundé.

I beg leave to differ with Mr. Lee, and would say that I think the State Department would consider an indentification by one of its consuls as good as that of any other person.

I am, etc.,

W. GILBERT.

No. 21.

Mr. Bayard to Mr. Lee.

No. 66.] DEPARTMENT OF STATE,
Washington, July 12, 1887.

SIR: I have received your No. 252, of the 23d ultimo, in which you refer to this Department, for instructions, the application of Mr. Charles László for a United States passport.

According to your statement, Mr. László, a Hungarian by birth, who emigrated to this country at the time of the political disturbances in Hungary, thirty-seven years ago, and was here duly naturalized, returned, after residing here sixteen years, to Hungary, where "he has remained uninterruptedly for twenty years, having what is apparently permanent employment."

You state also that his children were born in Hungary, and from this I infer that his family relations were there established. On the face of these circumstances the presumption is he is now domiciled in Hungary. It is true that this presumption may be rebutted by proof on his part that his residence was without *animus manendi;* but until such proof is received the presumption continues in force. Hence, under the established rule of this Department, he can not, as a person domiciled in Hungary, obtain from the Department or its representatives a passport averring him to be entitled to the immunities of a citizen of the United States. Nor is such a passport, you can remind him, in any sense necessary so far as concerns the laws of the United States, to enable him to come to the United States, either for the special temporary purpose you mention, or to resume the citizenship he here acquired by naturalization.

It is desired that the statement of *all* applicants for passports be made and sworn to by them on the forms provided for the purpose, particular attention being paid to the intention of returning eventually to the United States, and a *duplicate* sent to the Department with your dispatch reporting the case when you are in doubt or have refused a passport.

I am, etc.,

T. F. BAYARD.

No. 22.

Mr. Bayard to Mr. Lawton.

No. 4.] DEPARTMENT OF STATE,
Washington, July 28, 1887.

SIR: Mr. Lee's dispatch No. 253, of the 30th ultimo, relative to Mrs. Mundé's application for a passport, has been received and considered.

It appears that Mr. Mundé, on naturalization in Massachusetts in 1854, renounced allegiance to the King of Saxony. He went in 1866 to Würzburg, Bavaria, and then to Stuttgart, Wurtemberg. Subsequently he went to Switzerland to reside where he married in 1874 the person who is now, as his widow, making application for a passport. Later he went to Goritz, Austria, where he died. Before his death, on May 21, 1885, Mr. Francis, then our minister at Vienna, gave Mr. Mundé a passport as an American citizen.

It is not necessary now to determine the effect on his acquired citizenship of Dr. Mundé's long residence abroad, which was continued up to the time of his death. It is sufficient for the purpose of the present application to say that, assuming that Dr. Mundé always retained the *animum revertendi*, Mrs. Mundé, his widow, who has never been in the United States, does not, on the papers before the Department, show sufficient evidence of intention to come to and reside in the United States to warrant the Department in saying that she has retained the alleged American domicil of her late husband. This is merely a question of evidence, to be determined upon the proofs submitted. The intent to come to the United States must be *bona fide* and actual, with the purpose to perform the duties of American citizenship, and not simply for the purpose of evading responsibilities abroad without incurring any in this country. The only evidence in Mrs. Mundé's application of an intent to come to the United States is her declaration that she expects to do so in fifteen years. In the absence of positive evidence as to her reason for fixing that time, the Department is not disposed to make any inferences adverse to the motives of the present application. It is, however, not improbable that by or before the expiration of that term of years questions might be raised as to the liability of the applicant's son to certain burdens in the country of his birth, and of the *prima facie* domicil of his mother, where he has always lived, and where, as the evidence indicates, it is proposed that he shall remain until he reaches the age of twenty-one years, he being six years of age at the present time. This circumstance, in the opinion of the Department, makes it especially desirable that more definite evidence should be furnished by the applicant in respect to her intentions.

As the evidences before the Department are not sufficient to warrant a final decision on Mrs. Mundé's status, the Department does not intend, in approving your withholdment of a passport in the case as now presented, to prejudice any rights to which Mrs. Mundé may hereafter show herself to be entitled; all that is necessary at present to say is that the evidences now before the Department point to an Austrian rather than an American domicil.

I am, etc.,

T. F. BAYARD.

BELGIUM.

No. 23.

Mr. Tree to Mr. Bayard.

No. 175.] LEGATION OF THE UNITED STATES,
Brussels, November 29, 1886. (Received December 13.)

SIR: I have the honor to inform you that a bill has been introduced into the House for the reorganization of the Belgian army, the chief provisions of which are that every Belgian twenty years of age is liable to military duty; that the army shall be recruited every year, and that there shall be no exemptions in time of war; that the active contingent shall be fixed each year; that the permanent army in time of peace will represent always 1 per cent. of the population. The length of service is to be ten years for all branches, three years of active service, four years of service in the reserve of the active army, and three years of service in the national reserve.

Under the present service any one who draws an unlucky number at the annual drawings for recruits may free himself by buying a substitute for about 1,600 francs. This feature of the military law has been always very distasteful to the working classes, who have to do personal service in the army when they draw a bad number, because they have not the money to purchase a substitute, while those who are more fortunately situated pecuniarily may escape by paying 1,600 francs.

As, however, the Government does not seem to be in accord with the principal features of the bill, it is probable that it will not be accepted, but it will doubtless produce considerable discussion.

I have, etc.,

LAMBERT TREE.

No. 24.

Mr. Bayard to Mr. Tree.

No. 66.] DEPARTMENT OF STATE,
Washington, December 3, 1886.

SIR: I inclose a copy of a letter from Capt. J. F. Burke, commanding the Gate City Guard, of Atlanta, Ga.

This volunteer organization, which is highly commended by his excellency the governor of Georgia, is one of the foremost in the country for drill and discipline.

As you will see by the inclosure it is the deeire of the organization which is about visiting Europe to wear their uniforms and to carry their arms when on parade.

Please obtain early information whether the Government to which you are accredited will give the necessary permission, and under what, if any, conditions, and apprise me so that I can notify Governor Gordon in season.

I am, etc.,

T. F. BAYARD.

No. 25.

Mr. Tree to Mr. Bayard.

No. 178.] LEGATION OF THE UNITED STATES,
Brussels, December 13, 1886. (Received December 27.)

SIR: I have the honor to inform you that I have sent you by this mail, under separate cover as printed matter, three copies of the Bulletin Officiel de l'État Indépendant du Congo, No. 11, 2d année, 1886.

The instructions to the agents of the State, with reference to their relations with foreign consuls (page 195 *et seq.*), appear to be the most important document, so far as foreign countries are concerned, which this number contains.

I have, etc.,

LAMBERT TREE.

[Inclosure in No. 178.—Translation.]

CONSULATES.

Relations with the foreign consuls.—Instructions for the agents of the State.

ARTICLE 1.

The consul can not enter on his functions until after having received the exequatur of the sovereign king.

Nevertheless, the administrator-general can authorize an agent to exercise provisionally the consular functions.

(1) When he has received special instructions to that effect from the department of foreign affairs.

(2) When the agent has been designated by a consul regularly nominated and recognized as manager *ad interim* of the affairs of the post.

When a consul has been admitted to the exercise of his functions in virtue either of the sovereign exequatur or of a provisional authority, the administrator-general of the Congo notifies the magistracy and commissioners of the district in which the agent has authority to protect the interests of his compatriots. Before this communication, no agent or functionary of the State can hold official relations with the consul as such. The notice given to the judicial authorities will determine clearly the character of the consul by specifying if he is to be considered as a full consul or a trading consul.

ARTICLE 2.

The administrator-general of the Congo alone can decide upon the complaints which are addressed by the consuls to the local authorities. Consequently, saving the exceptions resulting from the present instructions, the agents of the State should, each time that they take cognizance of a request or a claim, merely give a certificate to the consuls and immediately inform the administrator-general.

When the claim assumes a political character, and bears upon any matter on which the sentiments of the Government are unknown to him, the administrator-general will abstain, as much as possible, from taking any action before referring it to the Government at Brussels.

ARTICLE 3.

International usage authorizes consuls to place the coat-of-arms of their nation outside their offices and to raise their national flag.

Although it is a privilege accorded to consuls alone, it is not necessary at the present time to suppress the flag-staffs of commercial houses and factories. Until the new order these will not be raised unless the consul himself makes the demand.

The authorities can not on any pretext enter the official building if the incumbent is a full consul, subject of the country which nominated him, and not trading. They can, however, do so with the consent of the director of justice, if he had granted asylum to persons threatened with criminal prosecution. If the consul applies himself to business having the object of money his office shall not be considered inviolable. In this case the authorities shall always avoid making any search in his official papers, provided that these are kept separately.

Except in a case of *flagrante delicto*, no search shall be made except in the presence and with the formal decree of the judge. (Article 5 of the ordinance of April 1, 1886, on the public ministry.)

It must be said that if a consul, even a merchant, comes to be nominated a member of the international commission of the navigation of the Congo he will be absolutely inviolable in the exercise of the latter functions, as well as his offices. (General act of the Conference of Berlin, Article 18.)

ARTICLE 4.

Not enjoying the privileges of exterritoriality, consuls are subject to the jurisdiction of the country where they find themselves. They may then, in a civil and commercial matter, be summoned before the tribunals of the Congo, and these shall be in respect to them territorially competent, since the consuls have their residence in the State. (Ordinance No. 18 on the manner of proceeding.) They can be restrained of their liberty and their goods may be seized, with the reservation of what is said in No. 3 relative to the offices. Subject to penal proscriptions like all other foreigners, consuls will be, like them, prosecuted and sentenced. It is expedient always to treat them with the regard due their official character. They can not be arrested, except in case of absolute necessity, and the magistrates will use, concerning them, all the consideration compatible with the proper administration of justice.

If a consul be under preliminary arrest, the confirmative ordinance which the judge should issue within three days, and confirm every fifteen days, ought to be submitted to the director of justice, who shall decide if it is necessary to continue the detention. (See the ordinance on the public ministry.)

ARTICLE 5.

Consuls have the right to see to the maintenance of internal order on board the merchant vessels of their nation and, to that effect, to take disciplinary measures and to take such proceedings as they judge necessary. They take cognizance of all differences which have arisen, at sea or in port, between the captain, officers, and men of the ship's company, for the execution of the obligations which bind them reciprocally or for any other cause. By differences must be understood not only civil contests which arise between the aforesaid persons, but also infractions committed aboard among the crew.

The local authorities will abstain from interfering unless they are required in writing by the consul or in case of disorders in which are found involved persons not forming part of the crew, or which are of a nature to compromise the public tranquillity on land or in port. In these cases it is the officers of public ministry whose functions naturally designate them to interfere; they will address a circumstantial report on the affair to the director of justice.

ARTICLE 6.

When consuls judge it necessary to cause the arrest and detention, otherwise than on board a vessel, of a person inscribed on the crew list, they must have the support of the local authorities. It must be noticed that according to the spirit of article 9 of the ordinance of April 1, 1886, on the public ministry, the judge alone can, in the case, order the detention. In a case where a confirmative ordinance should be issued by the judge, this shall be submitted to the director of justice, who will decide if it is necessary to continue the detention. The expenses of this imprisonment will be chargeable to the consuls; they shall be computed by a tariff to be fixed by the administrator-general of the Congo.

If a prisoner over whom a consul has jurisdiction escapes from a ship he can only be arrested by the authorities of the country, to whom the consul must apply. The officers of the public ministry will proceed to the search and arrest.

ARTICLE 7.

In case of the decease of a subject of his country, the consul may take, concurrently with the local authorities, all measures necessary to protect the interests of the heirs. In case of hinderance, or the absence of the heirs or testamentary executors, he shall be invited to be present, the case occurring, at the affixing of the seals, the making of the inventory, and to co-operate in the administration of the estate.

Within the jurisdiction of the tribunal of first instance of the Lower Congo, all measures relative to letters of administration will be instituted by the officers of public ministry, either with the consent of the consul, as mentioned above, or alone if there is no consul, or if the succession is open where no consul resides, and if the latter does not intervene.

In order that the public ministry may act to this end it will be expedient that the civil officers of the State inform it as far as possible of the decease of foreigners leaving no heirs in the Congo.

Outside of the jurisdiction of this tribunal the local authority may find itself obliged to take alone all the measures for the preservation and administration of the estate.

The personal property forming the estate may be remitted by direction of the administrator-general to the consul of the country to which the decedent belonged; the division of the estate in such case being effected according to the laws of this country. The administrator-general is forbidden to authorize the remission of the estate to the consul, if the same appears to him likely to be contested, or if it were subject to an execution, instituted in conformity to Title III of the ordinance on the civil and commercial procedure.

It is moreover understood that in case contests shall arise they shall be decided exclusively by the tribunals of the State.

If the estate includes landed property situated in the State, the transfer shall take place under the legal provisions upon real estate. The laws of nations submit real estate, as concerns the division of estates, to the laws of the country where it is situated. Should the State have on this point no legislation of its own, the heirs may, in the absence of any will, invoke in support of their rights the laws of the country of the decedent.

It is therefore expedient that the holder of land titles, if he finds himself confronted with conflicting claims arising from transfer occasioned by death, should seek the advice of the competent consul.

ARTICLE 8.

The said agents will have the right to receive, conformably to the laws and regulation of their country, in their offices or bureaus, all agreements made between citizens of their own country and the citizens or other inhabitants of the State, and even all agreements of the latter, provided that these have reference to property situated or to business in the territory of the nation to which the consul belongs, or the consular agent before whom they shall be made.

Copies of the said agreements and the official documents of all kinds, either in original or copy or translation, duly legalized by consuls or other consular agents and furnished with their official seals, shall be admitted as evidence before the tribunals of the state, provided they have been legalized by the director of justice.

ARTICLE 9.

When the consul asks the arrest of a criminal having taken refuge in the territory of the state the demand can be instituted in virtue of Article 4 of the decree on extradition. Still the individual can not be extradited, except by authority of the central government or in virtue of a convention with the state making the demand.

The competent authority can not receive commissions rogatory addressed to them by consuls, unless they are in virtue of a convention. (Article 8 of the decree on extradition.)

ARTICLE 10.

Consuls or other consular agents are alone authorized to direct all operations relative to the salvage of vessels of their respective nations stranded or shipwrecked on the coasts of the State.

The authorities of the State can, besides, interfere for the maintenance of order, to guarantee the interests of the salvors if they are foreign to the shipwrecked crews, and to secure the execution of the provisions to be observed for the entry and clearance of the goods saved.

ARTICLE 11.

The consul is not exempt from the payment of taxes of whatever nature, nor any public duties, such as that of assessor.

The right to issue bills of health is expressly reserved to the territorial authorities.

The authorities of the Congo will lend to consuls their intervention to convey to those interested the judicial and administrative acts sent to consuls by their Government and intended for foreigners established in the Congo.

No. 26.

Mr. Tree to Mr. Bayard.

No. 185.] LEGATION OF THE UNITED STATES,
Brussels, January 3, 1887. (Received January 17.)

SIR: I understand that the newly-established wires connecting Brussels with Paris by telephone were tried a day or two since, and that the trials were perfectly successful. The line will be handed over to the public use within a few days.

I have, etc.,

LAMBERT TREE.

No. 27.

Mr. Tree to Mr. Bayard.

No. 186.] LEGATION OF THE UNITED STATES,
Brussels, January 4, 1887. (Received January 17.)

SIR: I have the honor to transmit herewith the correspondence with the Belgian minister of foreign affairs on the subject of the proposed visit of the Gate City Guard, of Atlanta, to Belgium.

The Prince de Chimay, in his note informing me that the Government accords the authorization requested by the Guard, observes that "the best welcome will be reserved for them."

I have, etc.,

LAMBERT TREE.

[Inclosure 1 in No. 186.]

Mr. Tree to Prince de Chimay.

LEGATION OF THE UNITED STATES,
Brussels, December 14, 1886.

YOUR EXCELLENCY: I have the honor to inclose to your excellency herewith a copy of a letter from Capt. J. F. Burke, commanding the Gate City Guard, of Atlanta, Ga., addressed to his excellency the Hon. John B. Gordon, governor of the State of Georgia, one of the States, as you are doubtless aware, composing the American Union.

This volunteer military organization, which is highly commended by his excellency the governor of Georgia, is said to be distinguished for its perfection of drill and discipline.

It would appear from the letter of Captain Burke that the Gate City Guard contemplates making a visit to Europe.

The organization will include about seventy-five members, and will also be accompanied by a number of ladies and gentlemen who are friends and relatives of its mem-

bers. The object of the visit is recreation and the pleasure and instruction incident to travel.

They expect to sail from New York for Antwerp about the 1st of July next, and to include Brussels, Paris, Switzerland, and Italy in their route of travel.

In order that they may travel under discipline they wish to preserve the distinctive character of a military organization in wearing their uniforms and carrying their arms when on parade.

I am instructed by my Government to obtain early information as to whether the Government of His Majesty the King is willing to give the necessary permission for this American volunteer military organization to wear their uniforms while in Belgium and parade with arms, and under what, if any, conditions.

Thanking your excellency in advance for any information on the subject, which I may communicate to my Government, I avail myself, etc.,

LAMBERT TREE.

[Inclosure 2 in No. 186—Translation.]

Prince de Chimay to Mr. Tree.

MINISTRY OF FOREIGN AFFAIRS,
Brussels, December 31, 1886.

MR. MINISTER: You have kindly informed me by your letter of the 10th instant of the project of a voyage to Europe of a detachment of seventy-five men of the Gate City Guard, of Atlanta.

These volunteers who will visit Belgium desire to be allowed to wear their uniforms and carry their arms on parade.

I hasten to infom you that the necessary authorization is accorded and that the best welcome will be reserved for them.

It is well understood Mr. Minister, that the detachment will be required to observe the measures of order which might, the case happening, be prescribed.

Please accept, etc.,

The PRINCE DE CHIMAY.

No. 28.

Mr. Tree to Mr. Bayard.

LECATION OF THE UNITED STATES,
No. 198.] *Brussels, February* 3, 1887. (Received February 21.)

SIR: Referring to my No. 185, I have the honor to inform you that Le Moniteur of this morning publishes a copy of a convention just entered into between the French and Belgian Governments concerning the establishment of a service of telephonic correspondence between Brussels and Paris.

The Belgian King and the President of the French Republic yesterday had a conversation through the wires. I transmit herewith a copy of the convention and a translation of the same.

I have, etc.,

LAMBERT TREE.

[Inclosure in No. 198.—Translation.]

Convention concerning the establishment of a service of telephonic correspondence between Brussels and Paris.

His Majesty the King of the Belgians and the President of the French Republic, desiring to establish a telephonic communication between Brussels and Paris, and making use of the privilege accorded to them by Article 17 of the international telegraphic convention, signed the 22d of July, 1875, at St. Petersburg, have resolved

to conclude a special convention to this effect, and have named for their plenipotentiaries, to wit:

His Majesty the King of the Belgians, Prince de Chimay, officer of the Order of Leopold, chevalier of the Order of the Legion of Honor, etc., member of the Chamber of Representatives, his minister of foreign affairs; and Mr. Jules Vanden Peereboom, chevalier of his Order of Leopold, etc., member of the Chamber of Representatives, his minister for railways, posts, and telegraphs; and the President of the French Republic, Mr. Granet, chevalier of the Order of the Legion of Honor, etc., etc., etc., member of the Chamber of Deputies, minister of posts and telegraphs, and Mr. Bourée, officer of the Order of the Legion of Honor, etc, etc., etc., envoy extraordinary and minister plenipotentiary of the French Republic near His Majesty the King of the Belgians; who, after having communicated their full powers, found to be in good and due form, have agreed upon the following articles:

ARTICLE 1.

A service of telephonic correspondence will be established and worked between Brussels and Paris by the administration of posts and telegraphs of the two countries.

ARTICLE 2.

There will be made use of for this purpose copper or bronze wires of high conductibility, having at least three millimeters of diameter, and being placed in a manner to avoid in the greatest possible measure the effects of induction.

Each one of the two administrations will have performed on its own territory the work of placing the wires and will assure their repair, each at its own expense.

ARTICLE 3.

The administrations will remain free either to use only for telephonic service the circuits specified in Article 2, or to employ these circuits simultaneously for telegraphic service and telephonic service on the whole or on a part of their line. Nevertheless if experience demonstrates that the telegraphic use of the wires is prejudicial to the regular working of the telephonic service these conductors will be exclusively reserved to this service.

ARTICLE 4.

At Brussels and at Paris the telephonic circuits will terminate at a central office.

There will be established sounding boxes, where the public may be admitted to correspond.

The two administrations will take besides, as far as possible, the necessary measures in order that private establishments, and especially the subscribers of the systems of Brussels and Paris, may be enabled to correspond among themselves through the means of the international line by the intermediary of the central offices.

ARTICLE 5.

The operation of the telephone between Brussels and Paris will be assured by the agents of the two administrations, each on its own territory, or by other agents agreed to by them.

ARTICLE 6.

The standard adopted as well for the collection of tolls as for the duration of the communications is a conversation of five minutes.

The employment of the telephone is to be regulated according to the order of demands. There can not be accorded between the same correspondents more than two consecutive conversations of five minutes each, except when there is no other demand before or during the duration of these two conversations.

ARTICLE 7.

The toll for five minutes' conversation is temporarily fixed at 3 francs.

The products will be divided between Belgium and France in the proportion fixed for the division of telegraphic tolls by arrangement concluded between the two countries July 22, 1886.

The toll is paid by the person who asks the communication. Each administration will keep account of the tolls and will exercise the method of collecting them which it deems most convenient.

ARTICLE 8.

The telephonic service Brussels-Paris will be opened to the public in a permanent manner day and night.

ARTICLE 9.

The two administrations will decree in concert the rule of service which should be applied.

ARTICLE 10.

Each of the two contracting parties reserves to itself the right to suspend totally or partially the telephonic service for reasons of public order, without being held to any indemnity.

ARTICLE 11.

The two administrations are not subject to any liability by reason of the service of private correspondence in telephonic way.

ARTICLE 12.

The present convention will be put in execution at the date which shall be fixed by common accord between the administrations of the two countries; it will remain in vigor for three months after notice to terminate it, which may always be done by either of the contracting parties.

In faith of which the respective plenipotentiaries have signed the present convention, which they have witnessed with their seals.

Made in duplicate at Brussels December 1st, 1886.

[L. S.] The PRINCE DE CHIMAY.
[L. S.] VANDEN PEEREBOOM.
[L. S.] GRANET.
[L. S.] BOURÉE.

Certified by the secretary-general of the ministry of foreign affairs,
BARON LAMBERMONT.

No. 29.

Mr. Tree to Mr. Bayard.

No. 201.] LEGATION OF THE UNITED STATES,
Brussels, February 12, 1887. (Received February 28.)

SIR: I have the honor to inclose you herewith an unsealed letter addressed to the President of the United States, which I forward at the request of the president and officers of the "Cercle artistique littéraire et scientifique" of Antwerp, the official and oldest society of painters and sculptors in Belgium. It is a letter of thanks to the President, signed by the president and professors of the School of Fine Arts, by the officers of the "Cercle," and by the prominent artists and members, expressing their thanks and gratitude to the President for the recommendations contained in his last annual message to Congress for the abolition of duties on works of art.

I have, etc.,

LAMBERT TREE.

[Inclosure in No. 201.]

ANTWERP, *January* 15, 1887.

To His Excellency GROVER CLEVELAND,
President of the United States of America:

SIR: The artists forming the section of the plastic arts of the "Cercle Artistique" of Antwerp desire to transmit to you their warmest felicitations and their recognition of your wishes, expressed to the Senate of the United States of America, regarding the abolition of the duties on works of art, which have since many years seriously interfered with the importation of foreign sculpture and paintings.

The productions of the European art world have always been received with marked favor in America, and the question of their free introduction is one which will find an echo in all the artistic centers of Europe.

We, particularly, as representatives of the Flemish school, desire to send to you our sincere thanks, and trust that Congress will consider the great importance of the movement which you have initiated.

The removal of the present prohibitive laws would be an impetus to a new art movement in general, and tend to mutual benefit and progression in the friendly struggle between nation and nation.

We have the honor to be, your obedient servants,

FRANS VAN KUYCK, *President.*
GROVINS,
P. NERHAERT.

E. De Yans, Charles Verlat, Hendrick Schaefels, David Cob, Joseph Van Luppen, Sortielge, Walter Sanford, U. S. A., L. Van Engelen, Frans van Luppen, Henry Rut, Frans Gony, Floren Waudurvay, Frik Hanno, Jos. Naurdens, E. Faraoyns, Louis Pupuis, Georges Geefe, Eng. Gufz, Alphonse Peeters, Alfons Bogaerts, Jérant Portiége, N. Van Wallerschoag, André Plumot, A. N. Lathourser, Ed. Moerenhaut, H. Zimmerman, Ed. Chappel, H. Hoeber, D. Dunnaert, Jos. Bellmans, N. Detheyser, Thos. Lamosinier, T. Dyckmans, E. W. Boks, P. Vander Ouderal, Castel Ebert, U. S. A.; C. Corp, Jans Janssen, Louis Dericks, Eng. Siberd, Emile Velin, Hdrik Vanderbroecht, Theophile J. Grooff, Louis Sp. Maillure, G. B. Vander Veken, Pierre Vasslissderz, A. De Keyser, Thior. Virstrirete, Robert Fabie, Théodore Cleynhens, Emile Thulens, Fyniette, Edward Portiege, and C. Y. Bovin, Secretaries.

No. 30.

Mr. Tree to Mr. Bayard.

No. 203.] LEGATION OF THE UNITED STATES,
Brussels, February 17, 1887. (Received March 4.)

SIR: Referring to my No. 186, I met Mr. Charles M. Beels, the burgomaster of Brussels, last evening at a ball at the palace, and had a talk with him about the proposed visit of the Gate City Guard, of Atlanta, to Brussels next summer. He told me that he would do all he could to make their visit an agreeable one, and that they would be formally received at the *Hôtel de Ville*, which will be a distinguished municipal compliment to them.

I have, etc.,

LAMBERT TREE.

No. 31.

Mr. Tree to Mr. Bayard.

No. 210] LEGATION OF THE UNITED STATES,
Brussels, February 28, 1887. (Received March 14.)

SIR: The Belgian minister of finance laid a bill before the Chamber of Deputies a few days since to authorize the Congo Free State to issue bonds in Belgium with a view to contracting a loan. Without a law to this effect it would seem that such an issue within the jurisdiction of the Kingdom by a foreign state would be unauthorized.

The bill provides that the loan shall be issued in 100-franc bonds. That they will bear no interest, but must be reimbursed at par with an augmentation of 5 francs per year up to the date of the reimbursement. The redemption of the bonds must be secured by the deposit in a Bel-

gian financial establishment of a capital represented by first-class funds, and the successive issue of bonds shall not exceed 150,000,000 francs. The bonds are exempted from stamp duty.

The bill, I understand, has been offered by the ministry in deference to the wishes of the King, who has testified his devotion to and faith in the success of the Congo State by contributing to it 30,000,000 of francs already from his private fortune, and who now allows it each month 100,000 francs from his own purse.

In offering the bill the minister of finance also submitted with it a letter addressed to him by Mr. Van Eetvelde, the administrator-general of foreign affairs of the Congo State, in which the advantages to Belgium that would accrue from this financial operation are set forth.

He states that the revenues of the State are now considerable, derived chiefly from duties on exports, registrations, and the postal service, but that the resources must be necessarily augmented in order to assure the present and the future of the State; that among the newly settled or savage countries where it is sought to create new markets, the State of the Congo is certainly one of those which presents the best field and where commercial enterprises have the greatest chance of success and promise the most considerable profits; that the central seat of the Congo Government is located at Brussels, and is composed of Belgians, and that the greater part of its officials in Africa are also Belgians; that the State makes large purchases in Belgium every year, and that it has awakened a spirit of enterprise amongst its people to whom it is opening up a large commercial and industrial field; that a direct service by steamers has been established between Antwerp and the western coast of Africa, and the "Compagnie du Congo pour le Commerce et l'Industrie" organized, which is examining the construction of the railway to connect the Upper Congo with the sea; lastly, that while Antwerp will become the emporium of the produce of the State, the young men of Belgium will have careers opened to them in that country like those which are furnished to the sons of England and Holland by their colonies.

It will be observed that the basis of the reasoning of the administrator-general for the indorsement by the Belgian Government of his scheme for a loan is that the drift of the Congo State is towards becoming something in the nature of a colony of Belgium.

* * * * * * *

I think the bill offered by the minister of finance will become a law without any serious opposition.

I have, etc.,

LAMBERT TREE.

No. 32.

Mr. Tree to Mr. Bayard.

No. 224.] LEGATION OF THE UNITED STATES,
Brussels, March 28, 1887. (Received April 11.)

SIR: I have the honor to inform you that a Mr. Charles G. Richte called at the legation this morning for the purpose of obtaining a passport. In his application he stated that he was born in Prussia; is 67 years of age; emigrated to the United States in 1857; was naturalized in the city of New York in 1865; came to Europe in 1871 with his wife

(he has no children), and has not returned since to the United States, nor has he any fixed intention of returning at any time in the future. His return will depend on circumstances. He is the bearer of passport No. 9197, issued by the Department of State on the 9th of December, 1870.

In this state of the case Mr. Richter, claiming to be a naturalized citizen of the United States, and having continuously resided beyond its limits for the period of sixteen years, and having, as appears from the statement in his application, no fixed intention of returning thereto, I have decided not to issue a passport to him, unless the Department should instruct me to the contrary; I have also retained possession of his old passport, which has expired.

I transmit to you herewith Mr. Richter's sworn statement.

I have, etc.,

LAMBERT TREE.

[Inclosure in No. 224.]

NATURALIZED.

No. ———. Issued, ——— ——, 18——.

Applicant: Charles G. Richter.

I hereby apply to the legation of the United States at Brussels for a passport for myself, and my wife.

In support of the above application I do solemnly swear that I was born at Wesal, Prussia, on or about the 6th day of February, 1821; that I emigrated to the United States on or about November, 1857, sailing on board the Africa from Liverpool, and arriving at New York in November, 1857; that I resided five years uninterruptedly in the United States, from November, 1857, to April, 1871, at New York and other places; that I was naturalized as a citizen of the United States before the ——— court of common pleas at New York in the year 1865; that I am the bearer of passport No. 9197, issued by Hamilton Fish, Secretary of State, on the 9th day of December, 1870, which is returned herewith; that I am the identical person referred to in said certificate and passport; that I last left the United States April, 1871, on board the Wesa, arriving in Bremen April, 1871; that I have resided in Europe since April, 1871; that I am now temporarily residing at Brussels; that I have no fixed intention of returning to the United States. My return will depend on circumstances.

I desire the passport for the purpose of traveling in Europe.

Oath of allegiance.

Further, I do solemnly swear that I will support, protect, and defend the Constitution and Government of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without mental reservation or purpose of evasion. So help me God.

CHARLES G. RICHTER.

LEGATION OF THE UNITED STATES AT BRUSSELS.

Sworn to before me this 28th day of March, 1887.

LAMBERT TREE,
Minister.

Description of applicant.

Age: 67 years.
Stature: 5 feet 10½ inches.
Forehead: High.
Eyes: Gray.
Nose: Large.
Mouth: Medium, with moustache.
Chin: Medium.
Hair: Gray.
Complexion: Light.
Face: Oval.

Identification.

BRUSSELS, *March* 28, 1887.

I hereby certify that I know the above-named Charles Richter personally, and know him to be the identical person referred to in the within-described certificate of naturalization, and that the facts stated in his affidavit are true, to the best of my knowledge and belief.

F. W. MÜSER.

No. 33.

Mr. Tree to Mr. Bayard.

No. 226.] LEGATION OF THE UNITED STATES,
Brussels, March 30, 1887. (Received April 9.)

SIR: I have the honor to inform you that a number of prominent Belgian citizens have been during the past winter perfecting a project for holding an international exposition of sciences and industry at Brussels in 1888. They have finally enlisted the Government in the enterprise, which has decided, while leaving the financial responsibility and direction to these persons, who have formed themselves into a corporation, to favor it by extending to it the Royal patronage and probably a Government subsidy.

The King, with a view to encouraging the participation of Belgian and foreign producers, has within a few days, on the proposition of the minister of agriculture, industry, and public works, issued a Royal decree appointing his brother, the Count de Flandre, president of honor of the committee charged with the duty of arranging the exposition, and also appointing presidents and members of the central and other committees appertaining thereto. It is to be called "Grand concours international des sciences et de l'industrie."

The primary object of the projects is avowedly to relieve the crisis which is pressing so heavily upon Belgium just now, and to inspire new life into its industries.

I have, etc.,

LAMBERT TREE.

No. 34.

Mr. Tree to Mr. Bayard.

No. 232.] LEGATION OF THE UNITED STATES,
Brussels, April 7, 1887. (Received April 19.)

SIR: I have the honor to acknowledge the receipt of your unnumbered instruction of February 8 last, addressed to the diplomatic and consular officers of the United States, on the subject of issuing certificates, at the request of American citizens proposing to marry abroad, as to the freedom of such parties from matrimonial disabilities, and as to the law of the United States regulating the mode of solemnizing marriage. I have carefully read the instruction and will strictly guide my official conduct by it.

It is, perhaps, not irrelevant in this connection to also refer to marriages which sometimes take place in the United States between Belgians and Americans, without observing the provisions of the Belgian law, the restrictions of which, as in the case of the French law, attach to the Belgian citizen even in a foreign country. This is especially so with regard to obtaining the consent of the parents, where the Belgian is under twenty-five years of age.

Several cases have already come under my observation since my residence here, where the marriage has been repudiated by one of the parties, it is always the man, because of non-compliance with the Belgian law in obtaining consent of parents. In one of these cases the

marriage has been already declared void, and other cases are now pending in the courts.

I do not know that there is any way to prevent it, but it seems rather surprising that parents who propose wedding their children to foreigners do not exercise more precautions in ascertaining whether all the requirements of the law of the country of the foreigner have been complied with by him.

Their children would be saved a good deal of future unhappiness if they did. But the thirst for titles sometimes leads to precipitate marriages, which are afterwards found to be not particularly binding.

I have, etc.,

LAMBERT TREE.

No. 35.

Mr. Tree to Mr. Bayard.

No. 233.] LEGATION OF THE UNITED STATES,
Brussels, April 8, 1887. (Received April 19.)

SIR: I have the honor to acknowledge the reception of your unnumbered instruction of February 23, last, on the subject of passport returns.

The instruction, in all particulars, will be carefully observed by me.

While I am not able to make any suggestions as to desirable additions or alterations to the form of application, which seems to be searching enough in its allegations, yet some reflections have occurred to me on the subject of passports, as the result of my experience in the discharge of my official duties here, which I venture to state briefly, although, in doing so, I am rather expanding the terms of the invitation of the Department, in its instruction with reference to suggestions as to the form of the application.

I am satisfied that there is a great abuse of American citizenship by foreigners, and that there are very many persons—perhaps if we could get at something like the exact number we would be astounded—who become naturalized in the United States without the slightest intention of either living there or performing any of the duties of citizenship. They are persons who seek to escape the duties and responsibilities of *any* country, and who, while masquerading as Americans whenever it serves their purpose, do not possess the first element of the American citizen, either in love or knowledge of our institutions, and frequently not even of our language.

Their citizenship is in all, save form, a palpable fraud, not only on the United States, but on the country in which they actually dwell. It often happens in the course of my duty that such persons apply for passports because the police is annoying them, or they wish to travel in Russia, Spain, or other countries, and who admit that they have no fixed intention of ever returning to the United States. Some of these persons have lived there just long enough to get naturalized and no longer; others, although possessing naturalization certificates, I have found, on careful questioning, had never been in the United States the required five years, but had made only occasional visits there, and even then, from the first to the last visit, it covered a period of less than *four* years.

It is humiliating and degrading to American citizenship that the condition of the law is such that any large number of persons can have facilities for using its high and sacred title for the mere accomplishment of selfish and commercial purposes, or for the performance of clever tricks on other governments of which they are *really* citizens, but from all of the duties of which they thus escape. Citizenship of this sort is not of the slightest value to us, and in my opinion the adoption of a statute which would *uncitizenize* every naturalized citizen who, not being in the public service, remained out of the United States for a longer period than five years, or some other period fixed by law, would be a most just and wise measure.

It is evident also that there is much abuse of the naturalization laws in the same direction, and some amendment of them by which the act of assuming American citizenship should be more solemn, and at the same time the General Government in some way be possessed of some record of the people of foreign birth who, as citizens, may claim its protection, it seems to me, would be equally judicious and wise.

I have, etc.,

LAMBERT TREE.

No. 36.

Mr. Bayard to Mr. Tree.

No. 81.] DEPARTMENT OF STATE,
Washington, April 13, 1887.

SIR: Your dispatch No. 224, of the 28th ultimo, reporting your course in refusing to grant to Mr. Charles G. Richter a passport upon the ground that he has been absent from this country for sixteen years and has no fixed intentions of returning at any time in the future, has been received. Your action in the premises is approved by the Department.

I am, etc.,

T. F. BAYARD.

No. 37.

Mr. Tree to Mr. Bayard.

No. 235.] LEGATION OF THE UNITED STATES,
Brussels, April 19, 1887. (Received April 30.)

SIR: I have the honor to inform you that the treaty between Henry M. Stanley, representing the Congo State, and Tippoo-Tib, the powerful Arabian dealer in slaves and ivory, of the Upper Congo, rumors of which have been in circulation for some time past, has been published here.

It is as follows:

'Henry Morton Stanley, acting on behalf of His Majesty the King of the Belgians, Sovereign of the Independent State of the Congo, nominates Hamed-bin-Mohamed-Tippoo-Tib-Ouali, of the district of the Stanley Falls, with a salary of £30 a month, on the following conditions:

(1) Tippoo-Tib binds himself to hoist the flag of the Congo State on the station near the Stanley Falls, and to make respected the authority of the State on the River Congo and all its tributaries, as well at his station as down the river as far as to the River Arnwimi. He undertakes to prevent the Arabs, and the tribes there established, from carrying on the slave trade.

(2) Tippoo-Tib will receive a resident representing the Independent State of the Congo, and will make use of him as a medium for all communications which he may have to make to the general administration.

(3) Tippoo-Tib will have full liberty to pursue legitimate trade in all directions and towards all places that may suit him.

(4) Tippoo-Tib will have to appoint an *ad interim* substitute, to whom his powers will be delegated in his absence, and who is to succeed him if he dies; His Majesty the King of the Belgians reserving to himself the right to disapprove the choice of Tippoo-Tib if he see serious objection to it.

(5) The present arrangement will be valid only so long as Tippoo-Tib or his *ad interim* substitute shall fulfill the conditions here enumerated.

ZANZIBAR, *February* 24, 1887.

This treaty is considered of great importance to the State of the Congo, as it is supposed that it will have the effect of restoring its lost authority over Stanley Falls and of all that region. It is said that the influence of Tippoo-Tib is paramount over the country, and that he has at least 1,600 fighting men furnished with fire-arms always under his orders and at his disposal. * * *

Some of the newspapers here are criticising the King rather severely for having entered into a treaty with a slave-trader, which does not in express terms exclude him from trafficing in slaves.

Article 1 does, in fact, engage him to prevent "the Arabs and the tribes there established from carrying on the slave-trade," and article 3 gives him liberty "to pursue legitimate trade in all directions and towards all places that may suit him." The term "legitimate trade" in this last-named article is thought to be rather ambiguous, and to cover an intention on the part of the Congo State Government to be blind to what Tippoo-Tib may do in this direction, provided he maintains its authority at Stanley Falls.

* * * * * * *

Mr. Van Eetvelde, the administrator-general of foreign affairs of the Congo State, informs me that the intent of the treaty really is to prevent Tippoo-Tib from carrying on the slave-trade within its jurisdiction. He says they also hope through this powerful Arab to turn to the profit of the State a part of the commerce which is now carried on with the eastern coast.

In connection with Congo affairs I have also to inform you that the Belgian Parliament has passed the bill which I have referred to in previous dispatches, authorizing the Congo State to issue in Belgium bonds to the extent of 150,000,000 of francs, and that the French Government has authorized 80,000,000 francs of the amount to be negotiated in France. The loan is entirely a lottery affair.

The bonds will run for ninety-nine years without interest, but there will be drawings at certain periods at which it is possible to gain prizes running from 200,000 down to 250 francs. A portion of the money raised by this loan will be put into the railroad which is projected around Stanley Falls.

I think I observe a rather greater interest here in the Congo country than has ever been manifested before this. I have heard of a number of young men who are preparing to go out, some of whom are the sons of men of rank.

I have, etc.,

LAMBERT TREE.

No. 38.

Mr. Bayard to Mr. Tree.

No. 82.] DEPARTMENT OF STATE,
Washington, April 26, 1887.

SIR: Your dispatch, No. 232, of the 7th instant, acknowledging the receipt of the Department's circular instruction of the 8th of February, 1887, relative to the marriage of American citizens abroad, and reporting instances of marriages repudiated in Belgium, which were entered into between Belgians and Americans in the United States, without observing the restrictions of Belgian law, has been received and read with interest.

Information in regard to the practical working of the marriage laws of foreign countries as affecting our citizens will always be acceptable to the Department.

I am, etc.,

T. F. BAYARD.

No. 39.

Mr. Tree to Mr. Bayard.

No. 252.] LEGATION OF THE UNITED STATES,
Brussels, August 25, 1887. (Received September 12.)

SIR: I have the honor to inform you that on Tuesday last, the 23d instant, a rather serious riot was produced by the Belgian fishermen at the port of Ostend.

It seems that English fishing vessels are in the habit of bringing their fish to Ostend for sale; and on Tuesday two of these vessels arrived at the port and proceeded to unload their cargoes for the purpose of disposing of them in the Ostend market. The Belgian fishermen, between whom and their brothers on the other side of the Channel there has been much bad blood for a long time, growing out of various causes, declared that the Englishmen should not land their fish, to be brought into competition with the cargoes of the Ostend fishermen. The men on one of the English boats, nevertheless, persisted in proceeding to deposit their cargo, and had the aid of the police and gendarmes to protect them in their rights. When, however, the cargo was partly landed, the Ostend fishermen, who were all the time growing more and more excited, forced the line of police and gendarmes, which had been drawn up on the dock, around the English vessel, and seizing the fish threw them at their heads. The police and gendarmes finding it impossible to hold their position alone, invoked also the assistance of the civic guard, and on the arrival of the latter the fishermen were driven at the point of the bayonet from the dock.

In the mean time the two English vessels hauled out from dock a few yards, when the Belgian fishermen got into small boats and boarded them. Neither prayers nor menaces could induce them to abandon the vessels which they had taken possession of. The civic guard then advanced to the edge of the dock, and the usual legal summons was made for the rioters to disperse, but without effect.

The men had become terribly excited, and opening their shirts so as to expose their breasts, were crying out to the military, "*Tirez! voici*

nos poitrines; vous verrez de quelle couleur est le sang d'un pêcheur flamand!" The soldiers then fired two volleys over the heads of the rioters, but they made no motion to give up possession of the English boats. The third time they fired directly at the fishermen, killing five of them and wounding several more.

As soon as it was learned that some of their comrades had been killed, all the Belgian fishing-vessels in port were caused by their crews to hoist their flags at half mast in sign of mourning, and great excitement prevailed amongst the fishing population, which was increased by the action of the women, who were wandering about the streets, crying, wringing their hands, and heaping invectives on the heads of foreign fishermen, who, as they declared, are taking the bread from the mouths of their children. In the evening the English vessels put to sea without discharging their cargoes.

The affair may be considered in some degree a culmination of the hostility which has for a long time existed between Belgian and English fishermen.

According to the Belgians, when English nets are cut, as they sometimes are, it is always the Belgians whom they accuse. On the other hand, while the English have always enjoyed the right to sell their fish equally with the Belgians in the Ostend market, and employ steamers in the trade which purchase and take on board their loads of fish from English smacks in the open sea, thus rendering it impossible for the Ostend fishermen to compete with them at their home, syndicates of middlemen in England prevent the sale of their fish in English markets. The Belgians are kept out of France by the heavy duties imposed, and owing to the limited market to which they are confined, and the competition of other nations, especially the English in their own market, the Ostend fishermen are being reduced to starvation and misery.

Matters are more calm to-day, and it is believed there will be no further serious trouble for the moment. In the mean time it is said that England is already making the affair one of diplomatic investigation.

I have, etc.,

LAMBERT TREE.

CORRESPONDENCE WITH THE LEGATION OF BELGIUM AT WASHINGTON.

No. 40.

Mr. Bounder dè Melsbroeck to Mr. Bayard.

[Translation.]

BELGIAN LEGATION,

Washington, January 19, 1887. (Received January 19.)

SIR: One Emile Dewaele, born in 1867, at Sinay, Flanders, Belgium, belongs by age in the next conscription of militia. The young man, to avoid military duty in Belgium, invokes the naturalization conferred on his father, Charles Dewaele, the 17th September, 1880, by the circuit court of Roscommon County, Mich.

The certificate produced for that purpose is signed by the clerk of the court; but this signature is not certified to in any way.

Under these circumstances my Government has charged me to ask your excellency if Mr. *Charles* Dewaele is really a citizen of the United States.

It is also important for my Government to know officially whether, according to the laws of the United States, the effects of naturalization are extended to the children of the naturalized person (1) When they live with him (in the U. S. A.); (2) When they reside abroad.

Thanking your excellency for enabling me to answer these questions,

I am, etc.,

TH. DE BOUNDER DE MELSBROECK.

No. 41.

Mr. Bayard to Mr. Bounder de Melsbroeck.

DEPARTMENT OF STATE,
Washington, April 11, 1887.

SIR: I have to acknowledge the receipt of your note of January 19, 1887, making certain inquiries as to the citizenship of Charles Dewaele and of Emile Dewaele, his son.

Great as is my desire to give any information which it is within the range of my duties to communicate, I feel compelled to say that the information you request is not within such range. The reasons are as follows:

(1) When there is an issue likely to arise between an alleged citizen of the United States and the Government of a foreign country in which he resides, the question whether the position taken by the foreign Government is to be resisted by such citizen, as well as the qualifications attending his position in such respect, are to be determined primarily by himself. This Government, for instance, would say to such a party, "Whether you abjure your allegiance to us, or whether you render a qualified submission, in the performance of local civic or military duties, is for you, in the first place, to determine."

(2) Questions of this class are acted on by this Department, adopting the practice of the judiciary under similar circumstances, on the basis of affidavits and other documentary evidence, exhibiting the exact state of facts; which affidavits and evidence a foreign sovereign could not be called upon to produce.

(3) It is not in accordance with the polity of our institutions that the question of the citizenship of a person claiming, or likely to claim, the protection of the United States should be determined *ex parte* by this Department on the application of the Government against whom such protection may be sought. Citizenship in the United States has two aspects. On the one side, in this country, it carries with it electoral privileges and other prerogatives and immunities, as to which the naturalized citizen, no matter how destitute in other respects, has the same political rights with native-born citizens, no matter what may be their other advantages. On the other side, it gives such citizens, when abroad, the right to the protection of the United States to the full extent of its capacity against foreign powers. Such rights can not be divested unless on a hearing, in which the party whose citizenship is questioned is notified to appear; and, so far as the question of protection is concerned, they can be denied in this Department only on issue made by the party himself, after a full hearing of his case, with every opportunity given to him to present it in detail.

Accept, etc.,

T. F. BAYARD

No. 42.

Mr. Bounder de Melsbroeck to Mr. Bayard.

[Translation.]

BELGIAN LEGATION,
Washington, April 21, 1887. (Received April 21.)

SIR: Under the date of August 11, 1886, I had the honor to inform your excellency that the second session of the congress of commercial law would assemble in the month of September of this year, expressing the desire that the United States Government would also be represented at this session.

In pursuance of this note I have the honor to transmit to your excellency two copies of the resolutions* laid before the members of the international congress of commercial law by the royal committee of organization.

In conformity with the arrangement adopted for the preliminary work, the section of maritime law has made a new examination of the decisions reached at the congress of Antwerp. It has collected the criticisms of which these decisions have been the subject in numerous publications, and the remarks made concerning the draft of maritime international law, communicated last month to all who took part in the congress. It has examined and discussed, with the assistance of these new materials, the points which were examined by the session of 1885, and has elaborated the draft which it now submits to the members of the congress. This draft, which is accompanied by a report of Mr. N. Jacobs, president of the section, will serve as a basis for the deliberations of the second session of the congress, which will be held at Brussels during the second half of the month of September, 1887. The section's work includes a large number of subjects of maritime law. The propositions reached are divided into several series of resolutions distinct from one another. For some, those which relate to the conflict of laws, to collisions, and to salvage to sea-going vessels, the method of a treaty is recommended.

In choosing this frame-work and this method of division of its labors the section is impressed with the difficulties which each of the subjects presents from the stand-point of an international decision; some, indeed, adapt themselves to the form of a general law applicable to all nations in such countries as shall have enacted this law; others seem rather calculated to become the subject of conventions applicable solely to the contracting parties. The various portions of the commission's work are then independent of each other; they are not united in a common lot, and the failure of some does not involve the failure of the rest. The section has endeavored specially to do practical work. I think it has made the way easier for an international agreement on the subjects whose examination it had undertaken.

I direct your excellency's attention especially to this point, in order that you may be now able to form an opinion on the possibility of negotiating with the Government of the King special conventions on the subjects for which the Belgian commissioners propose to reserve that method of international settlement.

Hoping that the Government of the United States will kindly send a representative to this meeting of the congress of commercial law,

I avail myself, etc.,

THE. DE BOUNDER DE MELSBROECK.

*Not printed herewith.

No. 43.

Mr. Bayard to Mr. Bounder de Melsbroeck.

DEPARTMENT OF STATE,
Washington, May 25, 1887.

SIR: With reference to your note of the 21st ultimo relative to the international congress of commercial law, which is to be held at Brussels in September next, I have the honor to inform you that David Dudley Field, esq., of New York, has been duly appointed as American delegate to the congress in question.

Accept, etc.,

T. F. BAYARD.

No. 44.

Count d'Arschot to Mr. Bayard.

[Translation.]

LEGATION OF BELGIUM,
Washington, July 20, 1887. (Received July 21.)

SIR: Under date of the 11th of August, 1886, I had the honor to inform your excellency that the committee of organization of the international congress of commercial law will again meet in the month of September of the current year. In accordance with the request I made that the United States Government should be represented at this second session, your excellency was good enough to name Mr. David Dudley Field as the American delegate.

My Government directs me to notify your excellency that the meeting of the congress has had to be adjourned to the second fortnight of the month of September, 1888.

In consenting to the adjournment of the congress the King's Government has sought especially to insure the most favorable conditions for the objects sought. The deliberations of the second congress ought to be directed principally toward the replies as well of the participating Governments as of the learned societies, but the communications addressed to them have not as yet brought the number of answers which were expected, and consequently for the moment the preliminary work lacks the critical replies on which the commission counted as a decisive factor to bring the deliberations of the congress to a good determination.

The Government of the King hopes that your excellency will continue to furnish him your kind support, and will be happy to receive any communications which your excellency is good enough to send him to serve in the preliminary work with which the royal committee of organization will continue to occupy itself.

I avail, etc.,

CTE G. D'ARSCHOT.

BOLIVIA.

No. 45.

Mr. Seay to Mr. Bayard.

No. 76.] LEGATION OF THE UNITED STATES,
La Paz, December 6, 1886. (Received January 18, 1887.)

SIR: By my dispatch No. 60, dated May 6, 1886, I informed the Department that the Bolivian Government would soon depart for Sucre, the constitutional capital, remain there temporarily, hold the regular session of Congress there, and return to La Paz in the fall. It did depart about May 15.

As the time for the adjournment of Congress approached speculation became rife as to the question whether it would redeem its promise to return to La Paz. It was at first given out that it would pay a visit to Cochabamba and then return to Sucre. But when the President and his cabinet came to decide the question it was determined to remain at Sucre. As the rainy season will prevent travel until April or May it was very natural that such a step should be taken. But not a word was said as to its return to La Paz after that time. Hence a very natural fear among the people of La Paz that it will never return. Sucre is the constitutional capital, but, by Article 41, the President may, for "grave reasons," call the sessions of Congress elsewhere. It has thus, nearly the whole of the last fifteen years, sat at La Paz. President Pacheco, being a resident of Sucre, it is feared that he will keep the Government there during at least the remaining two years of his term. It will be observed that under the present constitution no one place can be selected as the permanent seat of Government. It may continue to be peripatetic or not, the question depending on the President's ideas as to what constitute "grave reasons." My colleagues have instructions to remain here until such selection is made, and so remain.

* * * * * * *

In the mean time the Government has not communicated with the diplomatic corps on the subject officially. We know nothing of its intentions except what we gather from the rumors and speculations of the public. We shall be cut off from each other for five or six months by the weather, the communication by the mule post being very precarious. Removal of a legation to Sucre would be troublesome and expensive at any time. As La Paz is even now quite accessible to the outer world by lake and railroad, and bids fair to be more so by the extension of the railroad, one would suppose that it is bound to be the permanent capital at no distant day.

With much respect, etc.,

WM. A. SEAY.

No. 46.

Mr. Bayard to Mr. Seay.

No. 23.] DEPARTMENT OF STATE,
Washington, January 21, 1887.

SIR: I have received your No. 76, of the 6th ultimo, touching the probable residence of the Bolivian Executive and cabinet at Sucre for a futher indefinite period.

The information before the Department is insufficient to permit of definite instructions concerning the permanent seat of the legation, but inasmuch as the utility of diplomatic intercourse depends about as much on the facilities the envoy has for communicating with his own Government as upon his presence at the actual seat of the Government to which he is accredited, it is probable that you will find it inexpedient to remove from La Paz, unless the permanency of some other seat of Government should be reasonably certain.

I am, etc.,

T. F. BAYARD.

BRAZIL.

No. 47.

Mr. Trail to Mr. Bayard.

No. 68.]

LEGATION OF THE UNITED STATES,
Rio de Janeiro, December 29, 1886. (Received February 5, 1887.)

SIR: Herewith I send you a report upon the "Boundary question between Brazil and the Argentine Republic," recently prepared by me. A copy of the treaty of September 28, 1885, is also inclosed.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure in No. 68.]

THE BOUNDARY QUESTION BETWEEN BRAZIL AND THE ARGENTINE REPUBLIC.

For several years past the most important question this Empire has had to deal with in her foreign relations has been, and still is, that of the boundary line which separates a certain part of her domain from the Argentine Republic. The controversy dates back to 1750, when the crowns of Spain and Portugal held possession of this entire continent, and although effort after effort has been made to settle the dispute, the exact position of the dividing line is as uncertain to-day as it was a hundred years ago. The territory in question is part of the "Misiones," interesting as the scene of the early works of the Jesuits, and as the home of the Guarances, that tribe of Indians whose determined and prolonged resistance to the invaders of their soil in colonial times gained for them universal respect and sympathy.

In superficies the territory is about the size of the State of Maryland.

As you are well aware, there exists a feeling of rivalry between the one Empire and the great Republic of South America, and the progress of either is watched by her neighbor with anything but a friendly interest. To this feeling is due in large part the autonomy of the Oriental Republic, neither of the two great powers being willing to see Uruguay become a province of the other. Now, this boundary question has not helped to better the reciprocal bad feeling, and out of it, somewhat over a year ago, grew rumors of war. The Argentines had been quietly moving in and taking possession of the "*territorio en litigio*," and Brazil concentrates the flower of her army in the adjacent provinces. For a time there was serious apprehension of a collision between the forces of the two countries. This was in May-September, 1885. Since then there has been a mutual understanding, and the matter is being discussed according to agreements set forth further on.

* * * * * * *

Brazil naturally wishes to feel secure along her southern boundary because it is to her southern provinces of São Paulo Paraná and Rio Grande do Sul that she looks for that material progress which will keep her well in the lead in South American affairs. It is to this section she is now directing all the immigration coming to her shores, and it is here the Government has continued in carrying out its railroad enterprises after abandoning them in the northern part of the Empire. But to return.

The territory in dispute lies directly south of Paraná, north of Rio Grande do Sul, and west of St. Catharina (provinces of). To understand its situation clearly it is necessary to look on the map, say that made to accompany the report of the Central and South American commission. Directly south of Paraná will be found Misiones, and it is to the blank space just east of this word I desire to direct your attention. It is bounded on the north by the Iguassú or Curituba River, and on the south by the Uruguay; to the east will be seen two rivers, the Chopim, which empties into the Iguassú to the north, and the Chapecó emptying into the Uruguay to the south. Now it is agreed on both sides that the northern boundary of the tract is the Iguassú and the southern the Uruguay. Brazil claims that the river Pepiri-guassú emptying into the Uruguay, and its contravertient, the San Antonio that flows to the north and empties into the Iguassú, form the true boundary line between her and the Argentine Republic. The Argentines say no; the true line is to the east, on our map about three-quarters of an inch, and is made by the rivers you call Chapecó and Chopim, which are really the Pepiri-guassu, and the San Antonio. What you call the Peperi (or Peperi-guassu on the map) is really the Peguiri, and what you call the San Antonio is really the San Antonio guassu. This is the question. The modern maps are on Brazil's side. How the rivers became mixed in this manner will be explained further on, from the Argentine point of view. But it is only fair to state that this section is little known, and that on our maps there are a dozen rivers within a radius of an inch to which no names at all have yet been given. This question is historic, as the following shows:

The courts of Portugal and Spain on January 13, 1750, made a treaty establishing the limits of their dominions in America and in Asia. As to the frontier to day in dispute between Brazil and the Argentine Republic the following was agreed on:

> From the mouth of the Ibicui the line shall ascend by the bed of the Uruguay until it meets the river Pepiri or Peguiri, which empties into the Uruguay on its western side, and it shall continue by the bed of the Pepiri upwards as far as its main source, from which it shall proceed across the high land to the principal source of the nearest river that empties into the Rio Grande de Curituba, otherwise called Iguassú (or Iguazu). By the bed of the said river nearest to the origin of the Pepiri and afterwards by that of the Iguassú or Rio Grande de Curituba, the line shall continue until the same Iguassú empties into the eastern bank of the Paraná, and from this mouth it shall proceed upwards by the channel of the "Paraná" until it unites with the river Iguray on its western side.

The commissioners appointed to draw the boundary line decided that the rivers Peperi-guassu, and the Santo Antonio formed the common frontier; but this demarkation became of no value because the two courts annulled this treaty by making another on February 12, 1761. The first treaty was abrogated on the part Spain on account of the resistance the Portuguese made to giving up the colony of the Sacramento, and because the Spanish Jesuits would not abandon the "Misiones" ceded to Portugal.

In 1777 another treaty was concluded, and as the monuments or posts set up by the commissioners named by the treaty of 1750 had been destroyed by order of the Governments, a commission was appointed to go over the ground again and to draw the line anew. The chief commissioners were the astronomer Saldanha and the geographer Gundin, who proceeded on the exploration to a certain point on the Uruguay (from which they should have descended until they reached the mouth of the Pepiri-guassú, which was the principal object of their commission). Here, however, Gundin, left his companion and struck out in an entirely opposite direction from the one agreed upon, and in the course of his voyage discovered a river till then unknown, which the Spaniards named Pequiri-guassú, and which was from that time regarded as the true Pepiri-guassú.

Such was the origin of the controversy which lasts until the present time, and which was not settled by the courts of Spain and Portugal, in consequence of the war of 1801, which annulled the treaty of 1777; the unexpected pretensions of the Spanish commissioners not having been examined and decided upon in the mean time.

When the United Provinces of the Plate became independent, in 1816, the boundary question was still undecided, nothing having been resolved on the points by the Vienna Congress of 1815. In 1821 Portugal recognized the independence of the United Provinces, and by this act annulled whatever agreements existed between her and Spain on the boundary question. In 1822 came the independence of Brazil, and from this date the question is no longer one that concerns either Portugal or Spain, but is transferred to Brazil and the Argentine Republic. Between these two powers the subject was first discussed in 1857, and a treaty was drawn up which took for its base that of 1750, and which stipulated that the rivers Pepiri-guassú and Santo Antonio, therein mentioned, were the same as those the boundary makers named by the treaty 1750 had so called. This last treaty was not ratified by the Argentines, and from this time until 1882 numerous efforts were made by the diplomatic agents of the two countries, but without success. At last, in 1882, the Argentine Government, while engaged upon making some change in that part of the "Misiones" belonging to it, felt constrained to open up the subject once again, and the Brazilian minister accredited there was invited to enter upon a new negotiation. This offer was accepted, and from it originated an Argentine memorandum and a Brazilian contra-memorandum, giving the claims of the two parties respectively. Translations of the two memorandums are herewith annexed, as is also a copy of the new treaty of September 28, 1885. A perusal of these documents leads one to infer that * * * the line is just as undecided now as it was a hundred years ago.

The Argentine memorandum.—Translation.

I.

The demarkation of 1759 was wrongly conceived and contrary to the plan and instructions of the courts (of Spain and Portugal).

II.

The error or mistake of the boundary-makers arose (1) from their being guided by the statement of an Indian who had been over the country but once, when a child; (2) from their not having determined with exactness the situation of the Uruguay-pita, which should have served them as their starting point; (3) from their not having ascended the Uruguay Guazu by the necessary passage until they should meet the Uruguay-pita, and further on the Pepiri or Pequiri.

III.

The demarkation made by them became valueless by the treaty of 1761, and can not be invoked in this question.

IV.

The treaty of 1777 is in full force and is the only title (titulo) and antecedent applicable to the boundary question; it agrees also with article third of the treaty of 1778.

V.

This treaty was not annulled, nor did it become void by the war of 1801 between Spain and Portugal, because it settled the dividing lines creating rights under the reciprocal guaranty of the two sovereigns, and because it was not expressly annulled nor modified by the treaty of Badajoz. All of which is in accord with the principles and jurisprudence of international law.

VI.

By this treaty the line of division that was drawn by it (the treaty) of 1750 was modified in its greater part, territories that Spain had by it ceded to the crown of Portugal retroverting, and that part embraced between the Uruguay and Iguazu alone being preserved.

VII.

The rivers to which the treaty of 1777 refers are consequently the true Pequiri and the one flowing in the opposite direction that empties into the Curitiba; there is no motive nor reason in affirming that because the names Pepiri-Guassú and San Antonio were employed, that permanence should be sought to be given to the boundary of 1759, which had been expressly annulled.

This mistaken boundary was one of the causes of the treaty of abrogation of 1761.

The Pepiri is not the Pepiri-guassú, and the treaty names as the first boundary the Pequiri.

VIII.

The *uti possidetis* invoked is not applicable to the case in question as opposed to the boundary determined by the treaty, because there is no possession, nor can any regular possession be alleged, nor can the treaty be accepted in part and rejected as to the rest. As little is it granted to allege possession where there is none as to succeed to (or inherit) the area embraced between the rivers in dispute.

IX.

The boundary makers of 1788, '89, and '91, subjecting themselves to the directions and spirit of the treaty of '77 and to the instructions it gave, fixed upon by common consent of the Portuguese, the situation of the Uruguay-pita, and sought, explored, and with the consent of the same determined upon the situation of the true Pequiri, which they named the Pequiri-guassú to distinguish it from the one the boundary makers of '59 had wrongly designated.

X.

The treaty of 1857 can not be invoked in this question according to the principles of international law, because it was not ratified, but if it should be cited as an antecedent, it would have to be itself dependent upon what it approved, by which the most easternly rivers were designated as the boundary, or those of the boundary makers of 1788, '89, and '91.

XI.

The Republic has not renounced its rights of dominion by any act nor has it desisted to make them valid according to the terms of the treaty in force.

XII.

Modern geographical maps and charts have no official character, nor can they be cited as proof of renunciation, abandonment, or cession of rights, since they are not revised in the manner such acts are required to be in order to be effective.

Only those can be considered in the question which were of the time anterior to the treaties, those which were made in the time of them (the treaties), or those which came immediately after the operations of the fixing the boundary.

The original manuscript chart of 1749, which served for the treaty of 1750, subsequent agreement and instruction given to the commissioners, place the Pequiri to the east of the mouth of the Uruguay-pita. This map subsists (subsiste) because if the treaty and its effects should be annulled the true situation of the rivers could not be (annulled).

The old maps of Brazil also place the Pepiri or Pequiri to the east of the Uruguay-pita, and the plans of the geographers who took part in the demarkation do the same.

The considerations set forth, founded on data and antecedents irrefutable, demonstrate with clearness the rights of the Republic to the territory in question.

She does not disavow for a moment the fitness and the necessity of terminating it by friendly and equitable measures, such as correspond to two nations which esteem each other and are destined to live in the greatest harmony, drawing closer their interests and cordial relations.

Acting then with justice, and submitting to the rules of law and experience, the controversy should cease by a frank and explicit acknowledgment of the rights of the Republic to the territory in dispute.

The Brazilian memorandum.—Translation.

I.

The treaty of January 13, 1750, determining that each of the contracting parties should retain what it then possessed, and tracing the frontier by the Pepiri or Pequiri and by the nearest river that ran towards the Iguassú, recognized the possessions of the Portuguese Government to the east of these two rivers.

II.

The demarkation of 1759 and 1760 was made very regularly and in entire conformity with the treaty of 1750 with the instructions sent for its execution, with the local tradition, and with the maps prepared and published by the Jesuits in 1722 and 1726.

III.

Consequently all the territory situated to the east of the rivers Pepiri-guassú and Santo Antonio was recognized as belonging to Portugal.

IV.

The treaty of February 12, 1761, annulled that of 1750, but it could not annul the fact of the Portuguese possession, which did not spring from it, because it existed anterior to it, and its existence was even recognized by it. This fact remained in full force.

V.

The treaty of 1750 was not annulled because there was error in the demarkation made between the Uruguay and the Iguassú, nor because the two contracting parties had changed their ideas as regards the respective possessions, nor with reference to the direction of that part of the frontier. It was annulled on the part of Spain on account of the colony of the Sacramento, which the Portuguese did not give up, and from the opposition of the Jesuits, who were not willing to abandon the "missions" ceded to Portugal.

VI.

The fact of the possession anterior to 1750 being undeniable and there not having been error in the demarkation, whatever new adjustment should be made ought naturally to agree to this as the practical expression of the right of Portugal.

VII.

And on it indeed was based the treaty of October 1, 1777, which, reproducing the frontier of 1750, respected the then recognized possession, and giving to the rivers which bound it the names agreed upon by the respective boundary makers, sanctioned the demarkation made by them.

VIII.

The intention of the two courts was made clear in the instructions sent out by the Spanish Government for the execution of the treaty of 1777, by the viceroy of the United Provinces of the Rio da Prata and by the principal Spanish commissioner to his subordinates.

IX.

Therefore all that the Spanish commissioners, who were appointed in virtue of the treaty of 1777, did to make the frontier run by two rivers distinct from those designated in this treaty and entirely unknown, was null.

X.

And moreover when the Spanish Government, receiving and approving the idea of her commissioners, sought for the substitution of the frontier which had been fairly and solemnly adjusted, in order that she could effect it, the agreement of Portugal was indispensable. But there was no agreement, consequently the frontier stipulated in 1750 and confirmed in 1777 held good until the treaty of this date was annulled as a result of the war of 1801.

XI.

This nullification (annullacão) continued in consequence of the following events:
War of 1808.
Transference of the crown of Spain to Napoleon I, and soon afterwards to his brother.
Independence of the United Provinces of the Rio da Prata without their renewing the treaty of 1777 or making another to take its place.
Recognition of the independence of these provinces on the part of Portugal without her renewing the treaty or making another suited to the new circumstances.
Independence of Brazil just when the boundary question between Portugal and the said provinces remained undecided.

XII.

Proved as it is, the nullification of the treaty of 1777, on which the Argentine Government bases its right, the question is solved by the *uti possidetis*, as a fact anterior to the treaty of 1750, by which it was recognized as it was respected by the other of 1777.

XIII.

The Argentine Government morally bound by the treaty of 1857 can not reject the *uti possidetis* as the base of the right of Brazil, not only because in it the dispositions of the treaty are found, but also because it (the Argentine Government) recognized it (the *uti possidetis*) officially by means of the declaration her minister of foreign affairs made in the explanation to the Chamber of Deputies when he discussed the said treaty in the [city] of Paraná.

XIV.

Consequently the frontier between the Uruguay and the Iguassú runs, according to the demarkation of 1759 and 1760, by the rivers Pepiri-guassú and Santo Antonio.

Accompanying the Argentine memorandum was a note, from which I extract the following:

But to accept the suggestion of your excellency in the form in which it is put would be equivalent to a motiveless renunciation to the territories over which the Republic considers herself to have the right.
This Government thinks, then, that could the demarkation be continued by the river that flows in the opposite direction to the Pequiri and the sources of the one and the other be united by a line which would divide the mountain chain at its center and would be relatively short as Oyarvide proved (Oyarvide, Spanish geographer, 1791). * * *

Brazil replied:

If the Imperial Government should accept * * * this proposition it would equally renounce its right to the frontier formed by the true Pepiri-guassú and the true Santo Antonio. This it can not do.

While the Imperial Government is convinced of the right that Brazil has to the frontier she defends, she is conscious of the good faith with which the Argentine Government from its side combats it, * * * and desiring on her part to give once again a proof of the sincerity of her sentiments and the certainty of her rights, she resolved to propose to the Argentine Government, as she now proposes, that a mixed commission * * * shall be named by both the Governments to explore the four rivers Pepiri-guassú, Santo Antonio, Chapeco, and Chopim, which the Argentine Government terms Pequiri-guassú and Santo Antonio-guassú, and the zone included by them, making an exact map of the rivers and of all the zone in dispute.

This proposition was accepted by the Argentines, and, after some delay, on the 28th of September, 1885, a treaty was duly ratified by the two powers at Buenos Ayres. By this treaty, a copy of which is inclosed,* it will be seen that the final settlement of the boundary dispute is for the time being postponed; that the commissioners appointed by the two countries, accompanied each by an escort, are to proceed to the disputed territory to explore and define it and the four rivers bounding it, and to report from time to time to their respective Governments, but they are not to pass any opinion upon the subject of the boundary line itself; this the respective Governments are to settle afterwards. That they will of themselves be able to come to an amicable agreement is more than doubtful, and it is probable they will be forced to call on some third power to decide upon their respective claims. The frontier dispute between the Argentines and Paraguayans, after the war of 1865–'70, was settled by President Hayes, and the claims of the Argentines and Chilians to Patagonia were submitted to the Ministers Osborn, our late representatives in the two Republics, and were adjusted to the entire satisfaction of both countries. * * *

I am, etc.,

CHARLES B. TRAIL.

No. 48.

Mr. Trail to Mr. Bayard.

No. 71.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, January 19, 1887. (Received February 23.)

SIR: I was yesterday informed by Consul-General Armstrong of an alleged attack upon our consulate at Santos. The only facts in my possession are those set forth in Vice-Consul Broad's communication to the consul-general. A copy of the said communication accompanied the latter's note to me, and is herewith inclosed.

From the vice-consul's statement it appears that when he called the attention of the chief of police to the outrage, that official explained—so I infer from Mr. Broad's note—that, owing to the enactment of a local law regulating the closing of shops on Sundays, some persons felt aggrieved, and proceeded to express their indignation by stoning various shops in different parts of the city; that among the shops so stoned was one just under the consulate, and that the missiles that struck and

* Treaty omitted in present publication.

damaged the consulate were intended for the shop. The chief of police, continuing, expressed his sorrow for the occurrence, and assured the vice-consul that the act of the mob was in no way intended as an insult to the United States.

The reply in writing of the chief of police to Mr. Broad's demand for an explanation will be transmitted you as soon as received by me, together with any other facts bearing on the subject that I can obtain.

The chief's verbal explanation, remaining uncontradicted, is presumably correct, and, in my judgment, an apology from the municipal authorities for the outrage committed unintentionally by a part of their citizens, and an indemnity for the damage done the consulate, coupled with a promise to punish the offenders, ought to suffice to be satisfactory.

As the case does not appear to be one that would be seriously damaged by a delay of a month or two, I do not feel called upon to take immediate action, but will await such instructions as you may be pleased to send me.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure in No. 71.]

Mr. Broad to Mr. Armstrong.

UNITED STATES CONSULATE,
Santos, January 12, 1887.

SIR: I beg to bring before your notice the following, which occurred on the night of the 9th instant. From inquiries I have made, this consulate was attacked on said night, about 9 o'clock, by a group of men and boys, who stoned the front of the consulate, breaking a number of panes of glass, the window-frame of one of the windows, injuring the arms of the consulate. I at once officially wrote to the delegado of the police, and I have delayed up to the present advising you, expecting an answer, so that I could have also furnished it to you. It has not come; but on speaking to the delegado on the subject, he will, he says, give me every information, expressing his sorrow that the affair should have occurred, and that the people who were concerned in the row did not intend in any way to insult the United States consulate. A municipal law has lately been passed to make all shops, etc., close on Sunday. This group took the law within their own hands, and a shop under the consulate was attacked, and for this reason the consulate suffered. Other shops in different streets were also stoned.

I considered it my duty to demand an explanation, and in so doing I think I have not done wrong.

I am, etc.,

HENRY BROAD,
Vice-Consul.

No. 49.

Mr. Trail to Mr. Bayard.

No. 72.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, January 21, 1887. (Received February 18.)

SIR: Herewith is inclosed a brief report upon Brazilian foreign affairs for the year 1886.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure in No. 72.]

BRAZILIAN FOREIGN AFFAIRS, 1886.

The year 1886, while not affording matter of striking moment as regards this Empire touching her exterior relations, yet gives us several subjects worthy of mention.

As diplomatic action in South America is largely engaged in the presentation and management of claims, I briefly outline the following:

The French passenger steamer *La France*, of Marseilles, on December 30, 1885, entered the bay of Bahia, and being signaled to stop by the national gun-boat for the purpose of undergoing sanitary inspection before proceeding to her anchorage, disregarded the signal, whereupon the gun-boat fired two blank charges at her. This warning likewise receiving no attention, the fort of Gamboa gave her two shots, one of which struck her on the prow, killing a passenger, an Italian. The French Government, on behalf of the owners of *La France*, sent in a claim for damages caused by the cannon-ball fired from the fort, and proposed to the Imperial Government that in the future the firing of ball be discontinued, substituting for this fines graded to suit the gravity of the case. It was alleged by the captain of the packet that the first signal was not given; that the two blank shots were supposed to come from a man-of-war at gun practice, and, finally, that his vessel had a clean bill of health, and did not come from an infected port. Brazil replied that the damage done the vessel and the death of the passenger were the result of systematic disobedience of port regulations on the part of commanders of foreign packets, and of utter disregard for the signals from the gun-boat, which were duly given in the case; that the only way to prevent the introduction of disease from foreign ports was to subject vessels coming from those ports to rigid inspection before entering the inner harbor, and the only way to compel them to stop, when they disregarded the signals, was to fire on them with shot. The claim of the Italian Government in behalf of the family of the passenger killed was likewise rejected. Claims made by English companies for firing upon their vessels under circumstances similar to the above were not entertained by the foreign office.

Of a different nature was the reclamation of the Waring Brothers (English) for the payment of an indemnity due them from Brazil caused by rescinding the Victoria and Natividade Railroad contract made with them in 1882. Waring Brothers are railroad contractors, and were employed by the Brazilian Government to survey and commence work upon a road the Government proposed constructing. They had scarcely begun when the Government concluded that a railroad in that locality was uncalled for at the present time, and so decided to abandon the work. The contract with the Warings was rescinded, and to indemnify them a decree was had fixing their loss at £70,000, which they accepted. This decree was of April, 1885. In September of the same year this decree was revoked by a law (No. 3271), which stated that the rescission of the contract in question needed the approval of the legislative power. In other words, the Chambers did not regard the Imperial decree as binding upon them, but proposed to investigate the matter and consider it *de novo*. The Warings applied to their Government for assistance at this stage of affairs, and Her Britannic Majesty's minister in their behalf insisted that the Imperial decree must be made good.

* * * * * * *

The Brazilian minister of foreign affairs, being interpellated while the Chambers were in session, advised the payment of the stipulated sum. His view of the matter prevailed, and the sum was paid.

* * * * * * *

On September 22d ultimo, notice was given by Brazil that the consular convention existing between her and Great Britain, Italy, France, Germany, Spain, the Netherlands, and Switzerland would cease to be of effect on and after September 22, 1887. The convention with Belgium expires September 4, 1888; the treaty of friendship, commerce, and navigation with Paraguay, in May, 1890. As the subjects of foreign countries, for the most part, retain their original nationality after settling in this Empire, and living in colonies, upon their decease their estates are administered upon by their respective consuls, acting as surrogate or probate judges. Such estates, after September next, will have to pass through the national courts, as do those of American decedents, and the fees incident to the administration of the same—in all a very considerable sum—will be collected and retained by Brazilian officials.

With her surrounding neighbors Brazil had no serious trouble the past year. The commission to locate the rivers which form the subject of the boundary dispute between this country and the Argentine Republic commenced their preliminary work, and the mobilization of the Imperial army on the southern frontier near the territory in *litigio* had no serious result. A revolution having broken out in that unfortunate Republic of Uruguay, Brazil announced her determination to observe a strict neutrality. * * * The leader of the revolution party, General Arredondo, was encouraged in his scheme by the Argentines, and formed his army on their soil. The so-called dictator, Santos, however, managed to keep the national army on his side, and the insurgents, being practically without arms, were soon overcome. Arredondo fled into Brazil, but by the time he reached Rio last year Santos magnanimously set at liberty all the prisoners and declared a general amnesty. The whole affair was a matter of less than six months' duration.

* * * * * * *

Our manufacturers complain because the balance of trade between us and South America is in favor of the latter. Now, this enormous difference is caused solely by our Brazilian trade. Our importations and exportations with the five Republics just about balance.

The Jornal de Comercio of Rio de Janeiro is the leading newspaper of South America. From an editorial of January 5, 1887, I take the following:

What we observe particularly * * * is the necessity of drawing closer the bonds between the different nations of this continent. The Chilian press, one of the best instructed in this part of America, occupied itself the latter months of the year with the necessity of celebrating treaties of commerce between the countries of South America, and expressed the suitableness of forming an union of the custom-houses (*union aduaneira*) for the free exchange within the continent of its products. The press of the Argentine Republic and of the United States discussed the project of a Latin-American congress, to be held in Washington, with the object of consulting about the better reciprocity of advantages and interests of the different states. This new affair is made important from the coming of the North American commission to South America, where they visited various capitals and entered into relations with the Governments, and it caused sufficient impression in Europe, being principally treated of by the French papers. Our neighbors of the Plate consider the project as merely an Utopian one, and though they won by their kind reception the good graces of the commissioners, they do not believe that important and lasting conventions can result from the congress which is to adjust valuable and reciprocal interests.

According to the version of the Tribuna Nacional, of Buenos Ayres, the United States Government proposes to convoke in Washington, in October of 1887, delegates from the different states of the American continent, with the exception of Canada, for

the purpose of opening a congress which will have for its object the study of all the questions which tend to the increase of the commercial relations and to the common prosperity of the American states. Last June Mr. Frye introduced a bill which was approved by the American Senate for the purpose of stimulating this initiative. On the 7th of July,* 1886, the Congress named a commission composed of four members to examine and propose the measures opportune for increasing the commercial importation between the United States and South America. This commission, before undertaking its excursion abroad, commenced its labors by visiting all the commercial and industrial centers of North America to observe and hear the opinions of their fellow citizens. To complete their investigations the members of the commission, traveled through Mexico, Central America, Ecuador, Chili, Uruguay, and to finish visited the Argentine Republic, although only hastily. They were sorry that the brevity of the time at their disposal prevented them from traveling over Brazil. On this excursion they gathered abundant data and agreed upon the suitableness of all the states of the South (America) sending delegates to the Washington congress.

In the bulletin of the Merchants' Exchange of Paris (*Lo boletin da camara syndical dos negociantes de comissiões de Paris*) it was said that Chili did not ratify the ideas of the Washington cabinet. Peru demanded absolute reciprocity. Ecuador conceives that she can not cut off her customs duties, which are the chief revenue of the state. Venezuela stated she was negotiating treaties with the European nations. The Argentine Republic and Uruguay exacted the introduction of their wool free of duty into the United States. In this manner only the states of Central America agreed to the proposals of the agents of the American Union.

CHARLES B. TRAIL.

No. 50.

Mr. Trail to Mr. Bayard.

No. 73.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, February 22, 1887. (Received March 21.)

SIR: Referring to my No. 71, of January 19th last, I have now to transmit the written answer of the delegate of police of Santos to the United States vice-consul in that city, in reply to a communication from the latter to the police authorities, in which it was alleged that the United States consulate in Santos had been stoned and damaged by certain Brazilian subjects.

The explanation and apology of the police delegate are taken as "sufficient" by Mr. Broad, our vice-consul at Santos. * * * A copy of the vice-consul's note to the consul-general, which accompanied the answer from the police delegate to the vice-consul as sent me, is also inclosed.

I am, etc., CHAS. B. TRAIL.

[Inclosure 1 in No. 73.]

Mr. Broad to Mr. Armstrong.

UNITED STATES CONSULATE,
Santos, February 17, 1887.

SIR: I beg to acknowledge receipt of your dispatch dated 12th instant, and in reply to same state that I inclose copy of the answer of the delegado de policia herewith received only this morning, respecting the attack on the consulate on the night of January 9th last. I think you will agree with me that the answer is sufficient.

No mention of the outrage was made in any of the local papers, consequently can send you no extract.

I have, etc.,

HENRY BROAD,
Vice-Consul.

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*1884.

[Inclosure 2 in No. 73.—Translation.]

Chief of Police to Mr. Broad.

POLICE OFFICE, SANTOS, *February* 15, 1887.

ILLUSTRIOUS SIR: Not before to-day have I been able to reply to your higness's communication concerning No. 76, which you deigned to direct to me the 10th of January last.

After investigating the facts to which your highness refers in the above-mentioned communication, I am fully convinced that there was no disrepect to the nation of which your highness is the very worthy representative in this city. The stoning was directed against the merchant quartered on the ground floor of the house that your highness occupies, and it was only by accident that some stones fell upon the upper story referred to, a few going upon the shield of the consulate.

Some of the authors of this stoning, which, as I have said, was not directed against the consulate, were suitably punished, and so I ask your highness to deign to accept this explanation with which I hope to conclude this very unfortunate event.

May your highness be pleased to accept, etc.,

Delegate of police:

CLAUDIO HENRICO DOS SANTOS.

No. 51.

Mr. Bayard to Mr. Trail.

No. 50.] DEPARTMENT OF STATE,
Washington, February 25, 1887.

SIR: I have received your No. 71, of January 19 last, in regard to the damage done the United States consulate at Santos on the 9th ultimo by persons who, as now explained, aimed the attack, which was made with stones, at the *shop* directly under the consulate.

The case does not appear to call for any urgent pressure, especially as it can not be doubted that, under the circumstances, the authorities will hasten to repair the damages occasioned by their apparent failure to enforce the laws and preserve the peace.

I am, etc.,

T. F. BAYARD.

No. 52.

Mr. Bayard to Mr. Trail.

No. 51.] DEPARTMENT OF STATE,
Washington, February 25, 1887.

SIR: In view of a communication of the 21st instant from Mr. E. R. Bacon, of the American Telegraph and Cable Company, you were telegraphed on the 23d instant as follows: "Use good offices for extending concessions to Pedro Segundo American Cable Company."

I am, etc.,

T. F. BAYARD.

No. 53.

Mr. Trail to Mr. Bayard.

No. 74.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, March 1, 1887. (Received April 9.)

SIR: On the morning of the 25th ult. I received at Petropolis the following cable:

Use good offices for extending concession to Pedro Segundo American Cable Company.

BAYARD.

To which I replied on the 28th:

Telegram received; action taken with representative.

The company's resident agent informed me that the concession would expire March 4th, and that he had not yet received instructions from New York concerning an extension of the concession. As but a week remained from the time the Department's telegram reached me to the date of the expiration of the concession, I deemed it advisable to cable reply, thus informing the company that the request for an extension had been made in time. Had the agent been away from the city and the petition not put in by the 3d of March the enterprise would have been considered as finally abandoned.

I used my "good offices" by addressing a note to the minister of foreign affairs, a copy of which is hereto annexed, and by requesting the French legation to furnish me with information concerning the French line in the West Indies, the said information for the use and at the request of the company's representative.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure in No. 74.]

Mr. Trail to Baron de Cotegipe.

LEGATION OF THE UNITED STATES,
Rio de Janeiro, February 28, 1887.

SIR: I am informed that the concession granted to the Dom Pedro Segundo and American Cable Company will expire the early part of the coming month. As your excellency is well aware, this company has been unable to carry out its plans within the allotted time, owing to the opposition it has met with from rival companies, and latterly an additional delay was caused by the unsatisfactory condition of the French line, with which the Dom Pedro Segundo is to connect in the West Indies.

The company petitions the Imperial Government for an extension of its concession, and I am just in receipt of a cablegram from the honorable Secretary of State, at Washington, which expresses the earnest desire that the Imperial Government may be pleased to grant the extension asked for.

The present telegraphic rates between Brazil and the United States are so enormously high that the public can indulge in this means of communication only at rare intervals, and thus the business interests of both countries suffer from the deprivation, in part, of what is elsewhere one of the ordinary agents of commerce. The laying of another line—competition—could not fail to remedy this state of affairs.

The United States Government could not but deeply regret to see the forced abandonment of an enterprise that promised to bring Brazil into closer connection with it. The interest manifested in this undertaking by prominent Brazilians, and the fact that the necessity for the line was fully recognized when the consession was originally granted, lead me to hope that the favor of an extension will be granted at an early day.

The present condition of the company and the matter in detail will be respectfully presented to the proper Imperial department in a petition now being prepared by the company's representative in Rio de Janeiro, Prof. Orville A. Derby, for which I solicit your careful consideration.

I avail, etc.

CHARLES B. TRAIL.

No. 54.

Mr. Trail to Mr. Bayard.

No. 77.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, March 19, 1887. (Received April 19.)

SIR: You are aware, by the report accompanying my No. 72, that Brazil has given notice of the expiration, at an early date, of all the consular conventions existing between her and foreign powers, and as most of these powers, if not all, will strenuously insist either on Brazil's agreeing to new conventions or to the prolongation of the old ones, it occurs to me that our Government ought to profit by the situation, at all events obtain as many and as valuable rights as Brazil will in the end be forced to grant to England, France, Portugal, Germany, and Italy. In the language of treaties and conventions these rights are spoken of as reciprocal, but when used with reference to Brazil it must be remembered that where one Brazilian claims a particular right or favor under a convention in England, France, or Germany there will be fully as many as twenty subjects, respectively, of these latter countries who will have occasion to claim the same right in Brazil. The foreign population here is large and important, but the imperial laws do not give it that protection which foreign governments deem it entitled to; hence the necessity of conventions and the readiness on the part of European powers to grant reciprocal favors to Brazil.

These conventions relate nearly wholly to consular intervention in the collection and settlement of the estates of their fellow countrymen dying abroad; and I am informed on the best authority that the costs of collection and administration under the conventions amount to 20 per centum of the estimated value of the estates. The taxed costs in orphans' courts, as given in a legal treatise on administration—"Bons de Defuntos é Ausentes, 1859"—ought not to exceed 10 per centum of the estate. Referring you to inclosure No. 1, you will note that Her Britannic Majesty's consul-general speaks of the consul's efforts in such matters as if they were usually made without any particular reference to the law, but as depending for their results mainly on luck. The United States cases there mentioned are those of Gavin and Melrose (recently reported to the Department by our consul-general). You will see he estimates that such estates "generally say about 20 per cent.," *i. e.*, where the decedent left no relative within the country and where there was no consul residing in that particular district [sic.] Although Her Britannic Majesty's consul-general is well versed in matters of this nature, his opinion of the method of procedure allowed our consuls by Brazil is erroneous.

Consul-General Armstrong has sent you a copy of decree No. 2433, of June 15, 1859, which governs the administration of the estates of Americans dying in this Empire, as claimed by Brazil, where they leave no heirs in the country. This law, it will be seen, applies to natives as well as to foreigners. The only article of the decree which contains the word "consul" is No. 33; it states that when the judge shall discover that the decedent was a foreigner he shall immediately notify the proper consul, or if there is no consul then the minister of foreign affairs, who in his turn shall communicate the fact to the competent authorities of the deceased person's country. This, it appears to me, is for a twofold purpose: (1) That the consul may search for the heirs, and (2) that, in the event of the non-discovery for the time being of heirs or claimants,

he may appear in court and observe how the estate is being administered and what final disposition is made of it. The article does not give him the right to interfere or take part in any way in the collection and administration of the estate; for that he must have a power of attorney from the heirs, and proof that they are the heirs, just as any non-official would have to have; but the fact that the article instructs the judge to notify the consul of the death gives the latter the right to attend the proceedings taken upon the decedent's estate. The article further says: "The judge shall immediately inform the consul." * * * In the case of Gavin this was not done, for the notice sent the legation was that the estate had been settled up already, leaving a certain balance in the hands of the curador. This balance, the net proceeds of the estate, Minister Jarvis requested the minister of foreign affairs to instruct the curador to pay over to our consul-general, but the foreign office said this was contrary to decree of 1859, which governs such cases. Of course in case the heirs to these estates do not appear and move their claims in time, *i. e.*, within thirty years, the estates go to the Empire; but if they should appear and are to be subjected to the delay and annoyance experienced by the heirs of Mr. William T. Harris, who died in Bahia in 1852, and whose heirs, after twenty-one years of repeated efforts, obtained from Brazil a quarter of the estate (Mr. Partridge to United States consul at Bahia, 1873), it would be an act of kindness, if not the plain duty of the Department, to advise them for once and all to abandon the said claims. I have only a very few of the records with me at Petropolis to consult, but if my memory is not at fault there is no mention of any American estate from Harris's* time (1873) to that of Gavin and Melrose.

The European consuls in Brazil, working under their respective conventions, are able to secure promptly at least a part of the estates of their decedent fellow-countrymen. I inclose a copy of Article IV of the convention between Her Britannic Majesty and the Emperor of Brazil. This, taken in connection with Inclosure No. 1, shows in a measure the proceedings taken on English estates. Articles VI and VII of decree No. 855, of November 8, 1851 (*vide* Inclosure No. 3) which Her Britannic Majesty's consul-general says govern in the cases of Gavin and Melrose, relate only to estates of those foreigners whose countries grant reciprocity to Brazil, which is not the case with us at present.

The method of procedure employed by the European consuls in this matter is as follows: As soon as they learn of the death of a fellow-countryman they instruct their consular agent in the district to appear for the heirs and to settle up the estate, or when there is no agent there they write the judge requesting him to appoint some one of the same nationality as the decedent as administrator, or in the case of the estate already having been administered upon they instruct the judge to order the balance to be transmitted them, which they pay over to the heirs when they can be found, and when unknown the money is remitted to the home Government, and sent to the locality from which the deceased originally hailed and where some legal claimants to the estate will in almost every case be found. Austria-Hungary is in exactly the same condition as the United States, without convention or reciprocity; yet her consul, by adopting the methods of his colleagues, enjoys all their privileges. The local judges, naturally, do not discriminate between the right of the different consuls, all of whom proceed in about the same way in obtaining possession of the estate.

The decree of 1851 (Inclosure No. 3), confers on the foreigners acting under its provisions nearly all the privileges enjoyed by the powers

* *I. e.*, from the time Harris's was settled.

having conventions, and it would be advantageous for us could we be governed by it; but the title reads: "This decree applies only where reciprocity exists." In this connection I quote from Mr. Partridge's No. 123, of August 15, 1873:

> In our own case I suppose it will not be possible for the Government of the United States to grant reciprocity of consular collection and administration independent of the local tribunals, since under our system the administration of estates is exclusively within the jurisdiction of the State courts.

Assuming this view to be correct, that our Government can not grant reciprocity, we still have it in our power to obtain whatever privileges, exemptions, and immunities are granted other nations, by forming a convention which would confer on us the rights enjoyed, for example, under Articles IX and XI of our treaty with the Argentines of 1853, these articles treating of reciprocal rights "conformably with the laws of the country."

But we have certain rights still existing under our old treaty with Brazil of 1828 which, in the matter of the collection and administration of estates, should place us upon as favorable a footing as any of the European powers. You will observe, by turning again to Mr. Partridge's No. 123, and the papers there referred to, that, after certain correspondence on this subject, Brazil admitted that Article XI of the treaty was in force, but maintained that it did not touch upon consular rights, and this with some show of reason, it appears to me; for Article XXXII of the treaty states, in effect, the necessity of a consular convention to declare especially the powers and immunities of consuls; and this matter of estates, as it is nowhere else referred to in the treaty as coming under consular jurisdiction in any way, would presumably have been one of the subjects to be included in the proposed convention.

Our treaty contains, however, the most favored-nation clause, Article II, and although the treaty "in all parts relating to commerce and navigation" ceased and determined December 12, 1841, and the words "in respect to commerce and navigation" occur in the body of that article, still I think it tenable to maintain that the article itself is yet in force, and entitles us among other favors to the privilege enjoyed by the European powers in the settlement of estates. It would certainly seem that under the peace and friendship parts of the treaty, which are to be permanently and perpetually binding on both powers, is included Article II, and that Brazil could not consistently withhold from us the privileges it confers.

If a prompt and efficient administration of Brazilian law by the native officials could be relied on, there would be no occasion for interference in these matters, but the opinion prevails among foreign representatives here resident that without some interference and supervision in the matter of estates, the interests of the heirs would suffer grievously.

To protect American interests our consuls ought to be entitled to the same privileges that other consuls enjoy; privileges to which they are entitled, in the writer's view, under Article II of the treaty, and without the rights to the exercise of which they are prevented from aiding their countrymen in one of the very matters where their assistance would be of very great service.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure 1 in No. 77.]

Convention between Her Britannic Majesty and the Emperor of Brazil respecting consular rights, etc. (1874).

ARTICLE IV.

Whenever a subject of one of the high contracting parties shall die within the dominion of the other, and there shall be no person present at the time of such death who shall be rightly entitled to administer to the estate of such deceased person, the following rules shall be observed:

(1) Where the deceased leaves, in the above-named circumstances, heirs of his own nationality only, or who may be qualified to enjoy the civil status of their father, the consul-general, consul, vice-consul, or consular agent of the nation to which the deceased belonged, giving notice to the proper authorities, shall take possession and have custody of the property of the said deceased, shall pay the expenses of the funeral, and retain the surplus for the payment of the debts and for the benefit of the heirs to whom it may rightfully belong.

But the said consul-general, consul, vice-consul, or consular agent shall be bound immediately to apply to the proper court for letters of administration of the effects left by the deceased, and these letters shall be delivered to him with such limitations and for such time as to such court may seem right.

(2) If, however, the deceased leaves, in the country of his decease and in the above-named circumstances, any heir or universal legatee of other nationality than his own, or to whom the civil status of their father can not be granted, then each of the two Governments may determine whether the proper court shall proceed according to law, or shall confide the collection and administration to the respective consular functionaries under the proper limitations.

When there is no consul-general, consul, vice-consul, or consular agent in the locality where the decease has occurred (in the case contemplated by the first rule of this article) upon whom devolves the custody and administration of the estate, the proper authorities shall proceed in these acts until the arrival of the respective consular functionary.

[Inclosure 2 in No. 77.]

Decree No. 855 of November 8, 1851

ARTICLE 6.

If a foreigner domiciled in Brazil should die under the circumstances of Article 2 of this *regulamento* in a locality where there is no consular agent of his nation, the judge *dos defuntos é ausentes* will proceed with the collection and inventory of the inheritance in the presence of two trustworthy witnesses of the nationality of the deceased, and for want of these in the presence of two reliable merchants or proprietors, who shall be administrators or liquidators of the inheritance until proof shall be made concerning the disposal of the balance of the estate (*producto liquido*) and there being no dispute about the estate (*e nao controvertido dallo*).

ARTICLE 7.

In the case of the preceding article, within fifteen days after notice has been received of the death of a foreigner under the circumstances of Article 2, the judge of the district will inform the minister of foreign affairs of the death, age, residence, place of birth, profession, and, as far as he can, of the property and relatives of the said foreigner, in order that the said minister may come to an understanding with the legation or consular agent as to the disposal of the balance of the inheritance.

Article 2, referred to in Articles 6 and 7, limits the case to that of a foreigner dying in Brazil, intestate, and leaving no consort or other heirs at law.

C. B. T.

No. 55.

Mr. Bayard to Mr. Trail.

No. 53.] DEPARTMENT OF STATE,
Washington, March 22, 1887.

SIR: I have your No. 73 of the 22d ultimo, communicating a note of the chief of police to our consul at Santos, regretting the occurrence there on the 9th January, during which a supposed attack with stones was made on the consulate. The matter seems to be disposed of satisfactorily.

I am, etc.,

T. F. BAYARD.

No. 56.

Mr. Trail to Mr. Bayard.

No. 79.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, March 31, 1887. (Received April 25.)

SIR: I have the honor to inclose a translation of a note from the Brazilian foreign office of yesterday, which states that the request made by me in compliance with your cable instructions of the 23d ultimo, for an extension of the concession held by the Dom Pedro Segundo American Telegraph and Cable Company has been granted, and the time for the immersion of the cable extended six months from March the 19th.

The company's representative in Rio shall be notified to-day of the official communication referred to above.

I have, etc.,

CHARLES B. TRAIL.

[Inclosure in No. 79.]

Mr. de Cotegipe to Mr. Trail.

MINISTRY OF FOREIGN AFFAIRS,
Rio de Janeiro, March 30, 1887.

Referring to my note of the 7th of this month I have now to communicate to Mr. Charles B. Trail, chargé d'affaires of the United States of America, that by decree No. 9733, of the 19th instant, the period of time for the immersion of the submarine cable, to which relates the concession transferred to the D. Pedro Segundo American Telegraph and Cable Company, has been extended for another six months (*prorogado por mais seis mezes*).

I have, etc.,

B. DE COTEGIPE.

No. 57.

Mr. Trail to Mr. Bayard.

No. 81.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, April 7, 1887. (Received May 7.)

SIR: On the 1st of March the Emperor was taken ill with a pernicious fever, the bad effects of which his physicians have not yet been able to overcome, and His Majesty is still confined to the sick-room.

Whilst the assurance is given by his medical advisers that no serious result is to be feared, yet His Majesty's illness has created a general feeling of uneasiness.

* * * * * * *

This feeling is somewhat intensified at the present moment by the temporary absence in Europe of the princess imperial, the constitutional successor to the throne.

The diplomatic corps has visited the palace almost daily to inquire as to His Majesty's condition, and the cable has conveyed to the illustrious sufferer the expressions of sympathy, and wishes for a speedy recovery, from many of the crowned heads of Europe.

I have, etc.,

CHARLES B. TRAIL.

No. 58.

Mr. Bayard to Mr. Jarvis.

No. 56.] DEPARTMENT OF STATE,
Washington, April 13, 1887.

SIR: I transmit a copy of a letter received from Messrs. Crenshaw & Wisner and other flour dealers, asking that representations may be made to the Brazilian Government, looking to the removal of the discrimination against flour which its existing import duty presents, or such other action as may be deemed appropriate.

You will present the subject for the consideration of His Majesty's Government, according to your best judgment.

I am, etc., T. F. BAYARD.

[Inclosure in No. 56.]

Crenshaw & Wisner and others to Mr. Bayard.

NEW YORK, *March* —, 1887. (Received April 9.)

SIR: In compliance with your suggestion, made to the committee who waited on you personally in February last, regarding the proposed establishment of extensive flouring-mills in Rio de Janeiro, they beg respectfully to submit the following facts for the consideration of your Department:

I.

The Empire of Brazil is the largest foreign consumer on this hemisphere of flour manufactured in the United States, ranking second only to the United Kingdom, its imports for the last five years averaging about 700,000 barrels per annum.

II.

It is only by strenuous effort and the use of the most improved machinery in manufacturing that this trade, giving employment to a very large number of persons, has been held, in the face of sharp competition from Hungary and the South American States of Chili and the Argentine Republic. Its loss would be disastrous, particularly to the great milling interests of Richmond and Baltimore, which have for many years chiefly supplied it.

III.

This industry is now threatened and imperiled by the formation of companies with British capital of about £500,000 sterling, proposing to build and operate large flouring mills in the city of Rio de Janeiro, under concessions and privileges from the Brazilian Government, and with the avowed design of keeping out the product of American manufacturers from that country.

IV.

This is only rendered possible by the fact that American flour pays an import duty in Brazil of about 75 cents per barrel, while wheat is practically admitted free, there being only a small custom-house charge exacted on it. As the greater nearness of the wheat-growing countries, Chili and the Argentine Republic, enables them to introduce wheat into Brazil at a less cost than the United States, this discrimination against the manufactured article, flour, threatens the loss by this country of this important trade.

The prospectus of the English capitalists, proposing the erection of mills in Rio de Janeiro, contemplates no benefit to Brazil or its people, but very large profits, estimated at 25 or 30 per cent., to their shareholders, predicated largely on the exclusion of American flour by reason of the duty upon it.

V.

The average annual exports from this country to Brazil for the past five years are in value about $6,000,000, of which flour has constituted nearly one-half, and of the remainder lard, lumber, oil, and naval stores are the chief articles in value. All these staple articles pay heavy duties at their port of entry in Brazil, said duties having recently been increased.

VI.

Our imports from Brazil, consisting chiefly of coffee, rubber, sugar, and hides, average for the past five years about $60,000,000 in value, and with the exception of sugar are admitted free of duty in the United States, although paying a heavy export tax in Brazil.

The import duty on coffee, which was taken off by the United States, was promptly reimposed as an export duty by Brazil, the result being merely the diversion of that large revenue from the United States Treasury into that of Brazil.

VII.

The exportation of flour to Brazil is chiefly carried on by American vessels, a large number of which, known as "Rio traders," are owned in Baltimore, and have been employed for many years in this special service, and bringing return cargoes of coffee. Depending mainly for their outward cargo upon flour, of which the destruction of the Brazil trade would deprive them, these vessels would become unprofitable and comparatively valueless. The American line of steamers to Brazil would be similarly affected, flour having also formed an important part of their outward cargo, and there being no other article of sufficient bulk and value as freight to compensate for its absence, the line could hardly be maintained, and most of the carrying trade would be done by foreign vessels.

In view of the threatened loss by the United States of the largest article of export to Brazil, and of the importance of that trade to the manufacturing, commercial, and shipping interests of this country, the foregoing statement is respectfully submitted, and your memoralists beg for it the attention of your Department, and that representations be made to the Brazilian Government looking to the removal of the discrimination against flour which its existing import duty presents, or such other action as may be deemed appropriate.

Appending a few statistics which partially indicate the proportions of the commerce between this country and Brazil, we are, Mr. Secretary, etc.,

CRENSHAW & WISNER, and others.

Imports from Brazil for five years of two articles.

Year.	Coffee.*		Rubber.*	
	Quantity.	Value.	Quantity.	Value.†
	Bags.		*Pounds.*	
1882	2,677,366	$38,286,333.80	16,831,783	$11,782,248.10
1883	2,810,148	40,185,116.40	14,924,682	10,447,277.40
1884	2,767,589	39,576,522.70	16,375,603	11,462,922.10
1885	3,148,418	45,022,377.40	16,149,344	11,304,540.80
1886	2,654,225	37,955,417.50	19,696,612	13,787,628.40
Total	14,057,746	201,025,767.80	83,978,024	58,784,616.80

*Bags of 130 pounds, at an average price for five years of 11 cents per pound.
†At average price for five years of 70 cents per pound.

Exports to Brazil from United States ports for the year 1886.

Articles.	Quantity.	Estimated value.
Flour.....barrels..	652,756	$3,106,000
Kerosene.....cases..	808,563	717,500
Turpentine.....do....	10,325	42,000
Lard.....pounds..	4,170,000	400,000
Rosin.....barrels..	40,500	101,250
Pitch pine.....feet..	9,900,000	138,500
White pine.....do....	2,200,000	84,000
Spruce.....do....	1,025,000	14,350

No. 59.

Mr. Trail to Mr. Bayard.

No. 84.] LEGATION OF THE UNITED STATES,
Rio de Janeiro, May 4, 1887. (Received June 4.)

SIR: On May 1 the following cable was received from you:

TRAIL, *Chargé, Rio:*
President expresses solicitude for health of Emperor.

BAYARD.

On the same day I delivered the message to the Emperor's chamberlain, and to-day am in receipt of the following reply by telegraph:

RIO, *Maio* 4.

MR. TRAIL, *Chargé d'Affaires, États-Unis Amérique:*
Sa Majesté Empereur m'ordonne vous prier vouloir bien transmettre S. E. Mr. Président, États-Unis Amérique les remercîments bien vifs pour les vœux exprimés par votre entremise pour le rétablissement santé. Sa Majesté se trouve mieux. Agréez compliments.

COMTE D'ALJÉSUR,
Chambellan Semaine.

Which was transmitted you by cable, same date, epitomized in this wise:

BAYARD, *Washington:*
Emperor thanks President; is improving.

TRAIL.

I have only to add that the court physicians last week moved His Majesty for the third time and that his condition is generally regarded as far from reassuring, light attacks of fever and vomiting recurring at shorter intervals, with increasing feebleness.

I have, etc.,

CHARLES B. TRAIL,
Acting Chargé.

No. 60.

Mr. Bayard to Mr. Jarvis.

No. 70.] DEPARTMENT OF STATE,
Washington, September 5, 1887.

SIR: I telegraphed you on the 1st instant:

You may continue to use good offices to facilitate further extension of time for laying Pedro Segundo cable. The company represents its intention and capacity to complete the work under its existing contracts. Acknowledge reception.

I now inclose a copy of the letter from the secretary of the company, pursuant to which the above instruction was sent.

The Department will be gratified to hear that the promoters of the enterprise are successful in their efforts to afford to the commerce of the United States and Brazil the increased telegraphic facilities promised by their project.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 70.]

Mr. Wilmot to Mr. Bayard.

NEW YORK, *August* ——, 1887. (Received August 31.)

SIR: Referring to the subject of our last communication of February 21, 1887, and the favorable consideration by you of our request therein contained, we take the liberty of again addressing you and to say: That the Brazilian Government granted the extension then sought, but owing to unforeseen and unavoidable delays in carrying out our contracts for construction it has been impossible for us to complete and lay our cable within the time of the extension, which will expire the coming month of September.

We have applied to the Brazilian Government for a further extension, and if it is granted we shall be able to give to the commerce of this country the much needed independent cable communication with South America.

We therefore most respectfully request that you direct, as to you may seem proper, the American representative in Rio de Janeiro to assure the Brazilian Government of the continued good faith of the officers and directors of this company in this great work, and to aid the company's agent before that Government to obtain the further extension.

With respect, etc.,

DE B. WILMOT,
Secretary.

CENTRAL AMERICA.

No. 61.

Mr. Hall to Mr. Bayard.

No. 574.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Guatemala, October 27, 1886. (Received November 20.)

SIR: I have the honor to transmit herewith a copy and translation of a law of Salvador, promulgated on the 29th ultimo and published in the "Diario Oficial" of the 1st instant, touching the status of foreigners domiciled or temporarily residing in that Republic. I respectfully invite the Department's attention to its provisions concerning matriculation and especially to articles 39, 40, and 41, which define, according to the ideas of that Government, what constitutes a denial of justice and the right of appeal to diplomatic recourse.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 574.—Translation.]

LAW OF SALVADOR RELATING TO FOREIGNERS—NATIONAL CONSTITUENT ASSEMBLY

The Provisional President of the Republic of Salvador to its inhabitants:

Know ye that the National Assembly has decreed the following:

The National Constituent Congress of the Republic, considering that it is of paramount importance for the conservation of the good international relations of the Republic to give due and prompt compliance with the prescriptions of article 50 of the constitution, decrees the following law relative to foreigners:

CHAPTER I.

ARTICLE 1. Salvadorians, by birth or naturalization, are those who are enumerated in articles 42, 43, and 44 of the constitution of the Republic.

ARTICLE 2. Foreigners are those who—

(1) Have been born outside of the national territory, who are subjects of foreign Governments, and have not been naturalized in Salvador.

(2) The children of a foreign father or of a foreign mother and an unknown father born in the territory of the state until the time when, in accordance with the law of the nation of the father or of the mother, respectively, they shall have arrived at majority. If within one year thereafter they should not have been made known to the governor of the department of their residence that they elect the nationality of their parents, they shall be considered Salvadorians.

(3) Salvadorian women who marry foreigners shall retain their foreign character during their widowhood. When the matrimony is dissolved the Salvadorian woman by birth may recover her nationality whenever, in addition to her residence in the Republic, she declares before the respective governor her determination to recover her nationality.

The Salvadorian woman who by her marriage does not acquire the nationality of her husband according to the laws of his country shall retain her own nationality.

The change of nationality of the husband, subsequent to marriage, imparts also a change of the nationality of the woman and their minor children, provided they re-

side in the country of the naturalization of the husband, respectively, saving the exception established in the foregoing paragraph.

(4) Salvadorians who are naturalized in another country and transfer thereto their residence.

(5) Those who serve foreign Governments officially in any political, administrative, judicial, or diplomatic capacity without the license of the legislative power as required by article 53 of the constitution.

ARTICLE 3. To determine the place of birth, mentioned in the foregoing articles, it is declared that national vessels, without distinction, are a part of the national territory, and that those born on board of them are to be considered as having been born within the Republic.

ARTICLE 4. In virtue of the right of exterritoriality enjoyed by diplomatic agents, the children of ministers and of the employés of the legations of this Republic shall not be held to have been born outside of the Republic (Salvador).

ARTICLE 5. The nationality of persons or of moral entities is regulated by the laws of its creation, consequently all persons who are under the laws of the Republic are Salvadorians when, in addition, they have their legal domicil therein.

Foreigners enjoy in Salvador the rights conceded to them by the laws of the domicil when such laws do not conflict with the laws of the nation.

CHAPTER II.

ARTICLE 6. The Salvadorian Republic recognizes the right of expatriation as natural and inherent to every man, and as necessary to the enjoyment of personal liberty; consequently, as it permits its inhabitants to exercise this right, permitting them to leave its territory and to establish themselves in a foreign country, so also it protects the right that foreigners of all nationalities have to settle within its jurisdiction. The Republic, therefore, receives the subjects and citizens of other states and naturalizes them according to the provisions of the constitution and of the present law.

ARTICLE 7. Expatriation and subsequent naturalization obtained in a foreign country do not exempt a criminal from extradition, trial, and punishment to which he may be liable in accordance with the treaties, international practices, and the laws of the country.

ARTICLE 8. Naturalized citizens of Salvador, when in foreign countries, have an equal right to the protection of the Government of the Republic with Salvadorians by birth, both as regards their persons and their property. This does not imply that when they return to the country of their origin they shall not be subject to the responsibilities they may have incurred before their naturalization, in accordance with the laws of that country.

ARTICLE 9. The Salvadorian Government will protect, by the measures authorized by international law, Salvadorian citizens in foreign countries. The executive will adopt such measures as he may deem most appropriate, which do not constitute acts of hostility, but if diplomatic intervention should not suffice, or such means should be insufficient, or if the grievances of the Salvadorian nationality should demand the adoption of severer measures, the executive shall then give an account thereof to the legislative power.

ARTICLE 10. The naturalization of a foreigner lapses by his residence of two years in the country of his birth, unless in the discharge of an official commission of the Salvadorian Government, or with its permission.

ARTICLE 11. Every foreigner who complies with the requisites of Article 23 of the constitution may naturalize himself in the Republic by making application in writing and consigning therein the renunciation and protest prescribed in the following article of this law.

ARTICLE 12. Every naturalization implies the renunciation of all submission, obedience, and fidelity to every foreign Government, and especially to that of which the naturalized person may have been a subject; to all protection foreign to the laws and authorities of Salvador, and to all right that treaties or international law concede to foreigners; and besides he shall protest his adhesion, obedience, and submission to the laws and authorities of the Republic.

ARTICLE 13. No certificate of naturalization shall be granted to the subjects or citizens of a nation with which the Republic shall be in a state of war.

ARTICLE 14. Neither shall a certificate of naturalization be given to persons declared judicially in other countries, or reputed to be, pirates, slaves, incendiaries, coiners of base money, forgers of bank notes or paper money, assassins, kidnappers, and thieves. The naturalization obtained by a foreigner in violation of this law is null and void.

ARTICLE 15. Letters or certificates of naturalization shall be issued gratuitously. No charge shall be made for costs, registration, stamps, or under any name whatsoever.

ARTICLE 16. The act of naturalization being personal, only with a special and ample power of attorney can the applicant be represented when the naturalization is not effected by ministry of the law, but in no case shall the power supply the want of the actual residence of the foreigner in the Republic.

ARTICLE 17. The quality of citizen or foreigner is intransmissible to third persons. The citizen can not enjoy the rights of a foreigner, nor can the latter enjoy the prerogatives of the former by reason of either capacity.

ARTICLE 18. The change of nationality produces no retroactive effect. The acquisition and rehabilitation of Salvadorian rights shall have effect only from the day upon which the certificate of naturalization is obtained.

ARTICLE 19. Colonists who come to the country on their own account, or for account of private enterprises, and emigrants of every class may become naturalized according to the constitutional prescriptions. Colonists already in the country are also subject to the same prescriptions in whatever does not conflict with their acquired rights under their contracts.

ARTICLE 20. The naturalized foreigner shall become a Salvadorian citizen when he complies with the conditions required by Article 51 of the constitution, and his rights and his duties shall be placed, on an equality with those of native Salvadorians, but he can not discharge those duties and offices which, according to the constitution, require the nationality of birth.

CHAPTER III.

ARTICLE 21. The matriculation of foreigners consists of an inscription of their names and nationalities in a book opened for this object in the department for foreign affairs of the Republic.

ARTICLE 22. The foreigner who desires to be registered and is in the capital of the Republic must present himself to the department of foreign relations, and if away from the capital to the governor of the respective department, and prove his nationality by one of the following documents:

(1) The certificate of the respective diplomatic or consular officer expressing the fact that the party is a native of the country which he, the agent, represents.

(2) The passport upon which the applicant has entered the Republic, legalized in due form.

(3) The certificate of naturalization, also legalized, and only when it shall have been satisfactorily shown that it has been lost or destroyed, or that the document is not essential according to the laws of the country where it was issued, can other proofs of equal value, that the interested party legally acquired such naturalization, be admitted.

ARTICLE 23. The proof of nationality with the classification of the applicant having been forwarded by the respective authority to the department of foreign affairs the inscription shall be made and a certificate thereof given to the foreigner, through the medium of the same authority, upon the payment of 5 francs to the national treasury, the only charge for the matriculation.

ARTICLE 24. The matriculation constitutes only prima facie proof of the attributed nationality of the foreigner, consequently proof in rebuttal can be admitted.

ARTICLE 25. The matriculation is established by the certificate thereof, issued and signed by the minister for foreign affairs, who alone has the right therefor.

ARTICLE 26. No authority or public functionary can recognize an individual of a determined nationality who does not present his certificate of matriculation.

ARTICLE 27. The certificate of matriculation shall not serve its owner to enforce any right or action, if the pretended right or action is anterior to the date of the matriculation.

ARTICLE 28. The national character which distinguishes one class of foreigners from another, established by the matriculation, concedes privileges and imposes special obligations. These privileges, in a strict sense, are called by the laws of the Republic "the rights of foreigners."

ARTICLE 29. The rights of foreigners are:

(1) To appeal to the existing treaties or conventions existing between Salvador and their respective nations.

(2) To have recourse to the protection of their own sovereign through the medium of diplomatic representation.

(3) The benefit of reciprocity.

ARTICLE 30. The juridical status of the matriculated foreigner, determined by the before-mentioned privileges, will be changed by the renunciation thereof by the interested party, and by a state of war between Salvador and the country of the foreigner.

ARTICLE 31. The renunciation may be tacit or express; express when stipulated between the Government and the foreigner; tacit when the foreigner deliberately executes an act by which he subjects himself to the laws of Salvador which concede to him any favor upon the condition or supposition of renunciation.

CHAPTER IV.

Rights and obligations of foreigners.

ARTICLE 32. Foreigners are subject to the provisions of Title IV of the constitution and to the law of the 3d March, 1877. They enjoy the guaranties conceded in Title II of the same without prejudice to the right of the executive to expel pernicious foreigners. The proceedings in this case shall be simply gubernative.

ARTICLE 33. Foreigners also enjoy the civil rights of Salvadorians, but the legislative power may modify and restrict such rights upon the rule of reciprocity, so that foreigners in the Republic are subject to the same restrictions that the laws of their country impose on Salvadorians who reside therein.

ARTICLE 34. Foreigners may, for all legal purposes, without losing their nationality, domicile themselves in the Republic. The acquisition, change, or loss of domicile are governed by the laws of Salvador.

ARTICLE 35. The suspension of personal guaranties being declared as permitted by the law of a state of siege, foreigners will be on the same footing with Salvadorians, subject to the restrictions of the law that decrees the suspension, saving only the stipulations of pre-existing treaties.

ARTICLE 36. Domiciled foreigners, the same as Salvadorians, are obliged to pay personal taxes, both general and local, ordinary and extraordinary, unless excepted by international treaty stipulations. In regard to taxes upon their real estate, they are subject to the provisions of Article 47 of the constitution.

ARTICLE 37. Transient foreigners are exempt from all merely personal tax, ordinary or extraordinary, of whatever class, but they are not exempt from taxes upon real estate nor from the contributions and imposts upon property, industry, professions, or commerce.

ARTICLE 38. Every foreigner is obliged to obey and to respect the institutions, laws, and authorities of the Republic as prescribed by Article 45 of the constitution, and to submit to the decisions and sentences of the tribunals without resorting to other recourses then those that the same laws concede to Salvadorians.

ARTICLE 39. Only in the event of a denial, or of a voluntary retardation in the administration of justice, and after having resorted in vain to all the ordinary means established by the laws of the Republic, may foreigners appeal to the diplomatic recourse.

ARTICLE 40. It is to be understood that there is a denial of justice only when the judicial authority refuses to make a formal declaration upon the principal subject or upon any incident of the suit in which he may have cognizance or which is submitted to his cognizance; consequently the fact alone that the judge may have pronounced a decision or sentence, in whatever sense it may be, although it may be said that the decision is iniquitous or given in express violation of law, cannot be alleged as a denial of justice.

ARTICLE 41. Retardation in the administration of justice is not to be considered voluntary when the judge alleges any legal motive of physical impediment therefor which he is unable to prevent.

ARTICLE 42. Foreigners do not enjoy the political rights that appertain to Salvadorian citizens, consequently they can not vote nor receive votes for any office of popular election, nor be appointed to any office or commission invested with civil or political authority or jurisdiction; nor to associate themselves for the discussion of the political affairs of the state, nor to take any part therein, nor to exercise the right of petition in that class of public affairs.

ARTICLE 43. The foreigner who voluntarily makes use of the rights expressed in the foregoing article shall, in virtue of the fact itself, like every Salvadorian, be held responsible for his acts and the consequences, without being considered as a naturalized citizen, except in the case named by Article 48 of the constitution.

ARTICE 44. Foreigners are exempt from military service, but domiciled foreigners are subject at all times to municipal duties with which neither authority, jurisdiction, nor deliberative vote are connected, and they are to lend personal aid to the armed police in cases involving the security of property and the preservation of public order in the places where they reside.

ARTICLE 45. Every foreigner is obligated not to violate neutrality against the Republic or against the Government of the same in the event of a foreign war.

ARTICLE 46. Foreigners shall take no part in the civil dissensions of the country; those who contravene this prohibition may be expelled gubernatively, by the executive, from the territory as pernicious foreigners, besides becoming liable for the offenses they may commit against the laws of the Republic; their rights and duties during a state of war will be governed by international law and by treaties.

ARTICLE 47. With respect to the crimes enumerated in Article 20 of the criminal code, foreigners who are the authors, accomplices, or harborers of crime are subject to the prescriptions of Article 20 of the same code.

ARTICLE 48. Continuous crimes previously committed in a foreign country and repeated in the Republic shall be punished in accordance with its laws, whether its delinquents are citizens or foreigners, and if apprehended in Salvadorian territory.

ARTICLE 49 Crimes committed outside of Salvador by foreigners against foreigners, shall not be prosecuted in the Republic, but the Government may expel delinquents as pernicious persons, from the country.

ARTICLE 50. Crimes committed in the territory of the Republic by foreigners or native citizens shall be prosecuted and punished in conformity with the laws of Salvador.

ARTICLE 51. Crimes committed as follows will be considered as having been committed in the territory of the Republic:

(1) On the high seas on board of national war or merchant vessels.

(2) On board of a Salvadorian vessel of war in foreign ports or waters.

(3) On board of Salvadorian merchant vessels in foreign ports or waters, when the crime shall not have been tried in the country to which the port or waters belong.

ARTICLE 52. When a foreigner commits a crime against the exterior security of the Republic, or the crime of sedition or rebellion, the Government may expel him at once from the country in gubernative form or subject him to trial in the ordinary form.

ARTICLE 53. In crimes of rebellion and sedition, the foreign character of the delinquent shall always be considered as an aggravating circumstance in imposing the penalty.

ARTICLE 54. This law does not concede to foreigners rights that are denied them by international law, by treaties, or by the laws of Salvador now in force.

ARTICLE 55. Notwithstanding that Spanish Americans are not held to be foreigners in Salvador, they shall be subject to the present law until the formation of the great Latin-American confederation referred to in article 151 of the constitution.

ARTICLE 56. Central Americans shall not be held to be foreigners for the effect of the present law.

Given at the national palace, San Salvador, the 27th day of September, 1886. To the executive power.

D. JIMENEZ,
Vice-President.
MÁXIMO MANCIA,
Secretary.
JEREMIAS GUANDIQUE,
Pro. Secretary.

NATIONAL PALACE, SAN SALVADOR, *September* 29, 1886.

Let it be published.

FRANCISCO MENENDEZ.

MANUEL DELGADO,
Secretary of State in the Department of Foreign Affairs, Justice, and Worship.

No. 62.

Mr. Hall to Mr. Bayard.

No. 579.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, November 3, 1886. (Received November 20.)

SIR:

* * * * * * *

I have the honor to inform you that about a month ago the minister of foreign affairs of Guatemala tendered the good offices of his Government to those of the two states (Nicaragua and Costa Rica) for the settlement of their pending questions. To-day the minister informs me that both Governments have accepted the proffered mediation of Guatemala; that the negotiations will be transferred to this capital, and that each party will send a minister with full powers and instructions.

I shall forward copies of the correspondence between these Governments as soon as I can obtain them; in the mean time I inclose translations of Señor Cruz's note and of the telegrams to which he refers.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 579.—Translation.]

Señor Cruz to Mr. Hall.

GUATEMALA, *November* 3, 1886.

MY DEAR SIR: For your personal information I have the pleasure to inclose copies of the telegrams that the ministers for foreign affairs of Nicaragua and Costa Rica have addressed to me in reply to the notes from this Government offering them its good offices for the settlement of the questions pending between those states.

With high consideration, I am, etc.,

FERNANDO CRUZ.

[Inclosure 2 in No. 579.—Telegram.—Translation.]

Señor Elizondo to Señor Cruz.

MANAGUA, *November* 1, 1886.
(Received in Guatemala November 2 at 5 p. m.)

I received in due course your very courteous note of October 2, in which you are pleased to offer to this Government the friendly mediation of that of Guatemala, in the question now being discussed between this Republic and Costa Rica. Yesterday I received a telegram from the minister for foreign affairs of Costa Rica, in which he informs me that he had received from your Government a similar note. The minister adds that he accepts the mediation, and that he desires, in case Nicaragua also accepts, that the negotiations be transferred to Guatemala in order that the friendly offices of the mediating Government may be more efficient.

My Government thanks yours for the friendly and fraternal sentiments of which it has given proof in its above-mentioned note. In view thereof, and of the fact that Nicaragua has endeavored, by all the means at her command, to obtain a solution in harmony with the rights and interests of both countries, and inasmuch as Costa Rica has already accepted the proffered mediation of the Guatemalan Government, Nicaragua also accepts it with satisfaction, and in due time will send her minister to that capital.

By mail, I shall have the pleasure to answer your referred-to note.

I am, etc.,

JOAQUIN ELIZONDO.

[Inclosure 3 in No. 579.—Telegram.—Translation.]

Señor Esquivel to Señor Cruz.

SAN JOSÉ, COSTA RICA, *October* 31, 1886.
(Received at Guatemala November 3 at 11 a. m.)

I have received the interesting note in which you inform me that your Government is disposed to mediate, with its good offices, in our differences with Nicaragua. My Government considers the noble attitude of yours a proof of its praiseworthy purpose to contribute efficiently towards the conservation of fraternal relations between the peoples of Central America. Such laudable conduct highly honors Guatemala, and I hasten to manifest to you that my Government accepts her mediation with thanks.

I have telegraphed to the Government of Nicaragua to ascertain whether they are also determined to accept the friendly offer of Guatemala, and if so, that I deem it advisable to transfer the negotiations to that capital. I am convinced that the matter will be dealt with advantageously to the two states by a Government which shows itself to be the friend of both. If Nicaragua responds to our wishes, my Government will soon send a minister to Guatemala with suitable powers and instructions.

I am, etc.,

ASCENSION ESQUIVEL.

No. 63.

Mr. Hall to Mr. Bayard.

No. 582.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, November 8, 1886. (Received December 1.)

SIR: Your instruction No. 379 of the 12th of August, inclosing a copy of an interest-bearing bond purporting to have been issued by Nicaragua in 1856, was received at the legation during my absence in Honduras. Upon my return, in September, I addressed a note to the minister for foreign affairs of Nicaragua, requesting such information as he might be able to give as to the genuineness of the bond in question. I now inclose a copy and translation of his reply, in which is transcribed a communication upon the subject from the minister of the treasury.

It is alleged that no record exists of the decree of the 28th August, 1856, under which the supposed bond is said to have been issued, nor any of the bond itself. The minister infers from the dates mentioned that it is the work of the so-called Walker Government, whose acts have never been recognized by any Government of Nicaragua since that time.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 582.]

Mr. Hall to Señor Castellon.

LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, September 22, 1886.

MR. MINISTER: I beg leave to annex hereto a copy of an interest-bearing bond, No. 69, for $200, purporting to have been issued in virtue of a decree of the Government of Nicaragua of the 28th August, 1856; it bears date of November 1, 1856, and is made payable at the Bank of Louisiana at New Orleans in gold or silver coin or the equivalent.

Inquiry having been made at the Department of State in regard to this bond, the matter has been referred to me for such information as I may possess or may be able to obtain in regard to its genuineness or validity. If your excellency will kindly furnish me with any information on the subject to enable me to answer the inquiry of the Department, I shall be very greatly obliged.

Renewing, etc.,

HENRY C. HALL.

[Inclosure 2 in No. 582.]

$200.] [$200.

REPUBLIC OF NICARAGUA.

No. (69). Know all men by these presents that the Republic of Nicaragua is indebted to the bearer hereof in the sum of $200, for value received, which the said Republic promises to pay at the Bank of Louisiana, in the city of New Orleans, in gold or silver coin, or their equivalent in other currencies, in twenty years from the date hereof; and also to pay an interest thereon at the rate of 6 per cent. per annum, payable at the bank aforesaid, at the end of each and every year upon the delivery of the warrants in the margin hereof.

This bond is transferable by delivery, and the holder shall have the right to give it in payment at par for one-half of the amount he may owe the Government for any customs, dues, taxes, or local contributions which may be laid or levied by the Republic of Nicaragua.

In witness whereof, the agents (*commissariat*) of the said Republic of Nicaragua sign these presents with their secretary, who countersigns the same and affixes hereto the seal of the said republic, in pursuance of a decree of said republic, dated on the 28th day of August, A. D. 1756, duly deposited and recorded in the office of William Christy, notary public, in the city of New Orleans, the 28th day of October, 1856.

Done at New Orleans, this 1st day of November, 1856.

MASON PILCHER,
S. F. SLATTER,
Agents.

[SEAL.] C. W. MUNCASTER,
Secretary.

[Coupon.]

$12. Republic of Nicaragua, $12. Government bond No. 69 for $200 interest warrant for $12, payable at the Bank of Louisiana, New Orleans, on the 1st day of November, 1858, fixed.

C. W. M., *Secretary.*

Coupons from 1857 to 1876, inclusive. The 1857 is cut off.

[Inclosure 3 in No. 582.—Translation.]

Señor Castellon to Mr. Hall.

DEPARTMENT OF FOREIGN RELATIONS OF NICARAGUA,
Managua, October 18, 1886.

SIR: I have the honor to inform you that having transcribed to the minister of the treasury your esteemed note of the 22d September, together with a copy of the bond accompanying it, I have received the reply, of which the following is a copy:

"I have had the honor to receive the communication that you were pleased to address me on the 8th inst., in which is transmitted the note of the minister of the United States, dated the 22d of September, inquiring as to the authenticity and validity of the supposed bond of this Republic issued, as it is pretended, in conformity with a decree of the Government of Nicaragua of the 28th of August, 1856. A textual copy of the bond accompanies the above-mentioned note.

"The mentioned decree is not known to the Government, nor does it exist on the records of our loans, nor is the obligation to which it refers a legitimate debt of the Republic. By the dates that are cited I perceive that it must be the work of the filibusters of Walker, who were here about that time, and whose history of depredation and rapine is well known. Of course the foreign usurpers never had any right to compromise the credit of this Republic."

In transcribing to you the foregoing note of the minister of the treasury I have the honor to renew, etc.,

F. CASTELLON.

No. 64.

Mr. Hall to Mr. Bayard.

No. 586.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, November 24, 1886. (Received December 16.)

SIR: * * * I have the honor to inclose herewith an article, with a translation, recently published in the newspaper La Nacion, of Tegucigalpa, Honduras, entitled the "Projects of Soto, Zaldivar, and Barrundia."

The writer of the article, who is well known in Central America, asserts that he has information that the persons referred to still persist in their purpose to subvert the present Governments of Honduras, Salvador, and Guatemala.

In the note of Señor Batres, accompanying my dispatch No. 524, Ex-President Zaldivar was reported to be in Mexico, Ex-President Soto

was in Costa Rica, where Zaldivar joined him later, and subsequently the two went to Nicaragua, where, at last accounts, it is said, Zaldivar remains and Soto has returned to New York. There is reason to believe that Ex-Minister Barrundia has not been in Central America since his departure in April, 1885.

With reference to these revolutionary projects the writer of the article says that although there is peace in Central America, there is neither tranquillity nor confidence as to the future, and that this state of uncertainty is due solely to the projects of the persons before named to recover their lost power. He is confident, however, that their plans will fail, as did the Delgado expedition in Honduras, which was the first part of the programme of their operations.

I am, etc.,

HENRY C. HALL.

[Inclosure in No. 586.—Translation from La Nacion of Tegucigalpa, Honduras.]

Dark Clouds.—The projects of Soto, Zaldivar, and Barrundia in the light of history.

At this moment Central America is at peace; there are no battles, no hostilities; there are no armies on the frontiers of the five Republics; there are no enlistments; the arsenals are idle, and there are no orders for arms.

If this is peace, then Central America is at peace, and is progressing tranquilly by constitutional paths.

But if peace means the tranquillity and confidence of every one that the present state of things will not be altered, and that every one can dedicate himself, without apprehension, to his special enterprises, then Central America is not at peace.

As a romancer would say, dark clouds obscure the horizon; the atmosphere is heavy; the lightnings flash at short intervals; thunder is heard; the fresh breeze, forerunner of the storm, stirs the leaves of the trees and plays upon our cheeks; soon the lightning will strike and the rain will come down in torrents. In such metaphorical language a Gongorian romancer, impressed with the political situation in Central America, might express himself; but I, who make no use of metaphors, and often sacrifice grace for the sake of perspicuity and truthfulness, must express myself in another way and call things by their right names.

In Central America elements are at work to produce discord, a general convulsion from which the promoters expect to reap great advantages. According to the information in my possession, the promoters of this projected revolution are Marco Aurelio Soto, Rafael Zaldivar, and Martin Barrundia. The two first named are ex-Presidents of Honduras and Salvador, and the latter, ex-minister of war of Guatemala in the time of General Rufino Barrios. It is asserted that these three individuals are closely leagued together and are making efforts in common accord, to scale the heights of supreme power in Honduras, Salvador, and Guatemala.

It seems impossible that these three should be leagued together; when they were in power, deep hatreds, jealousies, and rivalries existed among them, notwithstanding a common misfortune (for such it is for them to be deprived of power) has brought them together, and has made them combine their personal efforts and material resources in a common cause to carry out the beautiful plans they have plotted and caressed in the imaginations of their demented brains. I speak in this way because I can not conceive how men of intelligence, of common sense, can have the effrontery to set up such pretensions.

It is not my intention to do injustice to either of them, nor do I propose to excite the odium of these people against them, as is to be expected from those whose interests it is to oppose them. I have no interest in these western Republics (Honduras, Salvador, and Guatemala) and I am scarcely bound to the President of Honduras by the ties of friendship. Thus I am under no obligations to any of them; my opinion responds to no countersign; I expect nothing from those who are in power, and I fear nothing from those who aspire to it; I have given proofs also that the caciques of Central America inspire me with no apprehensions. Having made this declaration, I shall speak my convictions in regard to projects of the persons to whom I have referred.

Don Marco Aurelio Soto attained to the presidency of Honduras, as every one here and many abroad well know. I deem it needless to repeat that history. He was sustained in the presidency during seven years by the moral and material aid that General Barrios gave him, and during those seven years he did whatever his own royal pleasure dictated; he banished, imprisoned, flogged, shot, and he enriched himself by taking

possession of the treasures of the country. Don Marco Aurelio Soto in Tegucigalpa was, like the Sultan in Constantinople, master of lives and estates. But a day came, a sad one for him, in which Barrios became aware of the treachery of his protégé; he made no mystery of his discovery; he knit his brow and scowled furiously at his pupil; the latter filled with consternation, like a frightened paltroon, conceived that Honduras was no longer a safe place for himself; from all sides he saw the apparitions of approaching armies; he fled secretly, and from a foreign land exchanged humiliating letters with Barrios; from there, also, he sent his resignation as President of the Republic, basing it upon declarations which to-day he denies having made.

With all impartiality it may be said of him that he did not attain to power by popular vote nor by his own valor; that he was sustained in power by foreign forces, and in all that time reviled and robbed his people; that he abandoned his power through pure fright, and in attempting to recover it has made use of others, whom he has sent to death without doing a thing to save them. If one who has done all that can pretend to accomplish anything more than to organize fruitless expeditions (for he has not the courage to place himself at the head of any expedition in which there is personal danger), he will find no sane persons willing to take upon themselves the risks that Delgado assumed, to be like Delgado, abandoned to his fate; neither will he find, nor did Delgado find, any one to join him in his mad undertakings.

Dr. Zaldivar, with slight variations, is the counterpart of Soto. Zaldivar attained to power by lending himself to the humiliation of his country, which, bloodless and lifeless, lay at at the feet of the conqueror. The junta of notables, the scorn of a free people, gave him the presidency of Salvador; it belonged to him by no title whatever. The voice of patriotism was silenced, and the Salvadorians, notwithstanding their manhood, their valor, their undeniable democratic spirit, tolerated that inexplicable government during nine years.

And what was the government of Zaldivar during those nine years? It was a government of corruption, of plunder, of fraud—a real Byzantine government. The administration of Zaldivar left as its legacy seven millions of debt. If these are titles to the gratitude of the peoples, then Dr. Zaldivar has many titles to the estimation of his fellow citizens. No one will dispute the post with him; there is not nor can there ever be a Salvadorian who can do as much harm to his country as this man, who again aspires to its presidency, has done.

Martin Barrundia was minister of war in the time of General Barrios. I have no desire to disparage the memory of the dead, but those who knew Barrios can *appreciate* Barrundia by taking into consideration the fact that Barrios was in the practice of alarming his people by threatening to resign and to leave Barrundia in his place. What kind of a man must he have been whom President Rufino Barrios could make use of as a bugbear to frighten the citizens of that Republic? I need say nothing. Every Central American can give an answer.

To return to the subject, neither Soto, Zaldivar, nor Barrundia can lay any claim to the places to which they aspire. I have given but a sketch of each. I could write a history if they should desire it.

Notwithstanding that Messrs. Soto, Zaldivar, and Barrundia imagine that they possess influence, the fact is that they have none, nor is it possible that they should ever have any. Were it otherwise, I should say of the Central American peoples that they are lost; that they are destitute of all moral conscience, and that good or evil are the same to them.

But will it be so? I believe not. Providence has impenetrable secrets which He withholds from simple mortals. Perhaps those men may come to surrender themselves and to expiate their crimes. If it is not so, then there is reason to doubt Providence; but no, that would be blasphemy. Providence exists. Let Central American patriots have faith and wait.

CARLOS SELVA.

No. 65.

Mr. Bayard to Mr. Hall.

No. 409.] DEPARTMENT OF STATE,
Washington, November 29, 1886.

SIR: I have received your No. 574 of the 27th ultimo, transmitting a copy and translation of a law of Salvador promulgated on the 29th of September last in relation to the general subject of citizenship and to the status of foreigners in that Republic.

Before commenting upon Articles 39, 40, and 41 of this law, to which you specially invite the attention of the Department, I desire to advert to several other provisions which as substantially embodied in the code of Mexico have been the subject of frequent discussion in our diplomatic correspondence. I refer to the provisions of Chapter III of the Salvadorian law which relate to the process and effects of matriculation.

The matriculation of foreigners as defined in Article 21 of this chapter is an inscription of their names and nationalities in a book kept for that purpose in the department for foreign affairs. In order to be so registered, they must produce to that department certin evidence, prescribed by law, of their right to the national status claimed. If the requisite evidence be exhibited, the name and nationality of the applicant are registered, and in proof of this, he is given a certificate of matriculation, which is, however only *prima facie* evidence of his national status. But without this certificate no authority or public functionary of Salvador is permitted to recognize a foreigner's nationality (Chapter III, Article 26).

Upon the score of mere convenience it is evident how inexpedient as a matter of policy, in the present age of enlarged and liberal intercourse and of extensive commercial transactions, are municipal regulations which tend to impede and restrict the movements and business operations of foreigners.

But the law in question, as understood by this Department, goes beyond considerations of convenience, and raises important questions of international right. By Article 28, Chapter III, it is provided that matriculation concedes privileges and imposes special obligations which are called by the laws of the Republic "the rights of foreigners." These rights of foreigners, as stated in Article 29 of the same chapter, are as follows:

(1) To appeal to the treaties and conventions existing between Salvador and their respective Governments.

(2) To have recourse to the protection of their sovereign through the medium of diplomatic representation.

(3) The benefit of reciprocity.

Unless a foreigner possesses a certificate of matriculation, no authority or public functionary of Salvador, as has been seen, is permitted to concede to him any of these rights; and it is further provided in Article 27 of the chapter in question, that the certificate of matriculation shall not operate retroactively upon a claim of right arising anterior to the date of matriculation. Thus the object and purport of the law in question is to make the enjoyment and assertion by a foreigner in Salvador of the consequent rights and privileges of his national character, whether they are guarantied by treaty or secured by the general rules of international law, conditional upon his contemporaneous possession of a paper prescribed by the municipal law of the country as the proper proof of his citizenship.

In order to appreciate the significance of such a requirement, it is only necessary to consider that, if admitted, its effect would be to leave the question of the national status of a foreigner wholly to the determination of the Salvadorian authorities, and that, in the event of his failure to exhibit such proofs of citizenship as they may deem sufficient, his right to claim the protection of his Government would be lost. Conversely the right of his Government to interpose in his behalf would also be destroyed; for to deny to a foreigner recourse to his Government, by necessary implication, questions and denies the right of that Government to intervene.

Thus, by making the compliance of a foreigner with a municipal regulation a condition precedent to the recognition of his national character, the Salvadorian Government not only assumes to be the sole judge of his status, but also imposes upon him as the penalty of non-compliance a virtual loss of citizenship.

Nothing would seem to be required beyond the mere statement of these propositions, fully sustained as they appear to be by the context of the law in question, to confirm the conviction that its enforcement would give rise to continual and probably grave controversies. Such has been the result of the occasional attempts elsewhere than Salvador to enforce similar regulations, and such would seem to be the necessary result of the attempt of particular Governments to enforce laws which operate as a restriction upon the exercise and performance both by states and by citizens of their relative rights and duties, according to the generally accepted rules of international intercourse. Such intercourse should always be characterized by the utmost confidence in the good faith of nations, and by the careful abstinence of each from the adoption of measures which, by operating as a special restriction upon the action of other Governments in matters in which they have an important if not the chief concern, seem to imply distrust of their intentions. It is proper to observe that the Government of Mexico, guided by the experience of an ample trial of her law of matriculation, modified it in June last by the repeal of those provisions which made the matriculation of foreigners compulsory and a condition of the exercise of their right of appeal to their Government.

It may be said that the question of citizenship is one which peculiarly concerns the Government whose protection is claimed and in the decision of which that Government has a paramount sovereign right. This results not only from the relation of a Government to its citizens, but from the fact that international law recognizes the right of each state to prescribe the conditions of citizenship therein and regulate for itself the process whereby foreigners may, if they so desire, expatriate themselves and become naturalized. In the United States this process is defined by a statute, the administration of which is committed to the courts, who issue to the naturalized citizen certain evidence of his compliance with the law. The efficiency of this law, the basal principle of which is the voluntary action of the alien, is fully recognized by all states that concede the right of expatriation, and among these is Salvador.

The principle and validity of our naturalization law being thus admitted, it would seem that the mere question of its administration and of the proper evidence of its administration was one for the determination of this Government. But by the matriculation law of Salvador that Government is made the first and the final judge of the sufficiency of the evidence of American citizenship, even in the case of a naturalized citizen of the United States not of Salvadorian origin.

In this relation it is pertinent to advert to the recent case of Julio R. Santos, a naturalized citizen of the United States, of Ecuadorian origin, who was arrested while residing in his native country on a charge of complicity in a revolutionary movement there. The Government of Ecuador contended that he had lost his American citizenship by a residence of more than two years in his native country under that article of the naturalization treaty with the United States which provides that a residence of more than two years in the native country of a naturalized citizen shall, subject to rebuttal, be construed as an intention on his part to remain there. The United States, however, having ascertained and established to its own satisfaction the intention

of Mr. Santos to return to the country of his adoption, held its judgment in the matter to be conclusive and demanded for him the rights and privileges of a citizen of the United States.

The effect of the Salvadorian statute in question is to invest the officials of that Government with sole discretion and exclusive authority to determine conclusively all questions of American citizenship within their territory. This is in contravention of treaty right and the rules of international law and usage, and would be an abrogation of its sovereign duty towards its citizens in foreign lands to which this Government has never given assent.

Articles 39, 40, and 41, Chapter IV, of the law in question, purport to define the conditions under which diplomatic intervention is permitted in behalf of foreigners in Salvador whose national character is admitted. I regret that the Department is unable to accept the principle of any of these articles without important qualifications.

The article first enumerated provides that only in the event of a denial or a voluntary retardation of justice, and after having resorted in vain to all the ordinary remedies afforded by the laws of the Republic, may foreigners appeal to their Governments. The succeeding article defines what is meant by a denial of justice, and declares that such denial exists only when the judicial authority refuses to decide the matter before it, and that consequently the fact that a judge may have pronounced a decision, although it may be said to be iniquitous or in express violation of law, can not afford a ground for resort to the diplomatic channel.

Article 41 declares that delay in the administration of justice is not to be considered voluntary when the judge alleges any legal or physical impediment which he is unable to remove.

The comment made above on the law of matriculation is equally applicable to these provisions, that the denial to the foreigner of the right of appeal to his Government necessarily implies the denial in the particular case of his Government's right to intervene; and as this denial is based upon the decisions of the tribunals of Salvador, the judgments of those tribunals are made internationally binding as to all questions of municipal or of international law coming before them.

It may be admitted as a general rule of international law that a denial of justice is the proper ground of diplomatic intervention. This, however, is merely the statement of a principle and leaves the question in each case whether there has been such denial to be determined by the application of the rules of international law.

By Articles 39, 40, and 41, as they are understood by this Department, the Government of Salvador would avoid this question, especially when the act complained of was committed by the authorities of the Republic in pursuance of its laws. This doctrine is novel to this Government, which has maintained and acknowledged in its treaties and otherwise as a settled principle of international policy, the rule that in cases of violation of international right by the authorities of a state in pursuance of municipal regulations, the final decision of the national tribunals sustaining the action of the authorities is a consummation of the wrong complained of and constitutes no bar to international discussion.

Should you find occasion to discuss with the Salvadorian minister for foreign affairs the subjects of this instruction, you will endeavor to impress upon him the views herein stated, in the interest of that complete understanding and friendly intercourse which should subsist between the Republics of this continent.

I am, etc.,

T. F. BAYARD.

No. 66.

Mr. Bayard to Mr. Hall.

No. 410.] DEPARTMENT OF STATE,
Washington, November 29, 1886.

SIR: I have received and read with much satisfaction your dispatch No. 579 of the 3d instant, stating that Nicaragua and Costa Rica have accepted the proffered mediation of the Government of Guatemala for the settlement of their pending difficulties concerning their boundaries. This action is a step in the right direction, which should yield encouraging results.

I am, etc., T. F. BAYARD.

No. 67.

Mr. Hall to Mr. Bayard.

No. 589.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, December 3, 1886. (Received December 20.)

SIR: In continuation of my dispatch No. 579 of the 3d ultimo, I have the honor to inform you that Messrs. José Antonio Roman, of Nicaragua, and Ascension Esquivel, of Costa Rica, commissioners appointed by the Governments of those Republics, in accordance with the invitation of Guatemala, to agree upon the bases for a settlement of the pending difficulties concerning boundaries, arrived at this city on the 29th ultimo; they come accredited to the Government of Guatemala as ministers plenipotentiary. It is understood that they will be received to-day officially by the President, and that on Monday next, 6th instant, they will have their preliminary conference.

Señor Esquivel is the ex-minister for foreign affairs of Costa Rica, who has up to this time directed the negotiations on the part of his Government. * * *

The part that Guatemala will take will be one of friendly mediation whenever invited by both parties. * * *

As a matter that affects the prestige of Guatemala in Central America it is to be expected that the Government and Señor Cruz, the minister for foreign affairs, especially, to whom is due the credit of having taken the initiative steps to bring about these conferences, will make use of every effort to effect a settlement before the commissioners return to their respective states.

I have, etc., HENRY C. HALL.

No. 68.

Mr. Hall to Mr. Bayard.

No. 593.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, December 7, 1886. (Received December 30.)

SIR: A gentleman who I have reason to believe is well informed in regard to the affairs of the Panama Canal Company arrived here recently from Paris, where he now resides. He has furnished me with a

copy of a condensed statement showing very clearly and concisely the present financial situation of the enterprise. This statement, I understand, has been prepared by himself from the official reports of the directors and from other sources which he considers trustworthy. I have the honor to transmit it herewith, persuaded that it will be found of interest, should the information it contains not have been communicated to the Department already.

From this exhibit it appears that the company had, up to August last, contracted liabilities to the extent of $270,000,000; that its yearly fixed charges for interest, amortization, and administration, exclusive of the cost of construction, amount to $16,000,000; while as yet no considerable portion of the work has been completed. The conclusion is that the enterprise is hopelessly bankrupt.

I have, etc.,

HENRY C. HALL.

[Inclosure 1, in No. 593.]

A condensed statement showing the present financial situation of the Panama Canal Company. The data, it is said, have been obtained from the official reports of the company of the past four years and from other sources believed to be trustworthy.

Number.	Issues of Panama stock and bonds, etc.	Number of shares and bonds.	Sums realized in money for each emission.	Sums to be repaid to the stock and bond holders.	Sums to be paid annually for interest, amortization, and administration, exclusive of the cost of construction.
			Francs.	*Francs.*	*Francs.*
1	600,000 shares, of 500 francs each, interest 5 per cent., of which 10,000 shares were paid for the concession	600, 000	295, 000, 000	300, 000, 000	15, 000, 000
2	250,000 bonds, 5 per cent., issued September, 1882, at 487.50 francs, repayable at 500	250, 000	109, 375, 000	125, 000, 000	6, 408, 000
3	600,000 bonds, 3 per cent., issued October, 1883, at 285.50 francs, repayable at 500	600, 000	171, 000, 000	300, 000, 000	9, 540, 000
4	341,292 bonds, 4 per cent., issued ——, 1884, at 333.50 francs, repayable at 500	341, 292	113, 004, 920	170, 646, 000	7, 679, 740
5	500,000. These bonds were offered to the public on the 3d August, 1886, but only 458,802 were placed at 450 francs, repayable at 1,000 francs in 42 years, and bearing 30 francs yearly interest: First year, annual interest..... 13, 764, 070 First year, amortization..... 5, 505, 000	458, 802	206, 460, 900	458, 802, 000	19, 269, 070
	The amortization is to increase in the same proportion as the interest decreases, so that the annual charge will be 19,259,070 francs:				
	Item 1. Annual charges and expenses for the service of the debt, etc. (according to official accounts this item in 1884 was 10,267,841 francs)	.....	.....	.....	10, 000, 000
	Item 2. Annual payment to American committee for services and co-operation	.....	.....	.....	1, 500, 000
	Item 3. Administration expenses in Paris and Panama (taking the average of past five years)	.....	.....	.....	10, 631, 945
	Item 4. Control of the Colombian Government (?)	.....	.....	.....	24. 000
	Item 5. Add sundry items (sums) realized during construction up to 30 June, 1885, as per official statements of accounts	.....	19, 724, 448		
	Grand totals	2, 250, 094	914, 565, 268	1, 354, 448, 000	80, 052, 755
	Total in United States money	.....	.....	$270, 889, 600	$16, 010, 551

OBSERVATIONS.

The foregoing statement shows that the Panama Canal Company has received net, up to August, 1886, 914,565,268 francs, for which they must reimburse stock and bond holders 1,354,448,000 francs. The difference, 439,882,732 francs, represents the sums the company has paid in premiums. The total cost of the Suez Canal was 489,000,000 francs.

It is impossible to ascertain the amount in cash in the hands of the directors after the last emission, but, considering the pending engagements of the company, it can not be large; at all events, it can not go far in the disbursements for construction, for which item there were expended in 1885 not less than 240,000,000 francs.

The number of cubic meters already excavated, according to official statements, is 21,594,318, out of an estimated total of 120,000,000 (?). The fact is, there will be not less than 150,000,000 cubic meters to excavate, including the most difficult part of the work (rock excavations under water, tidal locks, the Chagres dam), which, as yet, have not been touched.

It is asserted that during the year 1885 there were 11,500,000 cubic meters excavated, at a cost of 240,000,000 francs. (Official reports to June 30, 1886.)

No. 69.

Mr. Hall to Mr. Bayard.

No. 595.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Guatemala, December 14, 1886. (Received January 4, 1887.)

SIR: The consul of the United States at San Salvador has asked for instructions in regard to the case of Mrs. Charlotte Dowdall de Arana, a native of the United States and the widow of a Spanish subject. I beg leave to report the principal facts as given to me by Mrs. Arana in 1883, and to refer the matter to the Department.

Under the new law* of Salvador, which requires that foreigners residing in that State shall be matriculated as such, they are also required, in certain cases, to produce, as proofs of citizenship, the certificates of diplomatic or consular officers. Mrs. Arana claims that by the death of her husband her original citizenship reverts, and that she is entitled to the protection of the United States.

From a letter that Mrs. Arana wrote to me in August, 1883, I gather the following concerning herself:

That she was born in Norwich, Conn., in 1846, of American parents. Her father's name was Daniel Dowdall, and her mother's maiden name was Eliza Smith; that her mother died when she was three years old, and that she was brought up by an aunt who lived in Massachusetts; that she was married in Kingston, Jamaica, on the 16th of April, 1869, to Mr. Manuel de Arana, a native of Vitoria, Spain, by profession a civil engineer. It appears that after their marriage they removed to Chili, where her two children, who are still minors, were born.

In 1879, or thereabouts, the family came to Salvador, where the husband died on the 13th of August, 1883. At the time of his death he was involved in contracts and business transactions with the Government of Salvador, out of which a claim has arisen which she has endeavored to prosecute through the Spanish legation, but thus far without success.

The only precedent having a close relation to this case that I have been able to find appears in Bentley's Digest of the Official Opinions of

*A copy and translation of this law accompany the writer's dispatch No. 574, dated October 27, 1886.

the Attorneys-General under the head of "Citizenship," pages 57 and 58, as follows:

7. A lady born in this country of American parents married a Spanish subject residing here, but who was never naturalized; and with her husband and his child of three years of age, also born in this country, removed to Spain, where she lived till her husband's death: *Held*, That the removal of the lady and her daughter to Spain, and their residence there, under the circumstances, were not evidence of an attempt on their part to expatriate themselves, and that they are still American citizens.

The difference between the two cases is that the parties were not married in the United States, nor does it appear that they ever resided there after their marriage.

I have heretofore informed Mrs. Arana that she and her children follow the nationality of her husband; of this I believe she was satisfied until advised that she has the right to assert and to regain her original citizenship. I shall be glad to receive your instructions upon the subject.

I have, etc.,

HENRY C. HALL.

No. 70.

Mr. Hall to Mr. Bayard.

No. 598.] UNITED STATES LEGATION IN CENTRAL AMERICA,
Guatemala, December 18, 1886. (Received January 4, 1887.)

SIR: I had the honor to inform you by my dispatch No. 589, of the 3d instant, of the arrival in this city on the 29th ultimo of the commissioners of Nicaragua and Costa Rica, appointed in accordance with the invitation of the Government of Guatemala to agree upon the bases of a settlement of their dispute concerning their boundary. I have now to report that up to this time no progress whatever has been made towards a settlement.

* * * * * * *

By the next mail I may be able to communicate more definite information. * * *

I have, etc.,

HENRY C. HALL.

No. 71.

Mr. Hall to Mr. Bayard.

No. 600.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, December 24, 1886.

SIR: With my No. 477 of the 12th of March last, I transmitted to the Department a translation of the treaty signed in this city on the 12th of September, 1885, between Guatemala, Salvador, and Honduras. I had occasion also to refer to the same treaty in my dispatches No. 478 of the 15th March, and No. 514 of the 7th June last.

The treaty referred to embraces the following subjects: Peace, friendship, union, alliance, extradition, commercial reciprocity, and postal, telegraphic, and monetary union. Nicaragua and Costa Rica were in-

vited at the time to become parties to the treaty, but they found many of its stipulations objectionable and consequently declined.

On the 31st of July last the minister for foreign affairs of Guatemala addressed a circular note to the several Central American Governments, inviting their acceptance of the treaty, with such modifications as would remove the objectionable features, or that they should enter into a new treaty embracing the same objects. The answers of the several Governments were such as to induce the Government of Guatemala to issue another circular note, under date of the 15th ultimo, inviting them to send delegates to a congress of all the states and proposing that it should meet in Guatemala on the 20th January, 1887, for the purpose of discussing and uniting upon a general treaty which will assure the peace and the mutual friendship and harmony of the Central American states. This invitation has been very cordially accepted by all, and the delegates are announced to meet in this city on the day named therefor.

I have the honor to inclose herewith the official newspaper of Guatemala of the 21st instant, containing Señor Cruz's note of the 15th ultimo, and the communications in reply of the Governments of Nicaragua, Honduras, Costa Rica, and Salvador. I have also annexed partial translations.

It has appeared to me that the efforts thus put forth to bring about harmony and a good understanding between the Central American Governments, which have not existed in many years, is highly creditable to the Government of Guatemala, to which the initiative is wholly due.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 600.—Translation.]

Circular addressed to the departments of state of Salvador, Honduras, Nicaragua, and Costa Rica upon the subject of a meeting of Central American plenipotentiaries in the city of Guatemala.

DEPARTMENT OF FOREIGN RELATIONS,
Guatemala, November 15, 1886.

MR. MINISTER: In due course I reported to the President the reply of your excellency to the note I had the honor to address you on the 31st July last, which had for its chief object to propose that the Republics of Central America should enter into a treaty which would be acceptable to all, and having for its bases reciprocal equality, guaranties, and utility, should establish in an enduring manner close relations of unalterable peace and loyal friendship by every stipulation required to strengthen the ties that unite them, give expansion to their commerce, identify their interests, invigorate their fraternal sentiments, and to consolidate lasting friendship as a spontaneous and natural result of the conditions, necessities, and the aspirations of all. The President, desirous that the project thus initiated should be carried out, and, taking into consideration the tenor of the reply of your excellency's Government as well as those of the Governments of the other Republics, has instructed me to invite the Government of that Republic, should it be favorably disposed, to accredit a minister plenipotentiary to a meeting of the representatives of the Central American States. In case the invitation should be accepted, as desired, my Government will esteem it an honor that this capital should be selected therefor, and the 20th of January next, 1887, fixed upon for the meeting.

The object of this meeting will be to decide upon the questions which were the subject of my note of the 31st July, and of the several replies thereto. If the result of the deliberations should be as my Government desires and believes, the unanimous acceptance of a treaty in such terms that it shall be an unequivocal token of fraternity and harmony which will insure the peace, strengthen the sympathy, establish the confidence, identify the interests, aspirations, and tendencies of these peoples that for no cause should be alien or indifferent to each other, nor fail in their duties and

family ties, then a great step in its opinion will have been taken in promoting the prosperity and great destinies of Central America.

Persuaded that your excellency's Government shares the same sentiments and that not less than Guatemala its patriotic interest is not only to remove every motive or appearance that could give rise to coldness or reserve, but to carry out with certainty and efficiency whatsoever may tend to unite more closely the Republics of Central America, to enliven them with the warmth of reciprocally frank and cordial intercourse and common interests, and giving to all active participation in the prosperity or adversity of each, I venture to believe that your excellency will honor me with an early and favorable reply.

Be pleased, etc.,

FERNANDO CRUZ.

[Inclosure 2 in No. 600.—Translation.]

Señor Elizondo to Señor Cruz.

DEPARTMENT OF FOREIGN RELATIONS,
Managua, Nicaragua, December 1, 1886.

MR. MINISTER: I have had the honor to receive your dispatch dated the 25th ultimo, in which your excellency is pleased to inform me that in conformity with the reply of my predecessor to your note of the 31st July last, his excellency the President of that Republic, desirous of carrying out the project then initiated, and taking into consideration the analogous terms of the replies of the Governments of the other sister Republics, has interested your excellency to invite this Government, should it be deemed expedient, to accredit a minister plenipotentiary to a meeting of the representatives of the Central American Republics.

* * * * * * *

I have informed the President in regard to your excellency's communication, and have received his instruction to reply to it in the following terms: The Government having already set forth in its dispatch of the 13th of August last its views and sentiments entirely in accord with the laudable purpose that animates the President of that sister Republic, it seems unnecessary that I should express in this communication the pleasure with which my Government accepts the idea of establishing, by a congress of plenipotentiaries of the five Central American Republics, inviolable rules that will assure, in an efficacious manner, the development of their common interests, the maintenance of peace and harmony, indispensable to the fulfillment of their future destinies by means of a treaty, as your excellency suggests.

To prepare in this way the advent of the common heritage of the sons of Central America is an honorable work, and for that reason well worthy of all who are inspired by the patriotism that animated our eminent legislators of 1824.

The President therefore accepts sincerely the invitation contained in the dispatch of your excellency, as also the idea of a meeting of the plenipotentiaries to take place in that capital, and will in due time appoint a citizen to represent Nicaragua.

Your excellency will be pleased to inform me if, in view of the answers your excellency's Government should receive from the other Central American Republics, the day of meeting should be postponed.

With sincere satisfaction for the terms in which I am able to reply to your excellency, I reiterate, etc.,

JOAQUIN ELIZONDO.

[Inclosure 3 in No. 600.—Translation.]

Señor Zelaya to Señor Cruz.

DEPARTMENT OF FOREIGN RELATIONS,
Tegucigalpa, Honduras, December 2, 1886.

MR. MINISTER:

* * * * * *

The President of this Republic being informed in regard to the enlightened sentiments of your excellency's note (of the 15th November) has instructed me to reply to it in the following terms:

My Government, Mr. Minister, cannot do otherwise than accept with enthusiasm and lively sympathy the mature conception of your excellency's Government, the promoting the meeting of a congress of plenipotentiaries of the Republics of Central America, that for so many reasons, and especially because they constitute one sole family,

ought to draw closer their interests and unite their aspirations and destinies and assimilate in sentiments of intimate confraternity.

It is an obvious necessity, Mr. Minister, that the Central American peoples should live in peace and order; under these auspices only will they be able to develop their material and moral progress, perfect themselves in the practice of the free institutions that they have adopted, and give impulse to their growing importance. The Governments of Central America will fulfill the most imperative of their duties in devoting themselves to the generous and patriotic work of cementing upon solid bases that order and peace so long hoped for, uniting in a solemn compact of family, as it may be called, to watch over the interests, the repose, the welfare, and prosperity of the political communities whose destinies are confided to their care, and to maintain among them an inviolable harmony. Such is the object of the noble initiative of your excellency's Government, for which that of Honduras sends through my medium its most enthusiastic congratulations.

In conclusion, I am happy to inform your excellency that my Government accepts with pleasure the courteous invitation of that of Guatemala, and will not fail to be represented at the proposed meeting of the plenipotentaries your excellency has suggested.

* * * * * * *

This occasion affords me the pleasure of renewing to your excellency, etc.,

JERÓNIMO ZELAYA.

[Inclosure 4 in No. 600.—Translation.]

Señor Fernandez to Señor Cruz.

DEPARTMENT OF FOREIGN RELATIONS,
San José, Costa Rica, December 9, 1886.

EXCELLENCY: I have had the honor to receive the esteemed note your excellency has been pleased to address me under date of the 15th November last.

It is very satisfactory to my Government to notice once more the laudable interest your Government has taken in carrying out the projects of a treaty which will secure the peace of Central America, protect and consolidate the friendly relations which exist between the five Republics, protect the private interests of each, and give increment and all possible unity to those interests which may be considered as common to all.

Your excellency, with much reason, gives assurances that if a treaty should be realized in such terms as will make it an unequivocal token of that fraternal friendship and harmony which will assure the peace, strengthen the affection, establish confidence, identify the interests, aspirations, and tendencies of peoples who never for any cause should be alien or indifferent to one another, nor omit their duties and family affection, then a great step will have been taken in advancing the prosperity and the great destinies of Central America.

The Government of Costa Rica, which is of the same opinion and sentiments with that of Guatemala as regards the advantages that will result from such a treaty can not do otherwise than favorably accept the idea announced in your note. The President of the Republic has given instructions to so inform your excellency and to announce that by this mail the required credentials will be sent to the licentiate, Hon. Ascension Esquivel, envoy extraordinary and minister plenipotentiary of this Republic near your Government, to enable him to present himself as delegate to the congress of plenipotentiaries that will meet at that capital on the 20th of January next.

In thus informing your excellency it is highly satisfactory to me to offer, etc.

MAURO FERNANDEZ.

[Inclosure 5 in No. 600.—Translation.]

Señor Delgado to Señor Cruz.

DEPARTMENT OF FOREIGN RELATIONS,
San Salvador, Salvador, December 11, 1886.

MR. MINISTER: I have the honor to refer to the courteous dispatch of your excellency of the 15th ultimo, in which you are pleased to inform me that you reported to the President of your Republic the note I addressed to your excellency on the 24th August, in answer to your highly important one of the 31st July last, and that he, being desirous that the project initiated by your excellency in that communication

shall be carried out, has given you instructions to propose to my Government, should the idea be acceptable, to appoint a minister plenipotentiary to a meeting of the representatives of the Republics of Central America. Your excellency is pleased to add that your Government would appreciate it should Guatemala be accepted as the place of the meeting of the plenipotentiaries, and the date therefor fixed for the 20th of January, 1887.

* * * * * * *

The important conceptions contained in your note have impressed the President with great satisfaction, and he has given me instructions to say in reply that he observes with pleasure that your Government has interpreted his sentiments in regard to the fraternity and concord that ought to reign between the members of the Central American family, and the constant and positive efforts that their Governments ought to make to assimilate their interests to strengthen the ties of mutual affection and cordial friendship that bind them together, and thus to hasten the day when the longed-for union, that ardent ideal and aspiration of Central American patriotism, may be realized. Consequently it is a pleasure to me to assure your excellency that if, as I have no doubt, the other Governments of Central America should accept favorably the fraternal invitation of your excellency, Salvador will send its representative to that capital on the date that your excellency has been pleased to fix for the meeting.

Renewing, etc.,

MANUEL DELGADO.

No. 72.

Mr. Hall to Mr. Bayard.

No. 601.] LEGATION OF THE UNITED STATES,
Guatemala, December 27, 1886. (Received Jan. 17, 1887.)

SIR: With reference to * * * correspondence relating to the difficulties pending between Nicaragua and Costa Rica concerning their boundaries, I have the honor to inclose herewith a copy and translation of a convention signed on the 24th instant, by the commissioners of those Governments with the mediation of Señor Cruz, the minister of foreign affairs of Guatemala, to whose efforts as a mediator, I am informed, it is due that the commissioners came to terms.

The object of the convention, as stated in the preamble, "is to submit to the arbitration of the Government of the United States the question between them in regard to the validity of the treaty of the 15th of April, 1858."

Article 11 stipulates for an exchange of ratifications on the 30th of June, 1887, or sooner if possible. This postponement is precisely what the Nicaraguan Government wished to avoid; it has been conceded on the ground that the Costa Rican Congress does not meet until the 1st of May next. It is no unusual event in any of these states that a special session of Congress is called at a few days' notice for matters of much less importance.

Within sixty days after the exchange of the ratifications the two Governments will solicit of the arbitrator his acceptance of the appointment. It is probable, therefore, that this solicitation will not reach the Department before the month of July next.

In the interval the Costa Rican Government consents, as stipulated in Article 9, to suspend the effect of its decree of the 16th of March last, concerning the navigation of the San Juan River by a Costa Rican steamer. I inclose a translation of the decree referred to, which has been the immediate cause of the present difficulties.

I have, etc.,

HENRY C. HALL.

[Inclosure 1.—Translation.]

Convention between the Governments of Nicaragua and Costa Rica to submit to the arbitration of the Government of the United States the question in regard to the validity of the treaty of 15 *April*, 1858.

The Governments of the Republics of Nicaragua and Costa Rica desiring to terminate the question debated by them since 1871, to wit;

Whether the treaty, signed by both on the 15th day of April, 1858, is or is not valid, have named, respectively, as plenipotentiaries, Señor Don José Antonio Román, envoy extraordinary and minister plenipotentiary of Nicaragua, near the Government of Guatemala, and Señor Don Ascension Esquival, envoy extraordinary and minister plenipotentiary of Costa Rica near the same Government, who having communicated their full powers, found to be in due form, and of conference with the mediation of the minister for foreign affairs for the Republic of Guatemala, Dr. Don Fernando Cruz, designated to interpose the good offices of his Government, generously offered to the contending parties and by them gratefully accepted, have agreed to the following articles:

(1) The question pending between the contracting Governments, in regard to the validity of the treaty of limits of the 15th of April, 1858, shall be submitted to arbitration.

(2) The arbitrator of that question shall be the President of the United States of America. Within sixty days following the exchange of ratifications of the present convention the contracting Governments shall solicit of the appointed arbitrator his acceptance of the charge.

(3) In the unexpected event that the President of the United States should not be pleased to accept, the parties shall name, as arbitrator, the President of the Republic of Chili, whose acceptance shall be solicited by the contracting Governments within ninety days from the date upon which the President of the United States may give notice to both Governments, or to their representatives in Washington, of his declination.

(4) If, unfortunately, the President of Chili should also be unable to lend to the parties the eminent service of accepting the charge, both Governments shall come to an agreement for the purpose of electing two other arbitrators within ninety days, counting from the day on which the President of Chili may give notice to both Governments or their representatives, in Santiago, of his non-acceptance.

(5) The proceedings and terms to which the decisions of the arbitrator are limited shall be the following:

Within ninety days, counting from the notification to the parties of the acceptance of the arbitrator, the parties shall present to him their allegations and documents. The arbitrator will communicate to the representative of each Government, within eight days after their presentation, the allegations of the opposing party, in order that the opposing party may be able to answer them within the thirty days following that upon which the same shall have been communicated.

The arbitrator's decision, to be held valid, must be pronounced within six months, counting from the date upon which the term allowed for the answers to the allegations shall have expired, whether the same shall or shall not have been presented.

The arbitrator may delegate his powers, provided that he does not fail to intervene directly, in the pronunciation of the final decision.

(6) If the arbitrator's award should determine that the treaty is valid, the same award shall also declare whether Costa Rica has the right of navigation of the river San Juan with vessels of war or of the revenue service. In the same manner he shall decide, in case of the validity of the treaty, upon all the other points of doubtful interpretation which either of the parties may find in the treaty, and shall communicate to the other party within thirty days after the exchange of the ratifications of the present convention.

(7) The decision of the arbitrator, whichsoever it may be, shall be held as a perfect treaty and binding between the contracting parties. No recourse whatever shall be admitted, and it shall begin to have effect thirty days after it shall have been notified to both Governments or to the representatives.

(8) If the invalidity of the treaty should be declared both Governments, within one year, counting from the notification of the award of the arbitrator, shall come to an agreement to fix the the dividing line between their respective territories. If that agreement should not be possible they shall, in the following year, enter into a convention to submit the question of boundaries between the two Republics to the decision of a friendly Government.

From the time the treaty shall be declared null, and during the time there may be no agreement between the parties, or no decision given fixing definitely the rights of both countries, the limits established by the treaty of the 15th of April, 1858, shall be provisionally respected.

(9) Meanwhile, the question as to the validity of the treaty shall not be decided. The Government of Costa Rica consents to suspend the observance of the decree of the 16th of March last as regards the navigation of the river San Juan by a national vessel.

(10) In case the award of the arbitrators should decide that the treaty of limits is valid, the contracting Governments, within ninety days following that upon which they may be notified of the decision, shall appoint four commissioners, two each, who shall make the corresponding measurements of the dividing line, as provided for by Article 2 of the referred to treaty of 15th April, 1858.

These measurements and the corresponding landmarks shall be made within thirty months, counting from the day upon which the commissioners shall be appointed. The commissioners shall have the power to deviate the distance of one mile from the line fixed by the treaty, for the purpose of finding natural limits or others more distinguishable. But this deviation shall be made only when all of the commissioners shall have agreed upon the point or points that are to substitute the line.

(11) This treaty shall be submitted to the approval of the Executive and Congress of each of the contracting Republics, and their ratifications shall be exchanged at Managua or San José de Costa Rica on the 30th of June next, or sooner, if possible.

In testimony of which the plenipotentiaries and the minister of foreign affairs of Guatemala have signed and sealed with their private seals, in the city of Guatemala, this 24th day of December, 1886.

J. ANTONIO ROMAN.
ASCENSION ESQUIVEL.
FERNANDO CRUZ.

A true copy:
J. A. ROMAN.

[Inclosure 2.—From the Gaceta Oficial of Costa Rica of March 12, 1886.—Translation.]

Decree of the Costa Rican Government relating to the navigation of the San Juan River.

NATIONAL PALACE, SAN JOSÉ, *March* 16, 1886.

By decree No. 46, of this date, a maritime and customs guard at the mouth of the river Colorado on the Atlantic having been established, his Excellency the President orders:

That the customs guard referred to shall have at its disposal a national steamer, with the necessary crew, comprising a captain, mate, an engineer, a fireman, and assistant.

The duties of the customs guard are the following:

(1) To watch for smuggling in the waters and territory assigned to its inspection.

(2) To give information to the customs guards established on the San Carlos and Sarapiquí, or to the inspector-general, according to circumstances, for the prosecution of smugglers.

(3) To ask and to obtain the assistance of the guards at San Carlos and Sarapiquí, whenever in the opinion of the commandant of Colorado it may be necessary.

(4) To make at least one voyage a month from Puerto Limon to carry correspondence to and from Colorado.

(5) To reconnoiter at least once a month the rivers San Juan, Colorado, Sarapiquí, and San Carlos; the first named in the whole extent that it is navigable for Costa Rica, the second in its entire extent, and the two others so far as navigable by steamers. The itinerary shall be reserved, so that the movements of the guard be not eluded.

(6) To institute preliminary proceedings and to report seizures to the fiscal authority at Limon.

(7) To carry out the duly communicated orders of the superior fiscal authorities, the inspector-general of the treasury, with the approval of this department, shall issue suitable instructions in regard to regulations to be observed by the customs guard of Colorado.

Let it be published.

His Excellency the general, the President of the Republic:

FERNANDEZ.

No. 73.

Mr. Bayard to Mr. Hall.

No. 420.] DEPARTMENT OF STATE,
Washington, January 6, 1887.

SIR: Your dispatch No. 595, of December 14, 1886, has been received. It relates to the case of Mrs. Charlotte Dowdall de Arana, who, having been born in the United States in 1846, of American parents, and having married in 1869 a Spanish subject, Mr. Manuel de Arana, now claims that by the death of her husband, in 1883, her United States citizenship has revived.

In a case similar to the present, Mr. Fish, in instructions dated February 24, 1871, to Mr. Washburne, then minister to France, after observing that by the law of England and the United States an alien woman on her marriage with a subject or citizen merges her nationality in that of her husband, proceeded as follows:

> But the converse has never been established as the law of the United States, and only by the act of Parliament of May 12, 1870, did it become British law that an English woman lost her quality of a British subject by marrying an alien. The continental codes, on the other hand, enable a woman whose nationality of origin has been changed by marriage to resume it when she becomes a widow, on the condition, however, of her returning to the country of her origin.
>
> The widow to whom you refer may, as a matter of strict law, remain a citizen, but as a citizen has no absolute right to a passport, and as the law of the United States has outside of their jurisdiction only such force as foreign nations may choose to accord it in their own territory, I think it judicious to withhold passports in such cases unless the widow gives evidence of her intention to resume her residence in the United States.

I am not disposed to depart from this precedent, which may be readily reconciled with the opinion of Attorney-Generals Bates (10 Op., 321), Stanbery (12 Op., 7), and Hoar (13 Op., 128).

Under these circumstances I must hold that Mrs. Arana as long as she remains without the jurisdiction of this Government is not entitled to the privileges of a citizen of the United States, so far at least as would entitle her to diplomatic interposition on her behalf against the Government of Salvador on a claim accruing since her marriage and departure from the United States.

I am, etc.,

T. F. BAYARD.

No. 74.

Mr. Hall to Mr. Bayard.

No. 603.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, January 6, 1887. (Received January 26.)

SIR: With reference to my dispatch No. 515, of the 17th June, and to your instruction, No. 380, of the 17th August last, in relation to the proposed establishment of a line of Spanish steamers between Panama and San Francisco, under special contracts with the several governments of Central America, I have the honor to inclose a translation of a decree of the Legislative Assembly of Salvador of the 27th September last, making certain amendments to the contract with that Government

and rejecting altogether the stipulation in regard to the rebate in duties upon merchandise imported into Salvador by that line. The decree also requires that the contractors shall deposit $20,000, or give the equivalent guaranty as a security for the fulfillment of their obligations.

In the mean time the contractors have failed to comply with that part of the contract by which they engaged to have their steamers ready at the time therein specified.

It may be proper to mention, in connection with this subject, that there is a line of German steamers making monthly trips between Hamburg and the Pacific ports of South and Central America, by way of the Strait of Magellan, during the season of coffee shipments, which is from December to June, inclusive. It is understood that the German Government subsidizes this line and takes much interest in its success; it receives in all of the Central American ports the same exemptions as regards port charges and concessions, except the subsidies for carrying the mails, that are accorded to the Pacific Mail Company's steamers. I have been informed that the German minister to Central America, by instruction of his Government, gave notice to the Governments of Guatemala, Salvador, and Costa Rica, with reference to the proposed line of Spanish steamers, that the German Government would expect that any rebate in import duties conceded to the vessels of any other nationality should also be extended to German vessels.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 603.—Translation.—From the Diario Oficial, of Salvador, September 27, 1886.]

THE NATIONAL CONSTITUENT ASSEMBLY.

The Provisional President of the Republic of Salvador to its inhabitants:

Know ye: That the National Constituent Assembly has decreed the following:

The National Constituent Congress of the Republic, considering that the contract entered into on the 6th of May of the present year, between the Supreme Provisional Government of the one part, and Don Carlos F. Irigoyen and Don José A. March of the other part, in regard to the establishment of a line of Spanish Central American steamers, is in the main acceptable, but that it contains conditions which conflict with the treaty of the 6th December, 1870, with the United States of America, and that the holders of the concession do not give sufficient security to insure the fulfillment of the stipulations of the said contract, decrees:

ONLY ARTICLE.

The contract referred to shall be approved with the following modifications:

(1) That the steamers touch at the ports of the Republic, although there may be neither cargo nor passengers.

(2) That the rebate of 3 per cent. in duties conceded to Irigoyen and March be rejected.

(3) That the said Messrs. Irigoyen and March as a guaranty for the fulfillment of the contract deposit the sum of $20,000, which they shall forfeit to the treasury in the event of a non-compliance with the stipulations, or that they give some other sufficient security.

(4) That in the event of Messrs. Irigoyen and March wishing to transfer or hypothecate the contract, it shall be with the assent of the executive.

Given in the national palace, San Salvador, September 10, 1886. To the executive.

ANTONIO RUIZ, *President.*
MAXIMO MANCIA, *Secretary.*
JEREMIAS GUANDIQUE, *Pro. Secretary.*

NATIONAL PALACE, SAN SALVADOR, *September* 18, 1886.

Therefore, let it be executed.

FRANCISCO MENENDEZ.

The Secretary of State in the Department of Public Works,

BALTIZAR ESTAPINIAN.

No. 75.

Mr. Hall to Mr. Bayard.

No. 605.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, January 10, 1887. (Received February 10.)

SIR: With reference to my dispatch No. 574, of the 27th October, and to your instruction, No. 409, of the 27th November last, relating to the recent law upon the general subject of citizenship and the status of foreigners in Salvador, I have the honor to inclose an abstract of a note from the minister for foreign affairs of that Republic to one of my colleagues in answer to his inquiry as to the interpretations to be given to articles 39, 40, and 41 of the referred to law.

The answer was not satisfactory, and the minister for foreign affairs was so informed.

In his second note the minister gives assurances that the law will be amended and that such amendments were under consideration. In view of this information, I have thought it advisable to address Señor Delgado upon the same subject and in the tenor of your above-mentioned instruction. I shall transmit his reply to the Department when received.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 605.—Translation.]

Abstract of a note from the minister for foreign affairs of Salvador, in relation to the law of the 29th of September, 1886, concerning the status of foreigners, naturalization, matriculation, etc., in that Republic.

The minister was requested to state, in regard to the interpretation to be given to Articles 39, 40, and 41 of the law of the 29th September, 1886, whether it is to be understood that the intention of the Assembly was to declare that no recourse is to be had against a denial of justice after a judicial decision has been pronounced, even should it be alleged that the decision is iniquitous or given in express violation of law.

The minister replied, under date of 29th November, 1886, affirmatively, and substantially as follows:

That in Article 39 of the law referred to it is established that foreigners can have diplomatic recourse in case of a denial of justice or of a voluntary retardation of its administration, but that it is essential that they shall previously have made use of the ordinary recourses established by the laws of the Republic.

That Article 40 defines what is understood to be a denial of justice, that is, when a judicial authority refuses to give a formal decision in a case before him or upon any incident thereof; but when a judge shall have given a sentence or decision, in whatever sense it may be, even should it be alleged that the resolution is iniquitous or given in express violation of law, there can be no recourse to the diplomatic channel.

He further says, that the object of the Assembly was to establish clearly the cases in which foreigners can have diplomatic recourse, in order to put a stop to unjust claims to which the subjects of powerful nations are so frequently inclined to resort. That it is well known that in the history of these Spanish American Republics there are recorded claims of manifest injustice; for the same reason these countries have been compelled to establish the cases in which such claims can be instituted, and thus to avoid the complication and difficulties that unfounded claims give rise to.

No. 76.

Mr. Hall to Mr. Bayard.

No. 606.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, January 10, 1887. (Received February 10.)

SIR: I had the honor to transmit to the Department with my dispatch No. 574 of the 27th October last a copy and translation of the recent law of Salvador upon the general subject of citizenship and the status of foreigners residing in that Republic. I now inclose a copy and translation of a law of Costa Rica, upon the same subjects, promulgated on the 21st ultimo.

This law contains no requirement in regard to matriculation nor, so far as I have been able to discover, any other particularly objectionable features. Article XVI, which corresponds to Articles 39, 40, and 41 of the law of Salvador, contains the following in regard to alleged denials of justice:

> Foreigners can only appeal to diplomatic intervention, in case of a denial of justice or of willful delay in its administration, after having in vain exhausted all the resources created by the laws, and in the manner prescribed by international law.

I shall be glad to receive any instruction the Department may be pleased to give me in regard to this law.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 606.—Translation from the La Gaceta of Costa Rica, of December 22, 1886.]

The Permanent Commission of the Constitutional Congress of the Republic of Costa Rica, considering:

1. That the enactment of a law as the complement of the constitutional provisions in regard to citizenship, alienage, and naturalization is of urgent necessity;

2. That in like manner it is desirable to condense in one code the disconnected, supplementary and incomplete regulations, upon the subject, existing in different collections of laws; in response to the initiative of the executive power, qualified as urgent—

Decrees the following law relating to foreigners and naturalization:

ARTICLE 1.

Costa Ricans by origin are:

(1) The legitimate child of a Costa Rican father, whatever may be the place of his or her birth.

(2) The illegitimate child of a Costa Rican mother, whatever may be the place of his or her birth.

(3) The illegitimate child of a foreign mother acknowledged by the Costa Rican father.

(4) The child born or found in the territory of the Republic of unknown parents or of unknown nationality.

(5) The inhabitants of the province of Guanacaste who have permanently settled therein since its incorporation with the Republic (December 9, 1825), up to the treaty of 15th April, 1858, with Nicaragua.

(6) The children of a foreign father born in the national territory, who, after reaching twenty-one years of age, inscribe themselves, of their own free will, in the civil register, or are inscribed by the free will of the father, or, in his default, of the mother, before completing that age.

ARTICLE II.

Children, under twenty-one years of age, of a Costa Rican father who has lost his nationality, may, at their majority, claim the Costa Rican nationality by declaring the same before the diplomatic agents or consuls of the Republic, if they reside abroad,

or before the department for foreign relations, if they reside in the national territory. If they should reside in this Republic, and upon reaching majority should have accepted any public employment, or have served in the army or national marine, they shall be held to be Costa Ricans without the need of other formalities.

The same shall be understood as regards the natural children of a Costa Rican mother who may have lost her nationality and have not been recognized by the foreign father.

ARTICLE III.

Naturalized Costa Ricans are—

(1) Foreigners who shall acquire, or may have acquired, Costa Rican citizenship in conformity with the law.

(2) Costa Ricans who having lost their national character shall recover it.

(3) The foreign woman who marries with a Costa Rican, a condition that she retains in her widowhood.

ARTICLE IV.

The Costa Rican nationality is lost by—

(1) The Costa Ricans who become naturalized in a foreign country.

(2) Those who accept public offices, titles, or decorations conferred by a foreign government without the consent of their own, with the exception of literary, scientific, and humanitarian titles, which can be freely accepted.

(3) Those who, without the permission of the Government, take military service in a foreign nation or enlist in a foreign military corps.

(4) The minor illegitimate child of a Costa Rican mother, upon being recognized by his or her foreign father, with the consent of the former.

(5) The Costa Rican woman who marries a foreigner, a condition which she conserves during her widowhood, except that in case she does not acquire the nationality of her husband in virtue of the laws of his country she shall conserve her own.

ARTICLE V.

The Costa Rican who may have lost his nationality may recover it—

(1) If included in paragraph 1 of the foregoing article by returning to the territory of the Republic and declaring before the department of foreign relations that he wishes to settle in Costa Rica and that he renounces his foreign nationality.

(2) If included in paragraph 2 by declaring expressly before the department of foreign relations that he has renounced the office, title, or decoration conferred on him by a foreign government.

(3) If included in paragraph 3 of the same article, by soliciting the permission of the Government to return to the territory of the Republic, and if granted, by returning to Costa Rica to fulfill the requirements demanded of a foreigner who solicits naturalization.

(4) If included in paragraph 4 by declaring, on attaining his majority, in the ministry of foreign affairs, that he chooses the Costa Rican nationality, or by his father subscribing him in the civic register before that age.

(5) If included in the 5th paragraph, the widow on the dissolution of her marriage can return to the territory of the Republic and declare in the ministry of foreign affairs that she wishes to settle in the Republic; and renounces her foreign nationality.

ARTICLE VI.

The husband's change of notionality, which took place during the marriage, causes the wife to change her nationality, if according to the laws of the country whose nationality the husband might adopt the wife follow the condition of the latter.

ARTICLE VII.

The rule that the child conceived is reputed as born for all that may be of benefit to him, may be called to the aid of him who wishes to acquire or keep the Costa Rican nationality.

ARTICLE VIII.

Every foreigner can be naturalized in Costa Rica who satisfactorily proves:

(1) That he is of age according to the laws of his country.

(2) That he has a profession, trade, or income on which to live.

(3) That he has lived at least one year in the Republic and has observed good behavior.

ARTICLE IX.

A letter of naturalization will not be granted to the citizens or subjects of a nation with which the Republic is at war; nor to those judicially declared in other countries to be pirates, slave-traders, incendiaries, coiners of false money, or forgers of bank-notes or other documents of public credit, nor to assassins, kidnappers, nor robbers. The naturalization paper which a foreigner may have fraudulently obtained in violation of the law is null and void.

ARTICLE X.

The foreigner who wishes to be naturalized shall apply personally or by means of a special agent to the ministry of foreign affairs, and shall manifest his intention of becoming a citizen of Costa Rica and of renouncing his nationality. That petition shall be passed to the Government of the province or district where the foreigner has lived, with the object of obtaining the declaration of three or more witnesses with respect to the points mentioned in Article VIII.

On the conclusion of the judicial inquiry, and after its return to the ministry of foreign affairs, should it be favorable to the petitioner, and should there be no legal obstacle, the Government shall grant the naturalization paper; otherwise, they shall refuse it. The resolution adopted shall be published in the official newspaper.

The provisions of this article do not comprise foreigners who may be naturalized according to law. Neither does it comprise those who have a right to claim or choose the Costa Rican nationality, for whom a single declaration, made before the diplomatic agents or consuls of the Republic abroad, or in the ministry of foreign affairs, is sufficient.

ARTICLE XI.

The naturalization of a foreigner lapses by his residence in the country of his birth for two consecutive years, unless it be caused by the fulfilling of an official commission of the Government of Costa Rica or with its permission.

ARTICLE XII.

The change of nationality produces no retroactive effect.

ARTICLE XIII.

Naturalized citizens have the same right as natives to the protection of the Government of the Republic. Notwithstanding, if they return to the country of their birth, they remain subject to the responsibilities they may have incurred previous to their naturalization. They have the same rights and obligations as citizens by birth, but they will be ineligible to offices and employments for which, according to law, nationality by birth is required.

ARTICLE XIV.

Foreigners enjoy the rights that Article 12 of the Constitution specifies and other analogous rights stipulated in treaties with foreign countries.

ARTICLE XV.

Foreigners can without losing their nationality establish their residence in the Republic for all legal purposes; notwithstanding the Government can expel administratively and summarily, with the previous consent of the council of the Government, every foreigner who has no occupation or recognized way of living, or who may have been condemned in a foreign country or in the Republic for any of the crimes specified in article 9, or who may take an active part in the political affairs of the country, or, in a word, who may be a mischief maker. For like motives and with a like procedure the Government can refuse any foreigner an entrance to the country.

ARTICLE XVI.

Foreigners are obliged to contribute towards the public expenses in the manner in which the laws establish, and to obey and respect the institutions, laws, and authorities of the country, submitting to the decisions and sentences of the tribunals, without being able to establish any other recourses than such as the laws concede to citizens of the Republic. They can only appeal to diplomatic intervention in case of a denial of justice, or of willful delay in its administration, after having in vain exhausted all the recources created by the laws, and in the manner determined by international law.

ARTICLE XVII.

Foreigners do not enjoy the political rights which pertain exclusively to citizens, so that they can neither vote nor receive votes for any appointment at a popular election, nor be nominated for any other employment or commission invested with authority or jurisdiction, nor associate themselves for the purpose of taking a part in the political affairs of the Republic, nor take any part therein, nor exercise the right of petition in matters of that nature.

ARTICLE XVIII.

Foreigners are free from military service, nevertheless domiciled foreigners are under the obligation to serve as police when the safety of property is imperiled, or the public peace of the place where they are settled is endangered.

ARTICLE XIX.

The stipulations of international treaties about citizenship, alienage, naturalization, rights and duties of foreigners remain unchanged.

To the Executive power, given in the Legislative Chamber of the National Palace in San José, on the 20th day of December, 1886.

ANDRES SAENZ,
President.
M. GUEVARA,
Secretary.

PRESIDENTIAL PALACE, SAN JOSÉ, *December* 21, 1886.

Approved:

BERNARDO SOTO.

The Secretary of the Department of Justice,

MAURO FERNANDEZ.

No. 77.

Mr. Bayard to Mr. Hall.

No. 424.] DEPARTMENT OF STATE,
Washington, January 28, 1887.

SIR: I have received your No. 603 of the 6th instant, touching the proposed establishment of a line of Spanish steamers between Panama and San Francisco, and have to express the Department's satisfaction at the rejection by the Government of Salvador of the clause in the contract granting 3 per cent. rebate of customs duties in favor of that line. Although professedly in the nature of a contract-subsidy, such alterations of the national tariff so far assume the form of a discriminating duty as to be open to remonstrance, on the ground of being at variance with the spirit of international relations based upon equality and comity.

I am, etc.,

T. F. BAYARD.

No. 78.

Mr. Bayard to Mr. Hall.

No. 425.] DEPARTMENT OF STATE,
Washington, February 1, 1887.

SIR: I transmit herewith, for your information, copy of a dispatch* from Consul Du Pré, at San Salvador, reporting the situation in Central America, and especially the political movements which appear to

*Not printed herewith.

point toward a coercive movement of Nicaragua and Salvador against Honduras.

Past experience has shown how deplorable are these constant conflicts between the Central American states, and how much the domestic prosperity of those commonwealths and their profitable intercourse among themselves and with the commercial world are impaired by such interruptions of good relations.

In the intervals of peace, the capital and developing enterprise of citizens of the United States have sought a field in Central America. This mutually beneficial movement has been especially marked since the occurrences of 1885, when the notable collapse of the aggressive policy of certain of the states against their neighbors held out a prospect of a long continued era of good will and tranquillity. Thousands of American citizens, with millions of dollars, are to-day in Central America under the guaranties of law and order there, and in the confidence that good administration and a due respect for international relations will efficiently protect them in the peaceable enjoyment of their liberties and rights.

It could not fail to be a matter of grave concern to the Government of the United States were the peace of Central America to be again disturbed, and the interests of our peaceable citizens there imperilled, by methods so utterly at variance with the sound principles of republican government. It is not indeed reasonably to be apprehended that coercion and forcible interference will be resorted to, against the peace and independence of their neighbors, by those states, which have so lately been so unsparing in their denunciation of, and so active in their opposition to, such a course when it was directed against themselves.

The Government of the United States is disinterestedly the friend equally of all the Central American Republics. You have heretofore been repeatedly instructed to use every effort permissible within the scope of good offices to promote an amicable understanding between them and to avert the arbitration of the sword. You will continue to do so.

I am, etc.,

T. F. BAYARD.

No. 79.

Mr. Bayard to Mr. Hall.

No. 429.] DEPARTMENT OF STATE,
Washington, February 16, 1887.

SIR: Your Nos. 605 and 606, dated January 10, 1887, which relate to the status of foreigners under the laws of Salvador and Costa Rica, respectively, have been received.

As you are aware, a municipal law excluding foreigners from having recourse to their own sovereign to obtain for them redress for injuries inflicted by the sovereign making the law has, in itself, no international effect. The United States, for instance, would not be precluded from calling on Costa Rica for redress for injuries inflicted on a citizen of the United States by Costa Rica by the fact that the latter state had adopted a law to the effect that no such claims are to be entertained. By the law of nations, the United States have a right to insist upon such claims whenever they hold that such redress should be given; and they

would not regard a statute providing that such redress should not be given; and would not regard a statute providing that such claims were not to be the subject of diplomatic action as in any way an obstacle to their taking such action. And I have further to say that the fact that a citizen of the United States was residing in the territory of a state passing such a statute at the time of an injury inflicted on him this does not preclude him from availing himself of the aid of the Government of the United States in obtaining redress; for even were such residence regarded as a tacit acceptance of such a law (which it is not) such acceptance would be inoperative, since no agreement by a citizen to surrender the right to call on his Government for protection is valid either in international or municipal law.

You will perceive that this instruction is, in a measure, a renewal of instruction No. 409, dated November 29, 1886. It may be proper, under the circumstances, for you to state to the authorities of Salvador the objections put in this and in my instruction No. 409 to the proposed legislation; but you are in no sense to express your assent to any amendment of or substitute for that legislation, or do any act which might cause it to be hereafter argued that the United States, being a party to any municipal legislation of either Costa Rica or Salvador, was bound by such legislation.

I am, etc., T. F. BAYARD.

No. 80.

Mr. Hall to Mr. Bayard.

No. 620.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, February 21, 1887. (Received March 19.)

SIR: I had the honor to report to you in my dispatch No. 600, of the 24th of December last past, that the Governments of Salvador, Honduras, Nicaragua, and Costa Rica had accepted the invitation of the Government of Guatemala to send their delegates to a Central American Congress, which, it was proposed, should meet in this city on the 20th of January of the present year, with the view of uniting in a general treaty, acceptable to all, which would assure the peace, mutual friendship, and harmony of the Central American States.

The delegates met in this city on the appointed day, and on the 16th instant concluded and signed a general treaty of peace, friendship, alliance, and commerce containing many important provisions. I have the honor to inclose a copy and translation, which I have no doubt will be found of interest.

The principle of arbitration for the settlement of all disputes is adopted. The treaty contains stipulations in regard to non-interference in the internal affairs of each other, reciprocal free trade in their own products and manufactures, and reciprocal freedom of navigation in their rivers, lakes, bays, and seas, and postal and telegraphic union.

A commission of two delegates from each state will meet in Guatemala two months after the exchange of ratifications for the purpose of formulating projects for the assimilation of their laws relating to coinage, weights and measures, and their civil, commercial, and penal codes.

It is stipulated also that there shall be a general congress of all the states every two years for the discussion of matters of mutual interest.

They agree also to use their influence in promoting the political union of the states, and the congress, which it is proposed shall meet on the 15th of September, 1890, will be empowered to take preliminary steps for that object.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 620.—Translation.]

Treaty of peace and friendship between the five Republics of Central America, signed in Guatemala the 16th of February 1887.

The Governments of Nicaragua, Costa Rica, Guatemala, Honduras, and Salvador desiring to draw closer and to strengthen the ties of fraternity and the friendly relations fortunately existing between these Republics; desiring also to secure their internal tranquillity and exterior peace and to promote the most ample development of their elements of prosperity; desiring also to establish appropriate bases for the near advent of the longed-for political union of Central America, have decided to enter into a general treaty, that may tend to the realization of such important objects; to this effect they have appointed as their plenipotentiaries—

The Government of Nicaragua, his excellency the licentiate Don Modesto Barrios, envoy extraordinary and minister plenipotentiary near the Government of Guatemala; the Government of Costa Rica, his excellency Señor Don Ascension Esquivel, envoy extraordinary and minister plenipotentiary near the Government of Guatemala; the Government of Guatemala, his excellency Señor Dr. Don Fernando Cruz, minister for foreign relations; the Government of Honduras, his excellency the licentiate Señor Don Jeronimo Zelaya; and the Government of Salvador, his excellency Señor Don Rafael Reyes, respectively, the envoys extraordinary and ministers plenipotentiary of Honduras and Salvador near the Government of Guatemala, who, after having communicated to each other their respective full powers, found to be in due form, have agreed to the following articles:

ARTICLE 1.

There shall be lasting peace and sincere and loyal friendship between the Republics of Nicaragua, Costa Rica, Guatemala, Honduras, and Salvador.

If, unfortunately, any difficulty between two or more of the said Republics should occur, they shall endeavor to terminate it between themselves in an amicable and friendly way; but if that settlement should not be attained, they shall adopt, positively and inevasibly, the medium of arbitration for the termination of the disagreement.

In order that the selection of an arbitrator may never be an obstacle to the fulfillment of this stipulation, it is agreed that if in four months after the publication by one of the contending Governments, in its official newspaper, of the note in which it demands of the other or others the election of such arbitrator, they should not have come to an agreement for the designation of a government or person to undertake the duties thereof, three shall be drawn from among the Governments of the following nations:* Germany, the Argentine Republic, Belgium, Chili, Spain, United States of America, France, Great Britain, and Switzerland. The first drawn shall be the arbitrator; if he declines, the second shall be taken, and if the second should also decline, then the third of those that have been drawn shall be the arbitrator.

The drawing shall be made in the presence of the representatives of the parties in contention by the delegates of the other Central American Governments whom either of the disputants may require for that purpose.

ARTICLE 2.

In case of a disagreement between two or more of the contracting Republics that may endanger the continuance of their good relations, it is the duty of the Governments which have no direct part in the dispute to interpose their good offices, jointly or separately, between the disputants, to induce them, if possible, to enter into a friendly arrangement, to the end that the principle of obligatory arbitrament be respected by all the parties to this convention.

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* These countries are named in alphabetical order in the original.

But if a rupture in fact should occur between two or more of the contracting Republics, the others, without omitting their good offices for an immediate cessation of commenced hostilities, agree to observe the strictest neutrality.

ARTICLE 3.

The contracting Governments, wishing to avoid motives for suspicion or mutual distrust, and recognizing the necessity that each one should abstain absolutely from all interference, direct or indirect, in the internal affairs of the other Republics, oblige themselves in the most solemn manner to respect the principle of non-intervention.

ARTICLE 4.

Should there be any disagreement between any of the contracting Republics and a foreign nation, the other parties to this contract, when informed thereof, shall interpose conjointly their good offices between the disputants, with the object of obtaining a friendly and peaceful settlement of the difficulty, and if such settlement should not be possible, it is agreed that the cause of the disagreement shall be submitted to arbitration.

If by these means of peace and conciliation it should not be possible to obtain a friendly termination of the dispute, and it should not be the Central American Republic which rejects such means, it is agreed that all the contracting Republics shall make common cause and shall be allied for the defense of the Central American territory.

ARTICLE 5.

Each one of the contracting Republics obligates itself to respect the independence of the others, and to prevent, by all the means in its power, the collection or preparation of war material, the enlistment of men, the collection of arms, or arming vessels to operate hostilely against any of the others, and political refugees from abusing their asylum, by plotting or conspiring against the established order in such Republic or against its Government.

In case such refugees or political malcontents should give just motives for distrust to one of the parties or that such party should ask for their detention, they shall be removed from the frontier or coast a sufficient distance to dispel all anxiety and to prevent their continuing to be a cause of apprehension.

That the Governments may be duly informed upon this point, it is also stipulated that whenever there shall be any suspicious emigration from one of the Republics to any of the others, or information received in regard to the plottings or conspiracies of malcontents against any of the contracting Governments, the party interested shall give official notice to the others, so that it may adopt opportune measures in due season.

ARTICLE 6.

As the contracting Republics must consider themselves as disintegrated members of one sole political body, and in no one case as nations foreign to each other, it is established that the natives of any one of them shall enjoy all the political rights that pertain to the natives of the Republic in which he resides. But in order that he may be considered as a native, and be subject to the duties and contributions to which natives are subject, it is essential that expressly, by a declaration in writing made before a competent local authority, or tacitly by the acceptance of an office of public duties, he shall manifest his wish to be considered as a native. It is understood, notwithstanding, that the Central American who accepts the concessions granted by this article does not by such acceptance of citizenship in one of the Republics lose his nationality in that of which he is a native.

In order that this stipulation may be effective in all Central America, the Governments which require it agree to amend their respective constitutions in the sense that the natives of the other Republics of Central America, without other requisites than their express or tacit consent, shall enjoy all political rights without any limitation.

In regard to civil rights, all Central Americans are on an equal footing. This assimilation shall be absolute, unreserved, and without any difference whatsoever.

ARTICLE 7.

The term of one year of continuous residence is the limited time to be required of the natives of Spanish American States for obtaining naturalization in Central

America; and three years are designated as the maximum of residence to be required for the same object of other foreigners. In this sense the Governments that require it agree to amend their respective constitutions.

ARTICLE 8.

The citizens of one Republic residing or domiciled in any of the others shall be exempt from obligatory military service of every kind, land or marine, and from forced loans, exactions, and military requirements. They shall not be compelled, under any pretext, to pay higher contributions or ordinary and extraordinary taxes than those paid by natives.

ARTICLE 9.

The diplomatic agents of one Republic in any of the others may morally aid with their good offices the rights of their compatriots in matters that are carried before the authority; but claims to establish diplomatic action shall be admitted and made use of only after all the recourses of legal process which by the laws of the country are granted to natives shall have been exhausted, there shall have been a denial or a culpable retardation of justice or notorious injustice in the resolution.

ARTICLE 10.

As regards the damages and injuries that the native of one of the Republics may receive in the territory of any of the others, the Government of the latter shall not be responsible except when caused by the Government itself or by the authorities of the country. In such case the injured party shall be heard by the authorities, and justice obtained through them, under the same laws to which the natives are subject, so that in no case shall the citizens of one of the contracting parties be placed on a better footing than the citizens of the others.

ARTICLE 11.

The natives of one of the contracting Republics may exercise in any of the others, in conformity with the local laws, their professions and trades without other requirements than the presentation of the titles therefor, properly authenticated, their identification of person, if required, and the credential of the executive power. They shall also have the right to matriculate in the university, faculty, or respective college their academic courses upon such authentications and identifications.

ARTICLE 12.

The commerce, by land or by water, between the contracting Republics, in products natural to the soil or manufactured in their territory, shall be absolutely free and exempt from duties of importation or exportation, whether customs or municipal. This stipulation shall commence to have effect on the 15th day of September, 1890. Neither shall any duty, fiscal or municipal, be collected in any of the contracting Republics nor at any place in Central America upon the products, natural or manufactured, passing in transit from one to another of said Republics.

The exemptions of this article are not to be extended to products which are not now, and may not be hereafter, of free trade in the Republic to which they are destined, from which exported, or through whose territory they may pass in transit.

To avoid the frauds that might be committed under this concession it is agreed that the products referred to, of free trade, upon being imported into the territory or dominions of one of the Republics, or in passing through them in transit, shall be accompanied by a safe conduct issued by the competent authorities of the Republic from whence they proceed, in which shall be certified their origin and that such products are exported from one of the contracting Republics to another, and the corresponding landing certificate, signed by the competent authority (of the place of destination), shall be presented within two months. The presentation of this landing certificate shall not be necessary if the said articles should be of free exportation, whatever may be the place to which they may be destined.

To guaranty more efficiently the reciprocal commerce between the contracting Republics, it is agreed that in no case, save in that of a formal declaration of war, shall one Government close the commercial relations of its country with another or others of the sections of Central America.

ARTICLE 13.

The navigation of the rivers, lakes, lagoons, gulfs, bays, and seas of either of the contracting Republics shall be free to all Central Americans upon the same terms and with the same limitations accorded to the natives.

ARTICLE 14.

The merchant vessels of any of the contracting parties shall be considered in the rivers, lakes, seas, coasts, or ports of the other as national vessels; they shall have the same exemptions, franchises, and concessions of the latter, and shall pay no other duties nor support other burdens than are paid by or are imposed upon the vessels of the country.

ARTICLE 15.

Correspondence is permitted between the judicial authorities of the contracting Republics in whatever relates to requisitory warrants in civil, commercial, or criminal matters, judicial summons, interrogatories, reception of declarations, reports of experts, and other acts of legal procedure.

The requisitions shall be addressed through the diplomatic channel and the authority called upon is bound to give them due course in conformity with the local laws.

ARTICLE 16.

The sentences in civil and commercial matters, arising from personal action, duly legalized and emanating from the tribunals of one of the contracting parties, shall have, upon the requisition of the same tribunals, in the territory of the other parties. the same force as those that emanate from the local tribunals and shall be executed by them in the same manner.

In order that these sentences may be carried out, they must be previously declared to be executory by the superior tribunals of the Republic in which their execution is to take place, and this tribunal shall not so declare them to be without establishing by a previous summary process—

(1) That the sentence has been pronounced by a competent judicial authority and with legal citation of the parties.

(2) That the parties have been legally represented or legally declared to be contumacious.

(3) That the sentence contains nothing that is contrary to public order or the public rights of the state.

ARTICLE 17.

Public instruments of every kind, granted in either of the contracting Republics, even previous to the conclusion of the present treaty, shall have in the others the same force and validity as those that emanate from the local authority or that have been granted by the local notaries or registers, conditional with their being draughted in accordance with the laws of the Republic from whence they proceed.

ARTICLE 18.

The contracting Governments agree to receive, reciprocally, in their respective territories the diplomatic agents that they may have occasion to accredit, and to protect and treat them according to generally accepted international rules and practices.

ARTICLE 19.

Diplomatic and consular officers of either of the contracting Republics in the foreign cities, places, and ports, where at the time there may not be a diplomatic or consular agent of another of the said Republics, shall afford the persons, vessels, and other interests of the citizens of the latter the same protection that they give to the persons, vessels, and interests of their compatriots, without requiring of them for the official dispatch of their business other or higher dues and emoluments than those that they are accustomed to require of their own citizens.

The acts of authentication and notarial, extended in a foreign country by a diplomatic or consular officer of either of the contracting Republics, in accordance with the laws of his country and treating of his own compatriots, shall be valid and shall have full faith in either of the other Republics. Acts of the same nature, extended in favor of or treating of the natives of another of the Republics shall be valid and shall receive faith in the latter, provided that the laws of the nation, in which the acts are to be executed, shall have been observed and that the latter had not, at the time of granting such documents, any diplomatic or consular representation at the place of the residence of the consul or diplomatic agent, and after the formalities of stamping, recording, and others required in the country wherein they are to be put into execution.

The appointments of diplomatic agents and of consuls made by each of the Governments and the signatures of such functionaries shall be communicated to the other Governments.

ARTICLE 20.

The natives of either of the contracting Republics shall enjoy in the others the rights of literary, artistic, and industrial property upon the same terms and subject to the same requisites as are enjoyed by their citizens.

ARTICLE 21.

The contracting Republics obligate themselves to maintain for their mutual mail service the same basis adopted by them as parties to the Universal Postal Union, with the sole exception that printed matter of whatever kind published in either of the Republics shall circulate free of postage in every part of the Central American territory.

ARTICLE 22.

It is agreed between the five Governments that the transmission of a telegram from one to another of the Republics shall pay no higher rate than those designated for the cheapest telegraphic communication between any two places in the territory of the Republic from whence the telegram proceeds, and that neither in the intermediate nor transit offices nor in that of reception shall any fee be received or extra charge made.

So long as Honduras, Guatemala, and Costa Rica have no telegraphic cable station on the Pacific coast, the land lines of Salvador and Nicaragua shall continue to transmit, respectively, the cablegrams received at La Libertad and San Juan del Sur from and to Guatemala and Honduras and from and to Costa Rica. The telegrams in which cable dispatches are transmitted shall pay no higher rates than those of telegraph land communications.

The telegraphic conventions and those relating to cable dispatches, between the contracting parties are modified in whatever they are in conflict with the present stipulations.

ARTICLE 23.

There shall be a complete and regular exchange of official publications between the five Governments. There shall also be an exchange of the unofficial publications in their respective territories; to this effect every editor and every owner of a printing-press shall be required to deposit in the respective department for foreign affairs, immediately after the publication thereof, eight copies, of which two copies shall be sent to each one of the other Central American Governments. In order that they may be duly preserved, for convenient reference, each Government shall deposit one copy of each publication in the public library it may select.

ARTICLE 24.

The Governments of the contracting Republics, in the cases wherein capital punishment may still be legally applied for common or political offenses, obligate themselves to procure, in the shortest period possible, the abrogation of the laws that prescribe it, to the end that respect for human life may become an established principle of Central American law.

ARTICLE 25.

A commission of two individuals of each contracting party shall meet in the city of Guatemala, two months after the exchange of ratifications, with the object of formulating projects for the unification of the laws of all the Republics concerning moneys, weights, and measures, professional studies, diplomatic and consular regulations, as also the civil, penal, and commercial codes. As soon as the said commission shall terminate either of the projects, it shall be transmitted to all the Governments for presentation to their respective congresses at their first sessions.

ARTICLE 26.

In order that the affairs of common interest to all of the contracting Republics may be discussed periodically and expedient measures adopted, there shall be a congress of the plenipotentiaries of all of them every two years. The congress shall employ itself

in the formation of such new treaties as experience may have suggested as necessary or useful for the development of the great Central American interests; in reforming those that in practice may have proved to be prejudicial or dangerous, and in discussing the affairs of general interest that either of the plenipotentiaries may submit for consideration.

The meetings of the congress shall take place by turn in all of the Republics in the following order: Costa Rica, Salvador, Honduras, Nicaragua, and Guatemala; and the first meeting shall take place on the 15th of September, 1888.

ARTICLE 27.

The contracting Governments agree to labor for the political union of Central America, in the sense of making it practicable, always by pacific means and upon solid bases that will conciliate reciprocal interests and be acceptable to public opinion. With this object the plenipotentiaries to the congress that will meet on the 15th of September, 1890, shall carry instructions and powers (should the obstacles which now prevent such union and the required elements therefor be removed) to enter into an appropriate compact in the form most suited to the general interests. To attain this object, the Governments will come to an understanding as to the most adequate means for carrying it out.

ARTICLE 28.

The contracting Governments desiring to proceed in accord in whatsoever affects the general interest of Central America will take steps to assimilate their foreign policy and to have a common representation near other nations. They will endeavor also to come to an understanding as to the bases for ulterior treaties with other nations, concessions to steamship companies, railroads, etc.

ARTICLE 29.

The five Governments agree to continue observing a policy in conformity with the democratic principles established in their several constitutions, and especially to carry out, in whatever depends upon themselves, the principle of alternation in the exercise of power.

ARTICLE 30.

The present treaty shall be perpetual and always binding in all that relates to peace, friendship, alliance, and arbitration; upon all other points relating to commerce, navigation, and other subjects it shall remain in force and vigor for the term of fifteen years, dating from the exchange of ratifications. Notwithstanding, if one year previous to the expiration of that term none of the parties shall have given official notice of an intention to terminate the same, it shall continue in force until one year after such notice shall have been given. Even should the notice referred to be made by one or more Governments the treaty shall not thereby be terminated for all, and shall continue to be binding upon the contracting parties that may not have manifested their intention to terminate it.

If, unfortunately, hostilities should break out between two or more of the contracting Republics, the present treaty shall subsist without alteration with the others. It shall be binding between the contending parties in whatever may not be incompatible with a state of war. Peace being made, the treaty shall revive without the necessity of an especial declaration to that effect.

ARTICLE 31.

This treaty shall be subject to the requisite ratifications, and these shall be exchanged in the city of Guatemala within the term of two months after the last ratification shall have been made. To this effect each Government shall notify the others of the ratification on its part as soon as it shall have taken place. The non-ratification of this treaty by one or more of the contracting Republics shall not release those which may have already ratified it, and among these it shall be binding and valid.

If either of the Republics should reject one or more only of the articles of this treaty, the other articles which it may have approved shall be binding in case that, after having communicated it to the others, these by common accord should consider the rejected articles as not indispensable for the conservation of the whole treaty. It is understood that they, as between themselves, remain bound to the observance of all the stipulations.

ARTICLE 32.

In virtue of this treaty those of peace, friendship, and commerce existing between the parties remain without effect.

In faith whereof the plenipotentaries have signed five originals and have thereunto affixed their respective seals.

Done in the city of Guatemala the 16th day of February, 1887.

MODESTO BARRIOS.
ASCENSION ESQUIVEL.
FERNANDO CRUZ.
JERONIMO ZELAYA.
RAFAEL REYES.

No. 81.

Mr. Hall to Mr. Bayard.

No. 621.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, February 24, 1887. (Received March 15.)

SIR: I inclose a translation of a protest of the minister for foreign affairs of Nicaragua against the alleged encroachments of Costa Rica on the San Juan River, as a violation of the intent and spirit of the convention signed at Guatemala on the 24th December, 1886, by which the two Governments have agreed to submit the question as to the validity of their treaty of 1858, the cause of the present difficulties, to the arbitration of the President of the United States.

The Nicaraguan minister to Guatemala has been instructed to confer with the Guatemalan Government in regard to these encroachments. The conference took place on the 22d instant, and resulted in the signing of a protocol, of which a translation is also inclosed. This Government will no doubt offer its mediation should the reply of Costa Rica be unsatisfactory to Nicaragua.

The point on the San Juan River which it is supposed Costa Rica intends to fortify is near to the Machuca Rapids, from whence the proposed canal eastward will commence.

The reply of Costa Rica, which I shall forward as soon as received, will no doubt afford an explanation of the real intentions of Costa Rica, and enable the Department to better understand this new phase of the dispute.

I have, etc.,

HENRY C. HALL.

[Inclosure 1, in No. 621.—Translation.]

The minister for foreign affairs of Nicaragua to the minister for foreign affairs of Costa Rica.

DEPARTMENT OF FOREIGN RELATIONS OF NICARAGUA,
Managua, February 14, 1887.

MR. MINISTER: By special instructions of the President, I have the honor to address you and to call your attention to a matter of manifest gravity, which has attracted the notice, not without good reason, of the people and Government of Nicaragua. From trustworthy information it is known that many days ago a Costa Rican engineer arrived at the place known as "Los Chiles," accompanied by several individuals; that he has taken measurements of the ground from that spot to a point called "El Infiernito," near to the "Machuca Rapids;" that he is opening paths and roads along the route which, considering the fact that that zone is uninhabited, cannot be otherwise than for strategic purposes, and, still more, Costa Rican troops have arrived at the same place, "Los Chiles."

The fact that the Costa Rican Government established last year a corps of customs guards at the mouth of the Colorado River, dependent upon the general inspection department of the treasury, placed at the disposal of the corps a national steamer to run over the San Juan, Colorado, Sarapequi Rivers at least once a week, and has laid out a town on the left bank of the Colorado, giving it the name of Yrazú, was the cause of the revival between the two Governments of the old question of boundaries, and that the dispute should attain to such proportions as apparently to close the door to a peaceful settlement.

That same aspect of the dispute moved the President of Guatemala to offer his mediation, which, after long conferences in which the minister plenipotentiary of Costa Rica did not manifest as conciliatory a spirit as was to be desired, resulted in the signing, on the 25th of December last in that capital, of a convention, which after ratification will bind both contracting parties to submit the question as to the validity or nullity of the treaty of limits of 1858 to arbitration, and designates as arbitrator the President of the United States of America.

The difficulty being placed under such enlightened auspices, it was not to be supposed, judging the affair according to the accepted principles of civilized peoples, and by the rules for their reciprocal relations, that either of the two contracting parties should, before the decision of the question through the medium agreed upon, take any step that would alter the status existing at the time I have referred to.

For all these reasons this Government observes with much concern that while we have withdrawn the troops which were to reinforce the garrisons of San Carlos and Costillo, the peace establishment only remaining there, and at a time when it was in the act of approving that convention the Government of Costa Rica unexpectedly assumes the singular attitude in which she appears to be placed by the acts that have given occasion for this dispatch, inasmuch as, according to the spirit of the convention referred to, while it remains unratified by the Congresses of the two Republics, the Government of Costa Rica has no right to exercise acts of jurisdiction that are equivalent to eminent domain over the same territory whose ownership the Government of Nicaragua maintains does not pertain to Costa Rica.

One of two propositions, either the Government of Costa Rica is disposed to accept the convention or to reject it; if the former, the status of the question as it was when brought up in June last ought not to be changed, as has been done, more especially after the acceptance of mediation and, as its result, arbitration; if the second, the good faith Nicaragua has given proof of in this affair, as in all others, gave it the right to expect that the Government of Costa Rica would select in such event the unequivocal course of frankness, and would publicly and categorically refuse its approbation of that convention.

I promise myself, Mr. Minister, that your excellency, in view of the gravity of the circumstances and of the powerful reasons herein set forth, will be pleased to honor me with an explanation which, while defining clearly the intentions of the Government of your Republic in regard to the status of the question of boundaries as established by the convention, will permit the Government of Nicaragua to understand the line of conduct it must follow in regard to the same matter, and to comply with its unavoidable duties to the nation.

Moreover, be the intentions whatever they may be, the President wishes me to demand, as I now do, of the Government of Costa Rica that as soon as possible it shall order a cessation of all military engineering work and that the troops referred to in the beginning of this dispatch shall be withdrawn from the right bank of the river San Juan, so that there may be no obstacle in the way to prevent the convention of arbitration having its desired results.

Trusting sincerely that nothing will occur to alter the cordial relations of friendship between Nicaragua and Costa Rica,

I have the pleasure to renew, etc.,

JOAQUIN ELIZONDO.

[Inclosure 2 in No. 621.—Translation.]

Protocol of a conference between the minister plenipotentiary of Nicaragua and the minister for foreign affairs of Guatemala.

On the 22d day of February, 1887, his excellency Señor Don Modesto Barrios, envoy extraordinary and minister plenipotentiary of Nicaragua, called upon the minister for foreign affairs of Guatemala, Señor Cruz, and stated that he had received special instructions from his Government to make known to the Government of Guatemala in private conference with the minister for foreign affairs the following:

That the Government of Nicaragua has learned with great surprise that the Government of Costa Rica has sent to a point known as "Los Chiles," near to the San Juan River, an engineer who in association with other persons is making surveys of

the ground between that point and Machuca Rapids, at a place called "Infiernito," and opening paths and roads which, in view of the fact that all of that zone is uninhabited, can not be considered otherwise than strategic. In addition, the Government of Nicaragua knows that Costa Rica has sent forces to the point called "Los Chiles."

That, as he has already stated, his Government (Nicaragua) has witnessed these acts with surprise, from the fact that such attitude is incompatible with the recent agreement to submit the question of boundaries pending between the two countries to the peaceful and humane recourse of arbitration; on the contrary, that attitude represents a bellicose spirit tending to provoke hostilities, the more, it is believed, inasmuch as military positions have been taken, intercommunicating by the strategic roads referred to, which may be used to dominate the San Juan River. For these reasons my Government has demanded the necessary explanations of Costa Rica, demanding also that she define her intentions and purposes in such a manner as will suggest to Nicaragua the action to be taken in future.

That the Government of Guatemala having with fraternal interest mediated in the question of boundaries between the two Republics, and having made use of its good offices to the extent of obtaining the submission of these pending difficulties to the arbitration of the President of the United States, the Government of Nicaragua has instructed him to bring these facts to the knowledge of the Government of Guatemala, and to place in the hands of the minister for foreign affairs a copy of the dispatch addressed to the Government of Costa Rica, to which reference has been made, and although he wishes and expects that the Government of Costa Rica being impressed with the powerful reasons that Nicaragua has in asking of Costa Rica that she observe a conduct with her neighbor more in harmony with the spirit of fraternity that ought to preside over the relations of the two countries, more in accord with the situation of friendly abeyance in which they have been placed by the convention of arbitrament, and in fine, more in accordance with the sentiments of peace, loyal friendship, and harmony that have inspired the labors of the congress of plenipotentiaries of the five Republics that has just closed its sessions in this city—a congress convened in virtue of the laudable initiative of the Government of Guatemala.

He repeats that although he hopes and looks for a satisfactory reply from the Government of Costa Rica, in anticipation of the unfortunate event ever to be lamented, that the asked-for explanations should not be obtained or should not be satisfactory, he now desires to prove to the Government of Guatemala the loyalty, good faith, and prudence that his Government has maintained in this matter in refraining to give to these long-continued provocations such an answer as would satisfy the justly indignant national sentiment, a prudence that has been observed on former occasions in deference to that peace which is so dear to nations, and a desire to avert, so far as possible, a shedding of kindred blood, a conduct also observed on this occasion as a proof of special consideration for the Government of Guatemala, which has manifested so much interest in averting a war between the two countries, a war which the Government of Nicaragua, always essentially peaceful, has never provoked nor will provoke, but will be under the necessity of accepting when all the measures of conciliation initiated and favored by the Government of Guatemala shall have been exhausted, leaving to its authors the responsibility of the calamitous consequences of a fratricidal contest and the scandal to which it would give rise in the civilized world.

The minister for foreign affairs of Guatemala expressed the thanks of his Government to that of Nicaragua for the deferent consideration it has shown in making known to him the matters hereinbefore mentioned, that his Government vehemently desires peace in Central America, and that the solution by arbitration of the difficulties pending between Nicaragua and Costa Rica shall not fail. That to obtain such solution his Government is disposed to do whatever may be in its power in deference to the common fraternity for which it has cordially labored in the Central American Congress. He, Señor Cruz, hopes that he may be informed of the reply that Costa Rica may give to the note, a copy of which has been delivered to him, and that in case it should not satisfy the Nicaraguan Government, and the latter should be pleased to make it known to him, his Government will take special satisfaction in exhausting all the means at its disposal, and in exercising its friendly offices to the end that all may be arranged according to the spirit of compromise and conciliation that inspired the convention, and that for no cause shall matters ever reach the extreme of a war between sister Republics; above all at a time when the foundations are being laid for an enduring peace among all.

The minister for Nicaragua expressed his thanks for these friendly manifestations and further stated that his Government would keep the Government of Guatemala informed of all that may transpire in the premises; that the attitude of the Government of Guatemala and the interest it manifests are new proofs of the cordial harmony that unite Guatemala and Nicaragua.

MODESTO BARRIOS.
FERNANDO CRUZ.

No. 82.

Mr. Bayard to Mr. Hall.

No. 440.] DEPARTMENT OF STATE,
Washington, March 18, 1887.

SIR: I have received your No. 621 of the 24th ultimo, further relating to the difficulties between Nicaragua and Costa Rica, growing out of the alleged encroachments of the latter on the San Juan River, and have to commend your action in sending hither all attainable information upon the subject.

The Department is, however, not in a position to express any views as to the merits of the controversy in advance of the proposed submission of the dispute to the President's arbitration. But it does earnestly counsel moderation, and some honorable *modus vivendi* pending a definite adjustment of their differences.

I am, etc., T. F. BAYARD.

No. 83.

Mr. Bayard to Mr. Hall.

No. 442.] DEPARTMENT OF STATE,
Washington, March 23, 1887.

SIR: I have received your No. 620, of the 21st ultimo, inclosing a copy of a treaty of peace and friendship between the five Central American states, signed at Guatemala, February 16, 1887, and have to say that the same has been read with much interest. I have also to express the hope that this arrangement will fulfill the purpose for which it was signed and promote peace and harmony among states so intimately joined by historical associations, identity of blood, and community of interests.

I am, etc., T. F. BAYARD.

No. 84.

Mr. Hall to Mr. Bayard.

No. 641.] LEGATION OF THE UNITED STATES,
Guatemala, April 11, 1887. (Received May 5.)

SIR: With reference to your instructions, No. 409 and No. 429, of the 27th November, 1886, and the 16th February, and to my dispatches numbered 574, 605, and 627, the latter dated the 8th ultimo, I beg leave to invite your attention to the inclosed copies and translation of correspondence with the minister of foreign affairs of Salvador, in relation to the recent law concerning citizenship and the status of foreigners in that Republic.

The minister's communication dated the 28th ultimo, in answer to mine of the 7th January last, is a general denial that the law in question conflicts with the established rules of international intercourse, or that it leaves to the Salvadorian authorities to decide upon the nationality of a foreigner. The object of the law, he contends, is that the

Government may be informed as to number of foreigners in the country and their domiciles, with a view to afford them due protection and to prevent any acts against them that might give rise to diplomatic intervention. He wishes it to be understood that the law is for the benefit of foreigners, and is not intended to restrict their movements and operations, and that Salvador does not ignore the right of foreign Governments to intervene in behalf of their citizens and subjects. In a note, addressed to one of my colleagues, he states that the object of the law referred to is to put a stop to the unjust claims of foreign Governments.

In regard to Articles 39, 40, and 41, which assume to define what is to be understood by a denial of justice and to impose restrictions upon foreigners in their recourse to their own Governments, he also denies that those provisions are in opposition to international rights.

I find his communication neither clear nor consistent, and in parts unintelligible. He concludes, however, with the information that the subject will be brought to the notice of the legislature of Salvador at its next session, with the object, it may be supposed, of proposing some amendments to the law. In the mean time I learn that the Government has taken no steps to carry out the law.

* * * * * * *

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 641.]

Mr. Hall to Señor Delgado.

GUATEMALA, *January* 7, 1887.

Mr. MINISTER: In the official newspaper of the Government of Salvador, of the 1st of October, is published the law of the 29th of September last, in relation to the general subject of citizenship and to the status of foreigners in that Republic. Having forwarded a copy of the law to the Department of State of my Government, I have been instructed to respectfully invite the attention of your excellency to some of its provisions which raise important questions of international right and whose enforcement would give rise to continual and probably grave controversies. Such has been the result of the attempts elsewhere than Salvador to enforce similar regulations which operate as a restriction upon the exercise by States and by citizens of their relative rights and duties according to the generally accepted rules of international intercourse.

The matriculation of foreigners, as defined in Article 21, is an inscription of their names and nationalities in a book kept for that purpose in the department for foreign affairs. In order to be so inscribed they must produce to that department certain evidence prescribed by the laws of the Republic, of their right to the national status so claimed. If the requisite evidence be exhibited, the name and nationality of the applicant are registered, and in proof of this he is given a certificate of matriculation, which, however, is only *prima facie* evidence of the national status (Article 24), but without this certificate no authority nor public functionary of Salvador is permitted to recognize a foreigner's nationality (Article 26).

By Article 28, Chapter III, it is provided that matriculation concedes privileges, and imposes special obligations, called by the laws of the Republic "Derechos de extrangeria." These, as stated in Article 29, are as follows:

(1) El de invocar el extrangero los tratados y convenciones existentes entre el Salvador y su respectiva nacion;

(2) El de recurrir á la proteccion de su propio soberano por la via diplomatica; y

(3) El beneficio de reciprocidad.*

*(1) That the foreigner may invoke treaties and conventions existing between Salvador and his own nation;

(2) That he may resort to the protection of his own sovereign through the diplomatic channel; and

(3) That he shall enjoy the benefit of reciprocity.

Unless a foreigner possesses a certificate of matriculation, no authority nor public functionary of Salvador, as has been seen, is permitted to concede to him any of these rights; and in Article 27 it is further provided that the certificate of matriculation shall not operate retroactively upon a claim of right arising anterior to the date of matriculation. Thus the object and purport of the law in question is to make the enjoyment and the assertion by a foreigner in Salvador of the consequent rights and privileges of his national character, whether guarantied by treaty or secured by the general rules of international law, conditional upon his possession of a document prescribed by the municipal law as the proper proof of his citizenship.

In order to appreciate the significance of such a requirement, it is only necessary to consider that if admitted its effect would be to leave the question of the national status of a foreigner wholly to the determination of the Salvadorian authorities, and that in the event of his failure to exhibit such proof of citizenship as they may deem sufficient, his right to claim the protection of his Government would be lost. On the other hand, the right of his Government to interpose in his behalf would be destroyed, for to deny to a foreigner recourse to his Government by necessary implication questions and denies the right of that Government to intervene. Thus by making the compliance of a foreigner with a municipal regulation a condition precedent to the recognition of his national character the Salvadorian Government not only assumes to be the sole judge of his status, but also imposes upon him as the penalty of noncompliance a virtual loss of citizenship. The effect of the law in question is to invest the officials of that Government with sole discretion and exclusive authority to determine conclusively all questions of American citizenship within their territory. This is in contravention of treaty right and the rules of international law and usage, and would be in abnegation of its sovereign duty towards its citizens in foreign lands, to which the Government of the United States has never given its assent.

It may be in place to advert to the fact that some of the provisions of the law referred to were substantially embodied in the code of Mexico; but Mexico, guided by the experience of an ample trial of her law of matriculation, modified it in June last by the repeal of the provisions which made the matriculation of foreigners compulsory and a condition of the exercise of the rights of appeal to their Governments.

Articles 39, 40, and 41 of the law in question purport to define the conditions under which diplomatic intervention is permitted in behalf of foreigners in Salvador whose national character is admitted. I am authorized to say that my Government is unable to accept the principle of any of these articles without important qualifications.

Article 39 provides that only in the event of a denial, or a voluntary retardation of justice, and after having resorted in vain to all the ordinary remedies afforded by the laws of the Republic, may foreigners appeal to their Governments.

Article 40 defines what is meant by a denial of justice, and declares that such denial exists only when the judicial authority refuses to decide the matter before him, and that consequently the fact that a judge may have pronounced a decision, although it may be said to be iniquitous or in express violation of law, can not afford a ground for resort to the diplomatic channel.

Article 41 declares that delay in the administration of justice is not to be considered voluntary when the judge alleges any legal or physical impediment which he is unable to remove.

The foregoing comment on the law of matriculation appears to be equally applicable to Articles 39, 40, and 41; that the denial to the foreigner of the right of appeal to his Government necessarily implies the denial of the right of his Government to intervene, and as this denial is based upon the decision of the tribunals of Salvador, the judgment of those tribunals are made internationally binding as to all questions of municipal or of international law coming before them.

It is admitted as a general rule of international law that a denial of justice is the proper ground of diplomatic intervention. This, however, is merely the statement of a principle, and leaves the question in each case, whether there has been such denial, to be determined by the application of the rules of international law. By Articles 39, 40, and 41, as understood by the Department of State of my Government, the Government of your excellency would avoid this question, especially where the act complained of was committed by the authorities of the Republic in pursuance of its laws. This doctrine is new to my Government, which has maintained, in its treaties and otherwise, as a settled principle of international law, the rule that in cases of violation of international right by the authorities of a state in pursuance of municipal regulations, the final decision of the national tribunals sustaining the action of the authorities is a consummation of the wrong complained of and therefore constitutes no bar nor impediment to international discussion.

I trust that your excellency will be pleased to accept these observations, which I have the honor to communicate by instruction of my Government, in the same friendly spirit in which they are offered, and in the interest of that complete understanding and friendly intercourse which ought to subsist between the Republics of this continent.

I have, etc.,

HENRY C. HALL.

[Inclosure 2 in No. 641.—Translation.]

Señor Delgado to Mr. Hall.

DEPARTMENT OF FOREIGN RELATIONS OF SALVADOR,
San Salvador, March 28, 1887.

MR. MINISTER: Opportunely I had the honor to receive your esteemed note, dated 7th January last, in which you are pleased to communicate to me that having sent to your Government a copy of the law of the 29th of September last, relating to aliens, you have received instructions to call the attention of my Government to some of its provisions, which raise important questions of international right, and whose enforcement would give rise to continual and probably grave controversies.

Among other provisions you cite, in the first place, Articles 24, 26, 27, and 29, which treat of the obligation of all foreigners to matriculate themselves in the department of foreign relations, and of the consequences of a failure to comply with that obligation. You find two objections to make against these provisions:

(1) That their effect would be to leave the question of the national status of a foreigner wholly to the determination of the authorities of Salvador; and

(2) That the right of foreign Governments to interpose in behalf of their subjects would be destroyed, as in your opinion to deny to a foreigner the right of recourse to his Government, by necessary implication questions or denies the right of that Government to intervene.

You add that in imposing upon a foreigner the obligation of matriculation as an indispensable condition to enable him to solicit the protection of his Government, that of Salvador assumes the right not only to be the sole judge of the nationality of a foreigner, but also that of imposing upon him, as the penalty of non-compliance, a virtual loss of citizenship.

You consider that these provisions are contrary to the treaties and to the rules of international intercourse and usage, and that to admit them the Government of the United States would renounce its sovereign duty towards its citizens in foreign lands, to which it has never given its assent.

Upon this particular point you consider it opportune to note the fact that some of the provisions of the law referred to are substantially incorporated in the code of Mexico, and that that Republic, guided by the experience of a long trial of her law of matriculation, modified it in June last, revoking those provisions that made matriculation obligatory and a condition of the exercise of the right that foreigners have to appeal to their Governments.

Articles 39, 40, and 41 are other provisions of the law upon which you make some observations. In these articles it is declared that foreigners can not have recourse to their Governments except in cases of a retardation or voluntary denial of justice, and after having exhausted in vain all the ordinary recourses conceded by the laws of the Republic, it is established also that there is a denial of justice when the judicial authority refuses to determine a matter submitted to him for his decision; but not when a decision or sentence may be pronounced, although it may be alleged that the resolution is iniquitous or given against express law. Upon this point you make objections analogous to those previously set forth. You say that the denial to foreigners of the right of appeal to their Governments necessarily implies the denial of the right of the latter to intervene; that by the acceptance of this doctrine the sentences of our tribunals would be internationally binding as to all questions of municipal or international law presented to them; that by the Articles 39, 40, and 41, as understood by your Government's Department of State, my Government would evade in each particular case the question of determining by the rules of international law whether there has been a denial of justice, and that your Government has always maintained the principle that in cases of violation of international right by the authorities of a state in pursuance of municipal laws, the final decision of the tribunals sustaining the action of the authorities is a consummation of the wrong complained of, and therefore constitutes no bar nor impediment to international discussion.

You conclude by declaring that the foregoing observations have been made in the interest of that complete understanding and of the friendly relations that ought to subsist between the peoples of this continent, and expressing the hope that my Government will accept them in the same friendly spirit that has inspired them.

In reply it is gratifying to me to declare to you that my Government, ever animated by the same friendly sentiments as is that of the United States, will do everything in its power to prevent the application of the law relating to foreigners, giving rise to any disagreement with friendly nations, and especially with the one that you so worthily represent.

You will now permit me to make a few slight observations in reply to those that I have referred to.

In the first place, I do not believe that the fact of imposing upon foreigners the obligation to matriculate leaves the determination of their nationality to the arbitrament of the Salvadorian authorities.

According to Article 22 of the law referred to the foreigner who presents a certification of the respective diplomatic or consular agent accredited in the Republic, in which it is set forth that the party interested is a native of the country represented by such agent, or the authenticated passport upon which the applicant has entered the Republic, or the certificate of naturalization, also duly authenticated, has the right to be inscribed in the books of matriculates. From this provision it is evident that it is exclusively the authorities of the country to which the foreigner or the diplomatic or consular agent in Salvador belongs who decide upon the question of nationality or citizenship. The question once decided by those authorities or agents and either of the documents just mentioned issued in favor of the foreigner, the minister for foreign relations is under the obligation to matriculate him and to give him the corresponding certificate thereof. I do not perceive, therefore, in what sense it can be said that the question of the nationality of foreigners depends upon the decision of the Salvadorian authorities.

The matriculation has for its object that the Government may be informed of the number of foreign residents in the country and of their respective domiciles in order that it may afford them due protection, and to avoid any act being committed against them which might give rise to diplomatic intervention. The foreigner who does not comply with the obligation to matriculate, voluntarily renounces the benefits to be derived therefrom; this in no wise is opposed to the rules of international law nor to the stipulations of treaties. On the other hand, Salvador recognizes and has always recognized the principle that a law can not alter in the least the provisions of treaties, and for the same reason if those with the United States or with any other friendly nation are opposed to the fulfillment of any of the articles of the law relating to foreigners, such article will not be enforced as regards that nation, and will be applied only to the citizens of the states with which we have no such treaties.

The first objection in regard to the matriculation of foreigners having been answered, the second objection likewise disappears. Salvador does not nor can not ignore the right of foreign Governments to intervene in behalf of their subjects residing in the Republic; it has done nothing more in the law referred to than to fix a condition upon which foreigners who wish to reside in the country may enjoy the so-called rights of alienage, among which is that of recourse to their respective Governments, as that condition is legitimate and expedient, and depends besides upon the free-will of the foreigner. Salvador in establishing it has made use of the natural rights that all peoples of the world have to impose just conditions upon foreigners who wish to reside in their territory. The foreigner who enters Salvador should know that to enjoy certain privileges he is under the obligation to matriculate; if he does not, it is he who tacitly renounces the right to invoke the protection of his Government; it is not the Government which renounces the right to protect him.

Coming now to the matter in which, according to this law, foreigners may appeal to their Governments on account of a denial of justice, I must declare to you that, in the judgment of this department, the said law refers only to claims that have their origin in acts of the judicial authorities, and not to claims that are founded upon an anterior act of the gubernative authorities. If in a civil or criminal suit a final sentence is pronounced, such decision carries with it, according to our laws, the validity of a thing judged; it must be complied with and executed against any person whomsoever, and the only recourse that remains to the party who considers himself aggrieved is to bring an action against the judge who may have maliciously pronounced an unjust sentence.

If the judicial resolution is not final, there remains always the ordinary recourses against it. For that reason the law referred to says that when a judicial matter has been decided by a decree or sentence there can be no diplomatic reclamation, although it may be alleged that the decision is iniquitous or manifestly unjust. This provision is in no way opposed to the principles of international law. You know very well that the sovereignty of a state necessarily implies the right to make laws, to interpret them, and to apply them as cases may occur. If any nation arrogates the right to revise the sentences pronounced by the tribunals of another nation, and of deciding whether they are just or unjust, the latter would not be sovereign in reality, inasmuch as in the exercise of one of its principal functions of sovereignty it would be dependent upon the former.

For this reason our law relating to foreigners declares that there is no denial of justice except when the tribunals voluntarily retard the decision of matters submitted to their cognizance or refuse absolutely to decide upon them. In case of the claim being based not upon the sentence itself, but upon an act anterior to it, I agree with you that a judicial decision can not debar the further prosecution of the claim; but I believe that in the law relating to foreigners there is no provision that establishes the contrary.

Notwithstanding the foregoing, my Government will bring your esteemed note to the notice of the national assembly at its next meeting, so that that high body, taking into consideration the observations to which I have had the pleasure to refer, may be pleased to resolve whatever may be expedient.

I improve, etc.,

MANUEL DELGADO.

No. 85.

Mr. Hall to Mr. Bayard.

No. 648.] LEGATION OF THE UNITED STATES,
Guatemala, April 27, 1887. (Received May 17.)

SIR: I had the honor to transmit to you to-day the following telegram, to the effect that the arbitration convention with Costa Rica, and a canal concession to Mr. Menocal had been ratified by the Nicaraguan Congress.

The foregoing was announced to me by two telegrams from the president of Nicaragua, received on the 25th instant and to-day; translations thereof are inclosed herewith. The former reports the ratification of the convention between Nicaragua and Costa Rica, signed in this city on the 24th of December, 1886, to submit their boundary difficulties to the arbitration of the President of the United States.

The telegram received to-day announces the ratification of a canal concession to Mr. Menocal and associates; this concession, I learn, is similar in terms to a former concession to the same parties granted in 1880, and which lapsed in 1884.

I have, etc.,

HENRY C. HALL.

[Inclosure 1, in No. 648.—Translation.]

President Carazo to Mr. Hall.

MANAGUA, *April* 24, 1887. (Received April 25.)

Minister HALL, *Guatemala:*

I have the pleasure to inform you that Congress has this day ratified the arbitration convention agreed to in that city (Guatemala) between the ministers of Nicaragua and Costa Rica.

* * * * * * *

EVARISTO CARAZO.

[Inclosure 2, in No. 648.—Translation.]

President Carazo to Mr. Hall.

MANAGUA, *April* 25, 1887. (Received April 27.)

Minister HALL, *Guatemala:*

The Menocal Canal contract has been ratified.
The President:

EVARISTO CARAZO.

No. 86.

Mr. Hall to Mr. Bayard.

No. 650.] LEGATION OF THE UNITED STATES,
Guatemala, May 2, 1887. (Received May 26.)

SIR: Recurring to my dispatch numbered 586, I beg leave to inclose an extract and translation, from a newspaper of Salvador, giving an account of an alleged scheme of ex-President Zaldivar and General Fabio Moran, to send an expedition against the Government of that state and of the action taken by the Government of Nicaragua to frustrate it. This expedition is referred to in my No. 644, of which President Menendez gave information to President Barillas.

The vessel which was to have conveyed the expedition, it is said, was purchased and fitted out at Panama by General Moran, Zaldivar's chief. It was to have touched at some designated point on the coast of Nicaragua and have taken from there a hundred and upwards Salvadorian refugees. The proposed place of landing was La Union, in the Gulf of Fonseca, where, it appears, the co-operation of some military chiefs had been secured for the scheme of revolutionizing Salvador and reinstating ex-President Zaldivar, whose efforts to regain power are persistent, but will no doubt continue to end in failure.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 650.—Translation.—From the Correo del Comercio of Salvador.]

Explanations.

We publish to-day without comments an editorial of the El Independiento of Granada, relating to a frustrated revolution against the Government of this Republic, which some Salvadorian emigrés, under the auspices of Messrs. Zaldivar and Morán had organized in Nicaragua.

As our readers will have noticed, the editorial to which we refer gave us no particulars; it is limited to denouncing the act and to eulogizing the conduct observed under the circumstances by the new President of the neighboring Republic, Señor Don Everisto Carazo.

From data obtained from entirely impartial sources, we can to-day make known to our readers that nothing less was proposed than the embarkation of more than a hundred men who, through deception, had been enlisted and conducted to the uninhabited coast by the revolutionists with the object of placing them on board of the vessel recently purchased by Señor Morán for invading Salvador.

The men had been told that the object of the gathering was to capture a large quantity of contraband liquors and tobacco, but when they arrived at the point agreed upon they were made acquainted with the object of the enterprise; they were informed at the same time that their landing would be effected at La Union, and that by that time some of the departments of the Republic would have pronounced against the Government of General Menendez, in accordance with agreements made with several military chiefs in the interior of the Republic.

Fortunately, the Government of Nicaragua, being advised in time, sent a detachment in pursuit of the revolters; ordered the emigrés at Rivas, who were in league with them, to remove to Granada, and thus frustrated their plans without the shedding of blood, or creating a scandal for Nicaraguan society.

As we learn, General Menendez has been cognizant since Holy week, when these occurrences took place, of all the particulars of the affair; he knows who they are that, within and outside of the country, conspire in union with Messrs. Zaldivar and Morán against the Government, and yet he remains tranquil and has molested no one.

We commend his course, as we also commend that of the President of Nicaragua, who has fulfilled his obligations as becomes his high position, in breaking up revolutionary projects against a sister and friendly Republic, conceived by those who imagine they have come into the world to subjugate their fellow-men, and to dispose of their lives and property as caprice may dictate.

No. 87.

Mr. Hall to Mr. Bayard.

No. 652.] LEGATION OF THE UNITED STATES,
Guatemala, May 11, 1887. (Received June 7.)

SIR: In the official newspaper of Guatemala of the 7th instant is published and promulgated a contract, entered into in February, 1886, between Messrs. Irigoyen and March, Spanish subjects, and the Guatemalan Government, relative to the establishment of a line of Spanish steamers between Panama and San Francisco, Cal., touching at the intermediate ports of Guatemala. This contract, as will be seen, was signed fifteen months ago, and is now published for the first time, twelve days after its ratification, by the Legislative Assembly.

I have referred to this contract in my No. 515 of the 17th of June, 1886, in reporting to the Department a similar agreement of the same parties with the Government of Salvador. Señor Batres, then minister for foreign affairs of Guatemala, said to me, with reference to it, that it was at variance with the policy of his Government; that although Guatemala had no commercial treaties with other nations, she had hitherto observed international comity in not discriminating against or in favor of any one * * * and he was confident that when the contract should be submitted to the Assembly, the objectionable features would be stricken out. Similar assurances were given to my colleagues. Moreover, the fact that Irigoyen and March were irresponsible bankrupts, with no standing or credit, financial or otherwise, in the country, gave reason to suppose that they would be unable to obtain the required capital or steamers mentioned in the contract.

In the mean time the parties failed to fulfill their stipulations with some of the other States, that their steamers should be ready for service in October last, giving still further reason to suppose that the project would fail altogether. The stipulation in the contract with Guatemala fixes the time, at the termination of the Government's contract with the Pacific Mail Steamship Company, in September next.

The before-mentioned contractors, after offering their concession in New York and Liverpool, have finally transferred it to the Marquis de Campo, an enterprising ship-owner of Spain, and the probabilities are that it will now be carried out.

I respectfully invite your attention to some of the conditions of this contract. The Guatemalan Government concedes to the parties, for the term of ten years, the privilege of the foreign and coastwise trade of Guatemala on the Pacific; a subvention of $20,000 a year during the first five, and of $18,000 a year during the last five years of the contract, and exemption from all port charges whatsoever.

The Government further concedes a rebate of 5 per cent.* in customs duties upon all cargo or merchandise imported into the ports of the Republic by the Spanish line. This rebate, as will be shown hereinafter, can hardly be considered otherwise than as a premeditated, unfriendly discrimination against American as well as other foreign vessels, and the effect can be no other than their exclusion from the Pacific ports of Guatemala, and even from our own port of San Francisco. This rebate exceeds in many cases the current freight upon every class of merchandise of American production or manufacture that could be imported in American vessels.

* Reduced to 3 per cent. by the Guatemalan Congress, with authority to increase to 5 per cent. in the discretion of the Executive.

A merchant of this place, who imports largely of American domestic goods, has given me the following statement, showing conclusively that the discrimination in favor of the Spanish line precludes everything like a fair competition by American vessels:

The merchant imported from New York, via Panama, four bales of bleached cotton sheetings; the freight thereon by the Pacific Mail Company's steamers was $20.75.

Import duties paid in Guatemala, $508.12.

The rebate of 5 per cent. on these duties, if imported by the Spanish line, would be $25.40, or, say, $4.65 more than the freight paid to the American line.

The same merchant received four bales of brown sheetings from San Francisco, the freight thereon amounting to $17.

Import duties paid in Guatemala, $329.12.

The rebate thereon of 5 per cent., if the same goods had been imported by the Spanish line, would be $16.45, or 55 cents only less than the freight paid to the American line.

It is evident that under such an enormous discrimination there can be no importations by American vessels into Guatemala.

The transfer of the above-mentioned contract to the Marquis de Campo was announced in the official newspaper of this Government about two months ago. Up to that time it had not been submitted to the Assembly, and the probability of its being carried out was entertained by no one.

In a conversation with Señor Cruz, minister of foreign affairs, he gave me to understand that he was decidedly opposed to the ratification of the contract, and one of the reasons he assigned was that it would deprive the Government of revenue to the extent of nearly $250,000, for which neither it nor the country would receive any compensatory equivalent. He also gave me to understand that the President shared his views. To my colleagues, the British and German ministers and the French and Italian chargés, he expressed himself in the same way, and at his invitation all of them addressed him communications upon the subject.

* * * * * * *

A copy of my communication to the minister is inclosed. I inclose also copies and translations of the contract and of the correspondence between Señor Irigoyen and the minister of public works concerning the transfer of the contract to the Marquis de Campo.

In my dispatch No. 603, of the 6th of January last, I mentioned the fact that there is a line of German steamers established between Hamburg and the Pacific ports of South and Central America by way of the Strait of Magellan. Large quantities of dry goods are imported into Guatemala by this line at low rates of freight compared with the Panama route. The German minister has exhibited to me to-day a comparative statement, carefully prepared by a German merchant, showing that upon nearly every description of merchandise usually imported by that line the rebates in duties, which shippers by the Spanish steamers will enjoy, is greatly in excess of the tariff of freight rates by the German steamers. Naturally he imagines there is no room left to the latter for a fair competition.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 652.]

Mr. Hall to Mr. Cruz.

LEGATION OF THE UNITED STATES,
Guatemala, March 24, 1887.

MR. MINISTER: I beg to be permitted to invite the attention of your excellency to a matter of grave importance affecting the commercial relations between Guatemala and the United States.

In the official newspaper of this Republic of the 15th instant is announced the transfer of a contract made a year ago by the Government of Guatamala and those of the other Central American states for the establishment of a line of Spanish steamers between Panama and San Francisco. Assurances also are given that it will be carried out.

It is understood that the contract referred to stipulates on the part of the Government of Guatemala, in addition to a money subsidy, for a rebate of 5 per centum of the customs duties upon all merchandise imported in the vessels of that line, and that this privilege shall not be extended to any other line of steamers during the existence of the contract. This stipulation practically closes the Pacific ports of Guatemala to American vessels; it excludes them from participation in the commerce between the same ports and San Francisco; indeed, with such an enormous discrimination against them they could not, even from their own ports, import merchandise of American production and manufacture into Guatemalan ports on the Pacific in competition with the Spanish line. Of course such consequences were not contemplated at the time of signing the contract, otherwise such discrimination could hardly be considered as a friendly act of the Government of your excellency in favor of American vessels. Moreover, such an alteration in the national tariff assumes the form of a discrimination against all foreign vessels in favor of the Spanish line, and affords ground for remonstrance as being at variance with that spirit of equality and comity recognized in modern international treaties of commerce and friendship.

The treaty between Guatemala and the United States, concluded on the 3d of March, 1849, but no longer in force, stipulated substantially that "no higher duties shall be levied and collected upon merchandise imported into the Republic of Guatemala in American vessels than shall be levied and collected upon merchandise imported in vessels of any other nationality." The United States have treaty stipulations of the same tenor now in force with the other Central American Republics, and the National Constituent Assembly of Salvador, to which the same contract with that Republic was submitted for ratification, rejected the clause conceding a rebate of duties upon the ground that it is a violation of the treaty of the 6th December, 1870, between that Republic and the United States.

I trust your excellency will be pleased to admit these observations in the same friendly spirit in which they are offered, and in the interest of that good understanding and cordial intercourse happily subsisting between Guatemala and the United States.

This occasion affords, etc.,

HENRY C. HALL.

[Inclosure 2 in No. 652.—Translation.—Published in the official newspaper of Guatemala of the 7th May, 1887.]

Contract between the Guatemalan Government and Messrs. Irigoyen and March for the establishment of a line of Spanish steamers between Panama and San Francisco, Cal.

OFFICE OF THE SECRETARY OF THE LEGISLATIVE POWER,
Guatemala, April 29, 1887.

To the Minister for Public Works:

SIR: We have the honor to transcribe to you the following report:

LEGISLATIVE ASSEMBLY: The committee on public works has studied with due interest the contract made with Messrs. Irigoyen and March for the establishment of a line of Spanish steamers for the service of our ports with San Francisco, Cal., and Panama.

The inconveniences which the nation has suffered for want of competition in this service are well known in having to submit to the payment of heavy freights as well upon merchandise imported as upon exported products of the country. The same thing occurs in regard to the payment of passage-money and the lack of good service to those who travel by the established line.

This same want of competition has caused delays at the ports, and in consequence expenses and losses to agriculturists and merchants. The committee believes that upon the establishment of the newly projected line and a useful competition these inconveniences will cease.

Article 2 of the contract fixes as the maximum of freights and passages 20 per cent. less than are paid to-day to the Pacific Mail Steamship Company, and, in addition to the rebate of 20 per cent. in passages, these are to be paid in the current money of the country.

Article 8 imposes upon the company the obligation to instruct every year two young men who may desire to become navigators; one as engineer, another as quartermaster; and, in addition, six launchmen as wheelmen and seamen; the company binds itself to instruct and maintain them, and, besides, give them such wages as may be assigned to them.

The committee finds the concessions made to the company for this service just and equitable, and is of the opinion that only the rebate of 5 per cent. be modified in the maritime customs duties upon merchandise coming in these steamers by reducing it to 3 per cent., inasmuch as this concession has for its sole object, as regards the company, to increase the amount of cargo coming by its steamers, and the benefit of the rebate would be solely in favor of commerce.

The committee does not believe that the concessions made to Messrs. Irigoyen and March affect in any way the commercial equality that should be observed with respect to all nations, inasmuch as they can all enjoy the rebate of 3 per cent. in maritime customs upon all merchandise, whatever its place of production, provided it comes by the line of vessels that they (Irigoyen and March) establish.

In view of the considerations set forth we propose, as the main points of the resolution, deferring always to the better judgment of this high body, the following:

Let the contract made on the 17th February, 1886, between the minister for public works and Messrs. Irigoyen and March be approved, with a modification of the article of the concessions, reducing from 5 to 3 per cent. the rebate in customs duties.

HALL OF SESSIONS, *Guatemala, April* 22, 1887.

MIGUEL URRUTIA, J. PABLO MALDONADO, GREGORIO ENRIQUEZ, R. ACEÑA, JUAN M. RUBIO, GUSTAVO E. GUZMÁN:

In discussing the report the following amendment was considered, approved, and accepted by the committee:

"That the Executive be authorized, in case of necessity, to concede a rebate up to 5 per cent. of the customs duties upon the cargo or merchandise that the said steamers carry under the conditions of this contract."

GUATEMALA, *April* 25, 1887.

PEDRO MOLINA FLORES: In bringing to your knowledge the resolution of this high body, we have the pleasure to renew to you the assurances of our distinguished consideration and esteem.

MIGUEL A. URRUTIA.
DAMASO MICHEO.

Contract referred to in the resolution which appears in the respective session of this number.

The secretary of state in the department of public works, with the authorization of the President of the one part, and Carlos F. Irigoyen and José A. March of the other part, have entered into the following contract:

ARTICLE I.

Irigoyen and March agree to establish a line of Spanish-Central American steamers for cargo, with good and commodious cabins for passengers, to run between San Francisco and Panama and way ports, binding themselves to touch once a week at each of the ports of San José, Champerico, Ocos, and any other port which the Government may hereafter open whenever there may be cargo, and remaining twelve hours in each one of the mentioned ports for the necessary loading and discharging of cargo.

ARTICLE II.

To charge as the maximum of freight and passages 20 per cent. less than what is charged to-day by the Pacific Mail Steamship Company, it being understood that passage-money, in addition to the rebate of 20 per cent., shall be payable in current money of the country.

ARTICLE III.

To carry and to bring the mails of the nation to the ports of itinerary, which the enterprise may have established, without any cost to the Government.

ARTICLE IV.

To convey, passage free, to any of the ports of the itinerary all ministers accredited by the Government.

ARTICLE V.

To carry at half the tariff of passage rates to any of the ports of the Republic troops and other civil and military employés of the Government when in active service and traveling by special order of the Government, to which effect they shall present to the agent, or to the purser on board, an order of the respective minister, in which shall be designated the class of passage that shall be given them.

ARTICLE VI.

To convey at half of the passage rates of steerage artisans, mechanics, or other persons who desire to immigrate to the Republic, whenever they come under contract with the Government and they present the contract to the agents.

ARTICLE VII.

To remain in port six hours longer than stipulated in Article I whenever the Government requires it and gives notice thereof directly to the respective agent of the company two hours before the designated time of sailing.

ARTICLE VIII.

To carry on board of their vessels and receive each year (at the end of the course) two young men who, having gained by competitive examination the required degrees of the polytechnic school, have chosen the career of navigators; they shall be maintained by the company. At the end of two years they shall present themselves for examination, and with their titles of officers they may elect employment in their class, with the usual wages of the vessels of the company. To carry also a young man to learn the occupation of an engineer, and another that of quartermaster, and also six launchmen to learn the occupation of helmsmen and seamen; these, besides their instruction and maintenance, shall receive the wages the company may assign them.

ARTICLE IX.

The names of the seven vessels which the company agrees to establish shall be *Guatemala, Salvador, Honduras, Nicaragua, Costa Rica, Mexico,* and *España.*

ARTICLE X.

The direction of the company shall be in the city of Guatemala, and the flags of the vessels shall be Spanish.

ARTICLE XI.

War materials and implements which the Government may import for its own account shall pay 25 per cent. less than the freight designated by the company. The company binds itself not to carry in its steamers war material and ammunition from the ports at which they touch to ports of Guatemala if there should be reason to suppose that such materials are to be used against Guatemala or for the purposes of war or pillage; it also agrees not to land arms in any port of the Republic when they do not come expressly for the Government.

The Government on its part concedes to the contractors, Carlos F. Irigoyen and José A. March, or to the company to which they may transfer it:

(1) A concession for ten years for the foreign and coastwise trade on the Pacific coasts of the Republic, and 5 per cent. less in the customs duties upon every class of cargo or merchandise which may arrive at any of the ports of the Republic by this line.

(2) A pecuniary subvention of $20,000 a year, payable in current coin of the country by monthly installments during the first five years; during the following five years the subvention shall be $18,000, payable in the same form as during the first five years.

(3) Exemption of the steamers of the company from the payment of the present port dues, such as tonnage, roll, light, water, etc., and those which may hereafter be established.

(4) The right to weigh anchor and leave the port without previous permission of the respective authority in case of bad weather or any other maritime incident.

(5) Exemption from dues, taxes, and imposts now in force, or which may hereafter be established, upon property, movable or immovable, of the company destined exclusively for its service.

(6) The Government will instruct the captains of the port to enter and dispatch the steamers of the company promptly both by day and by night; in the latter case the steamers shall make signals to be admitted to free-pratique.

(7) Exemption from military service of all the employés of the company, those on board as well as those on shore.

(8) The mails shall be received and delivered from alongside the vessels.

(9) The company shall establish for its own account a port light in each one of the ports of San José, Champerico, Ocos, and those which may hereafter be opened by the Government, so much needed by all navigators, and for the better service of the vessels.

ADDITIONAL ARTICLES.

I.

The contract shall commence to have effect after the termination of the contract between this Government and the Pacific Mail Steamship Company, and the contractors bind themselves to have their steamers ready for the stipulated service from that day, and in case they should not be ready the concession shall be declared to have lapsed.

II.

The payment of the subsidy shall commence from the month in which the first ordinary voyage shall take place; these voyages shall be precisely upon the dates fixed in the foregoing article.

III.

The company may omit to touch at any of the ports designated in its itinerary in the fortuitous event of being impeded by any maritime contretemps, without being held responsible for such failure.

IV.

The term of the concession shall commence to run from the day mentioned in Article I. And the ten years of its duration shall commence from the first regular voyage of the steamers.

V.

The dates upon which the steamers shall touch at the ports shall be designated by the same company and notice thereof given to the minister of public works. The same shall be done in case of a change of itinerary.

VI.

The capital stock of the company shall be considered foreign.

VII.

The company shall have the right to select in the ports of the Republic localities belonging to the Government upon which to establish warehouses, deposits of coal, offices, etc., and the Government shall cede them gratuitously.

VIII.

All materials, tools, machinery, etc., for the construction of warehouses, offices, store-rooms, etc., which the company may have to import from abroad, shall be entered free of all duty and impost, as also the supplies for its consumption.

IX.

At the expiration of the term of this contract the company shall have the right of preference over other enterprises of the same nature under equal circumstances, in case it should suit its interests to continue the service under a new contract, as also when the Northern Railroad shall have been built, the company shall have the same rights in the establishment of lines of steamers on the Atlantic.

X.

The company shall be exempt from its obligations under fortuitous circumstances, or *force majeure* when substantiated.

XI.

In case of the opening of the Panama Canal the Government shall arrange with the company the form in which the contract shall be continued, it being understood that under equality of circumstances it shall have every preference over other similar enterprises.

XII.

Whatever differences may occur between the contracting parties shall be settled by arbitrators, appointed one by each of the parties, and these in turn shall appoint a third.

XIII.

The contractors have the right to form a company either between themselves or by issuing stock, as also to transfer, sell, or hypothecate this contract, or the line of steamers established or to be established, to any corporation or person.

In faith of which and for due observance the parties sign two of the same tenor in the department of public works of the Republic of Guatemala, the 17th day of February, 1886.

CARLOS HERRERA,
Minister of Public Works.

CARLOS F. IRIGOYEN.
JOSÉ A. MARCH.

Department of Public Works.—Resolution relative to the addition to a contract made in February, 1886.

PALACE OF THE EXECUTIVE POWER,
Guatemala, February 24, 1886.

Taking into consideration the memorial of Messrs. Carlos F. Irigoyen and José A. March, in which they ask that there be added to the contract made with this department relative to the service of steamers on the Pacific, the following clause: "During the term of this contract the Government shall not concede to any other enterprises or companies equal or greater advantages than those herein stipulated for the service between San Francisco and Panama;" and desiring to afford to the contractors the facilities which they consider indispensable for the realization of the purposes they entertain, the general in charge of the Presidency, in conformity therewith, decrees that the above-transcribed article shall be considered as an integral part of the contract signed by them and the secretary for public works on the 17th of the current month.

Let it be communicated.

Signed by the President: HERRERA.

[Inclosure 3 in No. 652.—Translation.

Señor Irigoyen to Señor Rodrigues.

DEPARTMENT OF PUBLIC WORKS,
Guatemala, May 6, 1887.

To the Minister of Public Works:

I have the honor to communicate to you that the contract for the establishment of a line of steamers to do service between Panama and San Francisco, Cal., touching at the principal intermediate ports, made between the Government, José A. March,

and myself, has been formally transferred by us on the 9th of March last to Marquis de Campo, a Spanish subject residing in Madrid.

His high position, and the abundant resources which this opulent ship-owner can dispose of, and the great desire which animates him to draw each day closer the commercial relations between these Republics and Spain are a solid guaranty of the stability of the line of steamers which will soon be inaugurated.

In communicating this to the minister, permit me to congratulate the Government, so much interested in the welfare of the country, for the complete success which this enterprise will undoubtedly meet with, and which must afford positive service to the agriculture and commerce, the sources of our public wealth.

With the greatest, etc.,

CARLOS F. IRIGOYEN.

[Inclosure 4 in No. 652.]

Señor Rodrigues to Señor Irigoyen.

DEPARTMENT OF PUBLIC WORKS,
Guatemala, May 7, 1887.

SEÑOR:

I have the pleasure to reply to your courteous note addressed to me yesterday, informing me that the contract for a line of steamers to do service between Panama and San Francisco, Cal., touching at the principal intermediate ports, made between the Government of this Republic and yourself in union with Don José A. March, has been transferred to the Marquis de Campo, a Spanish subject residing in Madrid.

The very recommendable conditions of the Marquis de Campo and the desire, as you intimate that animates him to draw closer day by day the commercial relations between these Republics and Spain, are, in effect, a guaranty for the stability of this new line of steamers, which will count upon the support that the Executive can give it within the limits of his attributions.

In these terms the President has instructed me to reply to you, and to manifest at the same time his appreciation of your congratulations, addressed to the Government, on account of the good effect this enterprise is bound to have upon the agricultural and commercial interests of the country.

I am, etc.,

JUAN J. RODRIGUES.

No. 88.

Mr. Hall to Mr. Bayard.

No. 657.] LEGATION OF THE UNITED STATES,
Guatemala, May 21, 1887. (Received June 7.)

SIR: With reference to my dispatch No. 648 of the 27th ultimo, announcing that the Nicaraguan Congress had ratified the convention between Nicaragua and Costa Rica to submit to the arbitration of the President of the United States their questions concerning boundaries, I have now to inform you that in the official newspaper of Costa Rica of the 10th instant, received to-day, is announced the ratification on the 9th of the same convention by the Congress of that State, thus setting at rest all doubts and speculations as to whether the convention will or will not be carried out. I communicated this information to you by a telegram to the effect that the arbitration boundary convention with Nicaragua had been ratified by the Congress of Costa Rica. The exchange of ratifications only is wanting to complete the convention. It is stipulated therein that the exchange shall be made on the 30th of June, or before, if possible.

I have, etc.,

HENRY C. HALL.

No. 89.

Mr. Hall to Mr. Bayard.

No. 658.] LEGATION OF THE UNITED STATES,
Guatemala, May 23, 1887. (Received June 14.)

SIR: I have the honor to inclose a copy of the annual message of the President of Costa Rica, and a translation of an extract from the same relating to the settlement by arbitration of the pending question with Nicaragua concerning the validity of their boundary treaty of 1858.

In referring to the projected canal, the President calls it the "Canal of Costa Rica and Nicaragua," giving the precedence to his own state. Trifling as this incident may seem, it is nevertheless significant, as it is well understood that one of the alleged grievances of Costa Rica is the fact that the proposed enterprise has heretofore been known only as the "Nicaraguan Canal," while Costa Rica has been altogether ignored.

* * * * * * *

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 658.—Translation.]

Extract from the annual message of the President of Costa Rica.

The question pending with the sister Republic of Nicaragua, for causes which the respective secretary will inform you, had assumed a tone which was far from being harmonious, such as should always be maintained between the two countries; at this juncture the Guatemalan Government found a favorable opportunity to conduct us, through the medium of its good offices, to the enlightened solution of arbitrament, which will put an end to that annoying question, as it has also removed the danger of any alteration in the mutual and good friendship which both countries have so long maintained.

The legation accredited to Guatemala for that important object terminated its labors with a discretion worthy of the highest praise; of this, the merited applause it has received within and outside of the country is sufficient proof.

The opening of the *Canal of Costa Rica and Nicaragua* is agitated, day by day, with growing interest. Notwithstanding, I do not believe that the undertaking of such a great work is so near at hand as some suppose; in any event, however, my Government is constantly occupied with the subject, and has followed the movements closely and with the carefulness that its importance demands, assured also that the rights of Costa Rica will be respected.

* * * * * * *

SAN JOSÉ (COSTA RICA), *May* 1, 1887.

No. 90.

Mr. Bayard to Mr. Hall.

No. 468.] DEPARTMENT OF STATE,
Washington, June 13, 1887.

SIR: I have received your No. 652, of the 11th ultimo, concerning a contract between the Spanish subjects (Messrs. Carlos F. Irigoyen and José A. March) and the Government of Guatemala for the establishment of a line of steamers between Panama and San Francisco, and have to approve the very strong presentation of the case made in your

protest to the Guatemalan minister for foreign affairs, dated March 24, 1887.

In this connection, I inclose for your information, copies of two recent instructions addressed to your colleague at the City of Mexico, under date of April 25* and May 31, 1887*, by which you will perceive that an almost identical grievance is presented by recent Mexican contracts with the Spanish Transatlantic Steamship Company. If anything, the complaint against Guatemala's action rests on stronger grounds, for there the 5 per cent. rebate on the customs duties levied upon the merchandise imported by the Spanish steamers is absolute, and can in no case contingently fall upon the steamship company, as may occur in Mexico if the total duty assessed on a single cargo does not reach a specified sum.

I shall also inclose a copy of your dispatch, with its accompaniments, to Mr. Manning for his information.

I am, etc.,

T. F. BAYARD.

No. 91.

Mr. Hall to Mr. Bayard.

No. 671.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Guatemala, June 24, 1887. (Received July 14.)

SIR: I had the honor to transmit with my dispatch No. 652, of the 11th ultimo, a copy of a contract between the Guatemalan Government and two Spanish subjects relating to the establishment of a line of Spanish steamers between Panama and San Francisco, touching at the Pacific ports of Central America, and inviting the Department's attention to a clause which concedes to the patrons of that line a rebate of 5 per cent. in the customs duties upon all merchandise imported into Guatemala by its vessels. I invited attention also to the fact that the rebate in many cases would exceed the present rates of freight by the existing lines of American steamers.

The same parties now propose to establish another line of steamers between New York, New Orleans, and Aspinwall, touching at the Atlantic ports of Central America. I inclose a translation of the contract,† which, in the name of the Marquis de Campo, of Spain, has been offered to the Guatemalan Government. It is identical, in many respects, with the contract for the Pacific ports, and provides for the same rebate of 5 per centum on customs duties upon importations. Within the past few years a profitable and increasing trade has sprung up between the port of Livingston and New York and New Orleans, giving employment to a number of steamers and sailing vessels. The steamers usually extend their voyages to the bay islands and to the ports of Honduras. The trade is the growth solely of American enterprise, and is wholly dependent upon the United States for a market for the tropical fruit, of which the return cargoes are usually composed. With so great a discrimination against them, these vessels may be excluded from the import trade with the Atlantic ports of Guatemala, and apparently they can only be protected by some legislation similar to the

*Printed *infra*, pp. 716, 730. †Not published.

act of Congress of June 30, 1834, which imposed an additional tonnage duty on Spanish vessels bound to Cuba and Porto Rico.

I have invited the attention of President Barillas and his new secretary for foreign affairs to the proposed rebate, and have been assured by both that it will not be accepted.

I have, etc.,

HENRY C. HALL.

No. 92.

Mr. Hall to Mr. Bayard.

No. 672.] LEGATION OF THE UNITED STATES,
CENTRAL AMERICA,
June 27, 1887. (Received July 14.)

SIR: It was publicly announced early this morning that President Barillas had yesterday signed a decree declaring himself dictator of Guatemala. Later, I received a note from the minister for foreign affairs confirming the statement and accompanying copies of the decree and of the President's address to the country.

Upon the receipt of the minister's note I telegraphed you to the effect that dictatorial powers had been assumed by the President of Guatemala, and that the constitution had been suspended by a decree issued on June 26 by the President and Council of Ministers.

I have the honor to inclose copies and translations of the documents above mentioned. The printed translation of the decree from the office of the La Estrella is very imperfect, but as there is hardly time to prepare another to send by this mail, I venture to inclose it; it is at least intelligible and in a convenient form.

I have had no opportunity to learn how this measure has been received by the Guatemalan public; in this capital there is to-day much excitement, but there has been no turbulence nor violence.

The publication of all newspapers has been suspended.

I am, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 672.—Translation.]

Señor Montúfar to Mr. Hall.

DEPARTMENT OF FOREIGN RELATIONS,
Guatemala, June 27, 1887.

MR. MINISTER: The President of the Republic dictated yesterday a decree by which he assumes the supreme power of the nation, the constitutional regimen, in consequence, being suspended.

The motives he had for issuing such an important measure are to be found in the decree itself, and in a proclamation which he addresses to his fellow-citizens.

I transmit copies of both, and I have the pleasure to manifest to your excellency that during the short period in which the extraordinary powers that he assumes remain in force he will endeavor to cultivate, as heretofore, the happily existing relations with all the civilized peoples of the world without deviating a line from the general principles of international rights nor from the solemn obligations imposed by treaties.

This opportunity affords me, etc.,

LORENZO MONTÚFAR.

[Inclosure 2 in No. 672.—Translation.]

Manuel Lisandro Barillas, General of Division and President of the Republic of Guatemala, to his fellow-citizens:

The executive power has to-day dictated a decree demanded by public utility and necessity.

On the 11th of December, 1879, the political constitution founded upon public rights, and in conformity with the reforms implanted by modern ideas, was promulgated. That constitution destined, the greater part of it, to survive many years, and serving as the basis of the progress of the country, was amended on the 20th of October, 1885.

The amendments were made at a time of agitation and transition, and without the calmness required for a work of so great magnitude and importance. The legislators, guided by a desire to restrict the executive power, prescribed rules which place him under the necessity of absolute submission. The difficulties were augmented by the legislatures of the present and last year, which passed a considerable number of the most restrictive and impracticable laws. Some of these laws take from the executive powers indespensable for government, of which not even the amendments of 1885 had deprived him.

I do not aspire to absolute power, but it is essential that I should have the authority required for fulfilling the high mission that the people have confided to me. There can be no government without a revenue, and there can be no revenue if the executive power is without the means of maintaining and developing it.

The public credit, the economic element, which every government must sustain, even at the cost of great sacrifices, has suffered greatly. I came into power through the glorious revolution of 1871, whose programme I am obliged to defend, and I can not do it under the pressure of measures which detain me at every step and lead me towards a most odious reaction.

I do not wish a dictatorship; I aspire that the people which has honored me with its confidence shall be free, and for the same reason I have decreed the convocation of a constituent assembly.

Neither do I wish to endanger the liberal triumphs obtained by the legislators of 1879, which should be our guide. I propose only that the Constituent Congress which I invoke to-day shall revise the amendments of 1885. That high body will meet on the 1st of October of the present year, so that the power which I assume, in virtue of Article 1 of the Decree issued to-day, is transitory.

Guatemalans: The great work of the June revolution is yours. Let us defend it and not permit its destruction by the intrigues and machinations of the reactionists. I am a son of the people, and I do not forget their troubles and their sacrifices and I shall not permit them to be repeated.

Fellow-citizens, I count upon you. Rely upon me and upon the persons whom I have designated to aid me in the Government, and be assured that my only ambition is your happiness and the welfare of our beloved country.

M. L. BARILLAS.

GUATEMALA, *June* 26, 1887.

No. 93.

Mr. Hall to Mr. Bayard.

LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, July 5, 1887. (Received July 28.)

SIR: With reference to your instruction No. 468, of the 13th ultimo, and to other correspondence, relating to the establishment of a line of Spanish steamers between Panama and San Francisco, touching at the ports of Central America, I have now to inform you that the project of a decree is being studied by the Guatemalan cabinet, which is intended to countervail, as far as possible, without violating the contract with Messrs. Irigoyen and March, the discrimination against the established American lines. I have been assured to-day by President Barillas that such a decree will be issued in a few days.

With reference also to my No. 671, of the 24th ultimo, inclosing the project of a contract between the Marquis de Campo and the Guatemalan Government, relative to a line of Spanish steamers between New York, New Orleans, and Aspinwall, touching at the Atlantic ports of Guatemala, I have again been assured that the proposed contract will be rejected.

I will further add that Honduras, Nicaragua, and Costa Rica, in their respective contracts with the same parties, concede rebates of two per centum from the import duties on all merchandise imported by the Panama and San Francisco line. The necessity, therefore, of some legislation which will effectually protect our vessels in the future from such hostile discrimination is apparent.

I have, etc.,

HENRY C. HALL.

No. 94.

Mr. Hall to Mr. Bayard.

No. 683.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, July 11, 1887. (Received July 28.)

SIR: I have the honor to inclose herewith a copy of a telegram which I addressed to you on the 5th instant, at the request of President Barillas, in which he solicits your good offices in the event of difficulties with Mexico. He was constrained to make this appeal in consequence of the suspension of diplomatic relations between the two countries, announced by the Mexican minister accredited to Guatemala, and the private telegrams from Mexico relating to the menacing attitude of the Government which were being constantly received.

In this connection I inclose a copy and translation of a telegram, dated the 2d instant, from President Diaz to President Barillas, and a copy and translation of a note of the same date from Señor Garay, the Mexican minister, to the minister for foreign affairs of Guatemala. It will be noticed that these documents do not accord in their tenor; the telegram from President Diaz is not unfriendly; the note of Señor Garay is far from being friendly.

I inclose also copies of telegrams exchanged on the 7th instant between the Guatemalan minister to Mexico and the minister for foreign affairs here. * * * There has been no complaint of the action of President Barillas in suspending the constitutional regimen; the minister, however, has complained personally to President Barillas that he (the minister) was not consulted in the appointment of the cabinet; other causes of complaint are alleged. * * *

So far as I am able to judge, the Guatemalan cabinet, as at present constituted, offers better guaranties for the protection of foreign interests, and especially the interests of our citizens, than any that have preceded it during the past five years.

I shall refer to this subject in another dispatch, which I hope to be able to forward by next mail.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 683.—Telegram.]

Mr. Hall to Mr. Bayard.

GUATEMALA, *July* 5, 1887.

I am informed by the President of Guatemala that recognition of the existing Government of Guatemala by that of Mexico has been refused, and that Mexico has ceased to entertain diplomatic relations with Guatemala. The Government of Guatemala is uneasy, apprehending that some trouble may ensue. The Guatemalan President declares that he was forced to issue the decree of June 26, in order that the Government might not fall to pieces and the country be prevented from drifting into a condition of anarchy; that the people are contented, and that in October a new National Assembly will be convened. The good offices of the United States Government are requested by him if they should prove to be necessary. He further maintains that there is no ground for intervention by Mexico in the affairs of Guatemala.

[Inclosure 2 in No. 683.—Telegram.—Translation.]

President Diaz to President Barillas.

MEXICO, *July* 2, 1887.

To His Excellency the President of Guatemala:

I have had the honor to receive your Excellency's telegram, dated the 29th ultimo, and thank you for your courtesy in communicating to me the interesting information that it contains.

The Mexican Government will respect, as in duty bound, all that the Guatemalan people, in the exercise of their sovereignty, may do or approve with relation to the institutions which are to rule them.

PORFIRIO DIAZ.

[Inclosure 3 in No. 683.—Translation.]

Señor Garay to Señor Montufar.

MEXICAN LEGATION, *Guatemala, July* 2, 1887.

Mr. MINISTER: In my note of the 29th ultimo I informed your excellency that the gravity of the information that you communicated to me in regard to General Barillas having assumed the supreme power of Guatemala in suspending the constitutional regimen obliged me to transmit it by telegraph to my Government.

Having now received definite instructions not to recognize at present, as minister of the United Mexican States, the new order of affairs established in Guatemala, I hasten to communicate it to your excellency for its corresponding effect, protesting my distinguished consideration.

EDUARDO GARAY.

[Inclosure 4 in No. 683.—Telegram.—Translation.]

Señor Dardon to President Barillas.

MEXICO, *July* 7, 1887.

The political events in Guatemala have caused alarm to this Government. It is said that troops are on march for the frontier. Send me instructions, so that I may know what to do.

DARDON.

[Inclosure 5 in No. 683.—Telegram.—Translation.]

Señor Montufar to Señor Dardon.

GUATEMALA, *July* 7, 1887.

Señor DON VICENTE DARDON, *Mexico:*

Public acts have been received from all the boroughs approving the decree in which the President assumes extraordinary powers. To-day the decree convoking elections for the Assembly is published.

This Government relies, in regard to Mexico, upon the words of President Diaz to President Barillas.

There is absolutely no motive whatever for mobilizing troops on the frontier. The country is tranquil. All foreign interests are guarantied, as all foreigners who are accredited here, and who maintain cordial relations with the Government, can testify.

MONTUFAR.

No. 95.

Mr. Hall to Mr. Bayard.

No. 684.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, July 12, 1887. (Received July 28.)

SIR: With further reference to your instruction No. 468, of the 13th ultimo, and to my dispatches No. 652 and 679, the latter dated the 5th instant, I have the honor to inclose a translation of a note, received to-day, from the minister for foreign affairs of Guatemala, transmitting a decree signed yesterday, but not yet published, placing American vessels, as nearly as possible, upon the same footing with the vessels of the Spanish line of the Marquis de Campo.

In the ratification of the contract by the Assembly it was made optional with the Executive to reduce the rebate to 3 per cent.; this has been done, and the same rebate will now be conceded to all regular lines touching at Guatemalan ports of the Pacific, except the through steamers between Panama and San Francisco; to these a rebate of $2\frac{9}{10}$ per cent. is conceded. The coasting steamers of the Pacific Mail Company running no farther than some of the ports of Mexico will enjoy the full rebate.

There still remains the above-mentioned discrimination against the through steamers of the Pacific Mail Company, but it is relatively a trifling matter compared with the former.

The present Guatemalan cabinet by this act of justice has shown a disposition to remedy the unfriendly discrimination established by the Assembly at the time of the ratification of the contract.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 684.—Translation.]

Señor Montufar to Mr. Hall.

DEPARTMENT OF FOREIGN AFFAIRS,
Guatemala, July 11, 1887.

MR. MINISTER: I have the honor to transcribe to you the decree issued under this date by the President, the contents of which are the following:

"Manuel Lisandro Barillas, President of the Republic of Guatemala:

Considering that it is indispensable that a just equilibrium be established between the several steamship companies which now or may hereafter perform regular service with our ports, to the end that the competition in freight and passages, from which great benefits have been derived, and greater still may hereafter be obtained for the agricultural, commercial, and other interests of the country may be maintained; therefore I decree.

ARTICLE 1.

All foreign merchandise imported by the vessels belonging to any company, which vessels shall make regular direct voyages, touching at our ports of the Pacific, shall be entitled to a rebate of 3 per cent. from the present tariff of duties.

ARTICLE 2.

A rebate of $2\frac{2}{10}$ per cent. from the duties on articles imported in vessels of the lines already established, or that may hereafter be established, regularly between Panama and San Francisco, Cal.

ARTICLE 3.

In order that a company may enjoy the referred-to concessions, there must be solicited of the minister of public works (*fomento*), accompanying an itinerary, tariff of freights and passages, with details of conditions, and guarantying the regularity of the voyages in such manner as may be deemed opportune.

ARTICLE 4.

The concessions granted by this decree, which in no way modify the concessions previously granted to some steamship companies, shall commence to have effect on the 1st day of September next, 1887.

Given in the National Palace of Guatemala the 11th day of July, 1887.

M. L. BARILLAS.

The Secretary of State in the Department of Fomento:

SALVADOR BARUTIA."

And in having the honor to make it known to you, it is a pleasure to offer you the assurances of my consideration and esteem.

LORENZO MONTUFAR.

No. 96.

Mr. Hall to Mr. Bayard.

[Extract.]

No. 685.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, July 14, 1887. (Received August 8.)

SIR: The Government of Guatemala received last evening a telegram dated the 11th instant from their minister in Mexico, stating that Mexican troops have been ordered to the frontier of the two countries. The telegram was confirmed later by the Mexican minister here in a personal note to the minister for foreign affairs. I deemed it my duty to give you the information by telegraph, and accordingly I sent you to-day a telegram to that effect.

I have, etc.,

HENRY C. HALL.

No. 97.

Mr. Bayard to Mr. Hall.

[Extract.]

No. 478.] DEPARTMENT OF STATE,
Washington, July 19, 1887.

SIR: Your telegram touching the strained relation of Mexico to Guatemala, and reporting the movement of Mexican troops to the frontier, reached me on the morning of 15th instant. Upon receipt of the foregoing, I wrote a personal note to Mr. Cayetano Romero, the

Mexican chargé d'affaires at this capital, expressing concern at the intelligence conveyed by your telegram, and asking him to call at the Department.

He did so, when I showed him a paraphrase of the material parts of your telegram.

Mr. Romero proved to be without sufficient knowledge of the intentions of his Government to give me the assurances I hoped for, but promised to communicate with Señor Mariscal and let me know further.

I this morning received from him a personal note, in which he communicates Señor Mariscal's message "that the Mexican troops ordered to the Guatemalan frontier were not sent there to provoke a collision, but simply to protect Mexican interests." Copies of the correspondence are hereto annexed.* I have acquainted Mr. Manning, in Mexico, with this correspondence and have sent him copies of your previous dispatches on the same subject for his information.

I trust that your apprehensions of a disposition on the part of Mexico to provoke difficulty with Guatemala at this juncture may be without real foundation, which I am encouraged to believe, from Mr. Mariscal's declarations, may prove to be the case.

You will continue to advise me fully of the situation.

I am, etc.,

T. F. BAYARD.

No. 98.

Mr. Hall to Mr. Bayard.

[Extract.]

No. 690.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Guatemala, July 20, 1887. (Received August 9.)

SIR: On the 14th instant the Guatemalan Government received from its minister in Mexico the telegram referred to in my dispatch No. 685 of the same date. In addition to the announcement that troops were in march to the frontier, it contains a charge against the Guatemalan Government that its agents had assaulted the Mexican secretary of legation.

On a previous occasion Mr. Hosmer had called on Señor Garay to ascertain what foundation there might be for the report from Mexico, that troops were marching to the Guatemalan frontier. Señor Garay assured Mr. Hosmer that the report was untrue, or rather that it was impossible. At the second interview, however, Señor Garay confirmed the report.

I have, etc.,

HENRY C. HALL.

No. 99.

Mr. Hall to Mr. Bayard.

No. 691.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Guatemala, July 22, 1887. (Received August 9.)

SIR: With my dispatch No. 515 of the 17th June, 1886, I transmitted a translation of a contract, concluded on the 6th of May of the same

* Printed *infra* on p. 82.

year, between Irigoyen and March and the Salvador Government, relative to a line of Spanish steamers between Panama and San Francisco touching at the Central American ports of the Pacific. By that contract the Government, in addition to a money subsidy, conceded a rebate of 3 per cent. in the customs duties upon all importations by those steamers into the ports of Salvador. This clause of the contract was rejected by the legislature by decree of the 27th September, 1886, a translation of which I had the honor to transmit with my dispatch No. 603 of the 6th January last. The clause was rejected because contrary to the treaty of 1870 between the United States and Salvador.

Under date of the 14th ultimo, the Government entered into an additional contract with the same parties. I inclose a copy and translation of this additional contract as it appears in the Diario Oficial of Salvador, a month after its date, July 13, 1887.

Instead of giving the rebate directly to the importer, the Government supplies the company with documentary obligations which are to be receivable in payment of 3 per. cent. of the duties upon importations by that line. These obligations will, of course, be transferred to importers for the payment of duties. Practically, goods imported by these steamers will pay 97 per. cent. only of the duties, or, say, 3 per cent. less than will be paid by American vessels.

I would also invite the Department's attention to the second article of the contract. The steamers will carry the flags of the several Central American Republics; the two named *Mexico* and *Salvador* will carry the flag of Salvador. Under such conditions it seems to me that there can be no doubt that the rebate is contrary to our treaty, to the sixth article especially, with that Republic. It is certainly contrary to the intentions of the treaty, and I considered it my duty to so advise the minister of foreign affairs of Salvador, through the medium of Mr. Consul DuPré. I inclose a copy of my telegram, sent with that object, on receipt of a copy of the contract.

It is not unlikely, however, that the steamers will carry whatever flags may best suit the purposes of the owner for evading our treaties with these states and our laws concerning discriminating duties.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 691.—Translation.]

Additional contract with the Spanish Central American Steamship Company of the Marquis de Campo.

DEPARTMENT OF THE TREASURY, *Salvador.*

Higinio Valdivieso, subsecretary of public works in charge of the department, by special instructions of the President of the Republic, of the one part, and Carlos F. Irigoyen as the authorized agent of the Marquis de Campo of the other part, have agreed to the following contract, additional to that of the 6th of May of the past year (1886), approved by the National Assembly of the 27th September of the same year:

ARTICLE I.

The second paragraph of Article 13 of said contract shall be substituted by the following:

"A pecuniary subvention of $20,000 annually, by monthly installments, during the first three years, payable in the current coin of the country, and $18,000 annually during the two remaining years of the concession, payable in the same form, and during the five years of the concession a contingent subvention which shall be equal to 3 per cent. of the customs import duties upon the merchandise which their vessels shall bring to the ports of Salvador."

To effectually carry out this part of the subvention the Supreme Government shall deliver to the agents of the company documents receivable in payment of 3 per cent. of the customs duties, which documents may be used in the entry of merchandise, the respective bill of lading showing the same to have been imported by the company's vessels to accompany such entry, and a sum equal to the said 3 per cent. in bonds of the public debt.

["The bonds of the public debt have no marketable value; they are not amortizable and earn no interest."]

The said documents shall be delivered in advance and in amount estimated to be sufficient for amortizement during six months, at the expiration of which the corresponding liquidation shall be made.

["It is not clear whether the government delivers to the company both classes of obligations or only the debentures receivable in payment of 3 per cent. of customs duties."]

ARTICLE 2.

The steamers of the company shall be under the flags of the five Central American Republics, permission therefor being previously given by their respective Governments. The two named *Mexico* and *Salvador*, shall carry the flag of this Republic (Salvador).

ARTICLE 3.

The Government shall instruct its consuls in England to furnish sea-letters to the said steamers, authorizing them to carry the national flag until their arrival at the ports of the Republic, when they shall receive their respective registers free of expense.

ARTICLE 4.

The Spanish steamers which the company may employ as auxiliaries shall be subject to the rights and obligations stipulated in the contract.

ARTICLE 5.

As the steamers of the company will arrive before the date of the termination of contract with the Pacific Mail Company, it is agreed that the stipulated service shall commence at once, and that the Government in the mean while shall be bound to pay the contingent subvention only as established by Article 1, and that the pecuniary subvention shall commence to run from the day on which the Pacific Mail subvention ceases.

ARTICLE 6.

The Government shall interpose its good and friendly offices with the Governments of the other Republics to obtain the same concessions and to remove the difficulties and obstacles which may arise in the establishment of the line of Spanish-Central American steamers of the Marquis de Campo.

In faith of which we sign the present in San Salvador the 14th day of June, 1887.

HIGINIO VALDIVIESO.
CARLOS F. IRIGOYEN.

NATIONAL PALACE,
San Salvador, June 15, 1887.

Seen the foregoing contract concluded between the sub-secretary of public works (*fomento*), Dr. Don Higinio Valdivieso, in behalf of the Government, and Señor Don Carlos F. Irigoyen, in representation of the Marquis de Campo, relative to the addition to the contract of the 6th of May, of last year, touching the Spanish-Central American line of mail steamers, and the additional contract having been made in accordance with the instructions to the effect given to Dr. Valdivieso, the executive power accords the approval of the six articles of which it is comprised.

Let it be communicated.

By the President.

The Secretary of State in the Department of Finance, etc.,

MENDEZ.

[Inclosure 2 in No. 691.—Telegram.]

Mr. Hall to Mr. Du Pré.

GUATEMALA, *July* 19, 1887.

I have before me the Diario Oficial of Salvador, of the 13th instant, containing an additional contract relating to the Spanish-Central American steamers. It stipulates, *de facto*, discriminating duties against merchandise imported in American vessels, and it is as contrary to the intentions of the treaty with the United States as was the contract of the 6th of May of last year and contrary to the reciprocal friendly relations between the two countries. You can so make it known courteously to the minister for foreign affairs.

HENRY C. HALL.

No. 100.

Mr. Hall to Mr. Bayard.

No. 693.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, July 29, 1887. (Received August 18.)

SIR: By a telegram dated the 26th instant and received last evening, a translation of which I have the honor to inclose, the President of Nicaragua announces that by a treaty signed at Managua on that day the question of boundaries, so long pending between Nicaragua and Costa Rica, has been amicably settled. This treaty, I infer, obviates the necessity of submitting the question to the arbitration of the President of the United States, as contemplated by the convention signed in this city on the 16th December, 1886.

It is to be hoped the settlement will prove to be lasting.

I communicated this important news to you to-day by telegram in cipher.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 693.—Telegram.—Translation.]

President Carazo to Mr. Hall.

MANAGUA, *July* 26, 1887. (Received July 28.)

I have the pleasure to inform you that in this moment the treaty has been signed by which the question of boundaries, which has long existed between this Republic and Costa Rica, is amicably settled.

Very respectfully,

EVARISTO CARAZO.

No. 101.

Mr. Porter to Mr. Hall.

No. 489.] DEPARTMENT OF STATE,
Washington, August 3, 1887.

SIR: I have had the pleasure to receive your No. 684, of the 12th ultimo, saying that the President of Guatemala had issued a decree placing, as nearly as the contract would permit, the vessels of the Pa-

cific Mail Steamship Company upon the same footing as regards the customs rebate duty with those of the proposed Spanish line between Panama and San Francisco.

The Department would be pleased to see the entire abolition by the Government of Guatemala of any discrimination against an American, and in favor of a foreign line of steamers. At the same time it is gratifying to note the disposition of that Government to accord to American vessels treatment more in harmony with the amicable trade relations between the two countries.

I am, etc.,

JAS. D. PORTER,
Acting Secretary.

No. 102.

Mr. Bayard to Mr. Hall.

No. 492.] DEPARTMENT OF STATE,
Washington, August 12, 1887.

SIR: I have received your No. 691, of the 22d ultimo, relative to an additional contract between the Government of Salvador and the agents of a line of Spanish steamers to ply between San Francisco and Panama, signed June 14, 1887, the apparent effect of which would be to defeat the present treaty stipulations between the United States and Salvador in respect to the equal treatment of American vessels in the ports of that country.

Instead of giving a rebate on customs duties directly to importers by the Spanish steamers, as was proposed in the former contract which was rejected by the Salvadorian legislature on the ground of its conflict with the treaty stipulations with the United States, it is now proposed to charge full duties, but to furnish the company with notes or certificates entitling the holder to a rebate of 3 per cent. of the customs duties on goods shipped by the company's steamers.

This plan not only appears to present the same objections, in substance, if not in form, as those that led to the rejection by the legislature of Salvador of the former contract with the Spanish company, but it follows closely, if not precisely, the plan of the Mexican Government, of which you are already advised, and of which this Department complained as being a discrimination against American vessels. With Salvador, however, our position is strengthened by treaty obligations which do not exist in the case of Mexico, and which, in the judgment of the Department, clearly forbid such discrimination by Salvador as that contemplated in the contract in question. For, while the issuance of such certificates is not in terms forbidden by the treaty, their effect would be to work an actual discrimination against our flag and thus destroy the reciprocal equality of treatment which the contracting parties intended to secure.

I have, therefore, to approve your protest to the Government of Salvador, through Mr. Du Pré, consul there, and will thank you to keep the Department advised of all that transpires, and to take such further action, through just and proper remonstrance to that Government, as will insure the fullest compliance with treaty obligations and secure to our citizens the amplest measure of their rights thereunder.

I am, etc.,

T. F. BAYARD.

No. 103.

Mr. Hall to Mr. Bayard.

No. 697.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
San Salvador, August 15, 1887. (Received September 6.)

SIR: In one of my last dispatches from Guatemala I submitted a copy and translation of an additional contract, published officially on the 13th ultimo, between the Salvadorian Government and the agent of the Marquis de Campo, in which is stipulated a rebate of 3 per cent. upon all merchandise imported into Salvador by vessels of the so-called Spanish Central American line. The wording of the clause shows, apparently, the intention to evade the stipulations of the treaty of December 6, 1870, between the United States and Salvador.

Complying with your instruction No. 476, of the 15th ultimo, "to use my constant and discreet efforts to prevent any such discrimination from being continued, where it has already been granted, or extended by grant to other lines," I have invited the attention of the Salvadorian Government to the above-mentioned contract, and have asked that the rebate shall be extended to all American vessels arriving with cargo at the ports of this Republic. The demand has been granted, and will probably be made to extend to all regular lines of other nationalities. I have the honor to inclose copies of correspondence with the minister for foreign affairs, and trust that my action in the premises will be approved.

I beg leave to add that notwithstanding the fact that Guatemala and Salvador have placed our vessels on an equality with the before-mentioned Spanish-American line, the necessity still remains for some legislation which will effectually prevent such acts of unfriendly discrimination in future.

I have, etc.,

HENRY C. HALL.

[Inclosure 1 in No. 697.]

Mr. Hall to Señor Delgado.

LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
San Salvador, August 10, 1887.

MR. MINISTER: The Department of State of the United States, in several instructions to the writer, assumes that the rebate in customs duties which the Governments of Salvador and other Central American Republics have recently granted to the so-called Spanish Central American line of steamers of the Marquis de Campo is contrary to the spirit and intentions of existing treaties of commerce and friendship with these Republics.

Under date of the 6th May, 1886, a contract was concluded between the Government of your excellency and Messrs. Irigoyen and March (subsequently transferred to the Marquis de Campo) for the establishment of the above-mentioned line of steamers between Panama and San Francisco, touching at the ports of Salvador. This contract stipulated for a rebate of 3 per cent. in the customs duties on all cargo or merchandise imported into Salvador by the vessels of that line. It appears, however, that such a palpable infraction of the treaty of the 6th December, 1870, between the United States and Salvador did not escape the notice of the national constituent assembly of this Republic when the contract was presented for ratification. The stipulation for a rebate of 2 per cent. was, by a decree of the assembly, dated the 10th of September, 1886, *rejected because contrary to the treaty with the United States.*

My Government, to which I forwarded copies of the contract and decree, while manifesting its gratification over the action of the assembly, expresses its opinion that the proposed alteration of national customs tariff for the benefit of the vessels of

any special nationality or company, although professedly in the nature of a subsidy, was contrary to the spirit of all modern treaties of commerce, as well as of good international relations based upon equality and comity.

Your excellency will, therefore, be able to appreciate the surprise and disappointment of my Government upon receiving, as it will receive in a few days, the additional contract, bearing date of the 14th June last, between the agent of the Marquis de Campo and the Government of Salvador, in which the same rebate is stipulated to the Spanish Central American line; that the same objectionable feature of the contract of the 6th May, 1886, already rejected by the legislation of Salvador, is again inserted in this additional contract, and in a form which might lead to the impression that the obligations of a solemn treaty between two nations whose relations have never been interrupted, are sought to be evaded through technical constructions quite unusual with friendly Governments in their intercourse with each other.

Articles 4, 5, and 6 stipulate, in general terms, that American vessels and their cargoes shall not be subject to any higher charges or duties than are paid by the vessels and cargoes of any nation whatsoever.

Article 6 contains the following: "Y que en ningun caso se impondrá ó cobrará derecho diferencial en los puertos de los dos países sobre los dichos buques ó sus cargamentos," etc, and there is no previous or subsequent stipulation in the treaty, so far as I have been able to discover, which either controverts or modifies that article.

In virtue of the additional contract referred to, merchandise imported into Salvador by American vessels will be compelled to pay 3 per cent. higher duties than will be imposed on merchandise imported by the Central American line, of which two of the vessels will carry the Salvadorian flag. It must be apparent to your excellency that the possibility of such a contingency as that American vessels would ever be subject to higher duties than those of any other nationality while the treaty remained in force was not contemplated by its framers.

The practical effect of the contract, if carried out, can not be otherwise than to exclude American vessels from the import trade of Salvador, even when coming from their own port of San Francisco, and to compel American shippers to make use of the so-called Spanish Central American line in order to enjoy the rebate in duties, and your excellency may not be aware that this rebate in very many cases will exceed the current rates of freight by any of the established lines of steamers which now touch at the ports of this Republic.

I am authorized by my Government further to say that the proposed alterations of the national customs tariff, for the benefit of a special enterprise, overpass all legitimate limits of subsidies to vessels, and operate to destroy the American shipping interests which have been built up in good faith and the faith of treaties, and that the differential duties it is proposed to establish to the prejudice of those interests call for an urgent protest. Should its representations be insufficient, my Government will be compelled to recommend to the Congress of the United States the adoption of some legislation which will effectually protect those interests, and if such legislation should result in the imposition of differential duties upon all cargo imported into the United States by the Spanish Central American line of steamers the Government of Salvador will surely have no just cause to complain.

But, to avoid such retaliatory measures, I beg leave respectfully to suggest that your excellency's Government should concede by decree to all American vessels arriving at the ports of Salvador the same rebate in duties which has been accorded to the Spanish American line. Such a resolution would be a compliance with treaty stipulations, and would obviate further controversy.

I trust these observations will be received in the same friendly spirit in which they are offered, and in the interest of the cordial relations that have always existed between the United States and Salvador.

I have, etc.,

HENRY C. HALL.

[Inclosure 2 in No. 697.—Translation.]

Señor Delgado to Mr. Hall.

DEPARTMENT OF FOREIGN RELATIONS OF SALVADOR,
San Salvador, August 15, 1887.

MR. MINISTER: I have had the honor to receive your esteemed note, dated the 10th instant, containing some observations in regard to the additional contract made on the 14th June last between this Government and the agent of the Marquis de Campo, which, in the opinion of your excellency, is contrary to the treaty with the United States in force, in the part which concedes to the line of Spanish Central American steamers an eventual subvention, consisting of a rebate in the duties upon imports.

I have informed the President in regard to your esteemed dispatch, to which I refer, and he has instructed me to say in reply that my Government finds the reasons set forth therein very just, and that in his constant desire to maintain unaltered the friendly relations that happily it cultivates with the Government of the United States he has determined that through the ministry, to which the matter pertains, the necessary measures shall be dictated with the view of avoiding the objections pointed out by your excellency.

Thus assuring your excellency that through the ministry of public works (*fomento*) a decree in consonance with the final part of your mentioned note will be issued, it affords me great gratification to renew, etc.

MANUEL DELGADO.

No. 104.

Mr. Hall to Mr. Bayard.

No. 699.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,

Managua, Nicaragua, August 24, 1887. (Received Sept. 14.)

SIR: With my dispatch No. 696, of the 11th instant, I had the honor to transmit an abstract of the last boundary treaty between Nicaragua and Costa Rica, signed at this place on the 26th ultimo. I now inclose a translation of the treaty itself.

The Congress of Costa Rica is now in session, and will no doubt ratify the treaty. An extra session of the Nicaraguan Congress has been called for the same object, to meet on the 1st proximo. I understand that the treaty meets with opposition, but the general belief is that it will be ratified.

I have, etc.,

HENRY C. HALL.

[Inclosure.]

Convention of the 26th July, 1887, between Nicaragua and Costa Rica.

The Presidents of Nicaragua and Costa Rica, desiring to terminate all questions pending between the two Republics, after having conferred together in presence of their respective ministers for foreign affairs, have agreed to the following articles:

ARTICLE 1.

The Government of Nicaragua withdraws its objections touching the validity of the boundary treaty with Costa Rica of the 15th April, 1858, and on its part will obtain a second ratification thereof from the Nicaraguan Congress, which it maintains is indispensable.

ARTICLE 2.

With the object of making the river San Juan navigable at all seasons, the Government of Costa Rica consents to the diversion of the waters of the Colorado into the San Juan as far as may be necessary, and to the construction of the works required to effect such diversion.

ARTICLE 3.

The Government of Costa Rica will contribute one-fourth part of the cost of the improvement of the San Juan River between the Colorado and the Bay of San Juan del Norte. When the works shall commence the contracting Governments shall appoint a professional commission to determine what may be essential and to make an estimate of the cost. When the amount estimated shall have been ascertained the contracting Governments shall agree as to the appropriation of the funds and the disbursements thereof.

ARTICLE 4.

Nicaragua concedes to Costa Rica in perpetuity for commercial purposes the right of free navigation in Lake Nicaragua and in that part of the San Juan River from which she is now excluded. Notwithstanding, the special privilege granted to F. A. Pellas on the 16th March, 1877, for navigating those waters by steamers, shall be respected.

ARTICLE 5.

Costa Rica has the right to participate in the profits of the interoceanic canal that may be constructed on the line of the San Juan River, but, in regard to the share of such profits which Costa Rica shall receive, the contracting Governments shall submit the matter to the decision of an arbitrator, who shall decide in view of the route definitely adopted, and taking into consideration, on the one hand, the lands and waters which Costa Rica gives to the enterprise, and, on the other hand, the lands, waters, and rights which Nicaragua contributes.

When the route of the canal shall have been definitely adopted the two Governments, at the instance of either, shall come to an agreement for the appointment of an arbitrator, and the conditions and proceedings to be observed during the arbitration.

Costa Rica accepts, on her part and in all that relates to her rights, the concession made by Nicaragua to the "Nicaragua Canal Company," by contract of the 23d of March, 1887.

ARTICLE 6.

The points of doubtful interpretation in the treaty of 1858 thus far presented are decided as follows:

(1) The "Punta de Castilla" shall at present be taken to be the extremity of the right bank of the mouth of the San Juan River nearest to the port of San Juan del Norte. When the improvement referred to in Article 2 shall have been carried out "Punta de Castilla" shall be understood to be the extremity of the right bank of the San Juan River as the improvement leaves it.

(2) The central point of the bay of Salinas shall be fixed by the intersection of its two axes, major and minor.

(3) The right conceded to Costa Rica to navigate the San Juan River from its mouth to 3 miles below Castillo Viejo, for commercial purposes, does not include the right of navigation by vessels of war and revenue exercising jurisdiction.

ARTICLE 7.

Nicaragua may freely grant concessions for a canal or transit route when such concessions do not prejudice the rights of Costa Rica, without awaiting the consultative vote referred to in Article 8 of the treaty of 1858, which consultative vote Costa Rica hereby renounces.

ARTICLE 8.

The revenue vessels of Costa Rica conveying customs guards to any point of the right bank of the San Juan River within Costa Rican territory, or to Rio Frio, or conveying supplies to the customs guards there established, may pass through Nicaraguan waters as long as they do not exercise therein any act of jurisdiction.

ARTICLE 9.

In order to make the necessary measurements to fix the boundary line and to establish appropriate landmarks, the two Governments shall, within six months from the exchange of the ratifications of this treaty, appoint their respective commissions in such form as they shall agree upon. The measurements and the landmarks shall be concluded within ten years, counting from the appointment of the commission.

ARTICLE 10.

This treaty shall be submitted to the approbation of the Congresses of both Republics, and the ratifications thereof exchanged in San José, Costa Rica, or in Managua, within one hundred and twenty days from the date hereof, or earlier if possible.

Until this treaty shall have been so ratified the arbitration convention between the two Republics, signed at Guatemala the 24th December, 1886, shall remain in force and vigor.

In faith of all which, the said Presidents of Nicaragua and Costa Rica sign and seal these presents in duplicate, together with their respective ministers for foreign affairs, in the city of Managua, the 26th day of July, A. D. 1887.

BERNARDO SOTO.
CLETO GONZALEZ VIGUEZ.
E. CABAZO.
FERNANDO GUZMAN.

No. 105.

Mr. Bayard to Mr. Hosmer.

[Telegram.]

DEPARTMENT OF STATE,
Washington, August 27, 1887.

The Government of Mexico assures the Government of the United States that it will not interfere with Guatemala's domestic affairs, and the United States rely on this assurance.

No. 106.

Mr. Hall to Mr. Bayard.

No. 700.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Managua, Nicaragua, August 30, 1887. (Received Sept. 26.)

SIR: In continuation of my dispatch No. 697, of the 15th instant, and with reference to the additional contract between the Government of Salvador and the Marquis de Campo, relative to the establishment of a line of so-called Spanish Central American steamers between Panama and San Francisco to touch at the ports of Central America, I have the honor to inclose herewith a copy and translation of a decree of that Government, dated the 17th, which I find published in the Diario Oficial of that Republic of the 18th instant. By this decree the Government of Salvador concedes to all regular lines of vessels the same rebate of 3 per centum which by the additional contract referred to is conceded to merchandise imported into the ports of Salvador by the vessels of the above-mentioned line.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 700.—Translation from El Diario del Salvador of August 18, 1887.]

DEPARTMENT OF PUBLIC WORKS,
National Palace, San Salvador, August 17, 1887.

The supreme executive power, considering that it is useful and necessary to the commerce of the Republic to establish a competition between the several lines of steamers that touch at our ports, and that it is not just to make discriminations in duties in favor of one line without extending them to the others, in council of ministers, decrees:

ARTICLE 1.

The steamer lines having fixed itineraries and sailing vessels which have not, engaged in the commerce with the ports of the Republic shall enjoy the discrimination established by Article 1 of the additional contract made on the 14th of June of the present year with the Marquis de Campo.

ARTICLE 2.

To enjoy the benefit established by the foregoing article, the parties interested must submit the same in writing, and accompanying therewith the itinerary and tariff of rates, and agreeing, in addition thereto, to render exact compliance with their obligations to the public.

ARTICLE 3.

The company or association which fails to fulfill the obligations of the foregoing article shall be deprived of the benefits thereby conceded.

ARTICLE 4.

The present decree shall commence to have effect at the same time as the additional contract to which reference has been made.
Let it be communicated.
Signed by the President.
The secretary of the department of *fomento*.

ALVARADO.

No. 107.

Mr. Hall to Mr. Bayard.

[Extract.]

No. 701.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Managua, Nicaragua, August 30, 1887. (Received Sept. 26.)

SIR: On the 27th instant I received from Mr. Hosmer the following telegram:

I am informed by the German minister that a large body of Mexicans troops has been ordered to the frontier. The legation of Mexico will soon take its departure for Salvador.

In answer to the foregoing I requested Mr. Hosmer, should the report prove to be true, to communicate it to you by cable. From what I have learned since my arrival in Nicaragua, ten days ago, I am satisfied that the information communicated to Mr. Hosmer, as abevo, is well founded.

I am, etc.,

HENRY C. HALL.

No. 108.

Mr. Hall to Mr. Bayard.

No. 702.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Managua, Nicaragua, September 2, 1887. (Received Sept. 26.)

SIR: In continuation of my dispatch No. 697, of the 30th ultimo, I have the honor to inclose a copy and translation of President Carazo's message, in which he recommends the treaty signed by himself and the President of Costa Rica on the 26th July last to the favorable consideration of the Nicaraguan Congress, now in extra session.

In my No. 699 I expressed an opinion, founded upon a conversation with Señor Guzman, that the treaty would be ratified. To-day the President informs me that he has grave doubts as to the result. I shall be informed of whatever transpires in connection with this subject, and shall report promptly to the Department.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 702—Translation.]

Message of the President of Nicaragua.

Honorable SENATORS AND DEPUTIES:

Matters of great importance, requiring your prompt decision, make it indispensable to call you to an extra session.

Soon after the arbitration convention for terminating our difficulties with Costa Rica was signed in Guatemala, which convention you ratified in the month of April last, the idea was suggested of a personal conference between the chiefs of the two Republics, with the view of reaching by a quicker route a satisfactory solution of those difficulties.

My worthy predecessor received the first intimations to that effect, but left the matter entirely to the new administration, because, doubtless, of the proximity of the constitutional change.

In pursuance of the same idea I determined to invite his Excellency President Soto to visit this Republic. In effect, about the middle of July, the Chief Magistrate of Costa Rica, accompanied by some distinguished citizens of that country, was with us.

It is unnecessary to say that he was received by the Government and the country with all the consideration due to the high character of the distinguished guest and consonant with the sentiments of cordial friendship entertained here for the Government and people of Costa Rica.

After several conferences, in which efforts were made to conciliate the rights and interests which have for a long time been the subject of heated discussion, and more than once have endangered the harmony of the two countries and created abnormal situations extremely prejudicial, I signed, with President Soto, the treaty which the minister of foreign affairs will present to you.

Before signing the treaty I thought it desirable to consult the opinion of persons who, by their intelligence and knowledge of public affairs, are in a position to be able to interpret faithfully the aspirations of the Nicaraguan people. That treaty stipulates that the boundary treaty of 1858 with Costa Rica, approved at the time by the constituent, in the character of an ordinary, assembly, shall be submitted to you for its second ratification. Besides, through its medium, it will be possible for us to accomplish without any obstacle our old route to the Atlantic and the port of San Juan del Norte, of which we stand in so much need.

The construction of the interoceanic canal, a work of the most sanguine promise for the future of the Republic, and for a long time the object of the highest aspirations of our best citizens, is freed of all obstacles from that source. Indeed, in my judgment, it settles in an equitable and satisfactory manner all pending difficulties, and breaks up forever that hot-bed of our disagreeable disputes, highly prejudicial to our well-understood interests.

In the mean time, as the arbitration agreed upon is not dispensed with except in the event of this negotiation being perfected, all interest continues to be given to the measures conducive to that object. Since the exchange of the ratifications of the convention of arbitration, and the Government of Costa Rica having been notified in regard to the points of doubtful interpretation in the treaty of 1858, which may have to be decided by arbitration, this Government has established a legation in Washington especially charged with all matters relating thereto. It is satisfactory to me to inform you that our representative was received with proofs of cordial deference, and that the President of the United States of America has manifested his willingness to serve us as arbitrator; a significant proof of friendship which demands our gratitude.

The secretaries of the departments will give account to you of other matters thought to be worthy of your consideration at the present extra session.

EVARISTO CARAZO.

MANAGUA, *September* 1, 1887.

No. 109.

Mr. Porter to Mr. Hall.

No. 499.] DEPARTMENT OF STATE,
Washington, September 8, 1887.

SIR: I have to acknowledge the receipt of your No. 697, of the 15th ultimo, confirming your telegram of that date to the effect that the Government of Salvador had agreed to extend to American vessels the same rebate granted to the proposed Spanish Central American line of

steamers. I can only repeat what was said in the Department's No. 494, of the 23d, ultimo, that this information has been received with a considerable degree of satisfaction, and add that the Department's thanks are hereby extended to you for your successful efforts in behalf of American commercial interests in this matter.

I am, sir, etc.,

JAMES D. PORTER,
Acting Secretary.

No. 110.

Mr. Hall to Mr. Bayard.

No. 703.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, September 13, 1887. (Received September 28.)

SIR: I embarked at Corinto, Nicaragua, on the 5th instant, for Guatemala. On the morning of the 6th the steamer touched at the port of La Union, Salvador. There I learned that on the previous night a party of Salvadorian and Hondurean refugees, coming from Nicaragua, had surprised and captured the military quarters at that place.

The movement appears to have been directed by one General Barahona. Before the Government of Salvador could act, President Bogran, of Honduras, dispatched a force from Amapala to La Union. The place was recovered from the revolutionists, and handed over to the Salvadorian forces on their arrival a few hours later.

It is now said that the attack on La Union was premature. Their plans, the revolutionists say, contemplated simultaneous movements throughout Salvador, which, in consequence, have, beyond a doubt, been frustrated. It is alleged that it was in the interest of ex-President Zalvidar.

I have, etc.,

HENRY C. HALL.

No. 111.

Mr. Hall to Mr. Bayard.

[Extract.]

No. 707.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, September 22, 1887. (Received October 11.)

SIR: I had the honor to address you to-day the following telegram:

A protocol signed by the Guatemalan minister for foreign affairs and the Mexican minister with a view to the settlement of the difficulties pending with Mexico.

I shall have occasion to refer to this subject in another dispatch; in the mean time I will merely add that the Guatemalan Government is persuaded that this satisfactory arrangement is due to your good offices with Mexico, for which it is very grateful.

I have, etc.,

HENRY C. HALL.

No. 112.

Mr. Hall to Mr. Bayard.

No. 710.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, September 28, 1887. (Received October 14.)

SIR: With reference to my dispatches Nos. 652, 679, and 684, the latter dated the the 12th of July last, relating to the line of Spanish Central American steamers which it is proposed shall run between Panama and San Francisco, I have the honor to inform you that the first one of the proposed line has arrived at San José de Guatemala, and will sail to-morrow for the last-named port.

This steamer is called the *Guatemala*, and sails under the Guatemalan flag. She arrived here with a provisional register issued by a Guatemalan consul in Europe, and she will be provided at this place with a regular register issued by this Government.

This vessel, in my opinion, comes clearly within the provisions of section 2502 of the Revised Statutes as to the discriminating duty of the 10 per centum upon any merchandise imported by the said vessel into the United States.

We have no treaty with Guatemala, and with the exception of the Pacific Mail Company's vessels having a contract with the Government this Guatemalan steamer has special privileges in Guatemalan ports not possessed by any American vessels.

It is but just, therefore, that the discrimination established by the laws of the United States should be applied in this instance.

For convenient reference I beg leave to inclose a copy of the abovementioned section 2502.

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 710.—Revised Statutes, section 2502.]

SEC. 2502. A discriminating duty of ten per centum ad valorem, in addition to the duties imposed by law, shall be levied, collected, and paid on all goods, wares, and merchandise which shall be imported on vessels not of the United States; but this discriminating duty shall not apply to goods, wares, and merchandise which shall be imported in vessels not of the United States entitled by treaty or any act of Congress to be entered in the ports of the United States on payment of the same duties as shall then be paid on goods, wares, and merchandise imported in vessels of the United States.

No. 113.

Mr. Hall to Mr. Bayard.

No. 711.] LEGATION OF THE UNITED STATES
IN CENTRAL AMERICA,
Guatemala, September 28, 1887. (Received October 14.)

SIR: Referring to my dispatch No. 707 of the 22d instant, I have the honor to acknowledge the receipt of your telegram of the 24th, to the effect that the congratulations of the Government of the United States are extended both to Guatemala and Mexico in view of the probability of their arranging their differences amicably and honorably.

Upon making known the foregoing to President Barillas he expressed much gratification and desired me to tender you the thanks of himself and of his Government especially for your friendly offices with Mexico, to which he attributes the possibility of a settlement. I accordingly telegraphed you yesterday to that effect.

The newly elected Constituent Assembly will be inaugurated on the 1st proximo, on which day it is understood the Mexican minister will recognize the Government by attending the ceremony and displaying his flag, which may contribute something, possibly, to restore Guatemala's lost confidence in Mexico's good faith.

I have, etc.,

HENRY C. HALL.

No. 114.

Mr. Hall to Mr. Bayard.

No. 713.] LEGATION OF THE UNITED STATES IN CENTRAL AMERICA,
Guatemala, September 30, 1887. (Received October 22.)

SIR: Referring to my dispatches Nos. 707 and 711 of the 22d and 28th instants, respectively, I have the honor to inclose herewith a copy and translation of a note of this date which the Mexican minister to Central America addresses to the minister for foreign affairs of Guatemala relative to the renewal of official relations. These relations were broken off by Mexico in June last. * * *

The Mexican minister takes occasion to say that the National Constituent Assembly being about to open its sessions without so much as a single protest having been raised against the elections throughout the entire extent of the country, this establishes the fact that the nation accepts the decree of the 26th June last and its consequences. For these reasons, and the fact that the Guatemalan Government has given proofs of a desire to comply with its international obligations and those of vicinage with Mexico, his Government believes that the time has arrived for fulfilling its promises to respect whatever the Guatemalan people in the exercise of its sovereignty might do. He is therefore instructed to continue his official relations with the Guatemalan Government. A copy of the communication referred to was handed to me to-day by Señor Montufar. * * *

I have, etc.,

HENRY C. HALL.

[Inclosure in No. 713.—Translation.]

Señor Garay to Señor Montufar.

LEGATION OF THE UNITED MEXICAN STATES,
Guatemala, September 30, 1887.

MR. MINISTER: Inasmuch as the National Constituent Assembly will solemnly open its sessions to-morrow, without a single protest having been raised against the elections throughout the whole extent of the territory, nor any ostensible manifestation having been made against the new political regimen established three months ago, this important fact must be considered as a proof that the nation has accepted the consequences of the decree No. 380, issued on the 26th of June last by his Excellency General Don Manuel Lisandro Barillas.

The meeting of the legislative body is a praiseworthy event, because it establishes at once a popular regimen and will prepare the way for the re-establishment of that constitutional order which alone offers stability among the free peoples of America.

These considerations and the circumstance that the present administration has given to Mexico unmistakable proofs that it desires to fulfill the obligations imposed by international law, no less than those of the contiguity of the two countries, induce my Government to believe that the time has arrived for fulfilling the promises it made to respect whatever the Guatemalan people, in the exercise of their sovereignty, might do or confirm as to the institutions to be adopted, and I am, therefore, expressly instructed to continue with your excellency my official relations.

In having the honor to manifest this to, etc.,

EDUARDO GARAY.

No. 115.

Mr. Bayard to Mr. Hall.

No. 506.] DEPARTMENT OF STATE,
Washington, October 10, 1887.

SIR: I inclose for your information a copy of a dispatch* from Mr. Thomas B. Connery, chargé d'affaires *ad interim* at Mexico City, No. 228, of the 26th ultimo, concerning the relations of Mexico and Guatemala.

Reply has been made that Mr. Mariscal's statement had been read with satisfaction, and that this Government never had the slightest disposition to regard the declarations respecting Mexico's attitude toward Guatemala in any other than the spirit of perfect frankness and rectitude in which they were proffered.

I am, etc.,

T. F. BAYARD.

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* Printed page 749, *infra*.

CHILI.

No. 116.

Mr. Roberts to Mr. Bayard.

No. 94.] LEGATION OF THE UNITED STATES,
Santiago, October 1, 1886. (Received November 9.)

SIR: On the 18th of September President José Manuel Balmaceda took the oath of office and immediately thereafter his cabinet was sworn in.

As the President makes no announcement of his policy or views at his inauguration, I inclose a printed translation of his speech delivered before the convention which nominated him for President. I have every reason to believe that the views and sentiments expressed therein are those which he has consistently believed in during his public life and which will guide him in his administration.

Señor Joaquin Godoy, minister of foreign relations, was lately Chilian minister to the United States.

* * * * * * *

The political complexion of the cabinet is somewhat of a concession to the liberal opposition to the late administration, and it is quite probable that it will be reconstructed before another year.

I have, etc.,

WILLIAM R. ROBERTS.

[Inclosure in No. 94.—Translation.]

Speech of President Balmaceda.

Mr. Balmaceda was elected as a candidate for the Presidency by the grand Liberal convention held in Valparaiso on January 17 last, and his speech on that occasion in accepting his nomination will furnish a very clear conception of the man, the minister, and the President. It reads, translated, as follows:

"Designated candidate of the Liberal party for the Presidency of the Republic by this convention of delegates elected by the nation, and by honorable and duly authorized members of Congress, I gratefully accept the position of honor, labor, and responsibility tendered to me as an act of homage due to the wishes of my political friends and to the liberal ideas which I have served during the whole of my public life. I experience at this moment a perfectly natural feeling of anxiety as I contemplate the arduous task committed to my care and ability. Nevertheless, the cheering words of this numerous assembly, the members of which will, I trust, continue to lend me the efficacious support of their experience and patriotism, reassure me. The noble words of the president of the convention induce me to believe that an exposition, although brief, of the ideas and the common purposes which form the bond which we seal today in the sight of all the Republic will not be out of place. Our foreign policy should

be based upon the scrupulous observance of treaties and of international rights and of equal respect towards all the nations with whom we maintain relations of amity. It is unnecessary for me to say that in any and in all cases we shall maintain unsullied the honor and the rights of the Republic. The war having terminated and peace having been celebrated with the neighboring Republics, we will prove, practically, to the nations of the Pacific that between them and Chili there exist no antagonistic interests, for we only aspire to the peaceful preponderance of industry, to a greater development of trade, and to a national vitality sustained by the natural vigor of our institutions and to a patriotic cohesion in foreign affairs. The fulfillment of a constitutional mandate, and the necessity of strengthening the permanent security of the state, counsel the adoption of a law to organize, on a democratic basis, the national guard. This is a practical method of establishing the community of duties imposed upon all our citizens in the service of the highest interests of the nation. All of the Liberal régime rests upon regularity in the exercise of individual rights. Individual liberty, properly speaking, does not exist where there prevails a régime of exceptions and privileges. A reform, either civil or political, which extends and strengthens legal equality and the domain of common right, does not violate the principle of authority nor wound liberty of conscience. Common right, which is the practical outcome of civil liberty, is not the denial of any belief; it is the application of positive human criterion to state legislation to protect religious liberty. There is not, nor ought there to be, in the reformatory action of the Liberal party any attack upon the conscience of others. Our work is a work of tolerance, of respect for the religious faith of all; for it would not be lawful for us to ignore the fact that God has created mankind, and that He has bestowed upon Chili a share of the gifts with which He favors the rulers of nations. The cemeteries, civil marriages, and civil registration acts have secured full liberty in the manner of constituting the civil state of individuals and families. The reform which has been effected in this respect has laid the foundation of individual liberty in the civil order, just as the ratification of the pending reform of the constitution will establish liberty of religion and the independence and sovereignty of the state. To strengthen this Liberal conquest, to perfect and consolidate it gradually, in order that it may take deeper root in the habits of the people, should be the task of the statesman who knows that sudden reforms bring about dangerous reactions; and the most efficacious manner of consolidating the reform is the full and complete diffusion of education.

"Education is the lamp of intelligence and morality applied with discernment to the actions of men. It constitutes the securest foundation of individual rights and the surest guaranty of general prosperity. Intellectual influence, the progress of the age, political experience and foresight, indicate the field of public instruction as the cardinal point on which Chilian liberalism will have to prove its intelligence, the superiority of its doctrine, and its real interest for the welfare of the people. In a complete preceptorial organization, in a general use of the most advanced methods of teaching, in the foundation of new schools, in the elaboration of practical methods that will conduct us to gratuitous and compulsory primary education, in the extension and improvement of the position of the in and out pupils of the secondary schools, in the adoption of adequate text-books for experimental and practical teaching, in the constitution of the preceptorate according to the specialty of the professors in each branch, in the foundation of special schools to serve the industries of the country, and, finally, in the reform of the law relating to public instruction, we shall find that there is work to be done that will require a great amount of thought and study and all our energy and our united efforts. I believe that in order that this reform may be fruitful, the power and influence of the state are necessary, and that intolerance and sectarian influence should not be permitted within the precincts of the public schools. Education should neither be skeptical nor intolerant; it should simply respect the conscience of all. Our tributary system requires technical and practical revision, in harmony with the equitable distribution of the public duties prescribed by the constitution.

"The public income and expenditure returns of the past few years show that by maintaining a proper equilibrium between income and expenditure, productive public works that may materially influence education and national industries may and ought to be undertaken. And while speaking of home industries I ought to add that they are weak and tottering, owing to the want of confidence on the part of capital and to our own obstinacy in not opening up new channels of trade. If, like Washington and the Great Republic of the North, we should prefer to use home-made articles, though they may not be so perfect and may lack the finish of the foreign article; if farmers, miners, and manufacturers would have such of their machinery as can be made in the country manufactured in home workshops; if we would but open up and increase the variety of our raw materials and would work them up into useful alimentary productions or into articles of personal use; if we would but ennoble labor by increasing salaries according to the degree of intelligence and industry of the workman; if the

state, while preserving a proper equilibrium between its revenue and expenditure, would devote a portion of its wealth to the protection of home industries, sustaining and assisting them in their early years; if we make the state assist with its capital and economic laws; if all of us, individually and collectively, strive to produce more and of better quality, a vivifying sap will circulate through the industrial organism of the Republic, and a greater degree of wealth and happiness will accrue to us from the greatest of blessings that can fall upon an industrious and honest people; to maintain and clothe ourselves by ourselves. With national industries is closely associated industrial immigration, and also the idea of constituting, by special and better remunerated labor, fixed homes for a numerous class of our people, in which is not compromised the dweller in towns nor the farm laborer, but a class that roams about the country, and that lend their strength to the construction of great public works, that provides indomitable soldiers in time of war, but who, in times of public agitation or economical crises, may become a serious disturbing element. Municipal independence is the complement of laws that have been sanctioned during the past few years. Ideas have progressed immensely; nevertheless it would not be prudent to substitute suddenly for our old and effete system the most advanced municipal régime, although I believe that local government ought to have an independent existence with sufficient revenue, and should be endowed wth complete and full liberty and responsibilities.

"Political parties may and ought to organize themselves in accordance with the ideas they represent, because political reform is the bulwark of the free exercise of political rights. The electoral individual guaranties and internal administration laws recently promulgated by the Liberal party, place electoral rights beyond the influence of the executive power, protect individuals from any abuse of authority, limit the attributions of the agents of the Government, provide easy means for making effective the responsibility of authorities who may commit abuses, and, finally, they surround electors and personal liberty with guaranties that they never before enjoyed. Inveterate custom and extreme measures of militant political parties prove that only the political struggles which are developed within the sphere of the law and with organized political forces are useful; that this is the manner in which to found parliamentarism proper, for it is only in doctrine, in the solidarity of ideas, and in a reasonable subjection to the will of a lawful majority that they can attain honor, power, and stability. If, therefore, the reform of our political laws affords new and more ample conditions of existence to political parties, it is only just that they should live within the orbit that liberal or conservative ideas draw for the political parties which in modern times contend for government. Of late years the action and distribution of the national wealth has been greatly decentralized, and it has been employed in the execution of useful works in all the provinces and departments. This work of reparation and of distributive justice ought to be continued, because I know from personal experience that the greatest if not the only satisfaction that a public man or a political party can receive is that of doing the greatest possible amount of good, and of enabling the protecting hand of the Government to cover all the territory of the Republic. In the fulfillment of my duty as a public man, and especially in the position to which you invite me, and as a citizen whose duty it is to procure the happiness of all Chilians, I shall make use of the confidence you repose in me to serve Chili with all the strength that firm convictions, an untiring will, and an honest heart can bestow."

No. 117.

Mr. Roberts to Mr. Bayard.

No. 100.] LEGATION OF THE UNITED STATES,
Santiago, November 11, 1886. (Received December 20.)

SIR: Chili is about to convert her foreign debt, amounting to $30,000,000 into 4½ per cent. interest-bearing bonds, which she has negotiated with Rothschilds of London at 96 net.

By this conversion Chili will save annually in interest $1,455,733.

I have, etc.,

WILLIAM R. ROBERTS.

No. 118.

Mr. Bayard to Mr. Roberts.

No. 49.] DEPARTMENT OF STATE,
Washington, November 19, 1886.

SIR: I have received your No. 94 of the 1st ultimo, regarding the cabinet of the recently elected President of Chili.

The entrance upon the responsible duties of minister of foreign affairs of Señor Godoy, so long and favorably known during his diplomatic residence in Washington, is a guaranty that he will bring to the discharge of his duties an intimate knowledge of our country and its people, and a strong conviction of their friendship for Chili which will be beneficial to the good relationship and earnest sympathy which this Government so consistently desires to maintain with that Republic.

I am, etc.,

T. F. BAYARD.

No. 119.

Mr. Roberts to Mr. Bayard.

No. 112.] LEGATION OF THE UNITED STATES,
Santiago, December 28, 1886. (Received March 8, 1887.)

SIR: You are doubtless fully informed of the ravages made by Asiatic cholera in the Argentine Republic.

Its proximity has caused great alarm here, and this Government has taken extraordinary precautions to prevent its introduction into Chili. All intercourse between the two countries is prohibited, and a sanitary cordon of troops has been established at all the known passes of the Andes, and no vessels that touch at an Argentine port are permitted to enter a Chilian one.

A member of the Chamber of Deputies, who was in the Argentine when the decree of prohibition was issued, escaped the guards and came to Santiago to attend the Congress. He was at once arrested and lodged in the common jail. An extra session of the Chamber was called and resolutions passed depriving him of his privilege of exemption from arrest and trial, and giving the criminal court authority to try him for violation of the sanitary proclamation of the Government.

On the 21st instant I received a note from the minister of exterior requesting me to call upon him that day. I did so at once, and found that he desired to consult with me as to an inquiry made to the Chilian consul at Montevideo by the commander of the United States vessel of war *Juniata*, then stationed at Maldonado, a port in the Argentine, to know if in case he should remain two weeks at Sandy Point (Punta Arenas), he would be permitted to enter other Chilian ports afterwards. The minister remarked to me that in view of the great danger that threatened the lives of their people, the great alarm in the public mind, and the strictness of their sanitary arrangements, it would be impossible to allow the *Juniata* to come to Punta Arenas without some previous quarantine; that he had consulted with the President, who advised him to consult with me at once. I asked him what he proposed. He said that if the *Juniata* would remain for two weeks at the Falkland Islands, and in case no epidemic occurred on board, she could then visit Punta

Arenas and remain for two weeks more, when, if she showed a clean bill of health, she could afterwards enter any port in Chili.

I considered this proposition a very fair and just one, and at once accompanied his dispatch to the consul with one to the commander, in care of the consul, which read as follows:

Admit two weeks quarantine at Falkland Islands, and also two weeks at Sandy Point; precautions in Chili very strict and positive, and alarm in regard to cholera great and universal.

The minister expressed himself as much gratified at my prompt action, and I am happy to say the commander at once acted upon my suggestion.

I have, etc.,

WILLIAM R. ROBERTS.

No. 120.

Mr. Roberts to Mr. Bayard.

No. 113.] LEGATION OF THE UNITED STATES,
Santiago, December 29, 1886. (Received March 8, 1887.)

SIR: I inclose extracts (translated) from two speeches delivered in the Chilian Senate on the 22d instant, to which I beg to call your special attention.

The subject under discussion was the annual appropriation for the department of exterior, and the speeches are important for two reasons: First, as an evidence of the desire of Chilian statesmen to act in concert with the United States on the question of bimetallism; next, as showing the existence of a new and better spirit towards our country.

* * * * * * *

I am informed on good authority that never since the formation of this Government have such friendly sentiments been uttered in Congress about the United States. I look forward with great confidence to their steady and permanent growth.

I may mention that Senator Concha i Toro is a very wealthy and influential man.

I have, etc.,

WILLIAM R. ROBERTS.

[Inclosure in No. 113.—In the Senate (Chili), session 22d December, 1886.—In discussing the supply bill for 1887.—Translation.]

Senator Concha i Toro.

The remarks which I will have the honor to make took their rise in a rapid reading of the supply bill. It is timely to call at this moment the attention of the Senate and of the minister of foreign relations to a question which has occupied me these two years in this chamber. I wish to refer to a question which is debated to-day throughout the commercial world—the monetary question.

This question interests us very closely, because whatever may be its solution it will have a direct weight on the industry and commerce of Chili.

In the present state of civilization and of the world's commercial relations, all countries are tributary to each other, and are consequently interested in the solution of this very interesting question.

Let us suppose that gold prevails. How will it be with the debtor? Ruination complete. On the other hand, if bimetallism prevails and silver strongly depreciates,

if we are obliged to see our peso (dollar) reduced to 70 or 60 cents, it is easily seen what a resolution in the one or the other sense would profoundly affect our industries.

Already a nation has anticipated to put in execution a similar idea to the one I had the honor to propose to the Senate. I said then that it would be necessary to invite the other nations to join themselves to the United States, and let this great and important question be presented before them unitedly, not as separate and weak nations, but as a continent. Perhaps we would then also have some influence and procure for our interests a more favorable solution in the great monetary system.

There has been presented in the Congress of the United States a bill to that effect, and, though it is not yet approved, I hold it very necessary that the Chilian Government adhere to this idea and procure other South American countries to concur. The acceptance of the Chilian Government would be a great stimulant.

It undoubtedly is one of the most important points that can engage the attention of our foreign office.

Señor Freire, minister of foreign relations.

The remarks of the honorable senator for Santiago have been very interesting. The first being that the Government of Chili should treat of adhering to the action of the United States respecting the constitution of bimetallism as international money.

The Great Republic, as a silver producing country, has been occupied and is occupying herself with this important question, and Chili on her part finds herself in a similar situation.

The idea of the senator for Santiago is therefore very worthy of attention, and it seems to me that Chili should invite the other South American nations in order to facilitate the commercial action which finds itself to-day confronted with the single standard—that of gold.

Señor Ibanez.

Of the topics which the honorable senator for Santiago has treated on, the most important undoubtedly is that which refers to the money (coin) question. I remember at this moment that when I had the honor to represent Chili in the Great Republic of the North I noticed in all the great men of that country the good will towards the South American nations; and as it is the nation which there decides, in everything which refers to internal Government or external relations, the good will of the people is reflected in the councils of the Government.

The idea of adhering to the project of an American congress to convene at Washington at no distant date should be propagated and recommended by our foreign office to all South American Governments. I firmly believe if we place ourselves with the United States in the discussion of a universal money system, Europe will not take a resolution contrary to what would injure the interests of entire America; and let us remember that this question affects us very intimately. On it depends in a great part our future. Alone we are weak, but united we can be of serious thought to European nations.

On this question I should like to know the feeling of the entire cabinet. I know its good intentions, but I esteem the question so grave that there should be no vacillating in the councils of the Government.

The first point to which Señor Concha i Toro has referred is the convenience and still more the necessity for the Government of Chili to co-operate and assist with all its power in the realization of the idea, which for some time back has occupied the Government of the United States of America, to convene a congress essentially American, in which the all-important question relating to the circulating medium in the universal commercial transactions should be discussed. It is known that in Europe the question of bimetallism has occupied and is occupying to a large degree the great nations there, and it is also known that the solution of that question is destined to influence transcendentally the commerce of the American continent, and especially that of Chili, one of its principal products being silver.

Upon entering into this question with relation to a participation which the Government of Chili should take in it, it is necessary to state certain antecedents, and eliminate from debate certain preconceptions that might unfavorably influence the minds of public men called to direct the negotiations to bring this into effect.

As to the policy which at the beginning of the war on the Pacific appeared to develop itself in the Great Republic, a policy which was considered adverse to our interests, forming in us a public opinion that we would not accept any indication from that Government tending to the holding of an American congress which should have for its object to decide the questions and difficulties that were inciting the several Republics of Spanish origin. But if this bias had its reason to be, under those circumstances, it has none at the present moment, in which we see the American policy unfolded in all its greatness, and in all those conditions which characterize the decisions of a great people, always founded in equity and justice, and the well intended interests of the American continent.

One of the great obstacles that has always been in the way was that the Government of the United States took into account in its decisions the opinion, that Latin America was to be considered as still in an embryotic state, in which each of the Spanish-American Republics figured isolated; that they had not the strength and prestige which alone only can produce order and regularity in their institutions, and above all, the united proceeding in the prosecution of a plan or purpose whatsoever.

Of this I can give testimony. At a recent period, when I had the honor to represent the Government of Chili near the Government of the United States, the very important question relating to the Island of Cuba was discussed, and the United States Government, in place of consulting regarding it the American Republics went to the courts of Europe to ask for a solution which could have been obtained more conveniently and more satisfactorily from the American Governments.

I remember for that reason to have remarked to the Secretary of State, Mr. Hamilton Fish, that perhaps for the first time they went contrary to the old legend of the Great Republic, which says "America for Americans." Mr. Fish replied that undoubtedly they would have preferred to consult the Latin Republics, but it would have been without good result, considering the relative weakness of those states, produced by their disunion and internal convulsions that was always agitating them.

Very good. The remarks that Mr. Hamilton Fish then made, and to which I have referred, have no *raison d'être* at present, because the situation of these countries has changed completely in regard to their stability and regularity of their Governments.

The bias, on the other hand, which, at the beginning of the war on the Pacific (with Bolivia and Peru), appeared up to a certain point justified by the conduct of one of the noted men of the United States, has likewise no reason to be at present.

* * * * * * *

I can affirm in this respect that I have more confidence in the honest and generous policy of the American people than in that of many other countries.

Let us eliminate, then, these two factors, the unfounded preconception on the one and the erroneous appreciation on the other, and it is clear as day that we must place ourselves at the head of a movement in which the interests of all are harmonized; and though small as may appear in these principles our influence, it will be great and powerful, if we secure the union of all the other Republics that are placed in the same condition as ours.

In this manner the opinion of the Great Republic on the monetary question which now occupies us would be converted into the opinion of the whole continent, which, by its strength, would weigh enormously in the councils of European Governments, which could not proceed without our contingent.

If, then, the Government of Chili, inspired by these ideas, which in my judgment are true and correct, gives to this point of its international policy the impulse and direction which its interests require, it will undoubtedly secure results so satisfactory as to be an honor to the ministry inspiring this policy as well as to the Government under which it serves and to that of the Republic in general.

No. 121.

Mr. Roberts to Mr. Bayard.

No. 115.] LEGATION OF THE UNITED STATES,
Santiago, December 31, 1886. (Received March 8, 1887.)

SIR: Since writing my dispatch of the 28th, No. 112, the Asiatic cholera has appeared in a small village in Chili named Calle Santa Maria. It is located at the foot of the Cordilleras, at the entrance of the Upsillata pass over the mountains to Mendoza, in the Argentine, where the disease has been raging with great violence. Calle Santa Maria is about 10 miles east of San Felipe and about 50 miles north-east of Santiago. Seventeen deaths occurred there up to last night, and the Government has sent troops to form a military cordon around the infected district. Extensive preparations are being made here and in Valparaiso to combat the disease should it make its appearance.

I have, etc.,

WILLIAM R. ROBERTS.

No. 122.

Mr. Roberts to Mr. Bayard.

[Extract.]

No. 117.] LEGATION OF THE UNITED STATES,
Santiago, January 15, 1887. (Received March 8.)

SIR: Since my dispatch of the 31st ultimo, announcing the existence of the cholera at the hamlet of Santa Maria, Chili, the disease has spread through the larger portion of the province of Aconcagua, comprising the towns and districts of San Felipe, Santa Maria, Los Andes, Pauquehue, Catemu, Tierras Blancas, Nogales, Higuelas, etc., and the towns of Quilpué, Quillote, and Llaillai, the last two in the province of Valparaiso. It is slowly extending along the valley of the Aconcagua, following the course of the river towards the sea, near Valparaiso. It has already appeared at Quillote, a station on the railroad between Santiago and Valparaiso, and about 35 miles from the latter. About six hundred cases have so far been reported, of which about two hundred and fifty have proved fatal. The victims are almost exclusively confined to the poorer class of people.

Every precaution possible has been taken by the authorities to check the spread of the disease, and stringent sanitary measures adopted, especially in the cities of Santiago and Valparaiso, which for the last two months show a death-rate less than has ever been known at this season.

The following dispatch from Iquique, dated January 5, appeared in the press of this city:

The Peruvian Government has decreed to take active measures against the cholera, and has ordered the closing of all her ports against vessels coming from infected countries.

I waited for some days to see if the Government of Chili would succeed in the effort it was making with the Government of Peru to obtain a modification of the order, but having failed, I cabled the following dispatch on the 13th instant:

BAYARD, *Washington:*

Peruvian ports closed against Chili. Stops Panama mails both ways. No cholera Chilian ports.

ROBERTS.

It is unnecessary for me to point out how very seriously this action of Peru affects our interests. All the steamship lines have been withdrawn from the route between here and Panama, so that the Pacific, from Panama to Cape Horn, is practically closed to our commerce and communication by steam.

The situation at present is suggestive of the very peculiar position we occupy with regard to communication with this hemisphere. All the traffic and mails from this coast have now to go to Europe, and this dispatch will leave Valparaiso on the 18th instant for Lisbon, thence by rail to Paris and Calais, thence to Liverpool and New York, and will probably take fifty days alone in transit. The last dispatch received here was No. 50, and the last papers dated December 8; when I will receive the next mail it is impossible to say.

Since the foregoing was written, a notice appeared in the press that all transit has been forbidden along the frontier between Chili and Peru since the 12th instant.

I have, etc., WILLIAM R. ROBERTS.

No. 123.

Mr. Roberts to Mr. Bayard.

[Extract.]

No. 134.] LEGATION OF THE UNITED STATES,
Santiago, May 12, 1887. (Received July 26.)

SIR: So far as I can ascertain, cholera has disappeared in Santiago, Valparaiso, and all the sea-ports of Chili. A few cases are reported occasionally from two or three southern towns, but the cholera "lazarettos" are all closed save that in Concepcion, where eleven cases were under treatment yesterday.

About four thousand deaths by cholera are reported since its first appearance.

Fortunately the climate of Chili is not favorable to cholera epidemics, or its ravages would have been very much greater, in spite of the energy and liberality of the Government in checking its spread and ministering to the afflicted.

I have, etc.,

WILLIAM R. ROBERTS.

No. 124.

Mr. Roberts to Mr. Bayard.

No. 153.] LEGATION OF THE UNITED STATES,
Santiago, September 9, 1887. (Received October 14.)

SIR: The remains of Judson Kilpatrick, formerly United States minister in Chili, will be taken by the night train from here to Valparaiso, from whence they will be conveyed by steamer to-morrow, via Panama, to the United States for final interment. The widow, Mrs. Kilpatrick, and her children will accompany the remains.

I inclose copy of a note I addressed to the minister of foreign relations, at the request of Mrs. Kilpatrick, and a translation of his reply; also a translation of the minister's invitation to attend the obsequies to be held at the cathedral.

I attended, accompanied by the secretary of legation, the services at the chapel, and also accompanied the remains to the railroad depot.

I am, etc.,

WILLIAM R. ROBERTS.

[Inclosure 1 in No. 153.]

Mr. Roberts to Señor Amunátegui.

LEGATION OF THE UNITED STATES,
Santiago, August 4, 1887.

SIR: I learn that Señora Kilpatrick intends to remove the remains of her late husband, General Judson Kilpatrick, formerly minister of the United States to Chili, from the cemetery here for transportation to the United States for final interment.

I would ask that your excellency's Government extend to her all the necessary facilities to carry out her kind intentions, and beg to thank in advance for any courtesies that may be extended to her by your Government in the matter.

Renewing to your excellency the assurance, etc.,

WILLIAM R. ROBERTS.

[Inclosure 2 in No. 153.—Translation.]

Señor Amunátegui to Mr. Roberts.

MINISTRY OF FOREIGN RELATIONS,
Santiago, September 6, 1887.

SIR: My Government, desirous of paying to the memory of the illustrious General Judson Kilpatrick the homage due him, not alone on account of his personal merits, but also for having twice represented the Government of the United States in Chili, has issued the necessary orders that his remains be removed with the honor due them from Santiago to Valparaiso.

On Thursday next, the 8th instant, at 3 o'clock in the afternoon, the remains of General Kilpatrick will be brought from the cemetery of this city to the cathedral.

On Friday, the 9th, after the celebration of the funeral obsequies at 10 o'clock in the forenoon in that church, in the presence of the minister of state, the ministers of the diplomatic body, and the officers of the army residing in Santiago, they will be taken with military honors to the railroad station.

In the night train of that same day they will be conducted in a funeral car, with an escort of honor, under the command of one of the aides-de-camp of the President of the Republic, to the port of Valparaiso, where they will be embarked on Saturday with the usual honors.

All these ceremonies have been arranged in accord with the widow, Mrs. Kilpatrick.

Renewing, etc.,

MIGUEL LUIS AMUNÁTEGUI.

[Inclosure 3 in No. 153.—Translation.]

Señor Amunátegui to Mr. Roberts.

MINISTRY OF FOREIGN RELATIONS,
Santiago, September 6, 1887.

SIR: The widow of the former envoy extraordinary and minister plenipotentiary of the United States of America in Chili, General Judson Kilpatrick, having determined to remove to their native land the remains of her late husband, services will be held on the occasion in the cathedral church on next Friday, the 9th instant, at 10 o'clock in the forenoon.

Afterwards the remains of General Kilpatrick will be conducted to the railroad station with the usual honors.

I have the honor to invite the legation under your worthy charge in order that you and the persons composing it may please, if so disposed, to be present at said services.

Renewing, etc.,

MIGUEL LUIS AMUNÁTEGUI.

No. 125.

Mr. Bayard to Mr. Roberts.

No. 64.] DEPARTMENT OF STATE,
Washington, October 17, 1887.

SIR: Your No. 153 of the 5th ultimo, informing me of the departure of Mrs. Kilpatrick and her children from Chili with the remains of her late husband, was duly received.

It is especially gratifying to this Government to know that all official honors were shown in the impressive way you have described to one of our representatives, and you will take an early occasion to express to the minister of foreign affairs the sincere and grateful appreciation by the President of the facilities and courtesies tendered to Mrs. Kilpatrick on her sad journey, and the official ceremonies and honors on the part of the officials of the Government and the diplomatic corps on the occasion of the late General Kilpatrick's funeral obsequies.

I am, etc.,

T. F. BAYARD.

CHINA.

No. 126.

Mr. Denby to Mr. Bayard.

No. 182.] LEGATION OF THE UNITED STATES,
Peking, July 31, 1886. (Received September 16.)

SIR: I have the honor to report that the Chungking mob is the most serious riot that has occurred in China for many years. I inclose herewith a copy of a letter, which is the fullest account I have seen. It will be seen that the mob destroyed all the property of the American, French, and English missionaries, including that of the Taylor Inland Mission; the missionaries were seriously maltreated; the British consul was nearly killed; all the missionaries left, and are now at Hankow. The disorder has spread to other parts of the province Szê Chûen and may spread to other provinces. * * *

I have instructed Mr. Franklin, at Hankow, to do all he can to assist our missionaries.

It seems that the Chinese Catholics were objects of hostility to the mob, and many lives were lost in an attack on one of them.

One difficulty about questions arising out of these occurrences is that other foreigners claim that they arise from our anti-Chinese troubles at home. I am satisfied that the charge is not strictly true, but that they arise mostly from the French war. The Chinese have been unusually hostile to foreigners since that war terminated. No doubt the riots in the West, vaguely reported in China, contribute to the ill feeling.

No doubt England and France will demand redress and restitution of rights to their people. * * *

I have written to Mr. Franklin to find out and report to me the character and value of the property destroyed, and whether the missionaries will desire to renew operations in Chungking if protection be promised them or whether they will content themselves with demanding damages. * * *

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 182.]

Letter from Mr. Lewis to Mr. Hykes.

CHUNGKING, *July* 7, 1886.

DEAR BROTHER HYKES: You will doubtless have heard how this part of the world is turned upside down. On July 1 all missionary property in Chungking was destroyed, as well as the property of Mr. Bourne, the English consular resident. Mr. Bourne had his chair smashed, was hit with stones, and might have lost his life had not the hsien (magistrate) thrown his arms around him, himself receiving blows. A fine Catholic cathedral, just completed, and extensive foreign residences were given to the flames. Our city residences were first looted and then pulled down and carried off piece by piece. One of our sanitarium buildings, just completed, was given to the flames; two, partly finished, were demolished and the wall about the property knocked down. The C. I. M. (China Inland Mission) had two rented places in the city and a partly-built sanitarium in the country; the latter was burned. In the city Mr. Nicoll's place was torn down about their heads. Mrs. Nicoll, attempting to

flee into two houses, was repulsed, afterwards finding a temporary hiding place with a Catholic family. She received a blow on her shoulder knocking her down. Later she got off in a chair to the yamên. Mr. Copp is away on a trip. Mrs. Copp was at their rented place in the country, near where Gamewell and Crews were building, and Mrs. Wood was staying with her. Their place was first entered and looted. Mrs. Copp and Mrs. Wood came with an escort into the city to Wood's place, from which the mob soon compelled them to flee. Their chairs were knocked to pieces, but they received no serious injury. Our folks took chairs just as the mob arrived; were separated, Mr. Gamewell getting to the yamên, while the remainder were crowded into a small room at the constable's for hours, the mob constantly growing more threatening, but not being permitted by God to harm them.

I was over the river building a sanitarium. I heard of themob and started back at sundown. Entering a village, a man coming down some steps banged full might against me, nearly knocking the breath out of me. I pushed him headlong into the gutter and hurried on, took a chair, and reached the city in safety. I ran some risk in passing through well-lighted and crowded streets, but reached a Chinese friend's house without discovery. There I found Miss Howe's girls and some Chinese nurses and orphans. Our place, near at hand, was being looted, and the Catholic premises had begun to burn. The neighbors were afraid for their own property, and so prevailed on the mob not to burn ours. I was told the rest had reached the yamên in safety, and so stayed where I was until 2 a. m., when I reached the yamên in safety. Mr. Bourne found refuge at the taotai's, along with the French priests. It will be a week to-morrow since the riot began, and we are still at the hsien's yamên. The mob made a clean sweep. Our city property was worth 10,000 taels, and they have only left a few posts standing. They did not steal the well, but emptied it of water and found a piece of silver Dr. Crews had thrown into it. Not a missionary got away with even so much as a change of clothes. The servants and some others saved a few things, which they stored in friends' houses. Some of this has come in, but it is a very small proportion of our losses.

On the second day the mob began on the native Catholics and threatened the yamên. The taotai had done little or nothing while the foreign property was being destroyed, but now sent out soldiers and got the mob somewhat under. During the last few days the city has been quiet, but the fire has spread into the country.

The Catholics have been attacked and plundered in all directions. Houses have been torn down or burned, and lives lost. A rich Catholic here bought his coffin, hired one or two hundred roughs, and awaited the attack. He was beseiged for two days and nights, and put a score or two under ground, to say nothing about the wounded. One of his men stepped outside, was seized by the crowd, hung up to a tree, and shot full of arrows. The mob was started by the military students who were here for the examinations. They declared they would have this Catholic's life before they were through, but his coffin is still empty and his place guarded by soldiers. It is said that the whole eastern part of the province is in tumult, but we are unable to learn how true it is. It is as though there had been a sudden belching forth from the infernal regions up here. We shall go down the river if we can. We can not go without escort, and the magistrate can not send us yet. The ladies have borne up wonderfully, but nearly all are in danger of illness. The heat is great, the stench is almost intolerable, and the ladies and children in close quarters. We hope to get off soon. We have been asked for a statement of losses and the Protestants' loss with Bourne's exceeds 50,000 taels. The Catholics' loss in the city alone is said to be between one and two hundred thousand taels. The news of Chinese persecutions in America has much to do with the affair. It is said the Catholics blame us bitterly as the cause of the outbreak.

If you can arrange in your mission to receive a few sorry beggars please drop a line which we may receive in Hankow. Probably five or six of us will want to make a temporary stay with you.

With kindest regards,

SPENCER LEWIS.

No. 127.

Mr. Denby to Mr. Bayard.

No. 210.] LEGATION OF THE UNITED STATES,
Peking, September 21, 1886. (Received November 4.)

SIR: * * * Mr. Gamewell, of the Methodist mission, is here pressing his claim for indemnity and future protection in the matter of the Chungking riot in July last. As it is likely that the English and French

Governments will present the claims of their people, I deemed it best to present ours, without waiting for a formal order from you.

From the voluminous statements before me I have collated the facts. I have sent to the yamên the communication which is herewith inclosed, in which the facts are stated.

It has been the general practice to present first all the claims of this character to the local authorities through the nearest consul. I can not find that any such claim has ever been presented to the yamên by the legation. If the consul finds that he is unable to effect a settlement, the next step has been to send one of the officers of the legation personally to the proper locality to take charge of the negotiations. It is likely that some such procedure may still be necessary, because there will be questions of change of location of missionary buildings, ascertainment of damages, and future protection, which the yamên may delegate to the local authorities. * * *

One reason why the questions relating to this character of cases have been relegated to the local authorities is that the missionaries have been usually held to have no right to take up permanent residence in the interior.

As they are held to be in the interior only by the sufferance of the local authorities, it would seem that these authorities, who are alike responsible for their residence and the damages that they may suffer, should take cognizance of all such cases as this.

The right of missionaries to settle and remain permanently in the interior may come into question. But whether such right exists or not is not at all material to a proper decision of the merits of the above-mentioned claims.

Our treaties with China specifically guaranty to all citizens of the United States in every part of China entire immunity from every species of insult or injury, whether to persons or property. If, as in the Chungking case, the missionaries have settled in the interior with the consent of the local authorities, have bought property, had the deeds stamped by the magistrate, paid the fees for the transfer and the purchase price and erected buildings, the Government of the United States would not allow them to be ejected by violence or otherwise than by due process of law.

The authorities would be estopped from raising the question of the original right of the missionaries to go into the interior.

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 210.]

Mr. Denby to the foreign office.

LEGATION OF THE UNITED STATES,
September 14, 1886.

YOUR IMPERIAL HIGHNESS AND YOUR EXCELLENCIES:

I am instructed by my Government to bring to the attention of your imperial highness and your excellencies the subject of the late riot at Chungking, in which the United States missionaries lost all their property, and to ask redress for the wrongs and outrages thus committed and protection for the future.

The undoubted facts, as far as I have been able to ascertain them, are the following:

The American Methodist mission was established in Chungking in 1882. Property was purchased in the city early in 1883. Additional property for a hospital, a school, and residence was purchased in January, 1886. This property was purchased with the full knowledge and consent of the people and the local authorities.

The names of the society and of the foreigners representing the society were written in the deeds. The deeds were stamped by the magistrate, and proclamations were issued stating that the mission intended to build.

While the buildings were being erected the magistrate requested that work should temporarily cease on account of the presence of a large body of military students caused by the military examinations.

In June of this year the property was turned over to the magistrate with the full understanding that he was to be responsible for its protection. The missionaries then moved in the city. The location of the buildings is about 3 miles from Chungking, and this location was selected after many examinations of other sites without the slightest objection from any quarter.

Considerable time elapsed between the dates at which all the property was secured. There was an abundance of time for objection to the purchases or to the location, but none was made.

The missionaries gave up a temple which they had rented for a summer residence, and lost the rent, 60 taels, upon a suggestion that their residence there was objectionable. They had a lease on this temple, but they voluntarily surrendered it in order to save trouble. They then secured a place for a sanitarium across the Yangtze.

The building in both places began in March, 1886, and proceeded until June 6. The buildings, when completed, would have been 10 feet from the floor line to the eaves; lower than the adjoining buildings of the "Pei Shan Tang," a Chinese charitable institution.

The buildings were of stone, one story high. On Sunday, June 6 (fifth moon, fifth day), during the absence of all the gentlemen of the mission, one lady only being present, a crowd collected at the place where the hospital and schools were located and began to create a disturbance. Mud and stones were thrown and admittance demanded. This being refused, the gate was broken down. The lady took in her hand an old unloaded gun to frighten the mob, but the gun was torn from her hand and her index finger was cut open nearly to the bone and her face was cut by a stone. The crowd then retired. The nearest local official was notified of these occurrences, but refused aid. The next day the matter was reported to the magistrate. He made light of the affair, but said he would issue some proclamation.

It clearly appears from the evidence that the magistrate did not do his duty, and took no stringent measure to check the impending riot.

At the request of the magistrate, on June 19 work on the buildings stopped, and they were put in charge of the magistrate. June 28 inflammatory placards were posted by the military students, calling on the people to destroy the buildings. One of these placards was sent to the magistrate, with the request that he would take proper action.

The placard designated the first day of the sixth moon (July 2) for the destruction of the buildings. But the riot commenced again the day before, July 1, when the premises of Mr. Copp, a British subject, were attacked and plundered. Next, the premises of Mr. Nicoll, of the China Inland Mission, were destroyed; then the house of Mr. Wood, of the same mission, was looted, and then the premises of the Catholic missions were destroyed.

The riot had been progressing for hours and no effort was made by the authorities to check it.

A constable came to the mission buildings with chairs and urged all to escape. The missionaries and their families left immediately, taking nothing with them except the clothes they had on their bodies. After a great deal of trouble and danger they reached the yamên.

The next day the buildings in the suburbs were destroyed, and after that the sanitarium across the Yangtze was burned.

The riot continued until well into the afternoon of the second day.

During its progress a Chinese Catholic was attacked, who made resistance, and several deaths resulted.

The missionaries, including one lady who was near her confinement, were kept in the yamên in close and disagreeable quarters fourteen days. While the missionaries were in the yamên they were treated with rudeness and insulting language was addressed to them. On the morning of July 16 they were escorted to boats and allowed to depart.

When things got to a point when something had to be done or the whole city might be destroyed by fire, the taotai went out with his soldiers, the street barriers were closed, and in a short time quiet was restored.

I am compelled to charge that the events above detailed disclose a willful failure on the part of the local authorities to furnish aid and protection which the treaties call for. Some days before the riot the new buildings were turned over to the magistrate. He had abundant notice that a mob was being organized to destroy missionary property. During the progress of the riot, for two days, nothing whatever was done to check it. It was only when injury seemed imminent to the city that any re-

sistance was made to the acts of the mob. It appears, therefore, that in a great city where the means of quelling the mob were abundant, when a few determined men could have checked and prevented the outrages, nothing whatever was done to that end. It appears also that military students, and it is said even soldiers, participated in these outrageous acts. I feel, therefore, convinced that the Government of his Imperial Majesty will be ready to do full justice to these my countrymen, so that they may live in the peaceful enjoyment of their property and pursue the philanthropical work which alone has brought them to China.

I have the honor to present herewith an itemized statement of the losses incurred by the American citizens resident at Chungking, and to request your imperial highness and your excellency to take such measures as may be necessary, not only for a full and satisfactory settlement of the same, but to guaranty that they shall be insured hereafter from the recurrence of similar outrages and pursue in peace at Chungking their peaceful religious work.

I have, etc.,

CHARLES DENBY.

Statement of losses of American missionaries at Chungking.

	Taels.
House at Fu-tu-Kuan	3,385
House at Siang-feng-wu	1,100
House at Tai-chia-hsiang	7,000
House at Chin-lung-hsiang	3,000
Society's books	1,365
Effects of Mr. Gamewell	3,000
Effects of Mr. Lewis	2,500
Effects of Dr. Crews	2,500
Effects of Miss Wheeler	1,800
Effects of Miss Howe	1,400
Ready money lost	950
Total	28,000

No. 128.

Mr. Denby to Mr. Bayard.

No. 212.] LEGATION OF THE UNITED STATES,
Peking, September 29, 1886. (Received November 15.)

SIR: I have the honor to inclose herewith a translation of the reply of the Tsung-li yamên to my communication of September 14, relating to the Chungking riot, and my answer to their reply.

The yamên set out a report from the governor-general, wherein he asserts that the buildings of the American missionaries interfered with the feng shui and excited the people.

The yamên observes that in the eastern part of Szechuan the Chinese and the native converts have gotten on badly together; that the present affair was a surprise; that the local authorities desired but were unable to afford protection, and that, in view of the events which transpire in western countries, my charge that the conduct of the authorities showed willful neglect of duty is too severe. The yamên states that an imperial decree has already been issued to investigate the matter and do justice.

In my answer to this communication I combat the idea that the riot originated because the American missionaries had built in an improper place. I show, by quoting from the proclamations of the local magistrate, that they had not interfered with the feng shui, and that this charge against them is an afterthought. And I express the hope that in both countries these difficulties are temporary. * * *

It will be seen from the perusal of the communication of the yamên that it is couched in phraseology which is very non-committal. There is no distinct intimation that damages will be paid. * * *

For the present the yamên has declined to issue passports to foreigners to visit Chungking, on the plea that it would be dangerous. I have not acquiesced in this determination so far as commercial travelers are concerned, but am insisting that passports be issued.

I have, etc.,

CHARLES DENBY.

[Inclosure 1 in No. 212.—Translation.]

The Tsung-li yamên to Mr. Denby.

PEKING, *September* 23, 1886.

YOUR EXCELLENCY: Upon the 14th of September the prince and ministers had the honor to receive your excellency's communication in relation to the loss of property belonging to the American missionaries at Chungking, wherein you asked for redress for the same, and requested that measures be taken, as may be necessary, for their protection, as well as prevent the recurrence of similar outrages in future, etc.

With reference to this case the acting governor-general of Szechuan, Yu, presented a report bearing upon it some time ago, as follows:

The English and American missionaries acquired property and erected buildings thereon in the Pa district. This interfered with the feng shui, and was not in harmony with the public feeling. In consequence, a large concourse of persons passed to and from the place. It was observed that a foreign lady was carrying a gun for the purpose of frightening the people, which act incurred their displeasure and led to a disturbance between them. Afterwards the crowd disappeared. This was at the time of the military examinations, and the local authorities, fearing lest trouble would likely follow, admonished the missionaries to temporarily suspend work.

Unexpectedly the people [assembled together] in great numbers; this produced a grave condition of affairs, which afterwards assumed such an excessively excited aspect as to render it difficult for the local authorities to suppress [the temper of the crowd] and the buildings and houses of the foreigners were destroyed. Fortunately the missionaries were all protected and not injured. At present prompt measures are being taken to investigate and take action in the premises.

The prince and ministers would observe that it appears that in the eastern part of the province of Szechuan (Chuan Tung) the temper and general feeling of the people are passionate and imperious, and hitherto the Chinese and native converts have not lived together harmoniously. The present affair, however, was a surprise and assumed an aspect as though the country was in a state of rebellion. While the local authorities were desirous of according protection [to the missionary property] they found that they were powerless to do so. This state of affairs happens rather too often in western countries, and your excellency's observation in regard to a "willful failure on the part of the local authorities to furnish aid and protection (to the missionaries) which the treaties call for," seems to the prince and ministers as a needlessly severe criticism.

An imperial decree has already been issued from the throne instructing the governor-general of Szechuan to carefully and minutely investigate the case and to deal with it in accordance with justice and equity; and, as a matter of course, that officer will surely understand all the circumstances attending it and render satisfactory aid. When the governor-general's report has been received the prince and minister will again address your excellency.

A necessary communication in reply, etc.

[Inclosure 2 in No. 212.]

Mr. Denby to the Tsung-li yamên.

SEPTEMBER 29, 1886.

YOUR IMPERIAL HIGHNESS AND YOUR EXCELLENCIES:

Upon the 23d September instant I had the honor to receive the reply of your Imperial highness and your excellencies to my communication touching the loss of property of the citizens of the United States at Chungking, wherein your imperial high-

ness and your excellencies give a copy of the report of the acting governor-general concerning the alleged cause of the riot, together with a statement that an imperial decree has issued from the throne instructing the governor-general to investigate the case and to deal with it in accordance with justice and equity.

I return thanks for the assurances given in your communication and for the general tone of justice which pervades it. But you will permit me to remark that, in my opinion, too much stress is laid upon the idea that Americans had erected buildings in improper places.

I have before me a copy of the magistrate's reply to certain petitioners before the riot, as well as copies of proclamations issued by that officer after the riot. From the former (issued some days before) I make the following extracts:

"This thing of the Americans purchasing and building is in accordance with the treaties. When the work was begun I went myself to investigate things. They had not disturbed a single stone or in any way injured the geomantic influence of the place. This is sufficient witness that they understood things." * * * "To wait until after the sale to object is not equitable." * * * "If there were indeed any injury from building in these places I, the local magistrate, would long ago have investigated it and forbidden them."

In a proclamation issued by the magistrate, dated July 2, he says:

"These foreigners are building houses in accordance with permission given in the treaties."

After the riot this same magistrate, in another proclamation, dated the 3d of July, uses the following language:

"It (the trouble) arose because the Americans at O Hsiang Ching, Liang-feng-Ya, and Tsung-Shu-Pai—three places—were building houses and usurping important places controlling the feng shui."

These utterances are entirely contradictory and look to me as if an effort were made to throw the blame of the riot on the Americans, which is not in accordance with just conduct. As your Imperial highness and your excellencies pertinently remark, sudden riots will occur in all countries. They are a part of the labor troubles that have, notably in recent months, prevailed in many countries. I believe that this condition of things is temporary, and I have the highest confidence that the wisdom and love of justice which so eminently belong to your Imperial highness and your excellencies will find a remedy for such lamentable occurrences in China, as I believe that my Government will in the United States.

Your Imperial highness and your excellencies ascribe the riot at Chungking partly to jealousy between the Chinese and native converts. Such jealousy can hardly exist against native converts to any of the religious creeds represented by Americans, as such converts are probably not numerous enough to attract attention.

I have, etc.,

CHARLES DENBY.

No. 129.

Mr. Denby to Mr. Bayard.

No. 229.] LEGATION OF THE UNITED STATES,
Peking, October 16, 1886. (Received December 7.)

SIR: I have the honor to report that I was lately informed by the British minister that the Chinese authorities at Chungking desired Mr. Bourne, the English consular agent, to settle the claims of the American missionaries for damages. Sir John Walsham informed me that he had directed Mr. Bourne to compromise the claims of the English missionaries, and that if desired by me he would authorize Mr. Bourne to settle our claims also. I replied that I had no authority to direct Mr. Bourne to compromise the claims of the American missionaries without their consent. I stated that I would see the superintendent, Mr. Gamewell, and get his consent to such deduction as he might see fit to make, and that Mr. Bourne must be limited to the amount that Mr. Gamewell might fix.

Yesterday I saw Mr. Gamewell. He very strongly insisted that the sum of 28,000 taels, which he had formerly indicated to the local magistrate, was small, and he was not at all inclined to consent to any reduc-

tion. I represented to him that I had had large experience in the trial of tort cases, and that I had always found that if the responsible party at the beginning of proceedings offered respectable compromise, it was better to accept it; that securing the amount in a lump was an advantage which enabled the recipient to use the funds in supplying lost articles at wholesale prices; and besides, the certainty of recovery in any case was an element that ought not to be overlooked. Mr. Gamewell finally consented that Mr. Bourne might, by way of compromise, accept a reduction of 10 per cent., or, at the lowest, 25,000 taels in full, being a reduction of 3,000 taels. I thereupon notified the British minister, who telegraphed to Mr. Bourne that, the estimated losses being 28,000 taels, he might accept 10 per cent. less than this amount, but should not go below 25,000 taels, as a compromise.

Thus the matter stands at present. * * *

I have, etc., CHARLES DENBY.

No. 130.

Mr. Denby to Mr. Bayard.

No. 243.] LEGATION OF THE UNITED STATES,
Peking, November 17, 1886. (Received January 3, 1887.)

SIR: I have the honor to report the gratifying intelligence that the local authorities at Chungking have offered to pay Mr. Bourne, the English consular agent, 23,000 taels, in satisfaction of the losses suffered by the Methodist mission and the missionaries by the riots in July. This information came to me from Sir John Walsham, the British minister, who has very kindly permitted Mr. Bourne to act for us in this matter.

Mr. F. D. Gamewell, the superintendent of the mission, has accepted this offer. It is understood that its acceptance does not waive the right of the missionaries to return to Chungking, and does not surrender title to their real estate. But they consent to accept other lands in exchange for the land in the suburbs, should suitable and eligible locations be offered them.

I append hereto copies of Mr. Gamewell's communication to me and of my letter to Sir John Walsham, as also of a note from Sir John Walsham giving a copy of his telegram to Mr. Bourne notifying Mr. Gamewell's acceptance.

It is proper to state that the claim was 28,000 taels [No. 229]. I did not exercise any authority to secure the reduction asked. I left Mr. Gamewell entirely free to accept or refuse the offer.

* * * * * * *

I do not hesitate to say that, in my opinion, this compromise is proper and advantageous.

I have, etc., CHARLES DENBY.

[Inclosure 1 in No. 243.]

Mr. Gamewell to Mr. Denby.

NOVEMBER 17, 1886.

SIR: Having received from you a notification that an offer has been made to Mr. Bourne of 23,000 taels in settlement of the damages done by the mob in Chungking to the property of citizens of the United States, I hereby authorize Mr. Bourne to accept said offer by way of compromise, with the distinct understanding that the missionary association that I represent and the United States missionaries do not thereby sur-

render title to the real estate of said association, nor give up the right to return to Chungking and renew work there. It is, nevertheless, further understood that the missionary association will not insist on re-occupying the property in the suburbs of Chungking for mission purposes, but will, if the local authorities so desire, consent to exchange said property for other eligible and suitable property located in a different locality.

F. D. GAMEWELL,
Superintendent West China Mission of the Methodist Episcopal Church.

[Inclosure 2 in No. 243.]

Mr. Denby to Sir John Walsham.

NOVEMBER 17, 1886.

MY DEAR COLLEAGUE: I have the honor to acknowledge the receipt of your note of yesterday.

I beg leave again to return to you the thanks of my fellow-citizens and myself for your kindness and assistance in the matter in hand.

I have submitted to Mr. Gamewell the proposition to authorize Mr. Bourne to accept 23,000 taels in satisfaction of the wrongs and injuries done to the property of the Methodist mission and of the missionaries at Chungking.

Mr. Gamewell now authorizes Mr. Bourne to accept said sum in full satisfaction of the pecuniary loss.

I desire it to be distinctly understood, and so communicated to the local authorities by Mr. Bourne, that this acceptance of said sum does not involve any waiver of the right of the missionaries to return to Chungking and resume their legitimate work nor the surrender of their title to the real estate purchased and occupied by them.

And the missionary association and the missionaries will not insist on re-occupying for mission work the property in the suburbs of Chungking, if the local authorities object to such occupation, and will consent to exchange said property for other suitable and eligible property in the vicinity of Chungking. I attach hereto a copy of the communication of Mr. Gamewell to me expressing these ideas.

I beg leave to state that the association would take pleasure in refunding to your excellency the cost of telegrams, as well as any other expenses you have incurred on its account. A statement thereof can be sent to me.

Yours, faithfully,

CHARLES DENBY.

[Inclosure 3 in No. 243.]

Sir John Walsham to Mr. Denby.

NOVEMBER 17, 1886.

MY DEAR COLLEAGUE: On the receipt of your letter of to-day, and of its inclosure from Dr. Gamewell, I telegraphed the following message to Mr. Bourne, through Her Majesty's consul at Ichang:

"The United States minister, with the concurrence of the Missionary Association, accepts for pecuniary losses the proposed compromise of 23,000 taels, on the following specific conditions:

"The missionaries shall not be held as having thereby waived their right to return to Chungking, nor as having surrendered their title to the real estate purchased and occupied by them, but if the local authorities should object to the reoccupation for mission purposes of the property in the suburbs, the missionaries will agree to exchange it for other suitable property."

Yours, faithfully,

JOHN WALSHAM.

No. 131.

Mr. Denby to Mr. Bayard.

No. 254.] LEGATION OF THE UNITED STATES,
Peking, November 27, 1886. (Received January 15, 1887.)

SIR: I have the honor to transmit for your perusal a translation of a memorial presented to the Empress regent, in accordance with Impe-

rial instructions by the minister of the grand council, having relation to certain articles of procedure which are to be adopted by the court on the accession of the Emperor in February next.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 254.—Memorial published in the Peking Gazette, November 22, 1886.]

Your servants, Shih-To, Ngr ho-ho-pu, Chang-Chih-Wan, Hzü-Kang-shen, and Sun-Yü-Wen, on bended knees, present a memorial in obedience to a rescript of your Majesty, the Empress regent, to consider and submit certain articles. Looking upward, they implore the sacred glance of your Majesty upon this memorial, reverently prepared by them.

They would humbly state that in the matter of the Emperor's accession to the personal authority of Government and the direction thereof by her Majesty the Empress regent next year, the grand lieutenant and other yamêns have repeatedly presented joint memorials as to whether the ancient usage should be followed by the court, requesting your Majesty to issue your instructions thereon. Your memorialists also presented copies of the articles previously in force for your Majesty's perusal. These documents your Majesty ordered to be returned, and at the same time verbally instructed your memorialists to conjointly consider and submit other articles, setting forth which of the ancient usages should be restored, which should be modified, and which should be temporarily set aside for the present, and to await the Imperial decision thereon.

Your memorialists have respectfully and thoroughly consulted and advised together and now reverently present the following articles in detail for the perusal of your Majesty:

1. Special rescripts have been issued by her Majesty having relation to his Majesty the Emperor's visit to the Eastern Imperial Mausolia to perform sacrificial rites, as well as to the religious ceremonies to be performed in person by the Emperor at the Altar of Heaven during the present year. In regard to the ceremonies to be performed by his Majesty hereafter, viz: At the Imperial College of Antiquity, the performance of the agricultural observances at the Temple of Agriculture, the writing of the academicians, and the duties at the palace gate—your memorialists would reverently suggest that all these await the issuance of special decrees from the Throne.

2. It is right that there should be a distinction made in the performance of the sacrificial rites of the second and third order, when the ceremonies should be performed by the Emperor in person or by deputy. Your memorialists propose that the ancient custom be followed—the yamên concerned presenting a memorial at the proper period asking for Imperial instructions.

3. The important observances and mode of receiving congratulations on the celebration of the anniversary of the birthdays of the Empress and Emperor and on New Year's Day, the ceremonies to be observed at the Winter Solstice Palace Examinations and Imperial Banquets—your memorialists propose that all these matters shall be regulated in conformity to ancient custom, the board of ceremonies, in conjunction with various yamêns, presenting a report to the Throne and asking for instructions.

4. Whenever officials are summoned or admitted to audience and her Majesty is present to give instructions to the Emperor, your memorialists propose that in accordance with the joint proposition of the minister of the board of ceremonies, as a temporary expedient, a curtain of gauze be erected as a screen.

5. Your memorialists propose that all officials on duty at Peking or in the provinces, in presenting complimentary memorials to the Empress or Emperor, shall prepare such documents in accordance with the present form. Memorials upon matters of business shall also be reverently prepared in accordance with the form at present in use.

6. Of late years change in the rules that each yamên shall inspect and examine candidates for appointment and present a list of their names to their majesties the Empress and Emperor, and request instructions, as well as the rule temporarily suspending the granting in person audience of candidates—your memorialists propose (shall be abolished and) that in future the old custom be carried into effect, and that all official candidates be presented for audience in person. In this matter your memorialists reverently await the decision of your Majesty. The lists of candidates to be prepared in regular order in accordance with present custom.

7. In the matter of the provincial and metropolitan examinations, as well as all matters anent the themes to be given at these examinations, according to ancient

custom these must await the decision of his Majesty. Your memorialists propose that this custom be continued in practice, the grand council presenting the classics to the Empress, when her Majesty will select the page or leaf, and then her Majesty will be asked to name the themes. Afterwards these will be submitted for her Majesty's perusal, who will give them forth. There is no need to memorialize the Throne asking that officers be appointed to suggest the themes.

In regard to the subjects for the Manchu interpreter examination, these will still be arranged by the Han Lin officers of the Imperial College of Inscriptions. At the Mongolian examinations and the examinations for Mongolian secretaryships, the grand council will, in accordance with ancient usage, reverently submit the subjects for interpretation to Her Majesty.

8. All memorials presented to the Throne by the officials, either at the capital or in the provinces, which require a rescript, your memorialists propose that the ancient custom be carried into effect and his Majesty be required to inscribe his reply with the vermillion pencil. Afterwards the memorials will reverently be presented to her Majesty for her perusal before they are sent forth.

9. According to ancient usage at the palace military examinations, the board of war presents a memorial praying her Majesty to attend the competitive exercises in person. Your memorialists suggest that at the proper period the Emperor be requested (by said board) to issue his decree in regard to this matter.

10. According to ancient custom, when the board of war memorialize the Emperor, requesting the appointment of high officers as inspectors of feasts, a larger tablet is furnished, written with Manchu characters and not topped and green-topped slips, all which are presented to his Majesty, who makes the nomination. When the Eight Banner Corps practice on the sea conches, a report should be made to her Majesty on a large tablet. Your memorialists propose that for the present the regulations now in use, having relation to these matters, be followed.

11. In the matter of his Majesty marking off the names of criminals to be executed, your memorialists propose that the rule now in practice be followed.

The above articles are presented by your memorialists, and they reverently await the sacred glance of their Majesties the Empress and Emperor upon them and their decision thereon. They will respectfully carry them into effect and communicate them to the metropolitan and provincial authorities to be alike observed by them.

A rescript issued by the Empress regent.

Let action be taken as proposed.

Respect this.

No. 132.

Mr. Bayard to Mr. Denby.

No. 124.] DEPARTMENT OF STATE,
Washington, November 29, 1886.

SIR: I have received your No. 212, of the 29th of September last, touching the Chungking riots, and inclosing correspondence with the Tsung-li yamên in relation thereto. The yamên, you state, has directed the local authorities to investigate the riot and make further report thereon, and, in the mean time, carefully abstain from any admission of responsibility in the matter beyond what may be inferred from the issuance of the Imperial decree ordering the local authorities to investigate the occurrence and do justice.

I am pleased to notice the firm and energetic tone of your correspondence with the Imperial Government. Not infrequently hitherto, in cases of outrage upon citizens of the United States, the Chinese Government has not only exerted its authority to punish its offending subjects, but has also made compensation for the injuries and losses of the sufferers, thus fulfilling the measure of its conventional obligation to afford special protection to citizens of the United States who go thither under the express permission and guaranty of the treaties.

I am not surprised at the reference in the yamên's note of September 23, last, to the outrages on Chinese in certain of the northwestern Territories of the United States, as in some sense an answer to the com-

plaints of this Government on account of the riot at Chungking. The shocking and inhuman character of those outrages is deeply deplored and has been fully admitted by this Government. At the same time I am compelled to deprecate the manifestation in the yamên's note of a disposition on the part of the Imperial Government to depart from its former course of adhering to the stipulations of the treaties. If a policy of supposed retaliation be once commenced, it is not difficult to foresee in its lamentable progress its necessarily deplorable effect upon the present friendly relations of the two Governments.

During the past year I have fully discussed, in my correspondence with the Chinese minister at this capital, the character of the outrages in the distant northwestern Territories, and the question of this Government's liability therefor, both upon the general principles of international law and the provisions of the treaties. I desire especially to refer to my note to Mr. Cheng Tsao Ju of the 18th of February last. In that note I endeavored to impress upon his excellency the exceptional character of the unfortunate occurrences referred to, their remoteness from the centers of population and civilization, the suddenness of the attack, the absence of any official complicity, and the total lack of participation of citizens of the United States in the outrages which were shown to have been committed by foreigners abusing the privileges of residence in this country. I also emphasized the privilege of unrestricted resort to the courts of the country which is enjoyed by the subjects of China equally with those of the most favored nations, for the purpose of obtaining redress against the individual offenders.

This privilege is exercised by Chinese subjects on the same footing and subject to the same laws as by citizens of the United States, except that the former have in addition the option of resorting either to a State or a Federal tribunal for the trial of their rights, which in many cases is denied to our own citizens, and may at will remove their causes from a State to a Federal court.

It is unnecessary here to dilate, as was done in the note referred to, upon the essentially juridical character of our system of government. This is a fact of which all foreigners who come to our shores are presumed to take notice, and none more so than the Chinese, who come hither under stipulations of treaty which guaranty to them precisely the same rights under the law as are enjoyed alike by other foreigners and by citizens of the United States.

In China the system of government is radically different, and the rights of Americans who go thither are guarantied not by the general law of the land, which does not provide for equality of rights as between subjects and foreigners, but by the special stipulations of treaty. Without these foreigners would not enter the Empire, and indeed are not usually permitted to do so.

In this connection I invite your attention to the language of Article XIX of the treaty of 1844, which contains the first stipulation of the Chinese Government for the protection of citizens of the United States in China. The article reads as follows:

> All citizens of the United States in China peaceably attending to their affairs, being placed on a common footing of amity and good will with subjects of China, shall receive and enjoy for themselves, and everything pertaining to them, the special protection of the local authorities of Government, who shall defend them from all insult or injury of any sort on the part of the Chinese. If their dwellings or property be threatened or attacked by mobs, incendiaries, or other violent or lawless persons, the local officers, on requisition of the consul, will immediately dispatch a military force to disperse the rioters, and will apprehend the guilty individuals and punish them with the utmost rigor of the law.

These stipulations are somewhat amplified, but substantially affirmed in the eleventh article of the treaty of 1858.

Thus it is seen that the Government of China guaranties to the citizen of the United States, peaceably attending to their affairs, special protection, not only for themselves, but for "everything pertaining to them."

In order to appreciate the obligation of the Imperial Government in this regard, it is only necessary to consider the circumstances under which the foregoing provisions were made, and the narrow territorial limits to which they were applicable. When the treaty of 1844 was signed China was a closed country. Her people were averse to the presence and association of foreigners, and no American citizen could enter the Empire with any guaranty of security for person or property. The purpose of the treaty of 1844 was to afford such a guaranty, which was defined in the article above quoted.

But the provisions of this article, it is important to observe, are restricted to an exceedingly limited area, and do not extend to the whole empire. It is provided by Article III of the treaty that citizens of the United States shall be permitted to frequent only five designated ports (the number of which has since been somewhat extended), and even in those places, as is provided in Article XVII, sites for the dwellings and business houses of Americans are to be selected with "due regard to the feelings of the people".

Within these narrow confines alone did the Imperial Government engage to assert its authority, which is the only guaranty of the personal and property rights of Americans in the Chinese Empire. In the United States, on the other hand, not only are the subjects of China permitted to go freely into every part of the country, but the same constitutional and legal guaranties of their rights, as of those of our own citizens, everywhere prevail, save in the respect previously mentioned, that in many cases the foreigner may have special advantages in the selection of a forum.

It is therefore manifest that, although in those recently and sparsely settled regions of the United States in which social organization is necessarily imperfect, the administration of justice may not always be as prompt and efficient as could be desired, the temporary inability of the constituted authorities of a particular locality to enforce the rights of aliens or of citizens can not be regarded as evidence that such rights are not generally secured in the United States. In fact, there are at the present moment, residing in many parts of the United States, thousands of Chinese whose rights are effectually protected under the general law of the land. However much we may deplore those unfortunate occurrences, it can not be said that they have tended to render insecure the general situation of the Chinese in this country, or to expose them to further injury.

It may be stated, without fear of contradiction, that especial maltreatment of Chinese subjects in the United States is the rare exception, and not the rule. It is only in the remote districts, where lawlessness is naturally more apt to prevail, that the grievous instances of outrage which are so greatly deplored by us have occurred. In such regions our own citizens are frequently the victims of personal assaults, and mob law prevails where municipal law is weakest.

But what do we find to be the case when we consider the positions of Americans in China? Restricted in their movements to specific localities, and there compelled to select their places of residence and of business with "due regard to the feelings of the people," their only security for person or property is the protection of the Imperial Government.

Any denial, therefore, of this protection, even in a single case, can only be viewed as a refusal on the part of China to fulfill her conventional engagement to protect Americans and as rendering their situation generally insecure. Such a refusal on the part of the Imperial Government may be likened to the enactment of a law by Congress (assuming that it possesses the constitutional power to make such discrimination) that certain classes of aliens should no longer be entitled to the remedies now afforded by the law for the enforcement of the rights of aliens and citizens alike.

I trust that in dealing with the Chungking riots the Imperial Government will assert its authority to secure to American citizens the full measure of protection and indemnity which the treaties promise.

I am, etc.,

T. F. BAYARD

No. 133.

Mr. Denby to Mr. Bayard.

No. 257.] LEGATION OF THE UNITED STATES,
Peking, December 1, 1886. (Received January 15, 1887.)

SIR: I beg leave to renew the recommendation made by me in my dispatch No. 13, of date October 14, 1885, that the appellation and rank of Chinese secretary be conferred on the interpreter of this legation. I am aware that little importance is attached in the United States to titles or matters of rank. But I must take things as I find them at my post of duty. Here all ceremonial, social as well as official, is regulated by rank. A man without diplomatic rank goes to the lowest place on all occasions. A line in the statutes providing that the interpreter shall be designated as Chinese secretary and shall be treated as and held to be one of the secretaries of the legation, would be all that is necessary.

I think that the Tsung-li yamên and other boards and officials would accord more respect to an official designated as a Chinese secretary than to an interpreter. Interpreters have no rank whatever and are treated altogether as subordinates. The duties to be performed by them are delicate and important. The Chinese secretaries of the other legations often visit the Tsung-li yamên in place of the ministers and present diplomatic questions. Such an officer should have a distinctive diplomatic rank, so as to secure for him all possible consideration. I desire simply to place the interpreter of this legation on a par with those of the other great treaty powers.

I have, etc.,

CHARLES DENBY.

No. 134.

Mr. Denby to Mr. Bayard.

No. 260.] LEGATION OF THE UNITED STATES,
Peking, December 2, 1886. (Received January 21, 1887.)

SIR: I have the honor to report that American merchants doing business at the ports of Takow and Anping, in Formosa, have presented me the following question through the consul at Amoy.

It seems that the local authorities in Formosa levied an enormous lekin tax on native produce. The people refused to pay the tax and threatened to discontinue planting. The authorities then concluded to collect this tax from the foreign merchants after the produce (in this case sugar) had reached the go-down of the merchants. The foreign merchants refused to pay this tax on the ground that it was really an export tax and contrary to the treaties.

I have presented this question to the Tsung-li yamên fully, as you will see by a copy of my communication which is herewith inclosed.

I will communicate the answer when the same is received.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 260.]

Mr. Denby to the foreign office.

LEGATION OF THE UNITED STATES,
Peking, December 2, 1886.

YOUR IMPERIAL HIGHNESS AND YOUR EXCELLENCIES:

I have the honor to inform your Imperial highness and your excellencies that a question of some importance has been presented to me by American merchants doing business in Formosa, through the United States consul at Amoy. I beg leave to state the same to your imperial highness and your excellencies, and most respectfully to ask your interposition in order that justice may be done.

The treaty of 1858 between China and the United States fixes an export duty on sugar as follows: "Sugar, brown, per 100 catties, 1 mace 2 candareens; sugar, white, per 100 catties, 2 mace. The treaty provides that this tariff shall henceforward and until duly altered under the provisions of treaties be in force at the ports and places open to commerce."

If the foreign merchant brings native produce down from the interior under transit passes, he pays one-half duty, which payment exempts the goods from all charges en route. But if he buys the goods in the open ports from the producer, the rule has been to pay only the export duty. Now it happens that in the island of Formosa the local authorities imposed a lekin tax on all produce, amounting, I am informed, to from 10 to 15 per cent. on the value of each article.

The collection of this enormous tax was resisted by the producers, who refused to pay it and threatened to discontinue planting if it was insisted upon. The local authorities then abandoned the collection of this tax in the interior and concluded to collect it at the port of shipment from foreigners. For that purpose they established lekin stations at the port of Takow and Anping (a port of Vainanfu). The collection of such a tax was justly regarded by the foreign merchant as the imposition of a new export duty. It seems that the British consul, who is also consular agent of the United States, Mr. Warren, arranged with the local authorities that until the final decision of the high authorities at Peking on the legality of this tax, the goods might be shipped by giving bond guarantying the payment of the tax, should it be decided that such a tax could be levied within the limits of a treaty port. If the local authorities for any reason find themselves unable to collect lekin on the produce while it is en route, this inability furnishes no reason why the foreign merchant, after he has bought the goods and has them in his godown, should pay this tax.

If it is competent for the local authorities to levy what lekin they please, it becomes clearly impossible for the foreign merchants to do business at all. If he is liable to pay this tax he would never know how much his goods would cost him.

I am informed that the lekin tax levied in Formosa, is for white sugar, No. 1, 40 cents per basket of 132 pounds; and for brown sugar, No. 1, 20 cents per basket of 132 pounds. Taxes on Nos. 2 and 3 are proportionately larger. Since the bond system was agreed on the taxes have been largely increased. There is no means of knowing to what amount the tax may be hereafter increased. This uncertainty is very detrimental to trade.

The sugar season is now about to open, and it is important that the question of the liability of the foreign merchants to pay lekin on sugar in the two ports should be settled.

I therefore submit the whole question to your Imperial highness and your excellencies, hoping that you will do justice in the premises.

I respectfully request your Imperial highness and your excellencies to make an order that native products which have been bought by the foreign merchants shall only be required to pay the regular export duty, and shall not be required to pay lekin taxes.

I have, etc.,

CHARLES DENBY.

No. 135.

Mr. Denby to Mr. Bayard.

No. 262.] LEGATION OF THE UNITED STATES,
Peking, December 4, 1886. (Received January 21, 1887.)

SIR: I have the honor to inform the Department of the return of Marquis Tseng from the capitals of England and Russia, where he has been accredited as envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of China, since 1878. His return is a matter of some interest to foreign residents in China, as he is, perhaps, the most progressive and influential minister that has ever represented China abroad.

The Marquis Tseng is the son of the late Tseng Kuo-fan, the most celebrated among recent Chinese statesmen, and one who was much revered by the Chinese for the wisdom and patriotism believed to actuate his official conduct.

Possessing many of the admirable traits of his father, and belonging to a well-known official family, it is believed by many that the marquis will be in a better position than others who have held similar diplomatic posts to impress on the Chinese bureaucracy the advantages which will accrue to China by the adoption of Western improvements and civilization.

* * * * * * *

His mission in Europe has not been the easiest in the gift of the Emperor. He has had a difficult rôle to play, particularly in matters having relation to the late complications between France and China. He seems to have grasped the situation, and in many cases acted on his own views. * * *

To his credit it may be said that his mission abroad has been a success, and it is to be hoped that his efforts to serve his country at home may be equally successful.

The marquis is at present in Shanghai, where he has spent some time in inspecting the forts there. He is expected in Peking shortly. His present official positions are vice-president of the board of war and assistant lord of the admiralty.

I have, etc.,

CHARLES DENBY.

No. 136.

Mr. Denby to Mr. Bayard.

No. 263.] LEGATION OF THE UNITED STATES,
Peking, December 11, 1886. (Received January 21, 1887.)

SIR: I have the honor to report that the consul-general has submitted to me the following question: "Is the storage of opium by an American firm forbidden under Article II of the treaty of 1880?"

I have declined to answer this question specifically, but I have held that, under the facts communicated to me, Messrs. Russell & Co. were acting contrary to the treaty.

I inclose herewith a copy of my answer, which I submit to you for approval.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 263.]

Mr. Denby to Mr. Kennedy.

DECEMBER 4, 1886.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 20, of date November 26, 1886. In the absence of any statute construing or enforcing the second article of the treaty of 1880, it is very difficult to define accurately what acts are prohibited to be done by citizens of the United States. In a communication to Congress of date May 19, 1886, the honorable Secretary of State uses this language:

"The intent of the treaty is clear that no American citizen in China shall engage in or knowingly aid others to carry on the opium traffic."

I shall not undertake to answer specifically the question put, "Is the storage of opium by an American firm forbidden under Article II of the treaty of 1880?"

In advance of Congressional legislation it would not be proper for me to declare what acts are prohibited. It is sufficient to decide questions based on actual facts existing and communicated to me.

The facts admitted here are that Mr. Grieg, an Englishman in the employment of Messrs. Russell & Co., deals in opium. He stores it in their godown and he pays them "a commission from its storage." Without deciding whether storage of opium by an American under all circumstances is prohibited, I incline to the opinion that storage in a warehouse owned, kept, and used by an American to carry on his own business is prohibited. Should I sustain the view that Messrs. Russell & Co. take of the treaty I would be practically deciding that every American in China can lawfully fill his warehouses with opium on storage, take care of it and protect it, insure it, maintain an action for its possession, and do every act relating to it that any warehouseman may do.

It seems to me that such a state of things would be contrary to the treaty. It is true that storing an article is not literally importing it, buying, selling, or transporting it; but there would be neither buying, selling, importing, nor transporting an article unless it could be stored for safe-keeping. The greater must be taken to include the less.

Let it be distinctly understood that I do not intimate that an American may not lawfully lease a portion of his godown, or that the lessee may not carry on any business therein which is not prohibited by the law of China or by international law. What I hold is that an American may not use his godown, which he uses and occupies for the transaction of his own business, for the purpose of storing opium therein.

Your second question is, "Is the receipt of commissions for such storage an infraction of Article II?"

The receipt of pay for storage would neither add to nor take from the act itself its illegal character. If the opium were stored gratuitously the act would still be wrongful. The violator of law can not shield himself against the consequences of an illegal act by the plea that he did it without reward. If pay is charged for storage it is a circumstance tending to characterize the transaction as an ordinary matter of business.

You will please send a copy of this dispatch to the United States consul at Foochow, and communicate its contents to Messrs. Russell & Co. I am satisfied that this distinguished and honorable firm had no intention to knowingly do any act contrary to the treaty. They have construed its terms strictly, while I have looked at its true intent and meaning.

The whole matter will be communicated to the honorable Secretary of State for his decision.

I am, etc.,

CHARLES DENBY.

No. 137.

Mr. Bayard to Mr. Denby.

No. 132.] DEPARTMENT OF STATE,
Washington, December 9, 1886.

SIR: I have received your No. 229, of October 16, last, concerning the settlement of the claim of the missionaries for the destruction of their property at the Chungking riots, through the mediation of the British consular agent there, Mr. Bourne, whom the local authorities have asked to act in the matter.

Your action in authorizing, through the British minister, Mr. Bourne, with the consent of the superintendent, Mr. Gamewell, to adjust the claim of the American missionaries by the payment of not less than 25,000 taels, which is a reduction of 3,000 taels from the original amount asked, is approved.

* * * * * * *

I am, etc.,

T. F. BAYARD.

No. 138.

Mr. Denby to Mr. Bayard.

No. 273.] LEGATION OF THE UNITED STATES,
Peking, December 18, 1886. (Received February 12, 1887.)

SIR: I have the honor to inform the Department of the appointment of Marquis Tseng, late Chinese minister to England and Russia, as minister of the Tsung-li yamên. I will only say that his appointment is regarded as a good one.

I have, etc.,

CHARLES DENBY.

No. 139.

Mr. Denby to Mr. Bayard.

No. 274.] LEGATION OF THE UNITED STATES,
Peking, December 20, 1886. (Received February 12, 1887.)

SIR: I have the honor to inclose herewith a communication from the viceroy at Canton to Mr. Consul Seymour, relating to the claims of American citizens for damages at Tseng Yuen (American Baptist South) in September, 1884, and at Kwei Ping (American Presbyterian) in May, 1886. The viceroy states that he has repeatedly ordered the magistrates "to hasten and satisfactorily settle the preceding cases." He disputes the amount of damages claimed.

* * * * * * *

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 274.—Translation.]

The viceroy of Canton to Mr. Seymour.

CANTON, *October* 31, 1886.

SIR: Having received your two dispatches, one on August 28 and one on September 2, I, the viceroy, after perusing and investigation, found that when your former dispatch came to hand I had already ordered the Kwei Ping magistrate to investigate, administer, and trace up the lost articles and report them, and if Mr. Fulton should return to the district to see that he is protected.

I also have ordered the Ching Yuen magistrate to investigate into the case that occurred during August, 1884, when the missionary chapel was robbed, and have those that began the disturbances and those that destroyed and robbed away articles classified seized, tried, and satisfactorily administered.

Therefore, in regard to the two cases of Kwei Ping and Ching Yuen districts, I, the viceroy, have repeatedly and strictly ordered their respective magistrates to protect foreigners if there are any, to hasten and satisfactorily settle the preceding cases, and forbid them to delay or to be partial.

I have ordered them so many times that I think that each magistrate will not dare to delay or not to administer the affairs.

I refer to the clause in the dispatch saying that these affairs can be easily settled with your honorable consul, but the Ching (or Tseng) Yuen case is not a simple affair.

The official has been changed and things are different from what they were before, so it must be thoroughly investigated before it can be settled, and not because the native official wishes to delay.

With reference to whether the Kwei Ping case can be immediately settled satisfactorily it must be distinctly inquired, how the trouble originated, who caused the trouble, who were the ringleaders, who were the followers, before it can be justly decided.

With reference to the two cases that could be easily settled, I, the viceroy, only can strictly hasten, but can not decide beforehand.

With regard to the settlement of the cases by the viceroy in Canton; since Kwei Ping is several thousand lis from Canton, and Tseng (or Ching) Yuen is several hundred lis away, whether the affairs pertaining to the cases are true or untrue, and the causes of the troubles, all of which I have not witnessed with my own eyes, so that I can not decide the case without certainty.

Your dispatch also stated that the man who leased the house to Mr. Fulton at Kwei Ping said "that placards were posted offering a reward for his head at Kwei Ping." I am afraid that this news has been inaccurately reported, otherwise it must be that the man has been accustomed to pursue evil doings, and that he has gathered enmities with his fellow-countrymen; but this is not the foreigners' business.

I, the viceroy, have been accustomed to treat the Americans intimately, so I must order the Kwei Ping magistrate to protect Mr. Fulton when he reaches the district, so as to please your honorable consul's wishes.

In regard to your honorable consul's dispatch of July 11, 1886, in which it is stated that Mr. Fulton altogether lost property to the amount of $5,300, I, the viceroy, then referred to the dispatch of General "Loo" (the general of Kwong Si) and the petitions of the colonel of "Chum Chow," and the Kwei Ping magistrate, all stating that Mr. Fulton himself said that "the clothing and articles lost were not of much consequence," and that "all lives were secured, very fortunate"; all these words were uttered by Mr. Fulton himself, so that it cannot be untrue, and if the articles lost amounted to $5,300 he would have distinctly told the native official and not state that they were not of much consequence.

I, the viceroy, having a regard for the friendly terms of our two countries, that peace rest between us is considered important, and that the affairs concerning losses considered small, therefore I did not mention them in my answers, and since your honorable consul has repeatedly sent dispatches to me urging the settlement of the two cases, also did not mention the lost articles again, is similar to my ideas. Although the affairs are small, yet it is important in connection with the settlements, so I must clearly state it in the beginning, and think that your honorable consul sees it here.

Again, the two cases of Kwei Ping and Tseng (or Ching) Yuen are only disturbances suddenly arisen, which is a small affair, as the Americans did not receive any wounds or injury; and I, the viceroy, as soon as your honorable consul's dispatch was received, ordered each magistrate to immediately and satisfactorily administer the affairs, and have repeatedly and strictly hastened them; so I, the viceroy, did not spare any moment in attending to the American cases, and can say that I have exerted all my power, but in the case of the Chinese club-house at San Francisco, where the Americans totally killed over thirty Chinese subjects, and that several hundred thousand dollars' worth of property, etc., were lost, which is inhuman oppression to the extreme, and compared with the two cases of Kwei Ping and Tseng (or Ching) Yuen must be one hundred times as severe.

Although the indemnity has been considered and decided upon, and yet is not settled. China has exerted her utmost in administering the small cases of America; so America ought to immediately and satisfactorily settle the serious cases of China.

Your honorable consul ought to personally telegraph and petition to his excellency the American minister at Peking to write to your honorable country's Secretary of State (within this day) to consider satisfactorily and pay the indemnities to the Chinese minister and severely punish the rioters, so as to be in accordance with the public agreements.

Although this case is not connected with the Kwei Ping and Tseng (or Ching) Yuen cases, yet your honorable consul having previously sent dispatches respectfully asking me, the viceroy, of reasonable affairs, so I, the viceroy, respectfully ask reasonable affairs of your honorable consul, and think that your honorable consul will comply with this.

Besides ordering the Kwei Ping magistrate to immediately investigate into the true facts of this case, clearly trace up, satisfactorily administer, and report the affairs, and if Mr. Fulton returns to the district to protect him with all his power and to put a stop to all placards posted, and order the Ching (or Tseng) Yuen magistrate to investigate into the case occurred during August, 1884, when the missionary chapel was robbed, to have those that began the trouble and those that destroyed and robbed away property, etc., seized, tried, and immediately administered, so I reply to your honorable consul with compliments, etc.

CHANG CHIH TUNG.

No. 140.

Mr. Denby to Mr. Bayard.

No. 281.] LEGATION OF THE UNITED STATES,
Peking, January 6, 1887. (Received March 7.)

SIR: I have the honor to inclose herewith the reply of the yamên to my communication relating to the tax levied on sugar in Formosa, of which a copy was sent to you with my dispatch No. 260, of December 2, 1886.

It will be seen that the yamên relies on Rule 7 of the trade convention of 1858 with the United States. The yamên states that it has deputized officials to consult and arrange the matter. I will communicate the result.

I have to state in this connection that I have noticed in the public press that the viceroy at Canton has levied a new tax on kerosene oil. When I receive official notice from the consul, to whom I have written, I will protest against this outrage of Chang Chi Tung. I shall thus largely avail myself of your fine argument in your dispatch No. 116, of March 8, 1886.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 281.]

The Tsung-li yamên to Mr. Denby.

PEKING, *January* 3, 1887.

YOUR EXCELLENCY: Some time ago the prince and minister had the honor to receive a communication from your excellency in relation to the levying of lekin in Formosa, wherein you stated that it was important that the question be settled, etc.

At the time, the yamên sent instructions to Formosa, calling for a report upon the subject, and also acknowledged your excellency's dispatch. This is a matter of record.

Now, it appears that the collection of lekin in the island of Formosa is at present confined to one route [one road]. Whenever foreigners proceed inland and purchase

native produce, and do not apply for transit passes (to cover the goods *in transitu*), or when they purchase native produce at the treaty ports which have not paid lekin inland, in these cases it is right that the exaction of lekin should be levied on the goods. Since the collection of this tax is in lieu of the payment of the barrier, or transit tax, it can not be regarded as the imposition of an additional lekin tax from foreign merchants at the treaty ports.

The plan adopted in Formosa is not at variance with the provisions of Article VII of the trade regulations between the United States and China. Further, it is not altogether unlike the system governing the collection of lekin in the other provinces, although there are in the Formosa system slight points of difference. Instructions have already been sent by the yamên to the authorities of Formosa, as well as to the inspector-general of customs, to depute officers in Formosa to consult and properly arrange the matter.

As in duty bound, the prince and minister send this communication in reply for your excellency's information.

A necessary communication, addressed to his excellency Charles Denby, United States minister, Peking.

No. 141.

Mr. Denby to Mr. Bayard.

No. 282.] LEGATION OF THE UNITED STATES,
Peking, January 7, 1887. (Received March 7.)

SIR: I have the honor to report that the losses of the missionaries of the Methodist mission at Chungking have been finally adjusted.

I inclose herewith a translation of the agreement made by Mr. Frederick S. A. Bourne, acting for me, with the Chinese officials.

By the terms of this agreement the walls, masonry, pillars, etc., remaining on the property are to be preserved. The missionaries are to return to Chungking and rebuild, under the protection of the authorities, when deemed advisable. The present sites are to be exchanged for others. Twenty-three thousand taels are to be paid at specified times.

Mr. Bourne writes to Her Britannic Majesty's minister that the local authorities desired to insert in the agreement a period of delay in the missionaries returning to Chungking, but he refused to allow such a clause to be inserted. Mr. Bourne is still a quasi prisoner in the yamên, and the French missionaries are barricaded in their house. As soon as the French commence building our missionaries can return. The local officials were desirous of inserting in the agreement a clause that the head of the ward chosen by the literati and the head of the ward chosen by the people should control the selection of new sites, but Mr. Bourne would not consent, because the treaties do not warrant such an arrangement.

Mr. Bourne has rendered us signal service in this matter. He has displayed great zeal, ability, and kindness. There was no other person in Chungking who could attend to our business, and no American was allowed to go thither.

The agreement has been submitted by me to the superintendent of the mission, and has been approved by him. I have notified Her Britannic Majesty's minister of my approval of the agreement. The matter may therefore be considered as having reached a favorable termination.

I am just in receipt of your dispatch No. 118, of date November 8, 1886. You therein authorize me to go to Chungking, or to send thither

Mr. Franklin or a member of this legation. It is a six weeks' trip to go thither, and I hope the necessity of sending any one will not arise. * * *

I have, etc., CHARLES DENBY.

[Inclosure in No. 282.]

Mr. Bourne to Sir John Walsham.—Proposed arrangement of the American case arising out of Chungking riots of July 1, 1886.

The acting governor-general of Ssú Chuan, Yu, having deputed the expectant prefects, Lo and Fang, to arrange this affair at Chungking, together with I, taotai of Eastern Su Chuan, Heng, prefect of Chungking, Fu and Kwo, magistrates of the district of Chungking, and the minister of the United States in China, having requested the British minister, Sir John Walsham, bart., to instruct Mr. Bourne, British resident consular officer at Chungking, to settle this case on behalf of [the American minister], the above parties have now agreed to the following terms:

1. The local officials, civil and military, are to take measures to preserve all that remains on the American sites within the city in the Tai-Chia Hang and the Chin-lung Hang—walls, masonry, pillars, etc. Damages to this property will not be allowed.

2. The American missionaries are to wait until the district is quiet and men's minds quite settled before rebuilding their houses in the city. As soon as it is advisable for foreigners to build in the city, the local officials, civil and military, will extend strenuous protection to the missionaries, and will appoint police to look after them.

3. The American missionaries paid originally 2,300 taels for the site at Ihang-ching, and 200 taels for the site at Liang-feng-ya, exclusive of the stamp duty. As the people are not willing that the American missionaries should build on these sites, it is now decided that these sites shall be given up in exchange for others, according to Mr. Gamewell's letter to Hsia, taotai, dated July 12 last. As soon as suitable sites have been found a fair purchase price will be decided. If the price is more than 2,500 taels the American missionaries will make good the balance, and if the price is less than 2,500 taels the local officials will make good the balance after the purchase has been completed. The sites at Ihang-ching and Liang-feng-ya will be given up, and the foreign grave at Ihang-ching will be moved over. When the district outside (the city) is quite settled and the American missionaries build on the new sites given in exchange, the local officials, civil and military, will again take strenuous measures to protect them.

4. The list of losses made out at the time by Mr. Gamewell amounted to 28,000 taels, exclusive of the value of the four sites. Now that the affair is being settled by way of compromise, the American minister is willing to reduce the amount to be paid in compensation. It is promised that 23,000 taels, note silver, by the Chungking balance shall be paid; 5,000 taels in the twelfth month of this twelfth year of Kuang-hsii; 6,000 taels in the third month; 6,000 taels in the sixth month, and 6,000 taels in the ninth month of the thirteenth year of Kuang-hsii.

5. Both parties will report the above terms to their superiors for their approval, settling the case.

TAOTAI,
Prefect, Magistrate,
and Mr. BOURNE.

Dated December 10, 1886.

True translation.

F. S. A. BOURNE.

No. 142.

Mr. Bayard to Mr. Denby.

No. 146.] DEPARTMENT OF STATE,
Washington, January 8, 1887.

SIR: I have received your No. 243, of November 17, 1886, announcing the gratifying intelligence of the settlement of the claims of the Ameri-

can missionaries at Chungking, by reason of losses suffered by them on account of the riot there in July last.

The Department warmly appreciates the generous and able assistance rendered to our injured citizens by Mr. Bourne, the consular agent of Great Britain at Chungking. You will, therefore, in addition to what you have already said, suitably express the Department's thanks to Sir John Walsham, Her Britannic Majesty's minister at Peking, for his courteous kindness, and through him to Mr. Bourne for his valuable and successful assistance.

* * * * * * *

I am, etc.,

T. F. BAYARD.

No. 143.

Mr. Denby to Mr. Bayard.

No. 286.] LEGATION OF THE UNITED STATES,
Peking, January 10, 1887. (Received March 8.)

SIR: I have the honor to report that I have received from the consul at Amoy a notice that the local authorities of the island of Formosa have made a monopoly of the camphor trade of the island. By this regulation sale of camphor by private producers is prohibited; the Government alone buys and sells camphor. The custom of giving transit passes is abolished.

Mr. Crowell writes that he has brought this matter to the attention of the Department. I have instructed him that under Articles XIV and XXVII of the French treaty of 1860, the augmenting of the number of articles reputed contrabrand or subjects of monopoly is prohibited. The text of Article XXVII is:

> The Chinese Government renouncing therefore the right of augmenting the number of articles reputed contraband or subjects of monopoly, any modification of the tariff shall be made only after an understanding has been come to with the French Government and with full and entire consent.

It is further to be noted that in all the treaties for the regulation of trade contraband goods are specified. See Rule III of the treaty with the United States, which prohibits trade in munitions of war and salt only. In all trade conventions camphor is specified in the list of imports and exports and a duty is affixed.

I conclude that the proposed monopoly of camphor is prohibited by the treaties. Owing to the peculiar form of the Chinese Government, as it relates to the provinces, and for other reasons, I have adopted the rule of requiring the consuls in the first place to endeavor to settle with the local authorities all questions arising in their jurisdiction. I depart from this rule, as in the case of the Chungking riots, in those localities only where there is no consul. If the consuls are unable to procure redress, I then present the question to the Tsung-li yamên. I have therefore instructed Mr. Crowell to present his objections fully to the local authorities.

* * * * * * *

I have, etc.,

CHARLES DENBY.

No. 144.

Mr. Denby to Mr. Bayard.

No. 288.] LEGATION OF THE UNITED STATES,
Peking, January 12, 1887. (Received March 7.)

SIR: I have the honor to report on the present condition of the railroad question in China.

Plans had been perfected for the construction of a railroad between Tientsin and Taku. The engineers and all necessary material were to be sent out in the spring. But the opposition of the censors has again been successful. They memorialized the Throné, exposing the plans of the viceroy, Li Hung Chang, and General Wilson. They detailed every species of anticipated evil; the control of China by foreigners; the desecration of graves; the deprivation of the means of subsistence to the people. At the last moment it was ordered that all railroad enterprises should be suspended.

The Americans have, however, succeeded in securing the employment of an iron expert and a chemist for three years, at a salary of $12,500 gold and expenses of travel both ways, and while in China. These gentlemen are to exploit the iron mines in this province first, and afterwards in adjoining provinces. The announced plan is that China is to manufacture her own rails, and, having succeeded in securing material at home, she is to build railways. This employment was much coveted by the English, Germans, and French. It is undoubtedly a matter of gratulation that it has fallen to Americans, as it may be regarded as an opening wedge, an initial step, which may lead to important results.

* * * * * * *

I do not despair of the building of railroads in China. The question will recur again and again. The influences surrounding the Emperor are progressive. The use of steam, the telegraph, and modern arms and military and naval science, have won their way over just such opposition.

I have, etc.,

CHARLES DENBY.

No. 145.

Mr. Denby to Mr. Bayard.

No. 291.] LEGATION OF THE UNITED STATES,
Peking, January 18, 1887. (Received March 22.)

SIR: I have the honor to inclose herewith a translation of a dispatch from the Tsung-li yamên informing me that by agreement with Great Britain the import duty and lekin tax on opium has been fixed at 110 taels per chest. Opium is, after paying this duty, to be relieved from further taxation. The opium business in China is mostly in British hands. It is supposed that Germany will consent to this arrangement. Should she fail to do so some trouble might ensue. Her subjects might insist on paying 80 taels import duty and take the chances on the lekin tax. This would lead to smuggling into the interior, which China wishes to prevent.

In connection herewith I may be permitted again to express the hope that the present Congress will enact the necessary legislation on the

opium question. The moral influence of this legation has alone prevented breaches of the treaty stipulations. The question is liable to come up in various forms, and has already several times been bruited. American merchants make tentative efforts to evade the strict provisions of the treaty. The Chinese, on the other hand, are very jealous of their treaty rights. At any time disorder may arise at one of the treaty ports, and the representatives of the Government are powerless to prevent any infraction.

* * * * * * *

I hope that such legislation will have been enacted before this dispatch reaches you.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 291.]

The Tsung-li yamên to Mr. Denby.

PEKING, *January* 15, 1887.

YOUR EXCELLENCY: The prince and ministers have the honor to inform your excellency that some time since the Government of China entered into an agreement with the Government of Great Britain fixing the import duty and lekin tax on opium, the same to be collected under special regulations.

The yamên, in conjunction with the board of revenue, memorialized the Throne in the matter of fixing the time when the collection of this duty and tax should come into operation. It has now been decided that on and after the 1st day of February, 1887, the duty and lekin on opium, to be collected alike at all the treaty ports, shall be 110 taels per chest.

Now, besides having communicated with the customs or tax establishments in all the provinces and instructed the inspector-general of customs to notify the commissioners of customs (at all the treaty ports) to act accordingly, as in duty bound the prince and ministers send this communication for your excellency's information.

A necessary communication addressed to his excellency Charles Denby.

No. 146.

Mr. Denby to Mr. Bayard.

No. 299.] LEGATION OF THE UNITED STATES,
Peking, February 8, 1887. (Received March 31.)

SIR: I have the honor to inclose herewith a copy of my dispatch to the foreign office on the subject of the removal of the Woosung Bar in the Wangpu River, near Shanghai. Similar communications will be sent by each foreign representative.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 299.]

Mr. Denby to the Tsung-li yamên.

FEBRUARY 8, 1887.

YOUR IMPERIAL HIGHNESS AND YOUR EXCELLENCIES: I have the honor to inform your Imperial highness and your excellencies that the foreign merchants and shipowners at Shanghai have again petitioned the foreign ministers to bring before your Imperial highness and your excellencies the necessity of dredging the Woosung Bar.

I can not fail to comply with this request, because I believe that the interest no less of China than of the mercantile classes demands this improvement.

I am aware that the subject has been heretofore on several occasions brought to the notice of your Imperial highness and your excellencies. But observation and experience have taught us that nothing is ever settled until it is settled aright.

Shanghai, if not such already, is surely destined to be one of the great cities of the world. She occupies the most fortunate position midway of the Asiatic coast. With no possible rivals near her, looking towards America and Japan, with the great Yangtze tributary to her, she is the great central port of China, to which trade gravitates as naturally as the commerce of the world gravitates to London, or of America to New York. Her imports and exports largely exceed all those of the other ports of China. Her shipping is enormous. The ships of every nation visit her port.

There is no possible contingency which can ever deprive Shanghai of her pre-eminence over other cities. Nature has, by the configuration of the continent and the flow of the Yangtze, which pours its vast flood 1,900 miles through the heart of China, determined here the location of a great city.

If these statements be true, is it not just to the people of this city, and of China, whose commercial capital she is, that every facility should be afforded to the great trade which finds its chief mart at Shanghai?

For many years the Woosung Bar has been a detriment and injury to commerce. Detentions of ships occur there and heavy expenses are entailed on their owners. The bar could be dredged out at a comparatively small expense, considering the ends to be accomplished. Your archives and those of all the legations are replete with scientific reports showing the necessity for this work and the facility with which it can be accomplished.

Heretofore an objection has been made that this bar was necessary as a protection in time of war. But China now has a fine navy, and her own ships would be excluded as well as the ships of the enemy. Besides, the progress of the science of warfare has devised other and more efficient means to protect harbors. The present torpedo system insures absolute protection against an attacking fleet of any tonnage.

The greater the size of the ships which can ascend the river, the greater the tonnage dues collected. The greater the facilities for trade, the more trade there will be. The cost of transshipment of freight is a very serious item to large vessels. The danger of affecting the current to the disadvantage of native vessels by removing the bar has been disposed of by scientific observers.

I do not deem it necessary in this communication to go over the whole ground in favor of the improvement that is now petitioned for. Your Imperial highness and your excellencies are thoroughly posted on all phases of the question. I desire simply, in conjunction with my colleagues, to call your attention to the matter, and to beseech you, as well for the sake of the best interests of China as for that of the general commerce, to take immediate steps to have this bar removed.

I have the honor further to suggest that a work of so important a character as the improvement of the Wangpu River should be intrusted to the authorities who control the harbor, or that they should be consulted in determining on the plan of improvement, and the best scientific aid should be secured.

CHARLES DENBY.

No. 147.

Mr. Denby to Mr. Bayard.

No. 301.] LEGATION OF THE UNITED STATES,
Peking, February 8, 1887. (Received April 12.)

SIR: I have the honor to report that the Emperor Kuang Hsii assumed the reins of government yesterday. No notice of this event was sent to the legations. There was no public ceremonial. This day is always regarded as a holiday by the people. They thronged the streets. There was no procession or any of the public festivities usual in other countries. The princes and nobles of the Imperial family, the members of the court, and the high officials proceeded in a body to the presence of the Empress and paid their respects to the Emperor. At night there were displays of fire-works and illuminations all over the city. But this practice is usual; it is called the "feast of lanterns."

The Empress remains Empress regent. Her participation in the government is not well defined. Decrees will be issued in the name of the Emperor; but when she some time ago contemplated retiring from all control in matters of state an urgent request was made to her by all the high officials that she would still remain as an adviser of the Emperor, and, until he has acquired more experience, that she would to a certain extent retain control of public matters. To this she, being pressed, consented. She will, therefore, continue to appear with the Emperor, but behind a gauze screen, as heretofore.

For this arrangement there are two probable reasons. The first is that the question of audience of the foreign ministers is thereby postponed. During the long regency of the Empress dowager no effort was made to secure an audience. As she actually remains in power it is supposed that no such effort will now be made. The Chinese regard the granting of audience to any foreigners who will not make the *kotow* and bring tribute as derogatory to the dignity of the Emperor. They think that their own people will regard the granting of audience as a waiver of the claim of universal dominion, which is the traditional superstition of China. They are anxious that the reign of the Emperor shall not at the outset be marked by a retrocession from a revered belief. While in Corea and Japan the seclusion of the King and Emperor has been utterly done away, here it is preserved more strictly than ever. No eye may rest on the Imperial cortege as it passes in the street. All the ways are barricaded with mats and hangings, and formal notices, when the Emperor goes out, are sent to all the legations to request them to notify their people to keep off the streets.

Another and potent reason for the continued participation of the Empress dowager in the Government is the fact that Prince Chun is father of the Emperor. By Chinese etiquette he can not participate in the Government of his son. Filial piety, which underlies the whole system of government, and is the only well-defined religion that exists—the worship of ancestors—prohibits the father from occupying a position under the son. Prince Chun is at the head of the admiralty board, and has some connection which is not accurately known with the military. His influence is considerable. He is consulted by the high officials on all important questions. He is the seventh prince, the brother of the Emperor Hien Feng, and the brother-in-law of the Empress. A great party desires that he shall still remain in the direction of affairs. Thus, with the adroitness for which Chinese statesmen are famous, the question has been settled as to the participation of the Empress dowager in the Government.

The Empress has now ruled China for twenty-five years. On the death of Hien Feng in 1861, his son, Tung-Chi, an infant, succeeded him. There were two Empresses then. The Eastern Empress died six years ago. Until the assumption of the Government by Tung-Chi, in 1873, these two ladies ruled as regents. Tung-Chi died in 1874. The present Empress, who was then secondary consort of Hien Feng, the other Empress being his widow, adopted her nephew, Kung Hsii, the son of Prince Chun, as Emperor. The boy was then but four years old. He is now sixteen, this being the beginning of the thirteenth year of his reign.

Prince Kung, brother of Hien Feng, was at the head of the Government from his brother's death until 1884. He was then removed. Prince Chun has since then been the most important man in the Empire.

It is universally admitted that the Empress has manifested great ability. She is very industrious, even laborious. In a personal Government like this the labors of the sovereign are enormous. It is understood that she studies and comprehends all subjects submitted to her. It must be said that under her rule China has attained the highest position among the nations that she has ever occupied. Her financial credit is good in the markets of the world; peace prevails at home; manufactures and commerce are increasing; the navy has been created, and the army much improved. The people are generally prosperous, contented, and loyal. Altogether, the Empress will go down to history as one of the great rulers of the world.

I am, etc.,

CHARLES DENBY.

No. 148.

Mr. Bayard to Mr. Denby.

No. 162.] DEPARTMENT OF STATE,
Washington, February 15, 1887.

SIR: I have received your No. 263, of December 4, 1886, in regard to American citizens and the opium traffic in China, and have to approve your letter to the consul-general at Shanghai, touching the action of Messrs. Russell & Co., as contrary to the intent and spirit of the treaty of 1880.

Legislation to carry into execution the provisions of Article 2 of the treaty is, as you are already aware, now pending before Congress.

* * * * * * *

I am, etc.,

T. F. BAYARD.

No. 149.

Mr. Denby to Mr. Bayard.

No. 306.] LEGATION OF THE UNITED STATES,
Peking, February 15, 1887. (Received April 12.)

SIR: I have the honor to report that information has reached Peking that the difficulties between China and Japan, growing out of the Nagasaki riots last August, have been settled. A harmonious understanding has been arrived at by the two Governments. The details have not been made public.

This occurrence was a serious riot between Chinese sailors and the Japanese police, in which many persons were killed. It happened at a time when I have reason to believe China was seriously contemplating sending a fleet to Corea with a view to occupying that country. But the fleet was diverted to Nagasaki owing to these troubles.

That great jealousy exists between the two Governments—Japan and China—is undoubtedly true, but there is no immediate prospect of complications.

I have, etc.,

CHARLES DENBY.

No. 150.

Mr. Denby to Mr. Bayard.

No. 309.] LEGATION OF THE UNITED STATES,
Peking, February 18, 1887. (Received April 12.)

SIR: I herewith inclose a copy of the additional article of the Chefoo convention, relating to the tax on opium.

In anticipation of its promulgation large quantities of opium were landed during the last fortnight. It is now claimed by the customs that all this opium must pay the tax of 110 taels per chest. This claim is resisted by the importer, who asserts that the new regulation is not retroactive.

It is easy to be seen that the smuggling will be immensely stimulated by this enormous tax. But the Government expects to use energetic means for its prevention.

I would send other copies of this article, but they can not be procured at Peking.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 309.]

THE CHEFOO CONVENTION.

The following is the additional article of the Chefoo convention referred to in the express issued yesterday by P. J. Hughes, esq., Her Britannic Majesty's consul-general.

Additional article to the agreement between Great Britain and China, signed at Chefoo on the 13th September, 1876.

(Signed at London, 18th July, 1885.)

The Governments of Great Britain and China, considering that the arrangements proposed in clauses 1 and 2 of section III of the agreement between Great Britain and China, signed at Chefoo on the 13th September, 1876 (hereinafter referred to as the "Chefoo agreement"), in relation to the area within which lekin ought not to be collected on foreign goods at the open ports, and to the definition of the foreign settlement area, require further consideration; also that the terms of clause 3 of the same section are not sufficiently explicit to serve as an efficient regulation for the traffic in opium, and recognizing the desirability of placing restrictions on the consumption of opium, have agreed to the present additional article.

(1) As regards the arrangements above referred to and proposed in clauses 1 and 2 of section III, of the Chefoo agreement, it is agreed that they shall be reserved for further consideration between the two Governments.

(2) In lieu of the arrangement respecting opium proposed in clause 3 of section III of the Chefoo agreement, it is agreed that foreign opium, when imported into China, shall be taken cognizance of by the Imperial maritime customs, and shall be deposited in bond, either in warehouses or receiving hulks which have been approved of by the customs, and that it shall not be removed thence until there shall have been paid to the customs the tariff duty of 30 taels per chest of 100 catties, and also a sum not exceeding 80 taels per like chest as lekin.

(3) It is agreed that the aforesaid import and lekin duties, having been paid, the owner shall be allowed to have the opium repacked in bond under the supervision of the customs and put into packages of such assorted sizes as he may select from such sizes as shall have been agreed upon by the customs authorities and British consul at the port of entry.

The customs shall then, if required, issue gratuitously to the owner a transit certificate for each such package, or one for any number of packages, at the option of the owner.

Such certificate shall free the opium to which it applies from the imposition of any further tax or duty whilst in transport in the interior, provided that the package

has not been opened and that the customs seals, marks, and numbers on the packages have not been effaced or tampered with.

Such certificates shall have validity only in the hands of Chinese subjects, and shall not entitle foreigners to convey or accompany any opium in which they may be interested into the interior.

(4) It is agreed that the regulations under which the said certificates are to be issued shall be the same for all the ports, and that the form shall be as follows:

Opium transit certificate.

This is to certify that tariff and lekin duties at the rate of —— taels per chest of 100 catties have been paid on the opium marked and numbered as under; and that in conformity with the additional article signed at London the 18th July, 1885, and appended to the agreement between Great Britain and China signed at Chefoo the 13th September, 1876, and approved by the Imperial decree, printed on the back hereof, the production of this certificate will exempt the opium to which it refers, wherever it may be found, from the imposition of any further tax or duty whatever, provided that the packages are unbroken and the customs seals, marks, and numbers have not been effaced or tampered with.

Mark. (No. —— packages.)

×

(Port of entry.)

(Date.)

(Signature of commissioner of customs.)

(5) The Chinese Government undertakes that when the package shall have been opened at the place of consumption the opium shall not be subjected to any tax or contribution, direct or indirect, other than or in excess of such tax or contribution as is or may hereafter be levied on native opium.

In the event of such tax or contribution being calculated ad valorem, the same rate, value for value, shall be assessed on foreign and native opium, and in ascertaining, for this purpose, the value of foreign opium, the amount paid on it for lekin at the port of entry shall be deducted from its market value.

(6) It is agreed that the present additional article shall be considered as forming part of the Chefoo agreement, and that it shall have the same force and validity as if it were inserted therein word for word.

It shall come into operation six months after its signature, provided the ratifications have then been exchanged, or if they have not, then on the date at which such exchange takes place.

(7) The arrangement respecting opium contained in the present additional articles shall remain binding for four years, after the expiration of which period either Government may, at any time, give twelve months' notice of its desire to terminate it, and such notice being given, it shall terminate accordingly. It is, however, agreed that the Government of Great Britain shall have the right to terminate the same at any time should the transit certificate be found not to confer on the opium complete exemption from all taxation whatsoever whilst being carried from the port of entry to the place of consumption in the interior.

In the event of the termination of the present additional article the arrangement with regard to opium now in force under the regulations attached to the treaty of Tien-Tsin shall revive.

(8) The high contracting parties may, by common consent, adopt any modifications of the provisions of the present additional article which experience may show to be desirable.

(9) It is understood that the commission provided for in clause 7 of section III, of the Chefoo agreement, to inquire into the question of the prevention of smuggling into China from Hong-Kong, shall be appointed as soon as possible.

(10) The Chefoo agreement, together with, and as modified by, the present additional article, shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed the present additional article, and have affixed thereto their seals.

Done at London, in quadruplicate (two in Chinese and two in English), this 18th day of July, 1885, being the seventh day of the sixth moon, in the eleventh year of the reign of Kwang Su.

[L. S.] SALISBURY,

[L. S.] TSENG.

The Marquis of Salisbury to the Marquis Tseng.

FOREIGN OFFICE, *July* 18, 1885.

MR. MINISTER: I have the honor to address the present note to you in order to place on record the fact that, with the view of carrying out the proposal made by your Government, the following understanding has been come to between the Governments of Great Britain and China in regard to the additional article to the Chefoo agreement relative to opium, which has been signed this day.

It is understood that it shall be competent for Her Majesty's Government at once to withdraw from this new arrangement, and to revert to the system of taxation for opium at present in operation in China, in case the Chinese Government shall fail to bring the other treaty powers to conform to the provisions of the said additional article.

It is further understood that in the event of the termination of the said additional article, the Chefoo agreement, with the exception of clause 3 of section III, and with the modifications stipulated in clause 1 of the said additional article, shall nevertheless remain in force.

I have the honor to request that you will acknowledge the receipt of this note, informing me that the understanding recorded in it is accepted by the Chinese Government.

I have, etc.,

SALISBURY.

The Marquis Tseng to the Marquis of Salisbury.

CHINESE LEGATION, *London, July* 18, 1885.

MY LORD: In reply to your lordship's note of this date, I have the honor to state that the Imperial Government accept the following as the expression of the understanding which has been come to between the Governments of Great Britain and China in regard to the additional article to the Chefoo agreement relative to opium, which has been signed this day:

1. It is understood that it shall be competent for Her Majesty's Government at once to withdraw from this new arrangement, and to revert to the system of taxation for opium at present in operation in China, in case the Chinese Government shall fail to bring the other treaty powers to conform to the provisions of the said additional article.

2. It is further understood that, in the event of the termination of the said additional article, the Chefoo agreement, with the exception of clause 3, of section III and with the modifications stipulated in clause 1 of the said additional article, shall nevertheless remain in force.

I have, etc.,

TSENG.

No. 151.

Mr. Denby to Mr. Bayard.

No. 311.] LEGATION OF THE UNITED STATES,
Peking, February 18, 1887. (Received April 12.)

SIR: I have the honor to report that the first installment of the amount agreed to be paid on account of the losses of the Methodist Episcopal mission at Chungking, 5,000 taels, was paid by the local authorities at the time agreed on.

It has been received by Mr. Frank S. Gamewell, superintendent of the mission.

I have, etc.,

CHARLES DENBY.

No. 152.

Mr. Denby to Mr. Bayard.

No. 318.] LEGATION OF THE UNITED STATES,
Peking, February 23, 1887. (Received April 12.)

SIR: I have the honor to inclose herewith the answer of the Tsung-li yamên to my communication, of which a translation was sent you in my dispatch No. 299, of February 8, 1887. I therein urged the removal of the Woosung Bar.

It will be seen that the yamên has pressed on the local authorities the necessity of doing this work.

I have, etc., CHARLES DENBY.

[Inclosure in No. 318.—Translation.]

The Tsung-li yamên to Mr. Denby.

PEKING, *February* 21, 1887.

YOUR EXCELLENCY: Upon the 9th of February the prince and ministers had the honor to receive a communication from your excellency having relation to the dredging of the Woosung Bar, wherein you requested that measures be devised for taking immediate action in the matter, etc.

The yamên, it appears, during the third Chinese month of last year (April) sent instructions in regard to the matter to the minister superintendent of southern trade, urging that action be taken, but up to the present time no reply has been received from that officer.

Now, having received your excellency's communication upon this subject, the yamên has again communicated with the minister superintendent of southern trade, urging that instructions be sent immediately to the customs taotai at Shanghai to adopt a plan for taking action in the premises, and as in duty bound the prince and ministers send this communication in reply for your excellency's information.

No. 153.

Mr. Denby to Mr. Bayard.

No. 320.] LEGATION OF THE UNITED STATES,
Peking, February 25, 1887. (Received April 12.)

SIR: I have the honor to report that a question has arisen at Amoy, China, involving the legal status of a Chinese named Ae Teck.

Ae Teck, a native of Amoy, on the 31st of December, 1878, before the circuit court of the United States at Boston, Mass., declared his intention to become a citizen of the United States. Before securing his final papers of naturalization he returned to Amoy, where he has since resided. The date of leaving the United States is not given. He asserts an intention to return to the United States. Consul Crowell refused to allow Ae Teck to register, under section 468 of the Consular Regulations.

I have approved of the consul's action, because under section 158, Consular Regulations, Ae Teck is not a citizen of the United States.

The consul desires instructions as to whether Ae Teck is entitled to protection from him. Following the case of Simon Tousig, cited in Wheaton's International Law, ed. 1866, sec. 86, I am of the opinion that Ae Teck having voluntarily returned to China has lost the protection of the United States. (See also Woolsey, 5th ed., p. 122.)

I construe section 118 of the diplomatic instructions as meaning that protection will be afforded in maintaining the status of domicil, and as

not inconsistent with the Tousig case. The case of Martin Koszta does not conflict with this view.

Although not necessary for the decision of the point presented, it is important to know whether section 14 of the act of May 6, 1882, (acts of 1881–'83, p. 61), which prohibits the naturalization of Chinese, is law when tested by Article II of the treaty of 1880 (p. 827, acts 1881–'83). That is to say, can any Chinese subject be naturalized, and if so, what class and under what conditions?

* * * * * * *

This question arises in Ae Teck's case. That is to say, if Ae Teck can never be naturalized, the decision hereof may rest on that point alone. You may say that Ae Teck can not be protected by the Government, for the reason that, although he has declared his intention, he can never be a citizen.

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I have, etc.,

CHARLES DENBY.

No. 154.

Mr. Denby to Mr. Bayard.

No. 321.] LEGATION OF THE UNITED STATES,
Peking, February 25, 1887. (Received April 12.)

SIR: Adverting to my dispatch No. 288, of date the 12th ultimo, about the proposed construction of a railway between Tientsin and Taku, wherein I explained that, owing to the opposition made by the censors, operations were suspended, I have now the honor to inform the Department that I understand from a reliable source that that opposition is now being overcome and the viceroy Li is giving attention to the subject again.

There are two plans before the viceroy for the Taku railway—one proposed by General James H. Wilson and Russell & Co., last autumn, and one urged by the salt commissioner of Tientsin. The latter plan is simply to extend the railway from the Kaiping coal mines to the Peiho River near Taku, and thence along the north bank of the Peiho to Tientsin, and later on to Tung Chow (a city about 12 miles from Peking), and to do this all with Chinese capital and management. The first plan (General Wilson's) was agreed to last year, and in consequence the general went to the United States to carry it out; but, as I have already stated, operations were suspended, owing to the opposition of the censors.

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I have, etc.,

CHARLES DENBY.

No. 155.

Mr. Denby to Mr. Bayard.

No. 322.] LEGATION OF THE UNITED STATES,
Peking, February 25, 1887. (Received April 12.)

SIR: I have the honor to inclose herewith the original of a communication this day sent to the Tsung-li yamên by me.

The subject thereof is an energetic protest against the new tax of 6 mace (90 cents) on the case (two cans) of kerosene, lately levied as a lekin tax at Canton.

Little explanation is necessary, in addition to the contents of the said communication. I may mention that, in spite of the lekin of 40 cents per case which was levied in 1882, and for the privilege of collecting which the farmer thereof pays $63,000 per annum, the sale of kerosene has been rapidly increasing. Mr. Consul Seymour writes me that prior to the new tax it was anticipated that in 1887 the sale of kerosene imported at Canton would reach 400,000 cases, or 800,000 cans, or 3,000,000 imperial gallons, or 4,000,000 trade gallons. It is now proposed to raise 120,000 taels, or about $80,000, by this new tax. The original tax of 40 cents remains in force.

The farmer was offered the collection of this tax, but declined for fear of smuggling. So the lekin office will collect it by its own officials. The lekin tax alone now amounts to $30 per case. To this the import tax of 5 per cent. ad valorem must be added. To any article but kerosene this tax, being more than 50 per cent., would probably be fatal. But kerosene is so largely used, is so advantageous collaterally in permitting by its use native oils to be applied for food, and is so cheap, that it is difficult to forecast what effect on its consumption so enormous a tax may have.

The Chinese authorities have always contended, in the words of Tseng, uncle of the marquis, now viceroy of Nanking, that "once foreign goods have entered China and become the property of Chinese merchants, their taxation is a matter wholly and solely within the direction of China."

One answer, at least, to this proposition is, that this right is subjected to the treaty stipulations. It is plain that the right of importation may be valueless if, as soon as goods land, they may be burdened with a prohibitory tax. Thus, by indirection, the treaties may be annulled.

I have endeavored in my communication to the yamên to found my argument on the proposition that the new tax was not only prohibitory in fact, but was levied for the purpose of prohibiting. To this end I have cited passages from the proclamations of the lekin board.

Logically the only difficulty is to determine at what point a tax becomes prohibitory. The extraordinary vitality of kerosene makes it doubtful when such a point will be reached.

We have taxed fire-crackers 100 per cent., and partly on the ground that they are hazardous. The Chinese are improving on our example.

The whole question, as you well know, is embarrassing and troublesome.

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I have, etc.,

CHARLES DENBY.

[Inclosure in No. 322.]

Mr. Denby to the yamên and ministers.

PEKING, *February* 22, 1887.

YOUR IMPERIAL HIGHNESS AND YOUR EXCELLENCIES: I respectfully call the attention of your Imperial highness and your excellencies to the late lekin tax, of 6 mace on the case of kerosene oil, levied by the general office of lekin at Canton, by proclamations dated November 28 and December 18, 1886.

I request the repeal of this tax for the reasons hereinafter stated.

Kerosene oil, besides paying the import duty, did, before this last tax was levied, pay 40 cents per case lekin. The entire tax is, therefore, now about $1.42 cents per case.

A case of kerosene is only worth $2.50. Thus the whole tax is more than 50 per cent. of the value of the article. Under the treaty kerosene, not being a specified article in the list of imports and exports, pays 5 per cent. ad valorem.

Article 1 of the treaty of 1880 provides that the Governments of the United States and China mutually agree to give the most careful and favorable attention to the representations of either as to such special extension of commercial intercourse as either may desire. Under that clause it is proper that I should address you this communication. Whatever may be the proper construction of the treaties relative to lekin taxation, about which there has been so much discussion, one thing, I think, is certain, that neither party to a treaty has the right to abrogate it by indirect action.

China says to all the world, you may send your goods to the open ports if you pay certain duties. Of what avail is the privilege if the moment that the goods are landed and delivered to the consignee they are met with a prohibitory tax? How can the foreign merchant send goods to China if no Chinese subject can buy them because of onerous internal taxes? The whole foreign trade may be wiped out by this process and commercial intercourse may thereby be extinguished.

When it becomes apparent that any internal tax is levied for the purpose of prohibiting the importation of an article, then at least it becomes proper to protest and to ask for its repeal.

The proclamations of the lekin office above quoted disclose on their face that the object of this new tax is to prohibit the importation of kerosene. The language of the proclamation of November 28 is this: "Let it be proclaimed that the article of kerosene is very explosive in its character. The least negligence will result in a calamity of a fire with unlimited evils. Therefore it ought to be prohibited."

This prohibition is inconvenient. This enormous tax is levied in order to prohibit by indirection.

In the proclamation of December 18 the language is: "If kerosene should be suddenly prohibited it may be feared that inconvenience and trouble will arise." In both proclamations it is plain that the real intention is to prohibit the introduction of this article. I submit that as long as the treaties are in force this useful and generally used article cannot be excluded. Kerosene is used everywhere at Peking, and elsewhere in China, and all over the world. It has, like all other illuminating substances, caused fires by the negligence of the consumer. It is the cheapest of all the illuminators, and the one most used by the common people. Its use has produced a large revenue to China. A high tax may prevent importation and thereby do away with this revenue.

The levy of such a tax is especially unjust to the foreign merchant. He may have bought large quantities for transportation to Canton, in the faith that the existing duties would not be changed. Now, without notice of any intended change of taxation, he must encounter enormous losses. It is usual in other countries to fix a long period in advance, at the expiration whereof such changes are to take effect. But I do not rest my objections to this tax on want of notice, but on the plain proposition that it is, on its face, prohibitory and therefore contravenes the treaties.

For these reasons I must earnestly invoke your Imperial highness and your excellencies to examine this question in a spirit of equity and to order justice to be done.

I have, etc.,

CHARLES DENBY.

No. 156.

Mr. Bayard to Mr. Denby.

No. 164.] DEPARTMENT OF STATE,
Washington, March 1, 1887.

SIR: I inclose for your information copies of the below-enumerated correspondence, showing that American residents in China returning home on a visit, as well as travelers passing through the United States, may bring with them Chinese nurses or body servants under the provisions of the acts of Congress in regard to Chinese immigration.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 164.]

Mr. Bayard to Mr. Manning.

DEPARTMENT OF STATE,
Washington, January 21, 1887.

SIR: Referring to a circular issued by the Treasury Department on the 23d of January, 1883, to collectors of customs, relative to the transit of Chinese laborers over the territory of the United States in the course of a journey to or from other countries, I have the honor to transmit herewith for your consideration a copy of dispatch No. 57, dated the 3d ultimo, from our consul-general at Shanghai, making inquiry with regard to the right of American residents in China, returning home on a visit, to bring with them Chinese nurses or body servants for temporary sojourn, and also as to the right of travelers, passing through the United States in transit to another country, to carry with them the same class of servants.

As the act of July 5, 1884, is essential, for the purposes of this inquiry, with that of May 6, 1882, the latter question may be considered as settled by the opinion of the Attorney-General referred to in your circular.

The principles upon which the said opinion is based apply equally to the case first presented by the consul-general at Shanghai. It may be seriously doubted whether nurses and body servants accompanying persons who came to the United States for a temporary visit are laborers within the meaning of the act, and certainly they are not immigrants, for they do not come to stay.

For these reasons I am inclined to the opinion that neither of the classes of Chinese servants referred to by the consul-general at Shanghai is prohibited by the act from entering our territory for the purposes named in the inclosed dispatch. I beg to suggest, in case you concur in this view of the law, that a circular, supplementary to that of January 23, 1883, be issued to customs officers instructing them to admit Chinese nurses and body servants coming to the United States with non-resident employers, and for a temporary purpose.

I have, etc.,

T. F. BAYARD.

[Inclosure 2 in No. 164.]

Mr. Kennedy to Mr. Porter.

No. 57.] UNITED STATES CONSULATE-GENERAL,
Shanghai, December 3, 1886. (Received January 3, 1887.)

SIR: Our citizens having a temporary residence in China from time to time have occasion to return to the United States for business or recreation. It not unfrequently happens that a family so returning desire to take a Chinese servant, and it can be readily seen that very often it is a matter of great convenience, if not necessity, that a nurse should accompany an invalid or a family of small children on the tedious voyage to America. I am frequently asked if, in view of the act suspending the immigration of Chinese to America, this is permissible.

Further, it is becoming more and more popular for British residents in China to return to England via the United States. A case in this connection has been referred to me to-day, and I am asked if an amah, or female nurse, will be permitted to land at San Francisco for the purpose of continuing the journey to Europe.

I respectfully request the Department to instruct me how to reply to such questions. I am informed that in some instances this class of servants are allowed to land at San Francisco, while at other times they are not.

I believe an act was passed in 1884 touching this subject, but copies of the public acts subsequent to 1883 have not been received at this consulate-general, therefore I do not know how far the original act has been amended, or what effect it gives to the decision of the Treasury Department, given in a letter to Mr. Frelinghuysen, dated December 27, 1882, at the instance of an inquiry from here.

I have, etc.,

J. D. KENNEDY,
Consul-General.

[Inclosure 3 in No. 164.]

Mr. Fairchild to Mr. Bayard.

TREASURY DEPARTMENT,
February 23, 1887.

SIR: Referring to your communication of the 21st ultimo, relative to the right of American residents in China, returning home on a visit, to bring with them Chinese nurses or body servants, and also to the right of travelers passing through the United States to carry with them servants of the same class, I have the honor to state that an opinion upon the subject has been obtained, under date of the 14th instant, from the United States Attorney-General, which is substantially in accordance with the views entertained by your Department.

Referring to section 6 of the act of May 6, 1882, as amended by the act of July 5, 1884, the Attorney-General holds that Chinese persons accompanying, as servants or nurses, visitors entitled to enter the United States, and only temporarily remaining here during the stay of such visitors, whether to be regarded as "in transit merely across the territory of the United States," within the meaning of the opinion of Mr. Attorney-General Brewster of the 26th December, 1882, or not, fall within a description of Chinese laborers who, according to the views expressed in that opinion, and in which Mr. Garland concurs, were not intended to be excluded from the country by the legislation above mentioned.

This Department concurs in the above views, and will cause this letter to be printed in the next number of its official monthly publication, for the information and guidance of the officers of the customs.

Respectfully, yours,

C. S. FAIRCHILD,
Acting Secretary.

No. 157.

Mr. Denby to Mr. Bayard.

No. 327.] LEGATION OF THE UNITED STATES,
Peking, March 7, 1887. (Received April 29.)

SIR: I have the honor to inclose herewith a translation of the answer of the yamên to my dispatch of the 25th ultimo, relating to the increased lekin tax on kerosene at Canton. It will be seen that the yamên asserts the right of levying the increased lekin tax in question. They propose to address me again on this subject.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 327.]

The foreign office to Mr. Denby.

PEKING, *March* 4, 1887.

YOUR EXCELLENCY: Upon the 28th of February, the prince and ministers had the honor to receive a communication from your excellency having relation to the increased lekin tax levied on kerosene oil at Canton. Your excellency requested that instructions be sent to the head lekin office of that province not to impose any additional tax on that article, etc.

The prince and ministers would observe that there is no record of the yamên having received a report [from Canton] of the issuance of the proclamation [referred to] in said province increasing the lekin tax on kerosene. But the levy of an additional tax of that nature in the interior is not a tax collected from foreign merchants, and it would seem [in consequence] that the rule governing duties ad valorem of 5 per cent. can not be put forward or applied to the case. Besides, the mere levy of an increased lekin tax from Chinese merchants is not with the intent or purpose of prohibiting foreign merchants from importing kerosene. Since your excellency has addressed us upon the subject, it is right to send a copy of your communication to Canton, and on receipt of a reply the prince and ministers will again address your excellency for your information.

A necessary communication in reply addressed to his excellency Charles Denby, etc.

No. 158.

Mr. Denby to Mr. Bayard.

No. 328.] LEGATION OF THE UNITED STATES,
Peking, March 8, 1887. (Received April 29.)

SIR: I have the honor to inclose herewith an important article entitled "China: the Sleep and the Awakening," written by the Marquis Tseng, and published in the Asiatic Monthly Review.

The first part of this article describes the condition of China up to 1860. She was then asleep. "The light of the burning palace, which had been the pride and delight of her Emperors, awoke her."

She did nothing desperate then, but she quietly accepted her reverses, and "set about throwing overboard the wreckage and to make a fair wind of the retiring cyclone."

Then came the "awakening." China is not aggressive. The emigration of her people must be accounted for rather by "the poverty and ruin in which they were involved by the great Taiping and Mohammedan rebellions than by the difficulty of finding the means of subsistence under ordinary conditions. In her wide domains there is room and to spare for all her teeming population."

The colonization of her "immense outlying territories has become indispensable." But, besides the occupation of waste lands, another agency to absorb the overflow of population will be "the demand which will soon be afforded by the establishment of manufactures, the opening of mines, and the introduction of railways."

To supply the 300,000,000 of her population, these industries will employ an immense number of hands. For these reasons China is indifferent to emigration. The outrageous treatment of Chinese in other countries, which is characterized in strong language, furnishes another argument against emigration. But a better disposition has of late been manifested. "The United States Government, on a recent occasion, energetically suppressed a hostile movement directed against Chinese, and awarded to them compensation for the losses to which they had been subjected."

The French war, although China was successful, did not cause her to change her bearing towards foreigners. Her policy of moderation will be continued. China will soon attain a position of "perfect security." She is now fortifying her coasts and building a navy. She will proceed in this policy and will not now be diverted from it by the building of railways. China will extend and improve her relations with the treaty powers, ameliorate the condition of her subjects in foreign countries, and place on a less equivocal footing the position of her feudatories. A commission has recently been appointed to visit foreign countries and report on the condition of the Chinese.

"The warden of the marches is now abroad, looking to the security of China's outlying provinces—of Corea, Thibet, and Chinese Turkestan." Any interference with the affairs of these countries will be taken as a declaration of a desire to discontinue friendly relations with China.

China is not reconciled to the treaties caused by the events of 1860. "In the alienation of sovereign dominion over that part of her territory comprised in foreign settlements," and in other respects, China feels that the treaties ought to be denounced "on the expiry of the present decennial period." To this end she will "surely and leisurely proceed to diplomatic action."

China desires the nations of the east to sink jealousies and combine in an attempt to reform the treaties.

This résumé of the article in question shows * * * by turns denunciation for injuries inflicted, and flattering statements of an awakening sense of justice. We have the promise of great material progress in good time. We have denunciation of the treaties, but a statement that the attack is to be "surely and leisurely" diplomatic.

The marquis is probably laying out more work for China than can be accomplished in a generation.

With regard to the denunciation of the treaties, the process proposed is destined to be so lengthy that the subject need not now be discussed. But it may be asserted with absolute certainty that the foreign powers will not abandon their extraterritorial jurisdiction until China shall have remodeled her civil and criminal codes and abolished the cruel practices prevailing under them.

* * * * * * *

The marquis has nothing to say on the treatment of missionaries. Yet, of all questions this has been considered by natives and foreigners alike as the most practical and important question in China. It is not that foreign nations care about religious propagandism. They interest themselves simply in the protection of their people.

The war of 1860, as far as France was concerned, was waged for no reason except that a French missionary bishop had been executed in the interior. From that day to this the serious riots have been against the Catholics. But all foreigners have suffered more or less by them. In October, 1871, Prince Kung used this language: "The missionary question affects the whole question of peaceful relations with foreign powers—the whole question of their trade."

It is singular that some reassuring words as to religious toleration did not form a part of the document under consideration.

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I have, etc.,

CHARLES DENBY.

[Inclosure in No. 323.]

CHINA: THE SLEEP AND THE AWAKENING.

The following important paper by Marquis Tseng appears in the Asiatic Monthly Review:

There are times in the life of nations when they would appear to have exhausted their forces by the magnitude of the efforts they had made to maintain their position in the endless struggle for existence; and from this, some have endeavored to deduce the law that nations, like men, have each of them its infancy, its manhood, decline, and death. Melancholy and discouraging would be this doctrine could it be shown to be founded on any natural or inevitable law. Fortunately, however, there is no reason to believe it is. Nations have fallen from their high estate, some of them to disappear suddenly and altogether from the list of political entities, others to vanish after a more or less prolonged existence of impaired and ever-lessening vitality. Among the latter, until lately, it has been customary with Europeans to include China. Pointing to her magnificent system of canals silted up, the splendid fragments of now forgotten arts, the disparity between her seeming weakness and the record of her ancient greatness, they thought that, having become effete, the nineteenth century air would prove too much for her aged lungs. Here is the opinion of a distinguished diplomatic agent, writing of China in 1849: "With a fair seeming of immunity from invasion, sedition, or revolt, leave is taken to regard this vast Empire as surely, though it may be slowly, decaying."

This was the opinion of a writer whose knowledge of China and its literature is perhaps unequaled, and certainly not surpassed; nor was he alone in entertaining

such an opinion at the date at which he wrote, for by many it was then considered that the death of Tao Kwang would severely try, if not shake, the foundations of the Empire. But, as events have shown, they who reasoned thus were mistaken. China was asleep, but she was not about to die. Perhaps she had mistaken her way, or, what is just the same, had failed to see that the old familiar paths, which many centuries had made dear to her, did not conduct to the goal to which the world was marching.

Perhaps she thought she had done enough, sat down and fallen asleep in that contemplation which, if not always fatal, is at least always dangerous—the contemplation of her own greatness. What wonder if she had done so? Everything predisposed to such an attitude of mind. The fumes of the incense brought by many embassies from far-off lands; the inferiority of the subject races that looked up to her; the perfect freedom from the outer din insured to her by the remoteness of her ample bournes; all predisposed her to repose and neglect to take note of what was passing in the outer world. Towards the end of the reign of Tao Kwang, however, the sleeper became aware that her situation scarcely justified the sense of security in which she had been reposing. Influences were at work, and forces were sweeping along her coast very different from those to which China had been accustomed. Pirates and visitations of Japanese freebooters had occasionally disturbed the tranquillity of certain places on the sea-board; but the men who now began to alarm the authorities were soon found to be much more redoubtable than these. Wherever they came, they wished to stay. Submissive at first, they engaged in trade with our people and tempted them with strange merchandise. It was not long before troubles arose which showed that the white trader could fight, as well as buy and sell. The treaty of Nanking, in 1842, which was the result of these troubles, opened four more doors in the wall of exclusiveness with which China had surrounded herself. Amoy, Foochow, Ningpo, and Shanghai were added to Canton, thus making five points of touch between China and the West. This did something to arouse China from the Saturnian dreams in which she had been so long indulging, but more was wanting to make her wide awake. It required the fire of the Summer Palace to singe her eyebrows; the advance of the Russian in Kuldja and the Frenchman in Tonquin, to enable her to realize the situation in which she was being placed by the ever contracting circle that was being drawn around her by the Europeans. By the light of the burning palace, which had been the pride and delight of her Emperors, she commenced to see that she had been asleep while all the world was up and doing; that she had been sleeping in the vacuous vortex of the storm of forces wildly whirling around her. In such a moment China might have been excused had she done something desperate, for there is apt to be a good deal of beating about and wild floundering on such a sudden awakening; but there was none in the case of China. A wise and prudent prince counseled China to pay the price of her mistakes, whilst the great Chinese statesman who is now in power, and who, since 1860, has rendered such incalculable services to his country, began that series of preparations which would now make it difficult to repeat the history of that, for China, eventful year. It is not a moribund nation that can so quietly accept its reverses, and, gathering courage from them, set about throwing overboard the wreckage and make a fair wind of the retiring cyclone. The Summer Palace, with all its wealth of art, was a high price to pay for the lesson we there received, but not too high, if it has taught us how to repair and triple fortify our battered armor; and it has done this. China is no longer what she was even five years ago. Each encounter, and especially the last, has in teaching China her weakness also discovered to her her strength.

We have seen the sleep, we come now to the awakening. What will be the result of it? Will not the awakening of 300,000,000 to a consciousness of their strength be dangerous to the continuance of friendly relations with the West? Will not the remembrance of their defeats, and the consciousness of their new discovered power make them aggressive? No; the Chinese have never been an aggressive race. History shows them to have always been a peaceable people, and there is no reason why they should be otherwise in the future. China has none of that land-hungering, so characteristic of some other nations; hungering for land they do not and can not make use of, and contrary to what is generally believed in Europe, she is under no necessity of finding in other lands an outlet for a surplus population. Considerable numbers of Chinese have at different times been forced to leave their homes and push their fortunes in Cuba, Peru, the United States, and the British Colonies; but this must be imputed rather to the poverty and ruin in which they were involved by the great Taiping and Mohammedan rebellions, than to the difficulty of finding the means of subsistence under ordinary conditions. In her wide domains there is room, and to spare, for all her teeming populations. What China wants, is not emigration, but a proper organization for the equable distribution of the population. In China proper, particularly in those places which were the seat of the Taiping rebellion, much land has gone out of cultivation, while in Manchuria, Mongolia, and Chinese Turkestan, there are immense tracts of country which have never felt the touch of the husbandman.

Not only for economical, but for military reasons, the colonization of these immense outlying territories has become indispensable; and, recognizing this, the Imperial Government have of late been encouraging a centrifugal movement of the population in certain thickly inhabited portions of the Empire. But the occupation of waste lands is not the only agency to absorb any overflow of population which may exist in certain provinces. Another and a more permanent one, will consist in the demand which will soon be afforded by the establishment of manufactures, the opening of mines, and the introduction of railways. The number of hands, which these industries will employ can only be conceived when we remember that hitherto they have contributed nothing to the support of the country, and that were they developed to only a tithe of the extent to which they exist in Belgium and England, amongst a population of 300,000,000, the number of mouths they would feed would be enormous. This consideration will explain the indifference with which the Chinese Government have received the advances which at different times and by various powers have been made to induce China to take an active part in promoting emigration and engagements for the supply of labor. But even had these reasons not existed, the outrageous treatment which Chinese subjects have received, and, in some countries, continue to receive, would have made the Imperial Government chary of encouraging their people to resort to lands where legislation seems only to be made a scourge for their especial benefit, and where justice and international comity exist for everybody, bond and free, except the men of Han. Were it not for the one-sided manner in which, in some of these countries, the law is administered, one might think, from their benevolent dispensation with the *lex talionis*, that the millennium was at hand there. There is no question of an eye for an eye, or a tooth for a tooth, except when the unfortunate offender belongs to the nation of the almond eye.

If any one should consider this language is too strong, he must be strangely ignorant of the outrages committed on Chinese, and of the exceptional enactments directed against them, to which the press and the statute-book have so often borne testimony within the last three or four years. But, to render justice where justice is due, a disposition has of late been manifested by foreign governments to give Chinese adequate protection against the rowdy elements of their population, and to recognize the right of Chinese subjects to the same immunities as those which, by the law of nations, are accorded to the subjects of other powers. The United States Government on a recent occasion energetically suppressed a hostile movement directed against the Chinese, and awarded to them compensation for the losses to which they had been subjected. But if neither a spirit of aggression springing from and nurtured by the consciousness of returning strength, nor the necessity of an outlet for a surplus population is likely to endanger the good relations which now exist between China and the treaty powers, is it equally certain that a desire on the part of China to wipe out her defeats is not to be dreaded? Such was not the opinion of many who watched the course of events during the Franco-Chinese struggle for the possession of Tonquin. On every side we used then to hear it said, even in circles which took the Chinese side, that it would be disastrous to foreign relations should France not emerge from it completely triumphant. Success it was maintained would intoxicate the Chinese; make them overbearing and impossible to deal with. But has this been the case?

China laughed to scorn the demands of France for an indemnity; exacted the restoration of her invaded territory, and made peace in the hour of victory. Did this make China proud? Yes; proud with a just pride. Did it change her bearing, or make her unconciliating in her intercourse with the foreign powers? No. At no time since her intercourse with the West commenced have her relations with the treaty powers, and more particularly with England, been so sincerly friendly. At no time have their just demands been received with such consideration, and examined with such an honest desire to find in them grounds for an arrangement. China will continue the policy of moderation and conciliation which has led to this happy result. No memory of her reverses will lead her to depart from it, for she is not one of those powers which can not bear their misfortunes without sulking. What nation has not had its Cannæ? Answer. Sadowa, Lissa, and Sedan. China has had hers, but she is not of opinion that it is only with blood that the stain of blood can be wiped out. The stain of defeat lies in the weakness and mistakes which led to it. These recovered from and corrected, and its invulnerability recognized, a nation has already reburnished and restored the gilding of its scutcheon.

Though China may not yet have obtained a position of perfect security, she is rapidly approaching it. Great efforts are being made to fortify her coasts and create a strong and really efficient navy. To China a powerful navy is indispensable. In 1860 she first became aware of this, and set about founding one. The assistance of England was invoked, and the nucleus of a fleet was obtained, which, under the direction of Admiral Sir Sherrard Osborn, one of the most distinguished officers of the Royal Navy, would long ere now have placed China beyond anything save a serious attack by a first-class naval power, had it not been for the jealousies and intrigues which caused it to be disbanded as soon as formed. Twice since 1860 China has had

to lament this as a national misfortune, for twice since then she has had to submit to occupations of her territory, which the development of that fleet would have rendered difficult, if not impossible.

China will steadily proceed with her coast defenses and the organization and development of her army and navy without, for the present, directing her attention either to the introduction of railways or to any of the other subjects of internal economy, which, under the altered circumstances of the times, may be necessary, and which she feels to be necessary; for, unlike Turkey, she will not fall into the mistake of thinking that when she has got a few ships and a few soldiers licked into form she has done all that is required to maintain her position in the race of nations. The strength of a nation is not in the number of soldiers it can arm and send forth to battle, but in the toiling millions that stay at home to prepare and provide the sinews of war. The soldiers are but the outer crust, the mailed armor, of a nation, whilst the people are the living heart that animates and upholds it. Turkey did not see this, though it did not escape the keener vision of that Indian prince, who, when looking down on the little British force opposed to him, exclaimed: "It is not the soldiers before me whom I fear, but the people behind them, the myriads who toil and spin on the other side of the Black Water."

It is not the object of this paper to indicate or shadow forth the reforms which it may be advisable to make in the internal administration of China. The changes which may have to be made when China comes to set her house in order can only be profitably discussed when she feels she has thoroughly overhauled, and can rely on the bolts and bars she is now applying to her doors. It is otherwise with her foreign policy. Of the storms which ever and again trouble the political world, no nation is more master than it is of those which from time to time sweep over its physical horizon. Events must be encountered as they arise, and fortunate is the nation that is always prepared for them, and always ready to "take occasion by the hand." The general line of China's foreign policy is for the immediate future clearly traced out. It will be directed to extending and improving her relations with the treaty powers, to the amelioration of the condition of her subjects residing in foreign parts, to the placing on a less equivocal footing the position of her feudatories, as regards the suzerain power, to the revision of the treaties in a sense more in accordance with the place which China holds as a great Asiatic power. The outrageous treatment to which Chinese subjects residing in some foreign countries have been subjected has been as disgraceful to the Governments in whose jurisdiction it was perpetrated as to the Government whose indifference to the sufferings of its subjects residing abroad invited it. A commission has recently been appointed to visit and report on the condition of Chinese subjects in foreign countries, and it is hoped that this proof of the interest which the Imperial Government has commenced to take in the welfare of foreign-going subjects will suffice to insure their receiving in the future the treatment which, by the law of nations and the dictates of humanity, is due from civilized nations to the stranger living within their gates.

The arrangements for the government of her vassal states, which, until the steamer and telegraph brought the East and the West so near, had been found sufficient, having on different occasions of late led to misunderstandings between China and foreign powers, and to the loss of some of the most important of her possessions, China, to save the rest, has decided on exercising a more effective supervision on the acts of her vassal princes and of accepting a larger responsibility for them than heretofore. The warden of the marches is now abroad, looking to the security of China's outlying provinces—of Corea, Thibet, and Chinese Turkestan. Henceforth any hostile movements against these countries or any interference with their affairs will be viewed at Peking as a declaration on the part of the power committing it of a desire to discontinue its friendly relations with the Chinese Government.

It is easier to forget a defeat than the condition of affairs resulting from it; the blow than the constant galling of the girth. Any soreness which China may have experienced on account of events of 1860 has been healed over and forgotten long ago, but it is otherwise with the treaties which were then imposed on her. She had then to agree to conditions and give up vestiges of sovereignty which no independent nation can continue to agree to, and lie out of, without an attempt to change the one and recover the other. The humiliating conditions imposed on Russia with regard to the Black Sea, in 1856, had to be canceled by the treaty of London in 1871.

In the alienation of sovereign dominion over that part of her territory comprised in foreign settlements at the treaty ports, as well as in some other respects, China feels that the treaties impose on her a condition of things which, in order to avoid the evils they have led to in other countries, will oblige her to denounce those treaties on the expiry of the present decennial period. China is not ignorant of difficulties in which this action may involve her, but she is resolved to face them rather than incur the certainty of some day having to encounter greater ones; evils similar to those which have led to the land of the fellah, concerning nobody so little as the Khedive.

It behooves China, and all the Asiatic countries in the same position, to sink the petty jealousies which divide the East from the East, by even more than the East is separated from the West, and combine in the attempt to have their foreign relations based on treaties rather than on capitulations.

In her efforts to eliminate from the treaties such articles as impede her development and wound her just susceptibilities without conferring on the other contracting parties any real advantages, China will surely and leisurely proceed to diplomatic action. The world is not so near its end that she need hurry, nor the circles of the sun so nearly done that she will not have time to play the *rôle* assigned her in the work of nations.

No. 159.

Mr. Denby to Mr. Bayard.

No. 337.] LEGATION OF THE UNITED STATES,
Peking, March 15, 1887. (Received April 29.)

SIR: The control of the Yellow River presents the most difficult problem that Chinese engineering skill has ever encountered. For thousands of years this river has annually broken its banks and destroyed the immense works which the Government, with great persistence, labor, and expense, has built to restrain it.

This, the second of the great streams of China, rises in the plain of Odontala, northwest of China, a distance of 1,290 miles from the sea. Its numerous windings, however, make its total length at least twice this distance. The basin drained is estimated at 475,000 square miles in area. The difference in its depth in summer and winter renders it useless for navigation. The silt carried by the rapid current blocks up the mouth and renders the channel uncertain and unstable. The mouth is gradually filled with silt, and the water is thereby backed up until it overflows its banks and finds a new route to the sea. This peculiarity has been the cause of overflows and of changes of course. The last change, which occurred about thirty years ago, was from the course through Kiangsu to the present one in Shantung. Shantung and Kiangsu are the two provinces which suffer by the overflows.

The first record of engineering attempt to check the Yellow River's overflows dates back to the reign of Yao, B. C. 2293. From that time to this large sums of money have been annually expended in repairing old embankments and in building new ones; nevertheless, the river still remains the "sorrow of China."

Very recently the subject has been taken up by the Imperial Government with renewed determination. A late decree orders Chang Yao, governor of Shantung, to take steps "to permanently control the Yellow River." The plan of building dikes having been tried for centuries and failed, this official memorialized the Throne, proposing a new line of action. His idea is to divert "a certain portion of the waters of the Yellow River into the former course to the south."

The Empress, on the 31st December last, with reference to this memorial, ordered the grand council and the board of revenue and works to report on the advisability of this plan. The Gazette of January 12 last contains a memorial from the governor-general at Nanking, the director-general of grain transport, and the governor of Kiangsu, submitting their views "on the subject of diverting 30 per cent. of the volume of the Yellow River into its old bed, as proposed by Chang Yao, governor of Shantung, and Yu Po Chuan, one of the superintendents of the Peking granaries."

They conclude, and the director-general of the Yellow River supports them, that the project can not be carried out. Their reasons, summarily, are as follows:

First. The old bed has been abandoned more than thirty years. It is over 300 miles in length, is full of inequalities, and, further is inhabited and under cultivation. Moreover, in many places all traces of the river bed have disappeared.

Second. The old embankments, which "are 1,606,000 feet in length on the southern side and 1,442,000 feet on the northern bank," have, through lapse of time, fallen into disrepair.

Third. Should the change be effected, when the flood is high "the waters of the Yellow River will pour into the Grand Canal and ruin it."

In the same issue of the Gazette, Chang Yao combats at length the above objections. With regard to the people who have settled in this old river-bed, and whose eviction would be necessary, he says they number but 1,230 families, while in Shantung (his own province) "160,000 families are flooded out year after year, and, at the present moment, there are over 30,000 homes under water."

With regard to the condition of the embankments, Chang Yao replies that the old embankments in Kiangsu are larger and better than the present ones in Shantung. As to the danger to the canal, he says that the amount of water to be admitted into the new channel can be regulated by sluices. He further points out that, "judging from the manner in which the Yellow River is silting up in Shantung, it is bound either to find a way for itself through Chihli or to force itself into its old bed of its own accord, with disastrous effects in both cases, the measure of which it is impossible to dilate upon."

However natural it may be for Chang Yao to try to transfer his troublesome charge from his own province to Kiangsu, the expedient could effect no permanent solution of the difficulty. The only resort is to foreign engineers and engineering methods.

The Chinese Government seems to prefer to expend large sums annually in tentative methods of temporary relief than by one gross expenditure to make a radical and permanent improvement.

In this connection, I have the honor to request that, should the Department have any works or pamphlets on the means used by the Government of the United States to control the Mississippi River, copies should be forwarded to this legation. I would take great pleasure in presenting them to the Tsung-li yamên. This would be regarded as an act of courtesy by the Government, and might be of some substantial use.

I have, etc., CHARLES DENBY.

No. 160.

Mr. Denby to Mr. Bayard.

No. 339.] LEGATION OF THE UNITED STATES,
Peking, March 19, 1887. (Received May 7, 1887.)

SIR: I have the honor to inclose herewith translation of a manifesto by the Emperor on his ascending the throne. It was published in the Shanghai Courier of the 11th instant. It did not appear in the Peking Gazette, and was not brought to the attention of the foreign ministers in any way. It seems to have been sedulously concealed. In 1873, on the assumption of the reins of government by the Emperor Tung Chi, official notice of the event was sent to every legation. A demand for

an audience followed this notification. The avoidance of this procedure now plainly indicates that the Imperial Government is determined to prevent an audience if it can. No official notice of the accession of the Emperor, or of this manifesto, has ever been sent to any minister.

Proclamations are still sometimes issued by the Empress.

* * * * * * *

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 339.—The Emperor Kwong-Hsu's manifesto. Translated from this morning's Shunpao.]

By the appointment of Heaven, I have ascended the throne for thirteen years, and during that time the Empress regent, in consideration of my extreme youth, consented to transact the important affairs of state behind a screen, so that I might devote myself to study, and not disappoint my ancestors in the administration of the government. For over ten years the Empress has been untiring in selecting wise men for the Government service and dismissing those who were incapable for their office. Whatever money she has spent was for the benefit of the people, and the whole nation has been peaceful. History has never recorded such a brilliant administration as that under Her Majesty, a fact of which both officials and people are aware. Now the Empress has decreed that my education having been completed, I should assume the reins of government in person. When I heard of the decree I trembled as if I was in mid-ocean, not knowing where the land is. Her Majesty will, however, continue to advise me for a few years longer in important affairs of state. I shall not dare to be indolent, and, in obedience to the Empress's command, I have petitioned the Heaven and earth and my ancestors that I shall assume the administration of the government in person on the 15th day of the first moon, in the thirteenth year of my reign. Guided by the counsel of Her Majesty, everything will be done with care. The princes and officials should be loyal, and should be diligent in reporting the requirements of the people. Then the nation will be peaceful, and the Empress has not taught me in vain. The government of the Empire has been handed down to me alone by Heaven and my ancestors, and I consider the welfare of my people and officials as my own. I have thought fit to grant the following favors:

(1) The graves of the Emperors and the temple of Confucius are to be worshiped by the officials with the customary ceremonies.

(2) The temples of the gods of the mountains and seas, etc., are to be repaired by the local officials as a token of respect.

(3) Both Manchu and Chinese dutiful sons and grandsons, as well as chaste husbands and wives, are to be reported by the local officials to the board of ceremony for proper recognition.

(4) All the civil and military officials are to be promoted one grade higher in rank.

(5) The civil and military officials in Peking who are temporarily degraded or fined shall be exempted from their sentence.

(6) The orphans, the poor, and sick people of all the provinces are to be specially cared for by the local officials, and houses should be built for them to live in.

(7) Soldiers who are over seventy years of age are each to be allowed one son to take care of them, and to be exempted from military service.

(8) The important roads and bridges of all the provinces are to be repaired by the local officials, under the instruction of the governors.

These first orders are given for the benefit of the people, and let every one be aware.

Stamped by the Emperor's seal on the 15th day of the first moon, thirteenth year of Kwong-Hsu.

No. 161.

Mr. Denby to Mr. Bayard.

No. 340.] LEGATION OF THE UNITED STATES,
Peking, March 21, 1887. (Received May 7.)

SIR: The article entitled "China: the Sleep and the Awakening," of which I sent you a copy in my dispatch No. 328, of March 8, has provoked many criticisms in China. One which appeared as a supplement

to the Chinese Times, and is signed "Sinensis," is the most elaborate that I have seen. I have concluded to send the following abstract thereof. * * *

The writer enumerates the steps of progress recommended by the Marquis Tseng, as follows: The creation of a navy; the coast defense system; the strengthening of the army; the improving of relations with the treaty powers; a more effective supervision of feudatories; the repeal of the alienation of sovereign dominion over her territory comprised in foreign settlements.

The writer says that these exertions "are like the convulsive strugglings of a sleeping man suffering from a nightmare or delirium."

He claims that the first duty of China is "equitable rule and right government." She must first "discountenance official corruption," and adopt "a just and liberal policy" towards her own people.

He charges that the two modes of securing appointment to office should be abolished. The first is by literary examination, and the second by purchase.

These examinations, he charges, are worthless as a test of real ability. They require no knowledge of modern science or arts. They demand only a good memory and "a close acquaintance with the precepts and sayings of China's ancient sages." The opportunities for fraud are great, "and money plays an important part." He says that the Chinese fleet at Foochow was commanded by one of the "literati of the first water," but as an officer he was utterly incompetent.

A third method of securing advancement is the military service. Here money reigns supreme. Blue or variegated feathers, special mention for bravery, are bought openly. The Chinese officials are to be commiserated. Their literary training is no help in the discharge of their duties.

It is much to be regretted that "China's choicest sons," who have been trained abroad, are cast away in favor of those who have obtained official position by the methods above enumerated.

China needs a navy, but she needs most "competent hands to man her forts and fight her ships."

The students at the naval schools are, as a rule, maltreated and compelled to serve under ignorant officers.

The Chinese army should be entirely reformed. It is badly armed and officered by incompetent men. The achievements of the "Ever Victorious Army," commanded by General C. C. Gordon, are cited to show what Chinese soldiers can accomplish under proper guidance.

It is admitted that China's relations with foreign powers are just cause of complaint, but no particular remedy is suggested for these evils.

"The real weakness of China is her loose morality and evil habits, both social and political."

The strengthening of the army and navy will have no influence in restoring to China the sovereign right of bringing every foreign resident within her territory under her own laws. To do this "the extorting of evidence from prisoners by corporal pain," "bribery and unfair dealings," "the filthy prisoners," the "ling chi" (death by the slow process of cutting off each member in turn) must all be abolished.

If China were twenty times as strong as she is the foreign powers would not submit their people to her jurisdiction as the laws are now administered.

The plan of exercising a more effective supervision over her vassal provinces is not much commended. China should first learn to govern herself wisely.

(2) That the Hong-Kong government shall be entitled to repeal the ordinance if it be found to be injurious to the revenue or the legitimate trade of the colony.

(3) That an office under the foreign inspectorate shall be established on Chinese territory, at a convenient spot on the Kowloon side, for sale of Chinese opium duty certificates, which shall be freely sold to all comers, and for such quantities of opium as they may require.

(4) That opium, accompanied by such certificates at the rate of not more than 110 taels per picul, shall be free from all further imposts of every sort, and have all the benefits stipulated for by the additional article on behalf of opium on which duty has been paid at one of the ports of China, and that it may be made up in sealed parcels at the option of the purchaser.

(5) That junks trading between Chinese ports and Hong-Kong and their cargoes shall not be subject to any dues or duties in excess of those leviable on junks and their cargoes trading between Chinese ports and Macao, and that no dues whatsoever shall be demanded from junks coming to Hong-Kong from ports in China, or proceeding from Hong-Kong to ports in China, over and above the dues paid or payable at the ports of clearance or destination.

(6) That the officer of the foreign inspectorate, who will be responsible for the management of the Kowloon office, shall investigate and settle any complaints made by junks trading with Hong-Kong against the native customs revenue stations or cruisers in the neighborhood, and that the governor of Hong-Kong, if he deems it advisable, shall be entitled to send a Hong-Kong officer to be present at and assist in the investigation and decision.

If, however, they do not agree, a reference may be made to the authorities at Peking for a joint decision.

Sir Robert Hart, undertakes on behalf of himself and Shao, taotai (who was compelled by unavoidable circumstances to leave before the sittings of the commission were terminated) that the Chinese Government shall agree to the above conditions.

The undersigned are of opinion that if these arrangements are fully carried out, a fairly satisfactory solution of the questions connected with the so-called "Hong-Kong blockade," will have been arrived at. Signed in triplicate at Hong-Kong, this 11th day of September, 1886.

J. RUSSELL,
Puisne Judge of Hong-Kong.
ROBERT HART,
Inspector-General of Customs, China.
BYRON BRENAN,
H. B. M.'s Consul at Tientsin.

No. 164.

Mr. Bayard to Mr. Denby.

No. 178.] DEPARTMENT OF STATE,
Washington, April 2, 1887.

SIR: I have received your No. 282, of January 7, 1887, inclosing the final agreement of the local authorities at Chungking on account of the claims of American missionaries for property losses there by a mob in July last.

I have observed with gratification your words of commendation in behalf of Mr. F. S. A. Bourne, Her Britannic Majesty's consular representative at Chungking, for his services in the settlement of these claims, and have had pleasure in instructing Mr. Henry White, the chargé d'affaires *ad interim* of the United States at London, to whom I have sent a copy of your dispatch, to convey through the foreign office the thanks of the President for the valuable and disinterested services rendered by Mr. Bourne in the premises.

I am, etc.,

T. F. BAYARD.

in Hong-Kong in June last, in pursuance of Article 7, section 3, of the agreement between Great Britain and China, signed at Chefoo on the 13th September, 1876, and of section 9 of the additional article of the said agreement signed at London on the 18th July, 1885.

There were three plans proposed for the collection of the opium revenue for China.

First. The opium revenue should be collected for China by England in India. The Chinese commissioners favored this plan, because by a system of deferred payments of duties in India interference with capital would be avoided, and by freeing opium from taxation in China smuggling would be avoided.

Second. That China should do her own work, that is, collect her own revenue on Chinese territory, and take her own preventive steps all along the Chinese sea-board.

Third. The hulk plan, which was between the other two. Opium hulks were to be anchored at Hong-Kong. Every vessel carrying opium was, on entering the harbor, to go alongside of one of these hulks. The opium was to be discharged into a hulk. Opium leaving a hulk to go to Macao was to pay duty and lekin before it left port.

Opium to be taken to Hong-Kong, and not to customs godown, to pay duty and lekin in like manner.

Opium leaving a hulk to be taken to a Chinese treaty port by vessels under the flag of a treaty power, or belonging to a China merchants' company, to pay duty and lekin at the treaty port. Certificates to be issued by the hulk officials describing the nature and quality of the opium.

Under the inclosed agreement, which was finally arrived at, China collects the duties at her own ports and the rights of Hong-Kong are protected.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 345.]

Memorandum of the basis of agreement arrived at after discussion between Mr. James Russell, puisne judge of Hong-Kong; Sir Robert Hart, K. C. M. G., inspector-general of customs; and Shao, taotai, joint commissioners for China, and Mr. Byron Brenan, Her Majesty's consul at Tientsin, in pursuance of Article 7, section III, of the agreement between Great Britain and China signed at Chefoo on the 13th September, 1876, and of section 9 of the additional article to the said agreement signed at London on the 18th July, 1885.

Mr. Russell undertakes that the government of Hong-Kong shall submit to the legislative council an ordinance for the regulation of the trade of the colony in raw opium, subject to conditions hereinafter set forth, and providing—

(1) For the prohibition of the import and export of opium in quantities less than one chest.

(2) For rendering illegal the possession of raw opium, its custody, or control in quantities less than one chest, except by the opium farmer.

(3) That all opium arriving in the colony to be reported to the harbor-master, and that no opium shall be transhipped, landed, stored, or moved from one store to another, or reported without a permit from the harbor-master and notice to the opium farmer.

(4) For the keeping by importers, exporters, and godown owners, in such form as the governor may require, books showing the movement of opium.

(5) For taking stock of quantities in the stores, and search for deficiencies by the opium farmer, and for furnishing to the harbor-master returns of stocks.

(6) For amendment of harbor regulations as to the night clearances of junks.

The conditions on which it is agreed to submit the ordinance are:

(1) That China arranges with Macao for the adoption of equivalent measures.

It is advised that China should raise money by borrowing from her own people. She should have a national debt, in which her own people can invest. But at present the official corruption is so great that the people believe that their money once deposited with the Government is forever lost.

Improvements should, as much as possible, be left to private enterprise. But to accomplish this end underhand dealings, levying blackmail, imposition of heavy taxes, the assumption of injurious prerogatives, should be effectually prohibited.

The writer does not share in the boastful feeling of the marquis at the result of the French war: "China suffered crushing defeats at Foochow and Keelung, and France retained Tonquin."

The marquis, he says, has mistaken the effect for the cause; he has not probed the disease.

* * * * * * *

I have, etc.,

CHARLES DENBY.

No. 162.

Mr. Denby to Mr. Bayard.

[Extract.]

No. 343.] LEGATION OF THE UNITED STATES,
Peking, March 25, 1887. (Received May 7.)

SIR: I have the honor to report that my information is that Li Hung Chang yesterday obtained the assent of the Emperor to the building of a railroad between Tacu and Tientsin.

To whom the contract will fall is not decided. It is understood that the viceroy favors the plan submitted to him last year by General Wilson and Mr. Smith, of Russell & Co. Their proposition, which is now before the viceroy, is that a Chinese company is to be formed for Tacu line, the company to have the right to build future extensions (to Fung Chow or Peking and the line south); Russell & Co. to be foreign managers; General Wilson, chief engineer; loan to be made for the company of the Tacu line at 5½ per cent. interest, holding road as security. The loan is to be repaid as fast as Chinese shares are sold. The road is to be built and stocked at actual cost.

The viceroy will decide who shall have the contract as soon as he returns from the trip with the Emperor to the western mausolea—about the middle of next month. The French are making great efforts to secure the contract.

The new Kaiping railway, under the ex-customs taotai, Chow, with a canton lawyer named Achoy, are also bidding for the contract. Propositions have been made to consolidate this interest with the American company, but no result has been reached.

I have, etc.,

CHARLES DENBY.

No. 163.

Mr. Denby to Mr. Bayard.

No. 345.] LEGATION OF THE UNITED STATES,
Peking, April 1, 1887. (Received May 7.)

SIR: I have the honor to inclose herewith the basis of the agreement, relating to the opium traffic, arrived at by the commission which met

No. 165.

Mr. Denby to Mr. Bayard.

No. 348.] LEGATION OF THE UNITED STATES,
Peking, April 5, 1887. (Received May 18.)

SIR: I have the honor to inclose herewith a copy of the decree authorizing the building of a railway from Taku to Tientsin. The decree is based on a memorial of the Board of Admiralty. It recites that the Seventh Prince, Li Hung Chang, and Marquis Tseng all favor the construction of the road.

The chief reason assigned is the facility of moving troops.

To the Kaiping Railway Company are assigned the contract and authority to build the road. The reason of this preference is the securing of coal for the fleet.

As I have advised you, an effort was made to consolidate this company with the syndicate represented by General Wilson. It seems from this memorial that this scheme failed. The Kaiping Railway Company has already advertised for 2,000 tons of rails and fastenings, to be delivered at Taku ninety days after June 15th next.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 348.]

MEMORIAL FROM THE BOARD OF ADMIRALTY.

A memorial to the Empress, submitting a proposal for the experimental introduction of a railway at Tientsin and other places, in order to facilitate the movement of troops and the transport of material of war, and to increase the profits of the mercantile classes.

The introduction of railways has been under discussion for several years. Some have argued in their favor, and others adversely, so that no definite conclusion has been come to. The memorialist, I-huan (the seventh Prince) has frequently heard these oft-repeated opinions, and his own views were at one time opposed to the innovation, but since the recent campaign, and since he himself visited the northern sea-ports, he has become aware that these adverse opinions are not in accordance with the true interests of the state. When the prince with Li Hung-chang and Shan Ching inspected the sea-ports the question of railways frequently formed the subject of their deliberations. Moreover, when he presided over the Tsung-li yamên he obtained a clear insight into affairs, and considered thoroughly the means of remedying the difficulties of the time.

Tseng Chi-tse (the Marquis Tseng) has been ambassador in foreign countries for eight years, and has himself studied the railway systems of other nations, their utility in providing for the transport of troops and material, their immense benefit to the people, the large issues they involve, and the very great advantages to be derived from them, and he has seen that they not only afford protection to the frontier and a stimulus to the trade of the people, but at the same time are in no way attended with danger or impediment to the state. Since his appointment to the Tsung-li yamên he has devoted much thought to this matter, and made many inquiries, which have resulted in his entire agreement with the views set forth in this memorial.

In our deliberations we have duly recognized the fact that the circumstances of China have from ages past differed widely from those of other nations, and while we are fully cognizant of the many and great advantages to be derived from railways we have not been blind to the financial difficulties nor to the objections that might exist to an unsightly network of railways being spread like a web over the land, as is the case in many countries.

On the other hand, when we consider the important advantages to be gained in the facility and rapidity with which troops and material can be moved from place to place, we are convinced of the desirability of taking the best measures in this direction. One should not look at only one side of a question.

In the midst of our deliberations on this matter a report was received from the Tientsin salt commissioner, the taotai, and the officers in command of the various garrisons, to the following effect:

The sea-board of Chihli, stretching for a distance of some 700 li, consists for the most part of shoals and sand-banks, though there are many places where small craft can reach the shore; but, besides Taku and Pei-t'ang, where steamers can anchor near the shore, along the whole coast, from Shan Hai Kuan to Yang Ho K'ou, a distance of over 100 li, there is not a single place where the water is not deep and the waves high.

The port of Taku is distant from Shan Hai Kuan about 500 li, and in the summer and autumn the coast roads are so covered with water and obstructed with mud that the carts laden with merchandise can not travel more than 20 or 30 li in a day; indeed, in some places the road is often quite impassable; so that it is to be feared that in the event of a surprise we should be slow in meeting the emergency. Moreover, the northern and southern garrisons are too widely separated, and it would be difficult to come to the rescue in time of need. We can not, therefore, neglect to station troops at the most important and exposed places, occupying beforehand those points where the first struggle will take place, thus displaying the might of the nation, as it were, before her gates. But on the portion of the sea-coast nearest to Peking, from Taku and Pei-t'ang northwards for a distance of 500 li, the garrisons are few in number, and the gaps between them are a great source of danger. If they were united by a line of railway, in any case of emergency troops dispatched in the morning could arrive at their post in the evening, the soldiers of one garrison would suffice for the protection of several places, and the cost of maintaining the army could be greatly reduced.

In the seventh year of Kuang Hsii, the Kaiping Mining Company laid down 20 li of railway. Subsequently, to facilitate the coaling of vessels of war, the line was extended 60 li to the southward as far as Yeng-chuang on the river Chi. This line occupies the central portion of the road, between Pei-t'ang and Shan Hai Kuan, a tract of the highest importance as regards military transport. If this railway be carried through southwards to the north bank of river at Taku, and northward to Shan Hai Kuan, the 10,000 men under the command of the General Chow Shêmpo can be moved backwards and forwards along this distance of several tens of li, and serve all the purposes of several times their number. Should this appear to be too great an undertaking, or the difficulty of furnishing the necessary capital be found insurmountable, it is requested that the 80 odd li of railway from Yeng-chuang to the north bank of the river at Taku be first constructed, after which the 100 and more li of road from Taku to Tientsin can be gradually completed. If something over 1,000,000 taels can be raised, this work could be carried out in due course. The Tientsin-Taku railway once completed, the line from Kaiping northward to Shan Hai Kuan can then be taken into consideration.

This is a matter of the very highest importance for the defense of the sea-board. If the capital can not at once be collected from merchants by the issue of shares, it should be furnished by the Government, and soldiers should be employed to assist in carrying out the work, in order to secure its speedy completion.

Moreover, the coal used by the Pei Yang fleet is all obtained from Kaiping, and it is, as it were, the life and pulse of the navy. If the Kaiping railway is extended to the north bank of the river at Taku, the coal can be conveyed from the mines on board the ships in half a day, and if the line is continued from Taku to Tientsin, it can be utilized for the carriage of merchandise, and the freight received from the foreign traders will help towards the maintenance of the railway.

If this scheme is authorized the work should be placed in the hands of the Kaiping Railway Company, so that economy in expenditure and labor may be secured.

It is further requested that a high official of unimpeachable integrity may be appointed to undertake the supreme administration.

This joint petition was received by the memorialists.

The memorialists find that the railway proposed in the joint petition of the salt commissioner, the taotai, and the officers of the garrisons, which would run from Yen-chuang to the north bank of the river at Taku, a distance of more than 80 li, would lie mostly at the back of Taku and Pei-t'ang, some tens of li from the sea-shore, and there is evidently no fear of its becoming an object of attack by the enemy, but funds will be necessary for its permanent maintenance. They therefore request that a line may be gradually constructed from Taku to Tientsin of 100 or more li, which may be relied upon as a means of obtaining the funds in question, and thus both military and commercial interests will derive an equal advantage. The country will be protected at ordinary times, and in special emergencies defensive measures will be facilitated. In case of defeat the rolling stock can be withdrawn, the line taken up, the military stores buried, and the advance of the enemy need not be feared.

The memorialists have attentively considered this petition, and they now request the scheme may be sanctioned. They beg that it may entrusted to the Kaiping Railway Company, and that the former provincial treasurer of Fuh-kien, Shên Pao-ching,

whose services have been retained in connection with the northern squadron, and Chow Fu, acting salt commissioner, superintendent of customs at Tientsin, may be appointed conjointly to administer the affair and direct the officials and merchants connected with it.

In the autumn of this year the new war vessels ordered from England and Germany should reach China, and next year the memorialist, I-huan, will proceed to the seaport, and with Li Hung-chang and his colleagues arrange for the formation of the first division of the navy. They can at the same time inspect the railway. If it is found to be useful and free from objections, they would suggest that similar plans be put into operation in the various mining districts of the country.

The memorialists venture to present this memorial to Her Majesty the Empress, being moved thereto by the necessity of the times and their desire for the welfare of the nation.

A memorial from the Board of Admiralty, dated Kuang Hsii, 13th year, 2nd month and 22nd day (15th March, 1887).

Rescript granted.

No. 166.

Mr. Bayard to Mr. Denby.

No. 189.] DEPARTMENT OF STATE,
Washington, April 18, 1887.

SIR: I have received your No. 320, of February 25, 1887, relative to the claim of a Chinaman, Ae Teck, who, it appears, has declared his intention to become a citizen of the United States, and returned to Amoy, his native place, to be registered as an American citizen.

It has never been supposed that the act of Congress of May 6, 1882, relative to the naturalization of Chinese in the United States, was in conflict with Article II of the treaty of 1880, or with any other conventional provisions respecting the treatment of Chinese subjects in the United States. In the view, however, that the Department takes of the case of Ae Teck, it is not deemed necessary to raise that question. Naturalization is, as you say, a matter of judicial and not of executive cognizance, and it would be for the courts to say whether Ae Teck could, if he desired, be naturalized under the laws of the United States. At present it is clear that he is not a citizen of the United States, and, having returned to China, is not entitled to be registered there as such by the consuls of the United States.

Your action on the case is therefore approved.

I am, etc.,

T. F. BAYARD.

No. 167.

Mr. Bayard to Mr. Denby.

No. 190.] DEPARTMENT OF STATE,
Washington, April 18, 1887.

SIR: I have to acknowledge the receipt of your No. 300 of February 8, 1887, touching the necessity of opium legislation, and to say that the Department's instruction No. 166 of the 4th ultimo will have apprised you of the provisions of the act of Congress approved February 23, 1887, to carry into operation the second article of the treaty of 1880 with China.

I am, etc.,

T. F. BAYARD.

No. 168.

Mr. Bayard to Mr. Denby.

No. 193.] DEPARTMENT OF STATE,
Washington, May 3, 1887.

SIR: I have received and read with much interest your dispatch No. 328, of March 8 last, concerning the article by the Marquis Tseng, entitled "China: the Sleep and the Awakening," published in the Asiatic Monthly Review.

It is encouraging to see so astute an observer as the Marquis Tseng pay so high a tribute to the friendly and just disposition of the United States toward China and our firm respect for international obligations and comity.

I am, etc.,

T. F. BAYARD

No. 169.

Mr. Denby to Mr. Bayard.

No. 366.] LEGATION OF THE UNITED STATES,
Peking, May 14, 1887. (Received June 27.)

SIR: I have the honor to offer the following observations on the objection of the Chinese minister to the third section of the anti-opium law, as stated in your dispatch No. 177, of date March 23, 1887.

The first clause of said section simply enacts the existing treaty, adopting almost the language of Article 2 of the treaty of 1880, page 828, volume 22, United States Statutes at Large. The second clause provides inadvertently for a double pecuniary fine. The third clause gives jurisdiction to the consular courts.

The fourth clause provides for the confiscation of the opium therein above described, and its forfeiture to the United States for the benefit of the Emperor of China, proceedings to that end to be had before the judicial authorities of the United States in China.

I presume the objection of the Chinese minister is directed to the fourth clause. I agree that the clause is antagonistic to the fourteenth article of the treaty of 1858, if opium is "a contraband article of merchandise."

Under the said article contraband merchandise is to be dealt with exclusively by the Chinese Government. But it has never been admitted by my predecessors, and is distinctly disaffirmed by me, that a citizen of the United States can be tried for any offense and personally punished except by his own consul.

I submit to you the propriety of advising the consuls not to entertain any action *in rem* having for its object the confiscation of opium, but on the contrary to disregard the said fourth clause of the third section.

The ground for this ruling would be that the said clause is in conflict with the treaties. This course of action would relieve the mind of the Chinese minister from any apprehension of interference with the local laws of China.

Opium held in violation of the act of Congress would still receive no protection at the hands of the authorities of the United States. The

question of confiscation "for the benefit of the Emperor of China" would be left with the Chinese authori'ies, where it belongs. The personal penalties for a contravention of the act would still be enforced.

I have, etc.,

CHARLES DENBY.

No. 170.

Mr. Denby to Mr. Bayard.

[Extract.]

No. 367.] LEGATION OF THE UNITED STATES,
Peking, May 16, 1887. (Received June 27.)

SIR: I have the honor to bring to your attention a new phase of lekin taxation.

Kerosene oil is shipped from Hong-Kong in native junks. I have been furnished with a copy of a lekin receipt issued in Hong-Kong for duty paid on kerosene shipped to Canton. This receipt reads as follows:

Received from Mak-Kee the sum of { Chay on, four dollars. }*
3rd moon, 15th day, Kuang Hsii, 13th year.

FARMER'S CHOP.
[Chay on.]

Formerly the lekin duty on kerosene was 40 cents per case. The privilege of collecting this duty was farmed out. The farmer had his own stamps and seals. Lately a further lekin tax of 80 cents per case was levied. This receipt bears the stamp of the kerosene farmer and also the stamp acknowledging receipt of the 80 cents lekin duty. Thus both taxes are collected at Hong-Kong.

Thus it appears that Hong-Kong has become a lekin station for the Chinese Government. Hong-Kong has hitherto been a free port.

The result of this system on the property of Hong-Kong is likely to be detrimental, as it tends to divert trade therefrom.

The system of collecting the opium tax at Hong-Kong is by this procedure extended to kerosene oil. In the progress of this new departure it may happen that other taxes will be likewise collected in Hong-Kong. As Hong-Kong is not in my jurisdiction I confine myself to giving you information of these facts.

I have, etc.,

CHARLES DENBY.

No. 171.

Mr. Denby to Mr. Bayard.

No. 370.] LEGATION OF THE UNITED STATES,
Peking, May 18, 1887. (Received July 5.)

SIR: I have the honor to state that, in view of the discussion now being had in China touching the abolition of the extraterritorial jurisdiction

*Farmer's seal given to him by Government.

of the foreign powers, it has occurred to me that some general observations on the Penal Code of China would not be out of place. The subject does not seem to have been handled by any of my predecessors.

The Chinese Penal Code is excessively minute. There are few conceivable offenses not embraced in its provisions.

The first monarch of the present family, Shunchi, ordered a revision of the code in 1647. A new edition is published every five years. It comprises seven divisions and four hundred and thirty-six sections under an equal number of separate heads. The first of these divisions is in forty-six sections, consisting of general laws comprising principles applicable to the whole code.

The punishments inflicted are the following: From ten to fifty blows with the lesser bamboo, from fifty to one hundred with the greater bamboo; transportation to any distance not exceeding 500 li (a li is one-third of a mile); perpetual transportation; death either by strangulation or decollation. The bamboo, the cangue or movable pillory, the iron chain, handcuffs, and fetters are the common instruments of punishment. There is no banishment from the confines of China, but transportation is ordered to Mongolia or Manchuria. This punishment may also involve labor in public works.

The ten great offenses are rebellion, disloyalty, desertion, parricide, massacre, sacrilege, impiety, discord, insubordination, and incest.

Certain classes of offenders belonging to the imperial blood, or who have rendered valuable services, or are distinguished by wisdom, ability, zeal, nobility, or birth are entitled to commute these punishments by the payment of money.

Private offenses comprehend almost all cases of direct criminality; public offenses are cases of liability to punishment growing out of official responsibility.

New laws take effect from the date of their promulgation. Cases for which there are no specific laws must be decided from analogy.

Transportation varies from 500 li to 4,000 li in distance, and from a short period to life.

The second division covers offenses relating to violations of civil laws. The sections relate to appointments to office, to performance of official duty, to interference with magistrates, to non-execution of Imperial edicts, to the mutilation of official papers, to forming cabals and state intrigues, and other kindred subjects.

The third division covers violations of the fiscal laws. It concerns population and revenue. Fifteen sections relate to the enrollment of the people, adoption of heirs, building of temples without permission, evasion of public service by desertion, provision for the aged and bereaved. Eleven relate to lands and tenements, fraudulent misrepresentation of landed property, inspection of lands injured by calamity, usurpation of public or private lands and tenements, mortgaging land, private employment of public carriages and boats and the like. Seventeen sections relate to marriage, regulating marriage, mortgaging a wife or daughter, disregarding rank of wife or concubine, ejecting son-in-law, marrying during period of mourning or imprisonment, marriage between persons of different ranks, or with relations, or with persons who have absconded; forcible marriage of freemen's wives or daughters of freemen with slaves, holding go-between responsible.

Twenty-three sections relate to granaries and treasuries, coinage, receiving taxes, concealing revenue, monopolizing payment of taxes, giving false receipts, failing to make proper reports, clandestine use of revenue

or use of public property, frauds in storehouses, thefts in granaries, detention of revenue, purity of gold and silver delivered to Government, confiscated property, and the like.

Eight sections relate to duties and customs, regulations of salt department, smuggling of tea, alum, evasion of duties, and the like.

Three sections relate to money loans, unlawful interest, breaches of trust, finding lost articles.

Five sections relate to markets and shops, valuation of goods by factors, combinations of traders, false weights, manufacturing utensils and silk contrary to usage.

The fourth division relates to ritual laws—sacrifices, destroying altars, dishonoring tombs or the gods, prohibiting magicians and depraved arts, preparing medicine for the Emperor, interdicted books, imperial presents, neglect of ceremonies, monuments, sumptuary laws, respect to parents, false predictions, concealment of deaths, funeral rites, interments, festivals, and the like.

The fifth division relates to military laws—wrongfully entering temples or the palace, neglect of duty, trespass on imperial roads, wrongfully employing substitutes, regulations as to intercourse with the palace, locking gates of cities, unfaithfulness of officers, plundering by soldiers, insubordination, selling war-horses, arms, or accouterments, improper management of herds and flocks of the Government or neglect of them, using Government horses, excessive rations. This division contains seventy sections, and provides for almost every conceivable offense by soldiers.

The sixth division relates to general crimes and misdemeanors. The criminal laws are 170 in number, and are comprised in eleven subdivisions. Twenty-eight refer to theft and robbery; twenty to loss of human life; twenty-two to quarreling and fighting; eight to abusive language; twelve to litigations; eleven to bribery; eleven to frauds and forgeries; ten to illicit intercourse; eleven to miscellaneous offenses; eight to arrests and escapes; twenty-nine to imprisonments.

In this list may be found punishments for defacing brands or marks, for causelessly entering houses at night, for killing three persons in one family, for cutting human beings to pieces, for killing a concubine by excessive beating, for interference in cases of intended injury, for wives and concubines striking their husbands, for striking the children of a wife's former husband, for abusing parents, for bringing forward false accusations, for illicit sexual intercourse, for frequenting brothels, for employing eunuchs, for hushing up crimes, for "doing what ought not to be done," for accidental fires, for clerks writing confessions for others.

The other crimes are those known as *mala in se* in all systems of jurisprudence. Some of the special offenses above enumerated are novel, as the law which holds the master of the house criminally liable for an accidental fire, and punishes him with death should an Imperial temple be burned. But the penal legislation in general does not differ from that of other countries in the definition of crimes.

The law respecting theatrical representations prohibits the representation of empresses, famous princes, ministers, and generals of former ages.

Torture is prohibited to be applied to persons over the age of seventy and under the age of fifteen.

Females are not imprisoned except in capital cases and adultery. They are kept in custody by their husbands or kindred.

It is usual to compel the prisoner to confess his guilt before sentencing him. To this end torture is applied, but I am inclined to believe that

torture is not applied until there is raised a strong presumption of guilt.

When a man is accused of a capital crime his kindred are summoned to be present at the trial.

Ordinarily the death sentence is not executed until the Imperial rescript has been had. But sometimes the execution is immediate. Execution by the slow process, that is by hacking the members off one by one, is not uncommon.

The seventh division of offenses relates to public works. It contains twelve sections, assuming to effect public works, waste of time and expenditure, building contrary to law, misapplication of public money or silks, weaving prohibited patterns, encroachments on streets, and the like.

In those cases in which the law allows commutation money to be paid, in lieu of suffering the punishment inflicted, the amount varies from 12,000 taels, in case of the death penalty in certain cases, to a nominal sum for blows.

It may be said generally that whoever is guilty of any species of pecuniary malversation to the extent of 20 taels of silver shall receive forty blows, and the greater the amount the heavier the punishment.

Having thus furnished an abstract of the *Ta Tsing Leu Lee*, or Penal Code of China, I beg leave to offer a few remarks thereon suggested by reading and observation.

It is to be noticed that the Penal Code discloses that the duty of submission to parental authority is treated as a fundamental principle of government.

This principle, indeed, is the foundation both of law and religion. The worship of ancestors is the one distinctive principle of religion. Submission to parental authority, or to the rulers who represent parents, is a general rule of action. Secluded as China was from the rest of the world for many centuries, the patriarchal government which existed in the earliest ages in all countries, remained, and still remains, as the foundation of her system. This principle has served to unite as one people the vast population of China and to preserve for its Emperor the veneration of his subjects in spite of every convulsion.

It is also to be noticed that there are many provisions, not found in other codes, based on an exalted charity and respect for aged and honorable persons. There are also preventive measures, such as requiring any person who knows of an injury intended to another to endeavor to prevent it, and if unsuccessful to report the matter to the magistrates, which do not exist in other codes.

If we compare China with our own favored land we will not fail to conclude justly that the Chinese are inferior to our own people in social virtues. The chief cause, no doubt, of our superiority is the profession of the Christian religion. On the other hand we must admit that the Chinese possess certain moral and political advantages in a marked degree. Among these may be enumerated the regard paid to ties of kindred, the sobriety and industry of the lower classes, the absence of feudal privileges, the peaceful tendency of the Government and the people, the equable distribution of landed property, and the comprehensive, just, and equitable system of penal laws which I have herein sketched.

It must be said also that there is considerable liberty of the press in China. Its influence and spread is not, of course, as great here as in western countries, but there seem to be no previous licenses required and few restrictive regulations. No country in the world so much en-

courages literary pursuits, nor rewards them with such honors and emoluments.

While there are other statutes besides the Penal Code, still it may be taken as a compendium of the laws of China. Each branch of the Government has its own particular code of laws, but the general laws of the Empire are found in this code and they are connected with every branch of the constitution. These laws are the product of the wisdom of the Tartar dynasty and date from the Tartar conquest.

We shall look in vain in the Penal Code for the ordinary safeguards that are thrown around the citizen in the courts of our own land or in England. No presumption of innocence is admitted, and men are required to criminate themselves. In our view these practices must be held to be indefensible. But in considering what laws are adapted to a people we must study the geography of the country, the climate, the quality of the soil, the ordinary life of the people, their religion, inclinations, wealth, numbers, commerce, morals, and manners.

Perhaps the western world is not even now sufficiently acquainted with China to pronounce authoritatively on the adaptation of its code to its people. It cannot be denied successfully, although some authors have disputed the assertion, that bambooing and bastinadoing are almost universally used in criminal procedure. My belief is, that they are very common procedures used as punishment and as torture.

There are no permanent prisons, and all punishment is corporeal. It is impossible to defend on any human theory the cruelty which is often practiced in the courts. Absolute necessity is the only shadow of defense.

It will be noticed that the laws take a wider range than those of other countries. This might have been expected in a patriarchal government. The minute interference with individual freedom may also be more necessary in the ruling of such a vast population.

It is claimed that the severity of the written law is condoned by leniency in its execution. But I am not prepared to concede this proposition. My reading of the Pekin Gazette induces me to believe that there is great rigor in the enforcement of even the heaviest penalties, which are not redeemable by money commutation.

It may be said also that however equitable the laws may appear to be the administration of justice is corrupt. It is notorious that money is demanded and received by the underlings of the various yamêns from prisoners and criminals. It is charged that the judges are susceptible to bribery in civil cases.

But I do not believe that the Imperial Government would lend its sanction to corruption or injustice, or fail to send the perpetrators to the board of punishments for the assessment of a penalty, where a plain case was brought to its notice. The body of the people take great pride in their laws and demand only their impartial execution.

The era of reform has not dawned for China. Her attention to-day is directed to material development only. Possibly she has commenced at the wrong end, but she will first provide for an army and navy for self-protection before looking into the wrongs prevalent in her governmental system.

* * * * * * *

I have, etc.,

CHARLES DENBY.

No. 172.

Mr. Denby to Mr. Bayard.

No. 373.] LEGATION OF THE UNITED STATES,
Peking, May 23, 1887. (Received July 5.)

SIR: I have the honor to offer a few observations on the civil law of China. There is no written code applicable to civil proceedings. Nor is there any series of reports of cases. The administration of the law is moulded by the character of the Government. The Government is paternal. It is arbitrary, but it is based on the consent of the people, and it is encompassed by checks which serve to give it some of the elements of a democracy.

The courts do not seem to be bound by any technical rules. It has happened lately that in a civil case the plantiff has been punished corporally for bringing the suit, and the defendant has also been punished, though the plaintiff was adjudged to be in fault.

The villages, the clans, the neighborhood, and the guilds administer justice. The "gentry" are an important factor. They are elders and men of influence. They sometimes become officials. They often control the officials and order them to do justice. They may be more accurately described as mediators between the people and the officials. The greater part of the administration of the law in China is in the hands of the district magistrates. They are called "the parents of the people." The duties of this officer are by no means exclusively judicial. He administers the criminal and civil law, and he is responsible for the order of his bailiwick. He collects taxes. He has soldiers under him. He has charge of the literary examinations. Certain days in the month are fixed for the bringing of suits. There are no professional lawyers in China. I am tempted to express the idea that freedom cannot exist in a country which has no lawyers. But there is a class of persons who prepare law papers. They are accounted a shrewd and not very reputable class. The papers first go before the Tipao. This is the lowest of Chinese officials. There are several of them in the cities. He exercises direct and personal control over the people. He acts as constable, makes arrests, and hands the offenders over to the district magistrates. The Tipao puts his seal on the paper. It goes through several hands and is taxed with fees, which do not seem to be excessive. The defendant is summoned. He prepares his defense, which takes the same course as the complaint. Sometimes the defendant bribes the police not to arrest him. But ultimately the parties appear before the magistrates. An appeal lies from the district judge to the department judge, and from that officer to the provincial judge and up to the governor and governor-general, thence to the capital. There appeals are not unusual, and it sometimes happens that the inferior judges are punished by imperial rescript for not having discovered the truth, and for rendering erroneous judgments. There does not seem to be any independence in the judiciary as in other countries. The expense attending litigation, and the principles, above alluded to, that the plaintiff may be punished for bringing a wrongful suit, cause the Chinese to avoid lawsuits.

The chief peculiarity of the Chinese system is the censorate. Censors represent every province in China. There are 56 in all, distributed over 15 circuits, embracing the eighteen provinces, besides the metropolitan circuit. The duty of these officers is to inform the sovereign upon all subjects connected with the welfare of the people and the conduct of the Government. The censors memorialize the Crown at pleasure, and find

fault even with the Emperor. All abuses are brought to the attention of the Government. This institution takes the place of the press in other countries. But unrestrained license is not allowed. I have seen several cases in which the censors have been adjudged to have handed in trivial and unsupported charges and have been summoned before the board of punishments for the infliction of a penalty.

The basis of the civil and the commercial law in China seemed to do the same as that of the common-law custom. As to the commercial law, it seems to be regulated by the rules of the various guilds more than by any other factor. There are some general principles of law which prevail. In China the inspection of a sample is considered final, and the seller is only bound to give goods corresponding with the sample. The principle of *caveat emptor* prevails.

No contract is considered binding, even if written, unless earnest money is paid.

By Chinese custom the broker to whom goods are intrusted for sale is liable for their value. Brokers who sell goods to parties who fail to pay for them are held liable as principals to pay for the goods.

A servant may be dismissed at any time, being paid up to the time of dismissal. Verbal guaranties are binding. The law of partnership seems to be the same as in other countries. All active partners are held liable for debts of the firm, but sleeping or limited partners are not.

Among the probable reasons why the civil law has not had the same recognition as the criminal law may be cited the following: The fact that nearly all business is done through compradores, the settlement of disputes by the guilds, the contempt with which the *literati* look down on trade, and a certain want of power in the Chinese to apply abstract principles to practical results. This is demonstrated in the little practical use that they have made of the various inventions with which they are credited, such as printing, gunpowder, and the compass.

Perhaps the residence of foreigners of all nationalities in China, and the numerous consular and British courts, administering all of the laws under the sun, have contributed to delay the preparation of a code of law.

I have, etc., CHARLES DENBY.

No. 173.

Mr. Denby to Mr. Bayard.

No. 378.] LEGATION OF THE UNITED STATES,
Peking, May 31, 1887. (Received July 14.)

SIR: I have the honor to report that the following protocol has been published in the Shanghai papers:

PROTOCOL.

ART. I. A treaty of friendship and commerce with the most favored nation clause will be concluded and signed at Peking.

ART. II. China confirms the perpetual occupation and government of Macao and its dependencies by Portugal, as any other Portuguese possession.

ART. III. Portugal engages never to alienate Macao and its dependencies without agreement with China.

ART. IV. Portugal engages to co-operate in opium revenue work at Macao in the same way as England at Hong-Kong.

Done at Lisbon the 26th March, 1887.

HENRIQUE DE BARROS GOMES.
JAMES DUNCAN CAMPBELL.

By this agreement the cession of Macao is made absolute. It had been supposed that it would be contingent on the success of the new scheme for the collection of the duty and lekin on opium.

Thus Macao as well as Hong-Kong becomes a lekin station of China.

I have, etc.,

CHARLES DENBY.

No. 174.

Mr. Denby to Mr. Bayard.

[Extract.]

No. 380.] LEGATION OF THE UNITED STATES,
Peking, June 3, 1887. (Received July 25.)

SIR: I have the honor to report the latest information touching railways in China.

The right to build the Tientsin and Taku railroad has been accorded to the "China Railway Company."

I inclose herewith a proclamation of the viceroy to the effect that the officials will not interfere in the management of the road. The local authorities have also proclaimed that the people are not to interfere with the location of the line and that they will be paid for the right of way.

Another railway item is the purchase, of H. E. Chou Fu, of the material for a 30-inch line, of 24-pound rails, of 7 li (about 2⅓ miles) in length, from the French syndicate. This is intended for the Imperial palace grounds at Peking. There will be a locomotive, two first and two second class passenger coaches, and a baggage wagon.

It is admitted by railroad experts in China that the American system is best adapted to the country. It is likely that American cars will be procured for any line that is constructed. The European compartment cars are not thought to be as suitable as ours.

Another railroad item is that the contract to build 80 miles of railroad in Formosa has been awarded to the firm of Jardine, Matheson & Co., an old English Chinese house.

Means and appliances are necessary for effective work in China. Operating 10,000 miles away produces no results.

The Chinese are full of the idea that they ought to construct and own their own lines. To the world at large it must be said that it little matters who builds the roads. The main thing is to open up China to foreign trade.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 380.]

IMPORTANT PROCLAMATION FROM THE VICEROY.

The China Railway Company, which is to construct this line, is entirely distinct from the Chinese Engineering and Mining Company of Kaiping. Wu-Ting-fang, general manager of this railway company, and others, having by order convened a meeting of directors and merchants at which a set of regulations for the government of the company were satisfactorily drawn up, they were submitted to me by the chief directors, Shen, ex-provincial treasurer, and Cheu, taotai. I find that the regulations stipulate that the company in the administration of its affairs is to act strictly in accordance with the rules and principles observed in commercial business, and it de-

volves upon the official directors of the company to energetically look after its interests, so that the confidence of the people may be secured, and that no irregularities in the conduct of the company's affairs will ever occur. A report from the directors states that it is now proposed to raise a share capital of 1,000,000 taels, and printed copies of the company's prospectus and regulations have been circulated. It being feared, however, lest those who live at more as well as less remote distances may not know of the proposed scheme, this proclamation is issued to inform all classes, the officials, gentry, merchants, and people, that railways are popular interests in both eastern and western countries, and those of our merchants who have been abroad have personally witnessed the many advantages to be derived from railways. Moreover, wherever railways exist their business and general trade thrive to a much greater extent, and the wealthier classes in western countries all buy and hold railway shares and bequeath them to their posterity as legacies. China, in her endeavors to imitate western countries, shall do everything economically and honestly, so that all the net profits shall be equitably divided among the shareholders, in conformity with established regulations, and not the slightest irregularity shall be tolerated. This being an important measure affecting the welfare of the state, the officials must exert themselves to protect railway interests in order to establish them firmly, while its affairs and measures shall, in accordance with the usages of the western joint-stock companies, be decided by the board of directors selected by the shareholders in general meeting, the officials not interfering with their authority, but only guarding against malpractices. Intending subscribers to the shares should not hesitate or delay, lest they lose their opportunity. A most important and special proclamation.

No. 175.

Mr. Denby to Mr. Bayard.

No. 382.] LEGATION OF THE UNITED STATES,
Peking, June 8, 1887. (Received July 25.)

SIR: I have the honor to inclose a translation of a recent decree issued by the Empress.

It indicates the approaching marriage of the Emperor, but is chiefly an earnest appeal for economy. I send it as a fair specimen of the utterances of this remarkable woman.

I have, etc., CHARLES DENBY.

[Inclosure in No. 382.]

A DECREE ISSUED BY THE EMPRESS REGENT. PUBLISHED IN THE PEKING GAZETTE, JUNE 6, 1887.

The ceremonies attendant the marriage of His Majesty the Emperor are of an exalted and eminent nature, and it is proper that all necessary preparations should be made beforehand.

Let the comptrollers of the Imperial household, in due observance of the rules laid down in the dynastic institutes, reverently and with due care take action in the premises.

The expenses of the court are limited to definite rules. At present the reorganization of military matters has necessitated an enormous outlay of funds. The provinces are from time to time visited with calamities, such as droughts and floods. On account of these it is still more right and befitting for us to be mindful of the sufferings and hardships of the people and not overtax them. The practice of economy by the Emperor himself in the expenditures of his court is to lead or set an example to the people. The said comptrollers and others must all bear in mind the purposes of the court to attach importance to what is necessary, and to put aside unnecessary show and luxury. They are to strenuously enjoin upon all officers to thoroughly and honestly attend to the business assigned them, and not allow any excess in the way of squeezing.

In the matter of expenses let Prince Chun (seventh prince, and father of the Emperor) be appointed to scrutinize each account, as they merit, to the end that the expenditures may be really and honestly made.

As to the many duties incumbent upon the various yamêns to perform, let an examination be reverently made beforehand as to the rites and ceremonial that should be observed, and a report be presented to the throne to await the issuance of our rescript to take action accordingly.

Respect this.

No. 176.

Mr. Denby to Mr. Bayard.

No. 384.] LEGATION OF THE UNITED STATES,
Peking, June 10, 1887. (Received July 25.)

SIR: I have the honor to report two important evidences of awakening in China.

One is the creation of a traveling mission. A number of officials have been ordered to travel at the public expense in European countries for the purpose of acquiring information. Liberal allowances are made and salaries paid. The persons so traveling are to make reports on the places visited and on all matters of public interest. The members are to be replaced biennially with others, so that a great number of Chinese may be prepared for positions under the Government.

Another important advance has been made. The Tsung-li yamên has forwarded to the throne a memorial proposing the introduction of examinations in mathematics and physics into the competition for the civil service. This is to be done in all the provinces. The successful candidates are then to be sent to Peking to compete for higher grades.

At Peking they are to be examined in mathematics, physical science, civil and military engineering, international law, and history.

The candidates who are admitted to the third degree will receive an honorary official status and official appointments. The Emperor has approved this scheme. It is known that examinations have been heretofore confined to literary subjects, involving a knowledge of the classics. It is at length realized by the Government that a literary course does not produce engineers, sailors, soldiers, or practical men competent to lead in progress. This scheme will greatly enhance the usefulness of the Tung-wen College, which is presided over by our fellow-citizen, Dr. Martin.

I have, etc.,

CHARLES DENBY.

No. 177.

Mr. Denby to Mr. Bayard.

No. 385.] LEGATION OF THE UNITED STATES,
Peking, June 13, 1887. (Received July 25.)

SIR: I have the honor to inclose herewith a translation of a communication received from the Tsung-li yamên.

The governor-general of Canton enters into a lengthy argument in excuse of the tax complained of by me, of which a copy was sent to you in my dispatch No. 322, of date the 25th of February last. He sets out that the first lekin tax of 2 mace 8 candareens and 8 cash was levied because of representations that all other goods paid three taxes and kerosene only one. The tax of 80 cents a case, now complained of, he says was levied because the people had been subjected to new taxes on account of the increasing number of robberies. He claims that the tax does not interefere with the sale of kerosene, which is still sold for good profits.

The duty, he says, is not collected from foreign merchants. Therefore the foreigners can not be injured. Kerosene is still cheaper than

the native oil. The sale of kerosene has not increased, but it has not diminished.

The argument drawn from the danger of fire is then gone over by the yamên. Should kerosene still prove the cause of fires, direct action can be taken by the United States and China.

It will be seen that the main question of the power of China to discriminate against foreign goods after their distribution is not argued.

* * * * * * *

It is true, I suppose, that sales of kerosene have not diminished, a fact which proves that the new tax is not prohibitory.

* * * * * * *

It is likely that the correspondence already had will prevent any further increase of taxation.

I have, etc., CHARLES DENBY.

[Inclosure in No. 385.—Translation.]

The Tsung-li yamên to Mr. Denby.

PEKING, *June* 8, 1887.

YOUR EXCELLENCY: Upon the 25th February last the prince and ministers had the honor to receive a dispatch from your excellency in regard to the increased levy of lekin on kerosene oil at Canton, which you regarded as a plain intention to prohibit the introduction of this article. You requested the yamên to instruct the lekin authorities at Canton not to impose any further taxation of this kind on kerosene, etc.

At the time the yamên transmitted a copy of your excellency's communication to the governor-general at Canton for his perusal and action in the premises, and also sent your excellency a dispatch in acknowledgment, all of which is a matter of record.

The prince and ministers have now received a report from the governor-general at Canton, as follows: The commissioners of the Canton lekin office report that with regard to kerosene oil, in the eighth year of Kuang Hsii, Chang Chao Ying, a native merchant, petitioned that all kinds of foreign merchandise shipped into the interior by Chinese merchants had to pay three lekin imposts, namely, one on shipment of goods, one on examination of goods, and one on arrival of goods at destination; that kerosene oil is the only article exempt from the payment of these lekin duties, and that this exemption was decidedly not fair and equitable. It was therefore decided that lekin in the sum of 2 mace 8 candareens and 8 cash should be imposed on each case of kerosene oil. This tax has accordingly been collected for some years.

Last year, in the fifth moon, owing to the increasing number of robberies at Canton, a memorial was presented to the Throne, and the Imperial sanction granted, authorizing the raising of money to defray the expenses of patrolling police. The people contributed towards this object for the people's use, and it is a matter of no concern to lekin. Each article of merchandise is taxed in proportion to the business done. At the time the literati and merchants represented that they had deliberated together; that kerosene oil was in good demand, there being a large sale of it at extremely good profits, and that it only paid one lekin tax. They requested that an additional sum of 6 mace per case be imposed for the period of a half year. There was no opposition to this on the part of the people. Besides the collection of an additional sum on kerosene toward the patrolling police fund is an extra levy from Chinese merchants; it is not an additional duty collected from foreign merchants. When goods once pass into the hands of Chinese they are Chinese goods, and it matters not whether lekin is paid or a subscription is collected on them, the money comes (all the same) from the Chinese merchants, and is not a collection asked from foreign merchants. Hence there can not be any loss or injury to them [the foreigners]. Further, it appears that each case of kerosene oil pays an extra sum of 6 mace. This is equal to only 1 candareen 2 cash per catty. It is retailed to the people at the rate of 4 candareens 5 cash per catty. Peanut oil from the interior costs 6 candareens per catty; hence the price of kerosene oil is still much cheaper than the nut oil from the interior. Since this additional impost was put on kerosene the sale of the oil, although it has not shown very much increase, still there has been no diminution in sales noticeable; and from this it may be perceived that the trade has not suffered.

As to the statement made that the treaty can not be abrogated by indirect action, in the proclamation issued last year it was stated that the article kerosene is very explosive in its character, etc., and will result in a calamity with unlimited evils.

Now, with regard to kerosene, it is an article which causes fires. Of late years in Canton there have been a great many calamities by fire, mostly caused by kerosene oil. These are the real and true circumstances. Besides, there is a prohibition [against kerosene] in all foreign countries. For instance, take the steamers of Messrs. Butterfield and Levin plying between Hong-Kong and Macao. The carrying of kerosene is prohibited by them. This shows a prohibitory intention or purpose.

China has again and again enjoined upon her people, by the issuance of proclamations, that permission is still granted to import [kerosene] for lighting purposes, so that they may think of its calamitous nature and take necessary precautions in its use, but she has not been willing to restrain or press the matter too urgently.

The Governments of the United States and China mutually agree to give the most careful attention to the representations of either as to commercial intercourse.*

In future, if from circumstances calamities occur by fire—which it is difficult to prevent—to the detriment of the people, as a matter of course the question can be considered by both [the United States and China] and action taken in the premises. There will be no necessity, in a business not to be mentioned, to take indirect prohibitory action.

The yamên having received the above report from the governor-general at Canton, would state the representations made (and based upon) the real circumstances of the case, and, as in duty bound, the prince and ministers send this reply for the information of your excellency.

A necessary communication addressed by the Tsung-li yamên to his excellency Charles Denby, United States minister, Peking.

No. 178.

Mr. Denby to Mr. Bayard.

No. 388.] LEGATION OF THE UNITED STATES,
Peking, June 17, 1887. (Received August 1.)

SIR: I have the honor to inclose herewith a translation of the reply of the Tsung-li yamên to my request that a certificate be granted to Rev. Lai Ki to return to the United States.

The request was made at the pressing instance of two missionaries of the Presbyterian Board of Foreign Missions residing at San Francisco. The applicant had resided in San Francisco until February 5, 1880, and had there been employed as a preacher of the Gospel. His services are again as urgently required among his fellow nationals in California in the same capacity.

It will be seen that without establishing a precedent, but as a "special arrangement," the yamên courteously grants my request.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 388.—Translation.]

The Tsung-li yamên to Mr. Denby.

PEKING, *June* 14, 1887.

YOUR EXCELLENCY: The ministers have had the honor to receive your excellency's note stating that the Rev. Alexander J. Kerr and Rev. H. W. Loomis, missionaries of the Presbyterian Board of Foreign Missions in San Francisco, had requested you to apply [to the foreign office] for a passport to enable a native Christian to return to the United States. These gentlemen represented that Mr. Lai Ki, a Cantonese, went to San Francisco in 1875, and was from that time until February 5, 1880, a preacher of the Gospel in that city in connection with the said board. On the latter date, which is without the limits provided by the restriction act, he returned to Canton, where he has since been engaged as a preacher under the said Board of Foreign Missions. They desire again to secure his services, and your excellency requests that a passport may be issued to the applicant, etc.

The ministers would observe that although it does not appear from the records that the yamên has ever issued a passport to native Christians to proceed to foreign coun-

[* The full text is not quoted.—F. D. C.]

tries for the purpose of preaching the Christian doctrine; still, as they have received your excellency's note applying for a document of this nature, as a special arrangement, for the present case, they issue a passport, which is herewith inclosed to your excellency for transmission to the said Christian, Lai Ki.

In future, however, in matters of this kind, as to whether the yamên should issue the passports or whether the local officers exercising jurisdiction in the native place (of the applicant) should issue them, after the yamên has communicated and made due examination, a uniform set of rules can then be decided upon for action in the premises.

Compliments, with cards of seven ministers.

No. 179.

Mr. Denby to Mr. Bayard.

No. 390.] LEGATION OF THE UNITED STATES,
Peking, June 21, 1887. (Received August 1.)

SIR: I have the honor to report that the governor of Formosa, Lin Ming-Chuan, has made a contract with Messrs. Jardine, Matheson & Co., for the supply by the latter of rails, rolling stock, and bridge for a narrow-gauge, light-weight railway of 80 miles in length.

The line is to be from Tamsui to Changhua, the future capital of the island. The only stream to bridge is the Taikia River. It will be spanned by a lattice girder bridge in two sections, of a joint length of 1,400 feet.

On the Taku and Tientsin line the engineers and workmen are meeting with strenuous opposition from the land owners. The Chinese first take possession and promise to pay the value of the land taken in the future. The people have little faith in official promises. They have threatened the officials and driven away the engineers and laborers at various points on the line. The Government has apparently committed the error of intrusting the supervision of railway construction to persons unacquainted with the duties to be performed. It has also intrusted incongruous duties to the chief officials. Chou Fu is the official superintendent of railways, but he is also inspector-general of fortifications, superintendent of the navy, of the coast defense, and several other things. This commingling of duties is peculiar to the Chinese. Thus Li Kung Chang is viceroy of Chihli, and he is also in the direction of the war, army, navy, finance, coast defense, and judicial and ceremonial functions.

It is likely that an Imperial edict will be issued solving the right of-way difficulty in an arbitrary manner. Such embarrassments in the construction of the experimental line are to be regretted. Under intelligent foreign guidance they would probably have not occurred.

I have, etc.,

CHARLES DENBY.

No. 180.

Mr. Bayard to Mr. Denby.

No. 209.] DEPARTMENT OF STATE,
Washington, June 24, 1887.

SIR: I have received your No. 322, of February 25, 1887, inclosing a copy of your note to the yamên, protesting against the levy of the new lekin tax on kerosene of 6 mace (90 cents) per case. Your conclusion

is, that the object of this tax being intended to prohibit the importation of kerosene, it is consequently forbidden by the treaties.

It is true that the question of what constitutes a prohibitive tax is one of fact, which can only be determined by the result. What actually stops importation is, of course, prohibitory; and a severe check to importation, through the imposition of an exorbitant tax, is much the same as an actual stoppage. While it may be difficult to say that the proposed tax is prohibitory of the importation of kerosene, the enormous duty is clearly open to energetic remonstrance, as conflicting with the intent of the treaties that no differential treatment should exist.

Your note is therefore approved.

I am, etc.,

T. F. BAYARD.

No. 181.

Mr. Bayard to Mr. Denby.

No. 210.] DEPARTMENT OF STATE,
Washington, June 25, 1887.

SIR: Relating to the punishment of citizens of the United States by the consular courts of this Government in China, under the act of Congress of the 23d of February last, I have received, under date of the 18th of March last, a note* from the Chinese minister at this capital, a copy of which note is herewith inclosed. His excellency objects chiefly to that part of section 3 of the act which provides for the forfeiture by the consular courts to the United States, for the benefit of the Emperor of China, of opium dealt in by citizens of the United States in China, contrary to the provisions of the section which forbids citizens of the United States to import opium into any of the opium ports of China, or to transport it from one open port to another, or to buy or sell it in any such port. The provision as to forfeiture is deemed by his excellency to be "an interference with the regulations of the customs and the right of local self-government of China." And his excellency further says:

> The customs officials in China, in addition to forfeiture, found that under certain circumstances they had to deal more severely with some cases and punish the delinquents by imprisonment as a warning. In these cases they communicated with the consul of the delinquents, who accordingly awarded a certain term of imprisonment, thus showing that China did not desire to have its own punishment inflicted upon the subjects of other nations, thereby, through the generosity of its Government, according to the consuls of other nations the power of jurisdiction over the subjects of their respective Governments. But in ordinary cases, where only forfeitures were made, coupled with a fine, there was no necessity for the consular interference.

It is to be observed that the act of February 23, 1887, was passed "to provide for the execution of the provisions of Article II" of the treaty of October 5, 1880, which reads as follows:

> The Governments of China and the United States mutually agree and undertake that Chinese subjects shall not be permitted to import opium into any of the ports of the United States, and citizens of the United States shall not be permitted to import opium into any of the opium ports of China; to transport it from one open port to any other open port, or to buy and sell opium in any of the open ports of China.

* Published page 238, *infra*.

This absolute prohibition, which extends to vessels owned by the citizens or subjects of either power, to foreign vessels employed by them, or to vessels owned by the citizens or subjects of either power and employed by other persons for the transportation of opium, shall be enforced by appropriate legislation on the part of China and the United States; and the benefits of the favored-nation clause in existing treaties shall not be claimed by the citizens or subjects of either power as against the provisions of this article.

The object of this article was to bind the contracting parties to adopt appropriate legislation to prevent their respective citizens or subjects from engaging in the opium trade, and there is nothing to show that any change was intended to be made in the conventional arrangements previously existing in respect either to the punishment of offenses or the administration of the customs.

The act of February 23 is to be construed upon the same principle. In so far as it creates a new penal offense, the jurisdiction to try and punish citizens of the United States therefor rests exclusively with the duly constituted authorities of this Government, in this country or in China as the case may be. On the other hand, the act can not be supposed to have been intended to question or interfere with the right of China to administer her customs regulations in the manner heretofore agreed upon and followed, under and in conformity with the treaties.

The distinction between mere confiscation cases and penal charges against individuals is fully recognized in the 6th rule of 1868, which may be found at page 527 of Part I, Diplomatic Correspondence, 1868, and which provides that "when the act of which a merchant at any port is accused is not one involving the confiscation of ship or cargo, but is one which by treaty or regulations is punishable by fine, the commissioner will report the case to the superintendent, and at the same time cause a plaint to be entered in the consular court." The consul is then to fix a day for trial, at which the commissioner is to appear, either personally or by deputy, and conduct the case for the prosecution. "When the treaty or regulations affix a specific fine for the offense, the consul" (the rule further provides) "shall, on conviction, give judgment for that amount, the power of mitigating the sentence resting with the superintendent and commissioner. If the defendant is acquitted and the commissioner does not demur to the decision, the ships or goods, if any be under seizure, shall at once be released, and the circumstances of the case be communicated to the superintendent."

So far as the act of February 23 relates to the forfeiture of opium, it may be regarded as contemplating a course of procedure not inconsistent with that provided for in the above rule. The right of the Chinese Government to seize and confiscate contraband goods remains unquestioned and unimpaired. When, however, a citizen of the United States is arrested for importing or dealing in opium contrary to the law, he is to be tried for the offense in the proper consular court, and, if convicted, the confiscation of the opium, if any, found in his possession, and illegally imported or dealt in, to the use of the Emperor of China, would be an incident of his sentence; and the confiscated property would accordingly be delivered to the Chinese authorities. But if the defendant should be acquitted, this would not necessarily imply a release of the opium, which might be subject to confiscation, notwithstanding that the person charged with importing, or transporting, or buying or selling it may have been found guiltless of that charge; and in such case, the goods would be dealt with in accordance with the rules in force and heretofore observed by the two Governments in respect to forfeiture of goods for violation of the Chinese customs laws.

I approve, therefore, your proposed instruction to the consuls to deny the right of the Chinese Government to try or punish a citizen of the United States for an infraction of the opium act, and in confiscation cases to be guided by the rules above mentioned. For the cardinal object sought to be secured by the United States is the continued maintenance of their exclusive jurisdiction over the personal liberty and safety of American citizens in China, leaving it to the Government of that country to deal as heretofore with questions of confiscation of property introduced into the country in violation of the customs laws. Under the instructions above referred to, it is believed that the contentions of the two Governments are equally and respectively upheld.

I am, etc.,

T. F. BAYARD.

No. 182.

Mr. Denby to Mr. Bayard.

LEGATION OF THE UNITED STATES,

No. 394.] *Peking, June* 26, 1887. (Received August 1.)

SIR: I regard the inclosed memorial as of sufficient importance to send to you.

It signalizes the adoption of the two very important steps in progress to which I have already called your attention, to wit, the sending of ten or twelve officials abroad to study western affairs, and the introduction of mathematics and western science into competitive examinations.

Taken in connection with the construction of a railway in Formosa, and the railroads from the Kaiping coal mines to Taku and from Taku to Tientsin, it is seen that China has really had an awakening.

Very minute directions are given to the traveling officials to study the customs, politics, fortifications, arsenals, steamships, railways, warlike inventions, etc., in the various countries visited and to report thereon. The importance of the introduction of mathematics and physical science as studies can not be overrated.

In the memorial submitted a labored argument is made to prove that this new departure is simply a return to ancient Chinese methods.

It is stated that from 1122 to 255 B. C. mathematics was classed as one of the six arts, these being propriety, music, archery, charioteering, study, and mathematics, and from 620 to 907 A. D. "men qualified in mathematics were selected for official preferment." * * * The memorial marks a revival of learning which is destined to work mighty changes. Whence the impetus came is not an essential inquiry. It is not improper to state, however, that in an analysis of the causes of progress it will be found that our own country, at the beginning, under the ministration of Burlingame and his predecessors and on down to the present hour, has borne its full share in the material and educational development of China. If other nations, as a late writer in the Atlantic Monthly asserts, opened with their guns the way and we simply followed, it must still be admitted that our peaceful treatment has borne fruits no less precious than the commercial advantages won by arms.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 394.—Extract from Chinese Times.]

AN IMPORTANT MEMORIAL ON EDUCATIONAL REFORMS.

A memorial from the Tsung-li yamên submitting a proposal for the introduction of mathematics and other western sciences into the civil competitive examinations, provincial and metropolitan.

On the 18th of April, 1887, the grand councilor received an Imperial rescript wherein Her Majesty the Empress acknowledged the receipt of a memorial from a censor, one Ch'ên Cho Ying, proposing the granting of literary degrees to mathematicians, and requesting that, in appointing secretaries and others for our diplomatic service abroad, the applicants should be chosen from those officials who have traveled in foreign countries. He also proposed the purchase of irrigation machinery from abroad.

Upon receipt of the above memorial Her Majesty ordered the Tsung-li yamên, in conjunction with the boards of revenue and ceremonies and Prince Chun, to consider the measures proposed and submit a memorial thereon.

Accordingly, in obedience to the Imperial commands, we have deliberated upon the matter in question, and, lifting our heads, we humbly perceive the solicitude of our sacred sovereign, which embraces everything which concerns the national welfare, being specially circumspect in the bestowal of civil ranks and most earnest in encouraging men of talent. Such solicitude can never be forgotten.

With reference to the memorial of the censor above referred to, we find that the memorialist proceeds to say:

"Since the beginning of intercourse with western countries, the arsenals, dockyards, the Tung-wên College at Peking, and the Fang Yuan Kuan at Shanghai, have been the resorts for the acquisition of western learning and western sciences. There are, indeed, to be found young men who, going abroad in their youth, have mastered the western arts, such as surveying, drawing, mechanics, and other branches; but judging from their conversation, these have become totally denationalized, and think it necessary to adopt foreign methods in all their doing.

"The different boards and metropolitan yamêns having recently been called upon to recommend candidates for going abroad, the memoralist would suppose the officials would embrace this opportunity to acquire knowledge of western affairs, yet three months have passed by and no recommendations have been heard of. Thus, it is evident that those who are zealous for western knowledge cannot be easily found. Mathematics being the foundation of all the western sciences, any one who would master them must start from that foundation; and although it is by no means necessary, or even perhaps possible, that one should master several of the sciences, yet when he has obtained a thorough mastery of mathematics, it will be easy to make further researches. The Kuo Tzu Chien (Imperial National Academy) was established for the study of mathematics, and in more recent years the different provincial examiners have added mathematics to the list of their examinations. Therefore, the memoralist would earnestly pray that Her Majesty direct the examiners to make a report of the examinations in mathematics, and allot an extra number of honors for the successful candidates in that study; that the original examination papers be submitted to the inspection of the Tsung-li yamên, and the graduates be ranked as official students of mathematics; and that at the provincial examinations the first and second trials shall be in the 'four books' and five classics, but in the third, in accordance with the rules governing the examination of Manchu interpreters, the five themes to be given shall be on mathematics, and the literary degrees be conferred on the successful candidates, in addition to the regulation number of graduates in purely literary studies. The same rule to be applied to the metropolitan examinations, the successful graduates from which to be employed in the capital or be sent abroad where they may pursue further studies in the various educational institutions of Europe; and on their return after the completion of their studies, they shall be placed in the Department of foreign affairs, to be appointed to our diplomatic service abroad. In this way official advancement will be through a regular course, and our officers will no longer be the contempt of modern times. Nor on the one hand will they be like those who, professing to know foreign affairs, are really ignorant; or, on the other, like those who are inclined to be partisans of foreigners, and ready to create trouble."

Such were the words of the censor as contained in his memorial; and it is our opinion that plans for encouraging men of talent and learning should be suited to the circumstances of the times. During the years of 1865 and 1867 the Tsung-li yamên, in a memorial to the Throne, proposed the examination of students in mathematics, who, in conformity with the rule in force at the Tung-wên Kuan in Canton, were to be appointed to official positions at the expiration of three years' study.

If the candidate were a Manchu, he was to have the grade of official interpreter, and be allowed to take part in the provincial examinations for literary and other degrees; if he were a Chinese, he was to be classed as a kien shêng (collegian of the Imperial Academy), and be further privileged to participate in the provincial examinations; and both the Chinese and Manchus who were successful were to be appointed expectant interpreters. This memorial was sanctioned by Imperial decree, in the hope that the measures therein proposed would encourage and stimulate students and open a path for their personal advancement, so that in future years they might attain to positions of honor and fame.

But inasmuch as there were existing established rules governing the selection of graduates at the metropolitan and provincial examinations, it was most difficult to introduce innovations. Consequently, during the middle of Tao Kuang's reign, although in a memorial from the then viceroy of the Two Kuangs, Chi Kung, he classed mechanics and mathematics as one of the five learned professions; and again, at the beginning of Hien Fêng's reign, the Censor Wang Mao Yin made reference to it; lastly, in the year 1870, the viceroy of Fuhkien and Chêkiang, Ying Kuei, and others, in a memorial, advocated the introduction of mathematics. In each case the boards decided that the proposed measure was in violation of established usages, and the matter was stopped.

Mathematics, however, is classed as one of the six arts (these being propriety, music, archery, charioteering, study, and mathematics), and during the Chow dynasty, in advancing their men of talent and virtue, they considered those who understood mathematics as belonging to the six professions; and in the Tang dynasty men qualified in mathematics were selected for official preferment.

Our country had, in the remote past, framed a set of mathematical treatises which have served as models for hundreds of ages, and the National Academy was subsequently established, where a prescribed number of young men might be instructed in mathematics, the number to consist proportionately of Manchu, Mongolian, and Chinese, and the term of study to be several years. But mathematics, in order to be mastered, must be begun when one is young.

Our sacred sovereigns of successive dynasties, in their far-reaching schemes of improvement, availed themselves of the help of western mathematics, which they combined with our own, and in constructing their orreries, "Chi Taos" (equators), and other scientific representations that have remained standing monuments of their skill, and in manufacturing fire-arms and munitions of war, they borrowed the help of western methods. During the reign of Kang-hi, when wars with feudal states were frequent, two officers attached to the board of astronomy, Nan Huai Jên and Tang Jo Wang, were ordered by Imperial command to manufacture arms for the use of the army. These are historical facts, adduced to prove the force of our arguments. But people of the present day, who regard mathematics as a purely western science, have not given the subject their serious attention.

As for western scholars, we find that half their men of talent and capacity are drawn from their philosophical schools, which develop these intellects by the study of logic, and the other half spring from their marine, because the experience they gain by visiting different parts of the world emboldens their hearts and expands their knowledge. Progress or retrogression, therefore, does not depend simply on understanding the niceties of literary compositions.

Trigonometry and its collateral subjects are truly the foundation of western sciences, yet although one must begin with that study, he cannot stop here. Consequently, on both our southern and northern sea-board, there have been established arsenals, training-schools, military and naval academies, and those who complete the course of instruction in these institutions are placed on board-training ships, and those who are more advanced are appointed to positions in our navy. In this way it is hoped men of ability will be trained up to serve the country.

In order, however, to encourage young men to apply themselves to western studies, it is necessary that there should be an efficient system of selection and promotion. We, the ministers, in our deliberations, are aware that the regulations governing the civil competitive examinations can not be lightly changed, yet for the sake of encouraging men of ability, the existing methods might be modified. It is proposed, therefore, that His Majesty direct the provincial literary chancelors to issue at the competitive examinations, besides the subject usually given in the classics and poetry, a theme on mathematics; and should there be candidates for honors in that study and they be found proficient, that their examination papers be submitted to the inspection of the Tsung-li yamên, and their names be officially registered. That further, when the provincial examination occurs, the successful graduates first proceed to the Tsung-li yamên, and there submit themselves to an examination in the following subjects: Philosophy, mathematics, mechanics, engineering, naval and military tactics, marine artillery, torpedoes, international law, and history; and should any one be proficient in any of the above subjects that he be sent to compete at the civil literary examina-

tions in Peking under the same conditions as the other candidates; and in case of there being over twenty applicants the word "mathematics" shall be stamped upon their examination papers, but no extra paper of this study need be given on this occasion.

The examination papers of these students shall be handed in from the "outside screen" to the "inside screen," and out of every twenty candidates one shall be selected, provided that he is a thorough master of rhetoric; otherwise, rather than select unproficient graduates, no candidates will be accepted at all. And, however great the number of applicants may be, no more than three shall be selected at one time, in order to maintain a fixed limit.

The papers of the candidates at the probationary examination held under the direction of the Tsung-li yamên shall be handed in by the latter to the inspection and keeping of the board of ceremonies, and when the metropolitan examination occurs the provincial graduates who have passed successfully in mathematics shall take part under the same conditions as all the other candidates, selection to be made entirely in accordance with their literary proficiency.

By adopting the above modifications for securing men of varied accomplishments the existing regulations for examining and promoting literary men will not be changed, while they serve the important purpose of encouraging men of talent. With regard to those in the different military and naval schools and on board training ships who have mastered their respective professions and are already in official position, but who do not desire to subject themselves to the competitive examinations, it shall be the duty of the minister in charge of the respective schools to recommend them for promotion in accordance with the time of their services. But the conditions governing such men shall be entirely different from those imposed upon candidates who participate in the literary examinations. Those of the latter class who graduate successfully from the metropolitan examinations will be retained at the capital, and wait for appointments to the Tung-wên College, where they will act as compilers and devote themselves to further study until they may be sent to travel abroad or receive diplomatic appointments, selection to be made from time to time in accordance with merit and ability. In this manner those who manage our foreign relations will not be empty babblers, and they will, moreover, excel in usefulness those who are proficients only in western arts, without the complementary literary qualifications.

The censor we have above quoted, in a postscript memorial, requests that applicants for going abroad shall be impartially recommended by the officers of the boards and their selection be approved at the "metropolitan scrutiny." We find that this "metropolitan scrutiny" is an important ordinance, carrying with it a restriction to the candidates recommended by the different yamêns, who, besides being "first class," must be attached to the yamêns in some official capacity, and their merits and learning, their diligence or indolence, must have been looked into by their respective superiors and their competency for the position proved before they shall be admitted to the "metropolitan scrutiny."

Those who are sent out of the capital on official service shall, during the first half year, have their acts examined into and recorded by their yamêns, but after that, it shall be the duty of the yamên wherein they are employed to take cognizance of their acts, inasmuch as the long separation will place those in the capital at a disadvantage in ascertaining their doings. With regard to those who are sent on a traveling tour abroad, the distance of the separation being still greater, it will be impracticable for the yamên officials to ascertain whether or not an officer who evinces commendable energy at home maintains his zeal and studiousness abroad, and it will not do to record his doings at random.

It is proposed, therefore, that those who are really meritorious and pre-eminent in their respective yamêns and should obtain "first class" and pass at the "metropolitan scrutiny," should be eligible to be sent abroad, and during the first half year of their service they shall be regarded as "first-class" candidates for promotion; but after that it shall be the duty of the respective ambassadors to look after their conduct, and, if their ability and character are satisfactory, to submit their names to the Tsung-li yamên for submission to the Throne for the bestowal of promotion. But they shall not be further examined at the "metropolitan scrutiny." Those whose term of service at the capital has expired shall first be sent to have audience of His Majesty, and then their names will be recorded for future appointments. And when the names of any have to be submitted to the Throne, it shall be by the board of ceremonies through the grand council; and whenever any vacancy occurs it shall be in the pleasure of His Majesty to appoint these expectant officials. But those who are to be selected to office by the boards shall also receive their appointments from them.

(The memorial extends to greater length, but the foregoing contains all that is important in it.)

No. 183.

Mr. Bayard to Mr. Denby.

No. 214.] DEPARTMENT OF STATE,
Washington, July 1, 1887.

SIR: I have received your No. 366, of May 14, 1887, concerning the Chinese minister's objection to the third section of the act of Congress approved February 3, 1887, to enforce our treaty provision with China respecting the opium traffic.

In this connection reference is made to the Department's No. 210, of the 25th instant, as having already recognized the right of China, under the treaties, to administer her customs laws in respect to opium and other contraband goods. It is not the desire of the Department to encroach upon that jurisdiction, and it is hoped that the approval of your suggestion, to instruct the consuls in China, while taking exclusive cognizance of penal charges against citizens of the United States, to follow the rules heretofore applied in confiscation cases, will avoid any conflict of jurisdictional claims.

I am, etc.,

T. F. BAYARD.

No. 184.

Mr. Denby to Mr. Bayard.

No. 399.] LEGATION OF THE UNITED STATES,
Peking, July 4, 1887. (Received August 25.)

SIR: There has been a good deal of discussion for some years past as to the best measures to be adopted toward the wild savages in Formosa. The island is of wonderful richness, with a vast extent of fertile land and a great variety of useful products. It is endowed with forests, pastures, fisheries, and mines, and supports a large mercantile as well as agricultural population.

Though the civilized aborigines have long been amenable to Chinese control, the wild aborigines have held aloof, submitting, when they have submitted, only through fear. The Chinese have suffered much from their hands, and it was absolutely necessary that something should be done to bring about a better state of affairs.

Much as the Chinese Government has in the past ten years effected in the way of settling colonists, bringing new lands under cultivation, and opening mines, it has practically been able to accomplish very little with regard to the savages, who, it is said, hold possession of a territory which contains rich lands and valuable mines. It was suggested some years ago by certain high authorities that the only way to deal with the savages would be to drive them out, or, in other words, to exterminate the race.

But to have introduced civilization by means of conquest and slaughter, and the destruction of villages would have been both cruel and unnatural.

Lin Ming Chuen, the present governor of Formosa, who for the past two years has exercised full control in both civil and military matters and who has devoted special attention to matters appertaining to both Chinese and aborigines, has recently memorialized the throne, stating

that he has brought under subjection 478 hamlets or tribes, numbering over 88,000 savages, and that he has opened communication through the mountainous region inhabited by them. The memorialist adds that the territory thus recovered contains over 100,000 Chinese acres of arable land.

The Emperor commends Lin Ming Chuen on his able and dextrous management of this affair and has promoted certain military officers who distinguished themselves in carrying out the plan of action and policy of the governor.

It is to be hoped that the governor of Formosa has approached the wild savages, and brought them under subjection by means which will not only attach them to the Chinese, but prove successful and advantageous to both races and add to the security of the island.

I have, etc.,

CHARLES DENBY.

No. 185.

Mr. Denby to Mr. Bayard.

No. 412.] LEGATION OF THE UNITED STATES,
Peking, July 22, 1887. (Received September 3.)

SIR: I have the honor to inclose herewith a copy in French and English of the recent convention of the French Republic with China.

The following is a syllabus of these articles:

Article I. Keeps in force the Tientsin treaty.

Article II. Two new ports in China are opened to commerce.

Article III. Foreign merchandise imported into China pays three-tenths less duty than general tariff. Chinese merchandise imported to Tongking pays four-tenths less.

Article IV. Regulates duties on products of Chinese origin going through Tongking.

Article V. Native opium exported to Tongking pays 20 taels per picul. Regulates lekins.

Article VI. Regulates tonnage dues.

Article VII. Favored-nation clause.

Articles VIII, IX, X. Formal annex; relates to appointment of consuls.

I have, etc.,

CHARLES DENBY.

[Inclosure in No. 412.]

ADDITIONAL CONVENTION.

The President of the French Republic and His Majesty the Emperor of China, being desirous of favoring the development of commercial relations between the two countries and of insuring the good execution of the treaty of commerce signed at Tientsin on the 25th April, 1886, have decided to conclude an additional convention modifying some of the dispositions contained in the said act.

To this end the two high contracting parties have named as their respective plenipotentiaries, to wit:

The President of the French Republic, Mr. Ernest Constans, deputy, formerly minister of the interior and of worship, envoy extraordinary of the French Republic in China, commissary of the Government;

And His Majesty the Emperor of China, his highness Prince K'iug, prince of the second rank, president of the Tsung-li yamên, assisted by his excellency Sun Yü-Wen, member of the Tsung-li yamên, first vice-president of the board of works;

Who, having communicated to each other their full powers which they have recognized to be in good and due form, have agreed on the following articles:

ARTICLE I.

The treaty signed at Tientsin the 25th April, 1886, will be, immediately after the exchange of ratifications, faithfully put in execution in all its clauses, except, of course, in those which the present convention has for object to modify.

ARTICLE II.

In execution of Article I of the treaty of the 25th April, 1886, it is agreed between the high contracting parties that the town of Lang-Chou, in Kuangsi, and that of Mang-tze, in Yunnan, will be opened to Franco-Annamese commerce. It is understood, furthermore, that Manhao, which is on the water-way from Tao-Kai to Mang-tze, is opened to commerce like Lang-Chou and Mang-tze, and that the French Government will have the right to keep there an agent subordinate to the consul at the last-mentioned place.

ARTICLE III.

In view of developing the most rapidly possible commerce between China and Tongking, the import and export duties stipulated in Articles 6 and 7 of the treaty of the 25th April, 1886, are provisionally modified as follows:

Foreign merchandise imported into China by the open towns will have to pay the duties of the general tariff of the maritime customs diminished three-tenths.

Chinese merchandise exported to Tongking will pay the duties of the said general tariff diminished four-tenths.

ARTICLE IV.

Products of Chinese origin which have paid the import duties in conformity with paragraph 1 of Article 11 of the treaty of the 25th April, 1886, and which are transported through Tongking to an Annamese port, will have to pay, on leaving that port, if they are destined to another country than China, an export duty fixed by the Franco-Annamese customs tariff.

ARTICLE V.

The Chinese Government authorizes the exportation of native opium to Tongking by the land frontier, in consideration of an export duty of 20 taels per picul or hundred Chinese pounds. Frenchmen or French protégés will not be able to buy opium except at Lang-chou, Mang-tze and Man-hao. Lekin and carrier duties which native merchants will have to pay on this produce will not exceed 20 taels per picul.

Chinese merchants who will have brought opium from the interior will hand over to the buyer at the same time as the merchandise the receipts establishing that lekin has been paid in full, and the buyer will present their receipts to the customs, which will cancel them when he shall have paid the export duty.

It is understood that this opium, in case it should re-enter China either by the land frontier or by one of the open ports, can not be assimilated to produce of Chinese origin reimported.

ARTICLE VI.

French and Annamese ships, with the exception of vessels of war and of ships employed transporting troops, arms, or munitions of war, can go from Lang-sou to Cao-bang and *vice versa*, passing by the rivers (Sang-ki Kong and river of Cao-bang) which unite Lang-sou with Lang-Chou and Lang-Chou with Cao-bang.

These boats will have to pay for each trip a tonnage duty of $\frac{5}{100}$ taels per ton, but the merchandise composing their cargoes will not have to pay any duty.

Merchandise destined to China may be transported by the rivers mentioned in paragraph 1 of the present article, as well as by land routes, and especially the Government road (route Mandarinale), which goes from Lang-sou to Lang-chou; but, until the Chinese Government has established a customs station on the frontier, merchandise passing over these land routes may not be sold until it has paid duty at Lang-chou.

ARTICLE VII.

It is understood that France will have the full right to enjoy, and that without the necessity of previous negotiations, all the privileges and immunities of whatever nature they may be, and all commercial advantages which may be given hereafter to

the most favored nation by treaties and conventions having for object to regulate political or commercial relations between China and the countries situated to the south and southwest of the Chinese Empire.

ARTICLE VIII.

Having mutually settled the above dispositions, the plenipotentiaries have affixed their signature and their seal on two copies of the French text of the present convention and also on the Chinese translation which accompanies each of these copies.

ARTICLE IX.

The stipulations of the present additional convention will be put in force as if they had been inserted in the text of the treaty of the 25th April, 1886, from the day of the exchange of the ratifications of the said treaty and convention.

ARTICLE X.

The present convention will be ratified at once by His Majesty the Emperor of China, and as soon as it shall have been ratified by the President of the French Republic, the exchange of ratifications will take place at Peking.

Done at Peking the 26th June, 1887.

[L. S.] CONSTANS.
[L. S.] PRINCE K'IUG.
[L. S.] SUN.

ANNEX.

In an official letter under date the 23d June, 1887, the Chinese Government takes the engagement to adjourn the nomination of consuls in the principal cities of Tongking until such date as France and China may consider that circumstances permit their establishment.

It is understood, moreover, that when the Chinese Government will establish consuls at Hanoi and Haiphong, the French Government may appoint like officers in the capitals of the provinces of Yunnan and Kuang-si.

(True translation from French text.—W. W. ROCKHILL.)

No. 186.

Mr. Denby to Mr. Bayard.

No. 422.] LEGATION OF THE UNITED STATES,
Peking, July 29, 1887. (Received September 3.)

SIR: I have heretofore, in dispatches numbered 322 and 385, of date February 25, June 13 last, respectively, reported to you my efforts in communications to the Tsung-li yamên to secure a reduction of the lekin tax on kerosene oil at Canton.

I also, in dispatch No. 385, of date June 13 last, sent you a copy of the yamên's reply to my communication.

I have now the pleasure to report that Mr. Seymour has informed me that the kerosene lekin tax at Canton has been reduced from $1.30 to 50 cents per case.

Credit should be accorded to Mr. Seymour for his labors in this direction.

I have, etc.,

CHARLES DENBY.

No. 187.

Mr. Denby to Mr. Bayard.

No. 439.] LEGATION OF THE UNITED STATES,
Peking, August 15, 1887. (Received October 6.)

SIR: I have already had the honor to inform you that the lekin tax on kerosene at Canton has been reduced to 50 cents per case.

I am now in receipt of the proclamation of the commissioners of the head lekin office at Canton announcing that reduction. The proclamation is very lengthy. The following is an abstract thereof. It sets out that Chang Shin Ying, the farmer of the kerosene lekin monopoly, had filed a petition setting up that the farm tax is, altogether, $63,000; that a lekin of 40 cents had been fixed on each box; that the customs duty is 1 mace 4 candareens (or 20 cents), and now a lekin of 6 mace (84 cents) is to be added, making the whole levy 1,032 taels (or $1.44); that a box at Hong-Kong only costs $1.50, and the heavy tax has so increased smuggling that collections have been small; that kerosene has been brought, forty or fifty boxes at a time, from Sheki in Hiang-Shan, Shatou in Nawhai, and Shattong in Tungkoon. The carriers all claimed that the kerosene was for the foreign hongs and paid no lekin; "but how can foreign hongs use forty or fifty boxes a day?" Latterly ruffians carried rifles to protect the kerosene.

The farmers are not rich and will be ruined if this system continues. Moreover, kerosene sold in the northern part of Kuang-Tung is transported from Shanghai and Kiukiang and avoids lekin. The only way to stop smuggling is to take off the extra 84 cents lekin tax. The farmers offer to pay if the reduction be made an additional $37,000, making the whole sum paid $100,000 at 7 mace (97 cents to $1). In accordance with this petition the commissioners of the Kuang Tung head lekin office, which consists of the treasurer, judge, salt commissioner, grain intendant, and expectant taotai, reduce the extra lekin to 10 cents on each box, making the lekin now 50 cents. The reduction dates from July 18, 1887. This action is put on the sole ground that kerosene was smuggled so largely as to destroy collections. It is worthy of notice that the proclamation of November 18, and December 18, 1886, by which the extra lekin was levied, as well as the communication of the Tsung-li yamên to me on the subject, were all based on the grounds that kerosene was hazardous and dangerous and interfered with the sale of native oils. In this new proclamation not a word is said of like character. When the revenues declined by reason of smuggling the other alleged reasons for the increase of lekin disappeared from view.

I have, etc.,

CHARLES DENBY.

No. 188.

Mr. Denby to Mr. Bayard.

No. 443.] LEGATION OF THE UNITED STATES,
Peking, August 26, 1887. (Received October 10.)

SIR: Referring to my dispatch No. 408, of date the 16th of July ultimo, wherein I forwarded to the Department a list of the official candidates who had been declared eligible for appointment to travel abroad

for the period of two years under the system recently inaugurated by the Chinese Government, I now have the honor to hand you, inclosed, a list giving the names of those who have been selected by the Emperor to go to foreign countries this year. I understand that these officers will leave the capital in about a month to proceed on their respective journeys.

Mr. Fu Yün Lung and Mr. Ku Lon Kún, as you will observe, have been appointed to travel in Japan, the United States, British colonial possessions of North America, and Cuba. These gentlemen are of literary standing, the former a student of the Imperial Academy, and the latter a metropolitan graduate, or about the same as an LL. D. I have not, as yet, had the pleasure of meeting them, but I understand they are worthy representatives of the official class.

I take the liberty of bespeaking in their behalf a cordial welcome to our country, and to express the hope that every opportunity will be afforded them during their sojourn in the United States of seeing all and being made acquainted with every branch and phase of American industries.

I have, etc., CHARLES DENBY.

[Inclosure in No. 443.]

List of Chinese officials appointed to travel in foreign countries under the auspices of the Chinese Government.

Fu Yün Lung, expectant senior secretary of the board of war, and Ku Lon Kún, apprentice second-class assistant secretary of the board of punishments, to travel in Japan, United States, British colonial possessions in North America, Peru, Cuba, and Brazil.

Lin Chi Tung, apprentice second-class assistant secretary of the board of war; Li Ying Jui, expectant second-class assistant secretary of the board of punishments; Kung Chao Chien, expectant second-class assistant secretary of the board of punishments; and Chen Li Tang, apprentice second-class assistant secretary of the board of works, to travel in England, India, English colonies in the East, France, Algeria and other French possessions.

Li Ping Jui, apprentice second-class assistant secretary of the board of ceremonies, and Cheng Chao Tsu, expectant second-class assistant secretary of board of war, to travel in Germany, Austria, Holland, Belgium, and Denmark.

Mu Yu Sun, apprentice second-class assistant secretary of board of revenue, and Chin Peng, apprentice second-class assistant secretary of board of revenue, to proceed to Russia by sea, and after traveling in that country, to return to China via Siberia.

Hung Li Sün, apprentice second-class assistant secretary of the board of revenue, and Hsii Tsung Pei, expectant second-class secretary of board of revenue, to travel in Spain, Portugal, Italy, and Norway and Sweden.

No. 189.

Mr. Bayard to Mr. Denby.

No. 242.] DEPARTMENT OF STATE,
Washington, October 13, 1887.

SIR: I have received your No. 443, of August 26, 1887, relative to the two Chinese officials who have been selected to visit the United States and other countries during the period of their two years' sojourn abroad.

A copy of your dispatch has been communicated to the Secretary of the Treasury, to the end that the gentlemen referred to may receive

due admission into the United States upon arrival; and you may feel assured that whatever this Department can do to contribute to or promote the success of their mission while in this country will be cheerfully done.

I am, etc., T. F. BAYARD.

CORRESPONDENCE WITH THE LEGATION OF CHINA AT WASHINGTON.

No. 190.

Mr. Bayard to Mr. Chang Yen Hoon.

DEPARTMENT OF STATE,
Washington, March 4, 1887.

SIR: I have the honor to inclose for your information and that of the Government of China several copies of an act of Congress, approved February 23, 1887, to provide for the execution of the provisions of Article 2 of the treaty between the United States and China, of November 17, 1880, touching the opium traffic.

Accept, etc.,

T. F. BAYARD.

[Inclosure.]

[PUBLIC—No. 67.]

AN ACT to provide for the execution of the provisions of article two of the treaty concluded between the United States of America and the Emperor of China on the seventeenth day of November, eighteen hundred and eighty, and proclaimed by the President of the United States on the fifth day of October, eighteen hundred and eighty-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the importation of opium into any of the ports of the United States by any subject of the Emperor of China is hereby prohibited. Every person guilty of a violation of the preceding provision shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars nor less than fifty dollars, or by imprisonment for a period of not more than six months nor less than thirty days, or by both such fine and imprisonment, in the discretion of the court.

SEC. 2. That every package containing opium, either in whole or in part, imported into the United States by any subject of the Emperor of China, shall be deemed forfeited to the United States; and proceedings for the declaration and consequences of such forfeiture may be instituted in the courts of the United States as in other cases of the violation of the laws relating to other illegal importations.

SEC. 3. That no citizen of the United States shall import opium into any of the open ports of China, nor transport the same from one open port to any other open port, or buy or sell opium in any of such open ports of China, nor shall any vessel owned by citizens of the United States, or any vessel, whether foreign or otherwise, employed by any citizen of the United States, or owned by any citizen of the United States, either in whole or in part, and employed by persons not citizens of the United States, take or carry opium into any of such open ports of China, or transport the same from one open port to any other open port, or be engaged in any traffic therein between or in such open ports or any of them. Citizens of the United States offending against the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars nor less than fifty dollars, or by both such punishments, in the discretion of the court. The consular courts of the United States in China, concurrently with any district court of the United States in the district in which any offender may be found, shall have jurisdiction to hear, try, and determine all cases arising under the foregoing provisions of this section, subject to the general regulations provided by law. Every package of opium or package containing opium, either in whole or in part, brought, taken, or

transported, trafficked, or dealt in contrary to the provisions of this section, shall be forfeited to the United States, for the benefit of the Emperor of China; and such forfeiture, and the declaration and consequences thereof, shall be made, had, determined, and executed by the proper authorities of the United States exercising judicial powers within the Empire of China.

Approved, February 23, 1887.

No. 191.

Mr. Chang Yen Hoon to Mr. Bayard.

CHINESE LEGATION,
Washington, D. C., March 8, 1887. (Received March 9.)

SIR: * * * With regard to the act of Congress approved by the President to prohibit the traffic in opium wherein Chinese and American subjects are concerned, it is to provide for the execution of the provisions of Article 2 of the treaty concluded between the United States of America and the Emperor of China on the 17th day of November, 1880, and gives evidence of a desire on the part of your Government to maintain friendly relations with China. It seems to me that section 3 of the act will interfere greatly with the customs regulations and the rights of local self-government of China.

The ways and measures used by China to deal or treat with imported opium may not be entirely known to your Government, and I shall write to your excellency again on the subject.

Accept, etc.,

CHANG YEN HOON.

No. 192.

Mr. Bayard to Mr. Chang Yen Hoon.

DEPARTMENT OF STATE,
Washington, March 11, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant, relative to the lately approved act of Congress to enforce the provisions of Article 2 of the treaty of November 17, 1880, concerning the opium traffic. The third section of this law you apprehend will greatly interfere with the customs regulations and the rights of local self-government of China, and you promise to acquaint me with the method of your Government in dealing with imported opium.

I shall be happy to receive any information you may desire to impart bearing upon this important subject.

Accept, etc.,

T. F. BAYARD.

No. 193.

Mr. Chang Yen Hoon to Mr. Bayard.

CHINESE LEGATION,
Washington, D. C., March 18, 1887. (Received March 18.)

SIR: I had the honor to receive, on the 4th instant, your note dated the same date, inclosing four copies of an act of Congress, approved by the President February 23, 1887, touching the restriction of the opium

traffic, with a request that the same be communicated for the information of my Government.

I have carefully read the act and find that the prohibition of Chinese subjects against opium traffic in the United States and that of American citizens against the same in China, is to be enforced in conformity with the provisions stipulated in the treaty concluded between China and the United States on the 17th day of November, 1880.

Section 3 of this act states that the consular courts of the United States in China shall have jurisdiction to hear, try, and determine all cases in which citizens of the United States may offend against the foregoing provisions of that section, subject to the general regulations provided by law, and punish them upon conviction thereof by a fine or imprisonment; and that every package of opium or package containing opium, either in whole or in part, dealt in contrary to the provisions of that section, shall be forfeited to the United States for the benefit of the Emperor of China, etc.

On this point I had the honor of informing you in my previous note that this section interferes with the customs regulations and the rights of local self-government of China. The customs power of forfeiting is as important as that of levying duties. By the hitherto established regulations of the customs in China, all goods illegally imported by merchants of any nation, on their seizure after discovery, are immediately forfeited to the customs without the interference of the consul of the nation to which the offender belongs.

Rule 3 of a tariff and rules appended to the treaty of 18th of June, 1858, concluded between the United States and China, reads as follows:

> Import and export trade is alike prohibited in the following articles: Gunpowder, shot, cannon, fowling pieces, rifles, muskets, pistols, and all other munitions and implements of war, and salt.

Rule 5, section 1, says:

> It [opium] will be carried into the interior by Chinese only, and only as Chinese property. The foreign trader will not be allowed to accompany it.

Section 5 says:

> Infractions of the conditions, as above set forth, under which trade in opium, cash, grain, pulse, saltpeter, brimstone, and spelter may be henceforward carried on, will be punishable by confiscation of all the goods concerned.

The confiscation to the Chinese Government of all goods illegally imported has been practiced by the customs authorities ever since this treaty. Now, as American citizens and Chinese subjects are prohibited by the treaty to traffic in opium in the country of the other, the case of any American subject infringing the treaty stipulations concerning opium traffic at any port in China should be treated the same as in other cases of illegal importations. Section 2 of the act provides that proceedings for the declaration and consequences of the forfeiture of opium imported into the United States by a Chinese subject may be instituted in the court of the United States as in other cases of the violation of the laws relating to other illegal importations.

This shows that there is but one principle for eradicating evils and punishments for dishonesty. By Rule 5, above quoted, it has long been the practice that any opium, if carried into the interior of China by any American merchants, should, in whole, be confiscated to the Chinese Government; therefore, the same rule, without exception, should apply in the case relative to the prohibition of American citizens from importing opium into any port of China, for they are both, in substance, alike. I am led to believe that the reason why there was no provision made

in the supplementary treaty of 1881 for forfeiture was that there was no necessity for making any, as it was covered by provisions clearly made in the treaty of 1858.

Article 14 of the treaty of 1858 reads as follows:

> Any citizen of the United States who shall trade in any contraband article of merchandise shall be subject to be dealt with by the Chinese Government, without being entitled to any countenance or protection from that of the United States.

This shows that China, by right of domestic administration, has the power to deal with and forfeit in all cases of infringement against illegal importations, without the necessity of giving in detail the methods of carrying out its administration. China strictly enforces the prohibition of import and export trade in contraband goods, such as mentioned in Rule 3, and the customs authorities have hitherto and invariably dealt with such cases by confiscation and fine, which acts have never been questioned by any nation on the ground of the absence of such provision in the rule referred to. That they have not done so is no doubt due to the fact that the contraband goods in such cases, when seized, are subject to be dealt with by the Chinese Government.

The customs in China, in addition to forfeiture, found that under certain circumstances they had to deal more severely with some cases and punish the delinquents by imprisonment as a warning. In those cases they communicated with the consul of the delinquents, who accordingly awarded a certain term of imprisonment, thus showing that China did not desire to have its own punishment inflicted upon the subjects of other nations, thereby, through the generosity of its Government, according to the consuls of other nations the power of jurisdiction over the subjects of their respective Governments. But in ordinary cases, wherein only forfeitures were made coupled with a fine, there was no necessity for the consular interference.

Imported opium once leaving any treaty port in China, is considered as property owned by Chinese subjects, liable to pay any taxes that may be levied thereupon, so the local authorities have the power to punish by a fine any delinquent who may commit acts of irregularity and attempts at defrauding the Government.

The last two paragraphs of section 3 of the act read as follows:

> The consular courts of the United States in China shall have jurisdiction to hear, try, and determine all cases arising under the foregoing provisions of this section, subject to the general regulations provided by law. Every package of opium, or package containing opium either in whole or in part, brought, taken, or transported, trafficked, or dealt in contrary to the provisions of this section shall be forfeited to the United States for the benefit of the Emperor of China; and such forfeiture and declaration and consequences thereof shall be made, had, determined, and executed by the proper authorities of the United States exercising judicial powers within the Empire of China.

By this it appears that the motive of your Government in investing your consuls with special power was to suppress and punish acts committed by citizens of the United States in China against the treaty stipulations; but this in reality interferes in an indirect way with the independent power of the customs authorities in China, for if the United States officials were to have, instead of Chinese, jurisdiction of forfeiture, and to exercise the function of conveying the proceeds thereof to the Chinese Government, would not that be like an assumption on the part of the United States officials to collect on behalf of the Chinese Government customs duties and hand the same to it? This would seem to be inconsistent with the treaty stipulations as well as the laws of nations, and is what I mentioned in my previous note to you relative to my apprehension of an interference with the regulations of the

customs and the rights of local self-government of China. There are established precedents showing the customs system of China known to every nation, China will, therefore, only act in conformity therewith, and can not do otherwise, or make any irregular concession. Your Government is faithful and equitable in its international intercourse, and has never done anything to disturb or encroach upon the rights of the Governments of other nations, and I have always endeavored to carefully maintain the friendly relations that have been existing between your Government and China for many years. It behooves me now, after a careful examination of the act, to state for your information the methods of my Government in dealing with imported opium as above mentioned, feeling sure that my failure to do so would cause a controversy in the future which might jeopardize the cordial friendship of the two nations, and that such conduct could not be considered as the sincere and fair way to discharge my duties towards your Government. In the present year, by rules fixed by the foreign office in Peking, both duties and taxes are levied at the same time on imported opium. The power of the customs authorities is therefore greater than before when only duties were collected. I have written the above especially for your information, which I hope you will kindly submit to the consideration of his excellency the President.

I have forwarded the translation of the act in question to the foreign office in Peking.

Accept, etc.,

CHANG YEN HOON.

No. 194.

Mr. Bayard to Mr. Shu Cheon Pon.

DEPARTMENT OF STATE,
Washington, June 23, 1887.

SIR: I have the honor to acknowledge the receipt of the note from your legation of the 18th March last, and, in reply, to say that the act in question, as interpreted by the Department, is not understood to interfere with the administration by the authorities of China of her customs regulations in accordance with the rules heretofore agreed upon and followed. But in so far as the act creates a new penal offense, the jurisdiction to try and punish citizens of the United States therefor rests, as heretofor, under the treaties, in criminal cases, with the duly-constituted authorities of this Government.

The Government of China has heretofore recognized, even in the administration of the customs regulations, the distinction between mere cases of confiscation of property and those involving penal consequences to individuals. In the sixth of the eight rules adopted in 1868 to govern the investigation of cases of confiscation and fine by the custom-house authorities, it is provided that "when the act of which a merchant at any port is accused is not one involving the confiscation of ship or cargo, but is one which by treaty or regulation is punishable by fine, the commissioner will report the case to the superintendent and at the same time cause a plaint to be entered in the consular court."

It is then stipulated that the consul shall fix a day for trial at which the commissioner may appear, either personally or by deputy, and conduct the case for the prosecution.

"When the treaty or regulations affix a specific fine for the offense, the consul" (the rule further provides) "shall, on conviction, give judgment for that amount, the power of mitigating the sentence resting with the superintendent and commissioner. If the defendant is acquitted, and the commissioner does not demur to the decision, the ships or goods, if any be under seizure, shall at once be released, and the circumstances of the case be communicated to the superintendent."

The act of February 23 is not interpreted as questioning the right of the Chinese Government to seize and confiscate contraband goods, or as intended to confer upon the consuls of the United States any exclusive jurisdiction on that subject. When, however, a citizen of the United States is arrested for importing or dealing in opium contrary to that act, which was passed to carry into effect the agreement entered into by this Government with that of China in Article II of the treaty of October 5, 1880, the person so accused is to be tried for the offense, as in other criminal cases, by the duly-constituted authorities of the United States, and if convicted, the confiscation of the opium, if any, found in his possession and imported or dealt in contrary to the act, to the use of the Emperor of China, would be an incident of his sentence, and the confiscated property would accordingly be delivered to the Chinese authorities. In this manner the exclusive conventional jurisdiction of the authorities of the United States in China over the persons of American citizens for offenses there committed is maintained as heretofore, and the right of the customs authorities of China to administer her customs regulations in accordance with the rules heretofore observed remains unimpared.

Accept, etc., T. F. BAYARD.

No. 195.

Mr. Shu Cheon Pon to Mr. Bayard.

CHINESE LEGATION,
Washington, D. C., July 2, 1887. (Received July 2.)

SIR: I have the honor to acknowledge the receipt of your note, dated the 23d ultimo, stating that the act of February, 1887, as interpreted by the Department, is not understood to interfere with the administration by the authorities of China of her customs regulations in accordance with the rules heretofore agreed upon and followed, and quoting Rule 6 of the eight rules adopted in 1868 for joint investigation in cases of confiscation and fine by the custom-house authorities.

By the rules of 1868 I find that a joint investigation by the superintendent of customs and consuls is only necessary in a case wherein there exists a difficulty to arrive at a prompt decision on account of a doubt, and wherein the customs authorities claim that the confiscation of ship or cargo under seizure as justifiable, but which is disputed by the party to whom the property belongs.

In Rule 6, as quoted, there are found the respective terms "on conviction" and "if the defendant is acquitted." By these it is apparent that no decision of a case can be reached until an investigation is taken, thereby causing a great deal of discussion.

As there is not the least doubt that contraband goods, imported or dealt in contrary to the treaty stipulations, should be wholly confiscated, the customs authorities have, therefore, the right of confiscating the same themselves. The consul can not interfere in the matter by appeal-

ing to the rules of joint investigation of 1868. Since the importation of and dealing in opium at the open ports of China by an American citizen is expressly prohibited by the treaty, the customs authorities have accordingly the exclusive right to seize and confiscate any opium thus imported or dealt in, no matter how much or how little there may be. They need not wait for the decision of the consul as to his delivery of the same to them, which act is not in accordance with the practice and rules heretofore followed.

In my opinion, Mr. Secretary, the jurisdiction to try and punish American citizens in China rests with the consul and the right to confiscate contraband goods under seizure rests with the customs authorities. If there be any case wherein some doubt and difficulty exist and which can not be decided without an investigation, then the rules of joint investigation should be appealed to, thus the respective rights of both countries may be asserted with proper discrimination and without the one interfering with the other.

Accept, etc.,

SHU CHEON PON.

No. 196.

Mr. Bayard to Mr. Chang Yen Hoon.

DEPARTMENT OF STATE,
Washington, August 30, 1887.

SIR: I have the honor to acknowledge the receipt of a note from Mr. Shu Cheon Pon, dated July 2, 1887, in which, in reference to my note of June 23 last, touching the act of Congress approved February 3, 1887, for the suppression of the opium traffic, he remarks that United States consuls in China have jurisdiction to try and punish American citizens engaged in that trade, while the Chinese customs authorities have the right to confiscate the opium, and that joint investigation should only be followed in case of dispute.

The Government of the United States fully recognizes the principles herein set forth, and has no desire to encroach upon the jurisdiction of China in the administration of her customs laws in respect to opium or other contraband merchandise. Instructions in this sense were accordingly sent in July last to the United States minister at Peking, and through him to the consuls of this Government in China, which, it is hoped, will avoid any conflict by leaving China to execute her customs laws as heretofore and leaving penal proceedings against citizens of the United States to the properly constituted authorities of this Government under the extraterritorial guaranties of existing treaties.

Accept, etc.,

T. F. BAYARD.

No. 197.

Mr. Chang Yen Hoon to Mr. Bayard.

CHINESE LEGATION,
Washington, D. C., October 24, 1887. (Received October 24.)

SIR: Upon the receipt of the sum of money which the honorable Congress of the United States had voted, through the generous recommendation of His Excellency the President, to indemnify the unfortunate Chinese for their losses sustained at Rock Springs, in Wyoming Terri-

tory, this legation proceeded to have the proper distribution made to the respective sufferers by the Chinese consul-general at San Francisco, according to the list of estimates on file, with as much care as it was possible to observe. The distribution was completed on the 28th day of August last. In discharging this duty it has been found that the losses of six of the claimants had been repeated; but, being instructed by my Imperial sovereign to execute the distribution in the most precise and conscientious manner, I deem it proper to cause the return of the respective amounts above mentioned to be made to the United States Government as a proof of good faith on the part of this legation.

By reference to the attached statement it will be seen that the total sum of these repeated claims is $480.75, which I have now the pleasure of returning to you by the accompanying inclosure, an acknowledgment of which will be gratefully received by me. I desire, also, to improve the occasion to make known to you, Mr. Secretary, the deep gratitude with which my poor countrymen have received the indemnity for their losses and the great blessing it has proved to them after the wretched condition in which they were left by the events of 2d of September, 1885.

I have, etc., CHANG YEN HOON.

STATEMENT.

The repetition of claims in the Rock Springs indemnity by the Chinese residents is as follows:

Loni Yee Tsun	$133.50
Lo Wing Ngoon	33.25
Loui Hok Lim	77.00
Chun Sing Ip	154.50

The above-named claimants were those that lived in their respective huts at Rock Springs, Wyo., on September 2, 1885.

Hsu Cheong Yieh	$41.25
Choo Kin Hung	41.25

These two claimants belonged to camps No. 19 and No. 34.
These six items amount to $480.75.

No. 198.

Mr. Bayard to Mr. Chang Yen Hoon.

DEPARTMENT OF STATE,
Washington, October 26, 1887.

SIR: I have the honor to acknowledge your note of the 24th instant, inclosing a check for $480.75, being the amount of a claim twice sent in for losses sustained by your citizens at Rock Springs, in Wyoming Territory.

I shall have great pleasure in promptly bringing the matter to the notice of the President, who will greatly appreciate the very conscientious and punctilious manner in which your Government has acted in returning this sum, and I cordially accept it in the spirit in which it is offered, as a proof, if indeed any were needed, of the good faith of your Government and its legation at Washington.

I am gratified to learn that your suffering countrymen were pleased at and benefited by the distribution of the award made in their behalf by the Congress of the United States.

Accept, sir, etc., T. F. BAYARD.

COLOMBIA.

No. 199.

Mr. King to Mr. Bayard.

No. 70.] LEGATION OF THE UNITED STATES,
Bogota, September 11, 1886. (Received October 6.)

SIR: I have the honor to inclose herein for your information a copy and translation of a recent law of the Federal Congress here, relative to the claims of foreigners for losses sustained during the late rebellion.

I have, etc.,

V. O. KING.

[Inclosure in No. 70.—Translation.—From the Diario Oficial of September 7, 1886.]

Copy and translation of law 10, *of August* 31, 1886, *regarding claims of foreigners for losses during the rebellion.*

ARTICLE 1.

All claims presented by foreigners against the Government of the Republic, for loans, supplies, expropriations, or damages arising out of the late rebellion, shall be considered by the executive department, consequently, the executive power, through the medium of the minister of foreign relations, shall decide in each case according to the rules established by common law and the law of nations.

ARTICLE 2.

Whenever the acts that constitute the basis of a claim appear doubtful and the claimant shall not be satisfied with the estimate made thereof, he may appeal to the law courts for a decision thereon.

ARTICLE 3.

The nation shall not be absolutely responsible for the damages and exactions suffered by foreigners on account of rebels.

ARTICLE 4.

The alien and neutral character of the claimant shall in each case be determined before his claim is considered. The status of the foreigner shall be determined according to the constitution in force at the time the acts were committed which gave rise to the claim.

ARTICLE 5.

In order to establish his neutrality, the claimant shall present duly authenticated certificates from the respective civil authorities, and in default of such certificate a statement to that effect, duly attested, and obtained with the concurrence of the public ministry.

ARTICLE 6.

Foreigners who shall have forfeited their neutral character are not included in the provisions of this law. The condition of neutrality of each individual claimant shall be determined according to the proofs required by the preceding article.

ARTICLE 7.

The right of foreigners to present claims under this law shall cease from and after one year from its promulgation. This period shall not be extended, and shall apply to minors, to women, to absentees, and to all other persons privileged thereunder.

ARTICLE 8.

The law presumes that all contracts are fictitious which were concluded between foreigners and disaffected citizens subsequently to the promulgation of the resolution issued by the secretary of foreign relations on the 13th of February, 1885, in conformity with Article 12 of the civil code. Unless the contrary be proven, no claim based on such contracts shall be included within the provisions of this law.

ARTICLE 9.

The documentary evidence of claims shall contain sufficient proof of the following facts:

The alien and neutral character of the claimant; the origin and amount of the claim; the dates and places of the loans, supplies, expropriations or damages, and the name of the chief or authority sanctioning the same; the title or proof of ownership in the claimant at the time the supplies, expropriations, damages, etc., were furnished or incurred.

ARTICLE 10.

All sums awarded to foreigners shall be paid in accordance with the provisions of the executive decree of the 19th of August, 1885, on the subject. Paragraph. A certificate from the minister of foreign relations shall be a sufficient warrant to authorize the payment of a claim.

ARTICLE 11.

The examination of all claims that may have been presented to the minister of foreign relations before the promulgation of this law may continue, provided the formalities herein prescribed have been complied with, otherwise the said claims must be preferred anew.

ARTICLE 12.

The period of the rebellion shall be reckoned, for the purposes of this law, from the 18th day of September, 1884, to the 30th day of September, 1885.

ARTICLE 13.

The provisions of this law shall not interfere with any stipulations that may have been concluded in treaties or public conventions.

ARTICLE 14.

For the proper discharge of the business arising from the claims referred to in this law a special section shall be created in the ministry of foreign relations, which shall continue during the time necessary to accomplish said business.

ARTICLE 15.

The new section shall be composed, and the members thereof shall be compensated as follows:

One chief clerk, with $3,000 annually; one deputy clerk, with $1,800 annually; one first officer, with $1,500 annually; one second officer, with $1,000 annually.

ARTICLE 16.

The executive power is fully authorized to determine the manner and to make such provisions therefor as may be necessary.

ARTICLE 17.

All laws in conflict herewith are hereby repealed.

No. 200.

Mr. Bayard to Mr. King.

No. 53.] DEPARTMENT OF STATE,
Washington, October 13, 1886.

SIR: I have received and read with much interest your No. 70, of the 11th September last, transmitting the text and translation of a law enacted by the Colombian Congress on the 18th of last August, providing for the consideration and decision of all foreign claims arising out of the late rebellion by the Executive of the Republic, through the medium of the minister of foreign affairs, with the right of appeal to the courts of law from such decision.

It is a settled principle of international law that a sovereign can not be permitted to set up one of his own municipal laws as a bar to a claim by a foreign sovereign for a wrong done to the latter's subjects; and you are consequently to take the ground in all discussions with the Government of Colombia that the statute adopted by Colombia on the 31st of August, 1886, is regarded by the Government of the United States as in no way whatever qualifying or limiting the obligation of Colombia to the United States for injuries inflicted on citizens of the United States when in Colombia.

I am, etc., T. F. BAYARD.

No. 201.

Mr. King to Mr. Bayard.

No. 83.] LEGATION OF THE UNITED STATES,
Bogota, October 27, 1886. (Received November 27.)

SIR: On the 11th of September last I had the honor to transmit to you, under cover of my No. 70 of that date, a copy and translation of law 10, providing for foreign claims arising out of the late civil disturbances in this Republic.

I now inclose a copy and translation of executive decree No. 602, issued in conformity with the said law and directing the manner of carrying the same into effect. All claimants under it must be foreigners, and no claim can be held or presented by a citizen of this country, either as indorsee or transferee thereof.

In the preamble the decree affirms, as a principle of international law, that the Government should not be held to indemnify alien residents for losses or injuries sustained by them during a period of civil disturbance; but that, as an act of magnanimity peculiarly its own, it will, in the present instance, waive its immunity from obligation and repair the damages inflicted by native rebels upon its foreign guests. It is especially provided, however, that this act of generosity on the part of the Government shall never be cited as a precedent to influence its future action.

The rules laid down for the conduct of the examining board are, some of them, quite peculiar, while all of them are calculated to detect and defeat fraud and imposture. The claimant must establish his nationality; he must also prove his neutral character during the rebellion, although if he had violated his neutrality in the interest of the Government, he will not be held to have forfeited his rights thereby.

Claimants who are absent from the country are permitted to prosecute their claims through attorneys in fact duly authorized for such service; but no claim will be considered which is based upon the loss or injury of property that is in process of litigation until the title to such property shall have been conclusively adjudicated in the courts of the Republic.

In cases where the damage is alleged to be the result of injury to property, the claimant must not only establish his ownership of such property, but that his ownership existed prior to the 13th of February, 1885; or, if acquired subsequent to that date, that the grantor was a stanch adherent of the Government.

Claimants must disprove the presumptions of fictitious contracts alleged to have been entered into by them, and unless the same be overcome by proof they must seek their remedy in the courts of justice.

Claimants are not permitted to make oral arguments before the board, but are required to submit their cases in writing duly fortified by the certificates and attestations of certain department officers, and these latter are required to certify to the board their opinion in each case as to its merits, and the formalities observed in its preparation.

All claims, in order to receive the favorable consideration of the Government, must be founded on damages arising out of acts signalized by the concurrence of the four following conditions: (1) That the injury was inflicted by a regular force of insurgents under the command of a known chief; (2) that it was done against the will and without the consent of the claimant; (3) that it was done for the indispensable maintenance of the rebels; and (4) that it was done in a manner not repugnant to morals and civilization. All these four concurring acts must be proven by competent testimony, and the burden of proof is on the claimant, so that according to the terms of the first, third, and fourth conditions imposed the claimant can not recover if he was robbed by predatory bands led by an obscure chieftain; nor if the property stolen from him was not scrupulously devoted to the immediate necessities of the thieves; nor unless he had been plundered in accordance with the ethics in such cases provided, and in pursuance of the usage among civilized nations.

I leave to your own speculations the measure of relief that is in store for the objects of this magnanimous provision of the Government.

I have, etc.,

V. O. KING.

[Inclosure in No. 83.—Translation.]

Decree No. 602 of October 11, 1886, in furtherance of Law No. 10, of the present year, regulating the claims of foreigners.

The President of the Republic of Colombia, considering—

(1) That, although in conformity with the principles of international law as recognized, accepted, and practiced by civilized nations, the Government is not under obligation to indemnify foreigners for the losses and damages suffered by them in times of civil disturbances, it has been pleased, nevertheless, on this occasion, of its own free will, to repair, as far as possible, all damages caused to foreigners by the late rebellion, provided that certain conditions prescribed by law shall be complied with, but the present course shall not hereafter be cited as a precedent for future action.

(2) That in compliance with Article 16 of the law referred to, "the executive power is fully authorized to regulate the manner and direct the details for the execution of the same as far as it may be necessary," and,

(3) That it is proper to make uniform throughout the Republic the procedure by which foreigners may present their claims for indemnification, and that they may be

advised of the formalities prescribed by the Government in order to take the same into consideration

He decrees:

ARTICLE 1.

The special board created by Law No. 10 to examine the claims presented by foreigners against the Government for loans, supplies, expropriations, or damages arising out of the late rebellion shall not entertain any claims unless presented by *foreigners*, and for damages suffered by *foreigners*. Consequently all claims, although arising out of damages suffered by foreigners, which may be presented by Colombians as indorsees or transferrees, and those which, although presented by foreigners, may arise out of damages suffered by Colombians, shall be referred to a board to be organized for the purpose of considering the claims of Colombians.

ARTICLE 2.

The Government shall not be held responsible for damages caused by the rebels, except in those cases in which concur the following conditions:

(1) When they may have been caused by regular forces acting in obedience to orders given by a known chief, and not when caused by fugitive bands or by guerrillas in bodies of less than fifty men.

(2) When, in the infliction of the injury, the rebels may have used violence, or at least when it was done against the will of the injured person or without his consent, but such consent, even though implied, shall defeat the right to reclamation.

(3) When the injury sustained has been caused for the indispensable maintenance of the rebels.

(4) When, besides all the antecedent conditions, the injury may have been inflicted within the limits prescribed by morals and civilization.

All these acts shall be proven by testimony given with due solemnity and with the assistance of the public ministry.

ARTICLE 3.

The nationality of the claimant shall in all claims be the first question to be settled. In all cases the ministry of foreign relations shall decide such questions, in which it shall consider the provisions of the constitution in force at the time of the injury and the evidence offered by the person interested.

The facts to be proven shall be as follows:

(1) The name, surname, and domicile of the claimant.

(2) The place of his birth.

(3) The names, surnames, and domiciles of his parents.

(4) Their nationality.

(5) The foreign citizenship of the claimant to be established by his recognition in such character by the legation of his allegiance.

These facts, excepting the fifth, shall be established in the manner and under the forms prescribed by the civil law to determine the civil *status* of persons except the proof of *notorious possession*, which is hereby declared insufficient for this purpose. The fifth fact shall be proven by a certificate from his legation.

ARTICLE 4.

After the foreign citizenship of the claimant shall be established, the question of his neutrality shall be inquired into. This latter shall be proven by an explicit certificate to that effect from the highest political authority in the department (late State) in which the claimant resided during the period comprised between the 18th day of December, 1884, and the 30th day of September, 1885. If the functionary who is to execute such certificate should not be personally cognizant of the facts to which he is to certify, he shall require the person interested to adduce solemn testimonial proof thereof, procured with the assistance of the public ministry. The fact that a foreigner shall have taken part in the late rebellion by placing his person, his interests, or his knowledge in the service of the Government of the Republic, or of any section in its interests, although in general terms he may thereby have lost his neutrality, shall not be considered to have produced such result for all the purposes of Law No. 10 and of the present decree.

ARTICLE 5.

Whenever any interested person shall not be able to present his claim in person on account of his residing out of the country, or for any other reason, he shall appoint

an attorney, and the instrument naming the same shall be executed before a notary with due solemnity. Power of attorney in a foreign country shall be presented for authentication before the diplomatic or consular agent of the Republic nearest the place where the power is given, if there should be none at such place.

ARTICLE 6.

No claim whatever relating to property in litigation shall be considered. In such case the person interested shall previously submit his claims to the ordinary tribunals, and upon the decree thereof, establishing his rights, shall his claim be considered. This submission to the tribunals shall take place, in accordance with Article 2 of the said Law No. 10, whenever the facts upon which a claim is founded shall appear doubtful, and the claimant shall differ from the Government in such opinion. If the claimant should agree thereto, he shall supplement his evidence with such new proofs as may be required in order to entitle his claim to consideration by the Government.

ARTICLE 7.

The right herein granted to foreigners to present claims against the Government shall cease on the 30th day of August, 1887, and in accordance with Article 7 of Law No. 10. This term, incapable of extension, shall be equally applicable to minors, to women, to absentees, and to other privileged persons, in conformity with law.

ARTICLE 8.

The claimant shall fully prove that the effects, rights, and shares constituting his claim were his property before the day fixed by Article 8 of Law No. 10. If such property was acquired by the claimant at a period subsequent thereto, he shall prove that the grantor thereof was an undoubted friend of the Government. The proof required in this case shall be the same as that prescribed to establish the neutrality of foreigners, and shall be adduced with the same formalities.

ARTICLE 9.

All claims shall be rejected which are founded in contracts that are presumably fictitious or that were entered into for the purpose of defeating the fiscal measures of the Government. Unless the contrary be proven, no claim founded on such contract shall be admitted under the provisions of Law No. 10. Any person holding a claim under such circumstances may subject the same to the tribunals of justice.

ARTICLE 10.

If the claimant should be personally unknown to the minister of foreign relations and to his legation, he shall prove his identity in the manner prescribed by common law.

ARTICLE 11.

Every document or instrument that may be presented in evidence shall be authenticated by the political authorities of the department in the order of their work, from the highest inclusive.

ARTICLE 12.

All authorities who may act as public functionaries in the preparation of claims, whether they belong to the judicial, political, or military order, shall, in the documents authenticated by them, declare their opinion concerning the merits of such claims and the forms adopted in presenting the same. Whenever such opinion shall be adverse to the claim of the person interested, the said authority shall communicate the same, in a special order, to the minister of foreign relations. All judges before whom declarations shall be made shall certify to the personal and legal character of the persons making the same.

ARTICLE 13.

In no case shall claimants be permitted to make oral allegations or arguments. All statements alleged in support of a claim shall be submitted in writing.

ARTICLE 14.

If the evidence of claims already presented to the minister of foreign relations should appear incomplete, it shall, in order to entitle the same to consideration, be supplemented in the manner directed by this decree. In cases in which several claims bear the same date, that which is most complete shall have precedence in the order of consideration; in cases presenting the same form, that of the earliest date shall have the preference; in cases bearing the same date and being equally entitled to consideration, the precedence shall be determined alphabetically.

Given at Bogota, on the 11th of October, 1886.

J. M. CAMPO SERRANO.

By the minister of foreign relations:
VICENTE RESTREPO.

No. 202.

Mr. Maury to Mr. Bayard.

No. 45.] LEGATION OF THE UNITED STATES,
Bogota, September 11, 1887. (Received October 14.)

SIR: On the 7th instant I had the honor to send you a telegram to the effect that a great many arrests had taken place in consequence of an attempted revolution.

This movement has been headed by the leaders of the Liberal party, and the Government has successfully captured most of those concerned in the plot. Amongst them are gentlemen who have held some of the highest places in the Government of this country, such as ex-President Parra and Señor Don Carlos Martin, for some time Colombian minister at Washington.

They all will be sent out of the country.

The present constitution of Colombia authorizes the executive to expel or imprison, without trial, any person charged with conspiring to overthrow or to injure the Government in any way.

I have, etc.,

DABNEY H. MAURY.

COREA.

No. 203.

Mr. Foulk to Mr. Bayard.

No. 15.] LEGATION OF THE UNITED STATES,
Seoul, Corea, November 1, 1886. (Received December 16.)

SIR: After some delay, largely the outcome of the political disturbance of August last, the principal one of the schools of the Corean Government, for which three teachers have been furnished from the United States, was successfully established about a month ago. Thirty-five young gentlemen, most of whom are the sons of noblemen, were selected as pupils, and have taken up their quarters in dormitories at the school. The teachers report, after a month's experience, admirable progress of the pupils, and the generally satisfactory condition of the school. One of the teachers may soon be transferred to the charge of a class of pupils established in the hospital under Dr. H. N. Allen. I am trying to effect the establishment of a third school in the building formerly assigned to me by the Corean Government as my residence upon my arrival with the Corean embassy in 1884. The schools are looked on with general favor by Coreans; they are economically and quietly conducted. * * *

The steamer purchased in June last by the Corean Government from the American Trading Company of Yokohama is regularly plying under the Corean ensign, engaged in bringing tribute rice to Chemulpho from the southern ports at a great saving of expense to the Government. A second steamer has just been purchased by a Corean company and will be employed also in carrying tribute rice. This purchase was from Mr. Edward Tuke, an American merchant of Nagasaki, Japan.

The Government has shown commendable energy in erecting the buildings for the powder-making machinery purchased from the American Trading Company of Yokohama. The powder-mills should be ready for making powder during the present month.

The Government farm is receiving the support of the Government as heretofore, but its improvement has received a great check through the sudden death of Mr. Chöe-Kyöng Sok, who founded the farm upon his return from the United States, where he had gone in 1883 as attaché of the Corean embassy.

His Majesty is warmly supporting an officer who has undertaken to improve the roads between Seoul and Chemulpho with the idea of establishing wagon transportation over them.

A company of Coreans proposes to advance capital to construct a telegraph line from Seoul to Fusan to connect with the Japanese submarine cable. * * * The Government has again decorated Dr. H. N. Allen, of the Royal Hospital, and is now fitting up a commodious and excellent establishment to serve as a new hospital under his charge. Dr. Ellers, a lady physician, procured through Dr. Allen, is in regular attendance upon the Queen, and is very commendably spoken of for her tact and good work.

I have already reported the purchase by the Corean Government of six Gatling guns from an American firm. There being no one else to do it, I set up one of those guns and exercised the ten Corean soldiers stationed at the legation as guard in the use of it. The ten soldiers were later transferred to the palace, where there is now a fairly efficient battery of Gatlings of six pieces manned by sixty men.

There can be no question as to the desire for and capability of improvement on the part of Corea. * * *

I am, etc.,

GEORGE C. FOULK,
Ensign, U. S. Navy,
Chargé d'Affaires ad interim.

No. 204.

Mr. Rockhill to Mr. Bayard.

No. 34.] LEGATION OF THE UNITED STATES,
Seoul, December 17, 1886. (Received January 21, 1887.)

SIR: I have the honor to forward to you herewith a translation of a communication addressed to this legation by the president of the foreign office, by which he calls the attention of our Government to the provision of Article IV of the Corean-English treaty which allows English merchants to reside at Seoul, and to Article II of the protocol annexed to said treaty, which provides that in case the Chinese Government sees fit to relinquish the right, which it had acquired by treaty, of having merchants of its nationality reside in Seoul for purposes of trade, Great Britain would no longer claim that right for her subjects. The president adds that the Chinese Government is now removing its merchants to Yong-san, and he submits the question to our Government, asking that it consider what is proper for it to do under the circumstances.

The residence of Americans, as well as of other foreigners, in Seoul is not provided for by treaty, and it is only through the effect of the favored-nation clause, acting through the English and Chinese treaties with Corea, that they can reside here.

There are now living here five American citizens, owning property, the value of which may be roughly estimated at $12,000, for which they have received certificates of purchase issued by the mayoralty of Seoul, at the request of the foreign office, and registered at this legation.

Although none of the Americans living at Seoul are engaged in trade, still most of them belong to missionary societies, and there being no clause in any of the treaties allowing missionaries to reside in Corea, they may be seriously affected if the removal to Yong-san is finally decided upon.

The evident intention of the Chinese Government in removing its subjects to Yong-san is to exclude all foreigners, and more especially the Japanese, from the capital, hoping by this means to make its rule here still more complete.

In 1884, Minister Foote, the Japanese minister, Her Britannic Majesty's consul-general, and a member of the Corean foreign office, located at Yong-san the site of a general foreign settlement, which was to take the place of Yang-hua-ching, found unsuitable. There can be no doubt

that at that epoch the representatives of the treaty powers were disposed to discourage their nationals from settling in the capital, where the unsettled state of affairs and the presence of Chinese and Japanese troops made the establishment of commercial houses premature and unsafe. Since, however, the conclusion of the Tien-tsin convention between Japan and China in April, 1885, which resulted in the evacuation of Seoul by both Chinese and Japanese troops, the Government of the latter country, in view of the influx of Chinese merchants into Seoul, has considered itself justified in encouraging its subjects to settle here. The result is that at present there is a colony of Japanese in Seoul larger than that of any other treaty power, and the only one which has establishments of trade, the Chinese, of course, excepted.

The probable disposition of the Japanese Government will be to energetically resist the exclusion of its subjects from this place. * * *

Although it appears probable that no action will be taken in the near future, and that the provisions of Article IV, section 4, of the British treaty, which says, "British subjects may rent or purchase land or houses beyond the limits of the foreign settlements, and within a distance of 10 Corean li from the same," may cover the case, still it appears desirable that this legation should be instructed at your earliest convenience as to the course it shall pursue if the question comes under discussion.

I have, etc., W. W. ROCKHILL.

[Inclosure in No. 34.—Translation]

The president of the foreign office to Mr. Foulk.

SEOUL, *December* 6, 1886.

Kim, president of the office for foreign affairs, herewith makes a communication.

Article IV of the treaty between Chŏ-sŏn and Great Britain provides that the capital city of Han-Yang (Seoul) and Yan-hua-ching, or such other place in that neighborhood as may be deemed desirable, shall be made places of trade where English merchants can come and go with their merchandise; and, furthermore, it is provided by Article II of the protocol (with Great Britain) that if hereafter the Chinese Government shall surrender the right granted it last year of opening Chinese commercial establishments in the city of Han-Yang (Seoul), the same right shall no longer be claimed for English merchants.

It is a matter of record that these provisions have been communicated to your legation.

It now appears that the Chinese Government is removing the merchants who have opened stores in Han-Yang (Seoul) to Yong-san (Lung-shan). I have, therefore, to request that you will inform your Government of this fact, so that it may consider what it deems proper to do in conformity with the provisions of Article I (II?) of the protocol between Chŏ-sŏn and Great Britain. A necessary communication.

No. 205.

Mr. Rockhill to Mr. Bayard.

No. 47.] LEGATION OF THE UNITED STATES,
Seoul, January 13, 1887. (Received March 7.)

SIR: The question of the evacuation of Port Hamilton by Great Britain, or, as it is frequently called, its cession to China, has of late taken some definite form, and it is generally believed in China, Japan, and Corea that the present occupation of the island will shortly cease.

It has been frequently stated of late in the English press, with what authority I know not, that England would cede Port Hamilton to

China if that power would guaranty its neutrality. * * * I gather from a recent number of a Japanese newspaper that the mere rumor of such a settlement has been deemed sufficient ground for the Japanese Government to order the immediate return to Japan of General Saigo, the minister of the navy, who is now on a voyage around the world.

This mode of settlement appears, therefore, impracticable, and a simple evacuation of the islands by Great Britain and their return to Corea, either directly or through China, is the solution which is naturally forced upon us as the only feasible one.

The Corean Government, which is well aware of the present state of the question, has not, however, any definite plan as to the course it will pursue in the event of the evacuation of Port Hamilton. It is its intention to send an official to reside there, but it feels that his presence, or even that of a body of Corean troops, can not guaranty the future inviolability of the islands, and that the reoccupation of the group by some power, in case it deems it necessary, is a step beyond its power to prevent.

* * * * * * *

I have, etc.,

W. W. ROCKHILL.

No. 206.

Mr. Rockhill to Mr. Bayard.

No. 50.] LEGATION OF THE UNITED STATES,
Seoul, January 22, 1887. (Received March 7.)

SIR: I have the honor to inform you that yesterday Mr. Watters, Her Britannic Majesty's acting consul-general at Seoul, handed to the president of the foreign office a dispatch from Sir John Walsham, Her Britannic Majesty's minister at Peking, the substance of which is as follows: "In a former dispatch from this legation it was stated that annexation was not (as your excellency had implied) intended when a naval force was stationed at Port Hamilton, but that the action of Her Britannic Majesty's Government was simply to guard these islands when they were exposed to seizure at a critical time. It was also stated that when the necessity for keeping guard should have passed the temporary occupation would cease. This time would appear to have been reached, and the British forces will be withdrawn from the islands. To effect this, an agreement has been made by which the Government of China guaranties the security of the islands from seizure by any other power. The British forces will be withdrawn in the spring, and when the evacuation takes place your excellency will be informed of it by the admiral commanding our naval forces, through the consul-general at Seoul. It was my intention," adds Sir John, "to visit Corea a short time ago, to inform you of these facts in person, but circumstances having prevented it, I have addressed you this communication."

I have been informed from another source that the Chinese Government has offered Corea three of its ships of war, manned, of course, with Chinese crews, to assist in protecting these islands. The Corean Government has also appointed an official to reside on the islands, which will also be garrisoned with troops.

* * * * * * *

I have, etc.,

W. W. ROCKHILL.

No. 207.

Mr. Rockhill to Mr. Bayard.

No. 54.] LEGATION OF THE UNITED STATES,
Seoul, January 28, 1887. (Received March 31.)

SIR: Among the many advisers of the King and the Government of Corea, none play so active a part as the Chinese representative here. I have the honor to forward to you herewith a translation of the greater portion of a memorial which he presented to the King in September last, and in which, after drawing His Majesty's attention to the present disorganized condition of the realm, the result of the policy heretofore followed, he makes suggestions on ten urgent measures of reform. * * * While condemning the erection of a mint, the opening of a hospital, the establishment of a model farm, the purchase of a steamer, etc., he advises the King to develop the resources of the country, but suggests no means to attain that end. He furthermore urges the King to rely solely on the help of China, which alone can protect Corea from the insulting treatment of foreign nations.

Finally, he calls the King's attention to the necessity of treating with courtesy and good faith the treaty powers, and to the advantage of having all questions of state controlled by the ministers in council.

Since presenting the above memorial Yuan Shih-Kai has made several other suggestions to the Corean Government on measures of reform, the most important of which is, I have been told, the suppression of three of the six battalions of troops stationed in Seoul. * * *

I have, etc.,

W. W. ROCKHILL.

[Inclosure in No. 54.—Translation.]

Memorial of Yuan Shih-Kai, Chinese minister in Corea, to His Majesty the King.

SEPTEMBER, 1886.

I, Yuan Shih-Kai, with much respect, beg leave to present a memorial to your royal Majesty.

My official stay in this country has already extended over a period of five years. As early as the autumn or winter of the year 1881 I fully perceived that your Majesty was industrious in the work of ruling your country, sparing no pains to promote the wealth and increase the strength of the people. But I now observe that the country is on the point of disorganization, the people weak and poor, and the whole situation as insecure as that of eggs piled up on each other. Is not the actual condition of the country very far from realizing your Majesty's wishes? If your Majesty lay the blame on yourself, the nation will feel uneasy; and yet it is not allowable to hold the ministers responsible for it, as any such course would have the effect of punishing the innocent. The true cause lies in this circumstance, that, while the Government is really desirous of promoting the welfare of the nation, a certain class of narrow-minded people (literally little men) prevent the wishes of the Government from being carried out. If it is desired to rule the country properly, then the aimless policy of the past few years must be wiped out. It is unquestionably impossible to establish a system of government if the policy of the past is adhered to, and, moreover, troubles will arise. Look at 1884. Kim Ok-Kiun and others misled your Majesty by submitting to your Majesty various selfish plans and schemes, and when at length they proceeded to slaughter with their own hands the ministers of state, things had gone too far to be stopped before leading to serious consequences.

Consider their words and acts; there is a wide difference between the two. Your Majesty will see that these narrow-minded persons poisoned the mind of their royal master by their pernicious eloquence. In their endeavors to obtain power they professed to strengthen the country by inviting foreign help, while really plotting to plunge Corea into disorder. The baneful influence of such people does not pass away quickly. Had your Majesty looked into the intentions and scrutinized the actions of

Kim Ok-Kiun and others before the 17th October, and, suspecting them, taken steps to prevent their plot from being carried out, the affair would not have reached the dimensions it actually did assume. Had their long-meditated scheme of wickedness been successfully carried out, and had the disastrous course of events reached its fatal consummation, your Majesty's innocence would have remained obscured for hundreds and thousands of years, without hope of being ever cleared. It was extremely fortunate that the traitors were speedily defeated and tranquillity restored. I then thought that the plottings of narrow-minded persons would not break out again, an example having been set for future warning, and that Corea had passed an important turning-point in its organization.

Subsequently I went home on leave, and after spending there a few months I again came here last winter to resume my official duties, when, to my extreme surprise, I discovered disquieting signs in the tendency of affairs. Accordingly I cried to your Majesty's ministers day and night until my lips were parched and my tongue worn out, hoping that your Majesty would be pleased to maintain forever the safety of the country and the welfare of the nation, but my influence was weak and my natural parts insignificant, so my empty words were of no avail. Then the affair of the seventh month (July, 1886) came on.

Now, narrow-minded persons of low aspirations and worthless counsel, judging with their low and worthless minds, generally seek to possess wealth and are envious of power. Of worthless counsel, they arrest your Majesty's attention with their eloquent words; with low and depraved minds they do not shame to win your Majesty with flattery and adulation. Then, having enjoyed your Majesty's intimacy and confidence for some time, they begin to present various plans for making the country rich and strong, and thus seek to delude your Majesty with wild projects. Your Majesty ought of course to introduce reforms, so as to strengthen the position of the Government, but it must be remembered that the attempts of these narrow minded men are intended to revolutionize the state and put to death the ministers in order to make themselves opulent and influential, and with no care for the Kingdom's ruin and the happiness of the people. Kim Ok-Kiun's attempt is a case in point. But the delusive advice and the artful projects of the narrow-minded man can be easily detected. Your Majesty would do well to cause the preservation of the advice and counsels presented to your Majesty by Kim Ok-Kiun and others, and, keeping the documents by you, to read and reflect upon them at leisure. If any narrow-minded person offers to your Majesty counsels coinciding with those contained in those documents, your Majesty should regard them as Kim Ok-Kiuns. Compare their avowed intentions with their deeds and they will be found at variance. This is a method of demonstration than which your Majesty could have none better. If narrow-minded persons recommend themselves for service, they unquestionably have plans for enriching the country and making it strong. Give them leave to manage affairs, if they do not throw Corea into a turmoil, and the people into confusion, I will ask their forgiveness, and forfeit my eyes and cut out my tongue to help me obtain it. During my five years' residence here, I have a number of times presented my views, so I can not at the present critical moment remain indifferent to the danger of the situation, and neglect to devise some means of remedy. I sincerely hope that your Majesty will bear in mind that efficacious medicine is bitter to the taste and that I may have the good fortune to be spared tears of regret (for having offered this advice).

I respectfully submit the four following propositions and suggestions on ten reasonable measures of state for your Majesty's selection.

(The four propositions are of no special interest. Corea is compared to a disabled vessel, and Yuan-Shih-Kai, the carpenter, to a sick man, etc.)

(1) The first measure of reform is the appointment of ministers from hereditary houses. Members of hereditary families are aware that their interests are indissolubly bound up with those of the country at large. Their rank being already distinguished, and their pensions honorable, their thoughts are turned to the promotion and perpetuation of the safety of the country and the dynasty. By promoting the welfare of the country they secure that their rank and pensions will last for ages; and if the dynasty is maintained forever, they know that their fame will be handed down to unknown generations. Moreover, among the members of hereditary families there are not wanting men of experience and righteousness, who, if incapable of striking achievements, will at least keep the Government from corruption. If your Majesty should decide to put confidence in such men, the people will be contented and the country safe, and, once appointed, your Majesty ought not to doubt them. If there is anything doubtful about them, your Majesty had better not appoint them. Proceeding in this way, good administration will be secured.

(2) Treatment of minor officials. Minor officials are intent only on promoting their own self-interest, and do not care about the peace or welfare of the country. * * * They are not fit to be admitted into the Royal presence, or to have a share in determining the national politics. Had (Kim) Ok-Kiun, (Pak) Yiun-hic, (Hong) Yang-sik, and others been excluded from your Majesty's confidence, and employed simply in the

management of the business of departmental offices, the country would have been spared the attempt of 1884.

(3) The winning of the hearts of the people.

(4) The distribution of power.

(5) The removal of suspicion.

(6) Economy. The received rule of economy, in ancient as well as in modern times, has been to expend according to the amount of revenue.

* * * Money has been spent upon works which might as well have been deferred, but which have been undertaken by the small-minded of your Majesty's servants, whose sole object is to promote their own private interest. Such works, for instance, as the erection of a mint, a hospital, the establishment of a model farm, the purchase of a steamship, etc., are no doubt good in themselves, but in the present state of affairs of this country they are not of any urgent importance. What is now most pressingly needed is to bring the administration of home affairs into order to develop the resources of the country, and to encourage habits of industry and economy. * * *

(7) The selection of advisers.

(8) Rewards and punishments.

(9) Friendship of a friendly country.

The Middle Kingdom and your Majesty's country have been mutual friends for several centuries, and the people of the two countries have been intimate from remote ages. The two nations are therefore eminently fitted to help each other. If they keep on intimate terms no foreign nations will be able to interfere between them, groundless rumors will cease to be circulated, people will feel secure, and the country will be safe forever. * * * If your Majesty's people decide not to reject the help of China, no foreign country can subject Corea to insulting treatment. * * *

(10) The foreign relations of a country are watched by a whole world, and constitute one of the most important branches of its national affairs. When the management of foreign affairs is entrusted to a proper person, and when treaty powers are treated with courtesy and faith, a country will be sure to enjoy forever the friendship of foreign states. * * * If every affair of state, whether small or great, is controlled by the ministers of state in council, no secret plot will be possible. * * * My nature is artless, and I am used to speak frankly and in a straightforward manner; I therefore implore your Majesty's benevolent indulgence.

No. 208.

[Extract.]

Mr. Rockhill to Mr. Bayard.

No. 58.] LEGATION OF THE UNITED STATES,
Seoul, February 5, 1887. (Received March 31.)

SIR: Previous dispatches from this legation have informed the Department, of the opening in Seoul, by a number of American missionaries, of schools, an orphanage, a hospital, and of other useful undertakings due to them. In all these they have received the hearty support of this legation.

I have, etc.,

W. W. ROCKHILL.

No. 209.

Mr. Rockhill to Mr. Bayard.

No. 60.] LEGATION OF THE UNITED STATES,
Seoul, February 10, 1887. (Received March 31.)

SIR: I have the honor to forward to you herewith a translation of the provisional harbor regulations proposed by the Corean Government to be put in force for the port of Chemulpo.

I have, etc.,

W. W. ROCKHILL.

[Inclosure in No. 60.—Translation.]

Provisional harbor regulations for the port of Jen-chuan (Chemulpo), Corea.

1°. The harbor limits include the area covered at high tide with water, and lying within the following lines:

To the north, an imaginary line running east to west through the northern extremity of Roze Island.

To the south, an imaginary line running east to west through the southern extremity of Nak-Syon Island.

To the east, an imaginary line running north and south through the eastern extremity of Nak-Syon Island.

To the west, an imaginary line running north and south 1 mile west of the southern extremity of Observation Island.

2°. Vessels arriving must take up the berths assigned to them by the harbor master, or the officer acting in that capacity.

3°. Vessels having gunpowder or other explosives on board, as cargo or part of cargo, must anchor outside the harbor limits until a safe berth has been assigned to them, and in the discharge of such cargo must abide by the instructions issued by the customs.

4°. Ballast or ashes must not be thrown overboard within the harbor limits.

5°. Every vessel in harbor must show a bright light from sunset to sunrise.

No. 210.

Mr. Rockhill to Mr. Bayard.

No. 66.] LEGATION OF THE UNITED STATES,
Seoul, March 5, 1887. (Received April 12.)

SIR: Referring again to the question of the removal of foreign tradespeople from Seoul to Yong-san, treated of in my dispatch, No. 34, of December 17 last, I have the honor to inform you that a good deal of feeling has been shown of late by the Corean merchant guilds of this city at the opening within the city of new shops for retail business by Japanese subjects. The discontent of the Coreans culminated on the 25th ultimo, when all places of business within the city were closed by order of the eight guilds which rule the trade of this place. A large body of trades-people went the same day to the foreign office and asked the president to forbid the Japanese opening new shops within the city, and to order the removal to Yong-san (some 3 miles outside the city) of all foreign traders. The president informed the people that this question was under discussion, and that within two or three months it would be settled. In the meanwhile nothing could be done.

The King, having also heard of the excitement, called some of the principal men to the palace and told them that they must have the shops opened, for that would not prevent them discussing the affair they wanted to have settled.

Towards evening the city had assumed its usual appearance and the greater part of the shops had been reopened.

The Japanese authorities here felt much apprehension at this sudden manifestation of ill-feeling. Many of the Japanese women were sent away from town, and none of their nationals were allowed for some days to go out after dark.

It is worthy of note, as suggestive of the continued alarm in which the people live, that this slight occurrence caused the price of rice to rise considerably.

The president of the foreign office is waiting, I hear, for the reply of Great Britain and Germany to his dispatch, inclosed in my No. 34,

these two powers being the only ones which have express stipulations in their treaties concerning this question of residence of trades-people in Seoul. It is also to be noted that, throughout this agitation, the encroachments of the Japanese on the local retail trades appear to have alone caused dissatisfaction, although the number of Japanese traders here is much smaller than that of Chinese.

I have, etc.,

W. W. ROCKHILL.

No. 211.

Mr. Rockhill to Mr. Bayard.

No. 69.] LEGATION OF THE UNITED STATES,
Seoul, March 7, 1887. (Received April 12.)

SIR: I have the honor to inform you that on the 24th ultimo the foreign representatives here whose Governments have entered into the agreement with the Corean Government concerning the general foreign settlement at Chemulpo, met at the foreign office to discuss the questions arising therefrom.

The president of the foreign office first suggested a general discussion of the agreement of the 3d of October, 1884,* which seemed to him ambiguous and open to grave objections, which would make its enforcement prejudicial to all parties. The foreign representatives having declined to discuss an agreement approved by their respective Governments, and which they were instructed to see carried out as soon as possible, the president agreed to take measures for its being put in vigor at an early date; but it was also agreed, in view of the general opinion that the land regulations were open to serious objection, that after the expiration of one year any of the signatories of the agreement might formulate his objection and ask for a revision.

The president of the foreign office then mentioned the fact that while the text of the agreement mentioned an "annexed plan," none such existed. Mr. Denny, the foreign adviser of the foreign office, insisted on this omission making the agreement an imperfect instrument. The foreign representatives held, however, that they had in their possession plans of the settlement which, while not all on the same scale, agreed as to the boundaries. With these plans they were perfectly satisfied, as they had been made by the surveyor employed for that purpose by the Corean Government. The absence of an annexed plan to the agreement might easily be remedied by the Corean foreign office and the diplomatic representatives agreeing to consider one of the plans in their possession as the authoritative one. The president of the foreign office agreed to this mode of settlement.

On the 4th instant another conference was held at the foreign office, and a plan of the general foreign settlement of Chemulpo was signed and sealed by the president of the foreign office and the representatives of the different powers which had signed the agreement. The president also informed the diplomatic body that he should at once send orders to the local authorities of Chemulpo to resurvey the lots sold, erect boundary stones, and issue title deeds to owners, and fulfill the other duties imposed on his Government by the agreement of October 3, 1884.

* Printed before signature in Consular Reports, Department of State, No. 45, September, 1884, p. 92.

Great, and, I may say, universal dissatisfaction is shown by all the residents in the general foreign settlement at the enforcement of the agreement. Their objections are both general and specific and some of them are unquestionably well founded. The upset price of the lots, the high land rent, the possible assessments, the expensive buildings which they are forced to erect, the right, or supposed right, of the Corean Government to reserve and not purchase at auction, as in the case of other lots, such pieces of land as it desires to hold, are among the numerous grievances which will undoubtedly require careful consideration hereafter.

It is to be feared that the existence of some of the rules objected to, especially that fixing the nature of the buildings which owners are allowed to erect on their lots, has very materially retarded the development of the Chemulpo general foreign settlement, which still only consists of about a dozen poorly-built frame houses, so far removed from the water-front that they are unfit for business purposes.

The original agreement and land regulations were drafted on the pattern of those of Kobe, Japan; but the conditions were very different in the two cases, and the class of merchants which might confidently be looked for at Kobe, can not, in the present state of Corea, be expected at Chemulpo, and a revision of the land regulations would appear from present appearances to be necessary in the near future.

I have, etc.,

W. W. ROCKHILL.

No. 212.

Mr. Bayard to Mr. Dinsmore.

No. 3.] DEPARTMENT OF STATE,
Washington, March 14, 1887.

SIR: Referring to Mr. Rockhill's No. 34, of the 17th of December last, inclosing a note which had been addressed to him by the Corean foreign office for the purpose of obtaining the views of this Government touching the question of the removal of foreign merchants from Seoul, I have to state as follows:

In the treaty between the United States and Corea, the ports and places to which citizens of the United States may resort, and in which they may reside, lease buildings or lands, and construct residences or warehouses, are not specifically designated; but, by the Article XIV of the treaty, the United States, its public officers, merchants, and citizens are entitled to the most-favored-nation treatment.

By the treaty concluded between Great Britain and Corea on the 26th of November, 1883, about a year and a half after the conclusion of our new treaty, certain ports, among which was Seoul, were declared to be "opened to British commerce." It was also provided that British subjects should have the right, at the ports designated in the treaty, "to rent or to purchase land or houses, and to erect buildings, warehouses, and factories," and free exercise of religion was also guarantied to British subjects.

By a protocol to the British treaty, it was agreed that if the Chinese Government should thereafter "surrender the right of opening commercial establishments in the city of Han-Yang" (Seoul), which had been

granted to Chinese subjects, "the same right shall not be claimed for British subjects, provided that it be not granted by the Corean Government to the subjects of any other power."

Precisely the same provisions as are found in the British treaty with respect to residence and the opening of commercial establishments in Seoul are contained in the treaty between Germany and Corea, which was concluded on the same day as the British treaty.

On the 16th of October, 1885, as the Department was informed by Mr. Foulk's No. 245, of the 21st of that month, ratifications were exchanged of a treaty between Russia and Corea, similar in its provisions to the treaties made by Corea with Great Britain and Germany.

It appears, therefore, that rights of citizens of the United States, with respect to residence and the pursuit of commerce in Seoul, were first derived from the British and German treaties, through the favored-nation clause in our own treaty, and that those rights have been further secured by the treaty with Russia, the text of which, however, the Department does not possess.

It has been seen that, under the British and German treaties, "the right of opening commercial establishments" in Seoul is at present dependent upon the retention of the right by the Chinese Government. It is not the province of this Department to construe the British and German treaties with Corea, nor to say what effect the loss of "the right of opening commercial establishments" by British and German subjects would have upon their rights of residence, of property, or other rights under the treaties. It is sufficient to say that those rights, whatever they may be found to be, belong equally to citizens of the United States.

So far as the right to engage in commerce and open commercial establishments is concerned, there is, as stated in your dispatch, no case requiring practical action by this Government. None of the American residents in Seoul, as you state, are engaged in trade; and many, perhaps all of them, have gone thither purely on missions of humanity, with the special permission and with the encouragement of the Corean Government. Turning to the published correspondence between this Department and the legation of the United States in Corea, I find that on the 1st of September, 1884, Mr. Foote reported to the Department that the Rev. Dr. R. S. Maclay, a Protestant missionary stationed many years in the East, had visited Corea with a view to establish a mission school and hospital. "There seemed," said Mr. Foote, "to be no serious objection, and since his departure I have received the assurance of His Majesty that not only will no obstacle be thrown in the way, but that the establishment of a mission school and hospital at Seoul will be tacitly encouraged." On the 5th of March, 1885, Mr. Foulk reported that Dr. H. N. Allen, who had been sent out by the American Presbyterian Board of Missions to render gratuitous service to the people as a physician, and who, after the revolutionary attempt of the preceding September, had rendered great service to wounded soldiers, made a proposal to establish a hospital, which had "met with high approval from the Government and been accepted," and under date of the 30th of May following, "the opening of the hospital was announced in a general proclamation to the whole country."

Under date of June 3, 1886, Mr. Foulk made a report to the Department on the progress of the work of the American residents in Seoul up to that time. He stated that Drs. H. N. Allen and H. G. Heron, "who conduct the Government hospital in Seoul," had opened a school of

chemistry at the hospital, and installed Mr. H. G. Underwood as a teacher, and that, "representing the American Presbyterian Board, those three gentlemen have, with the grateful assent of the Corean Government, opened an orphan's home and industrial school in the city, which bids fair to be a great success. Dr. William B. Scranton and family, and Mrs. M. F. Scranton, with Mr. H. G. Appenzeller, represent the Methodist mission in Seoul. Dr. Scranton has opened a private hospital. Mr. Appenzeller is about to open a school, and Mrs. Scranton is erecting a building in which to establish a school for girls and women. * * * The work of these missionaries can not, to my mind, be too highly commended. They have done much to introduce a spirit of order and neatness among the Coreans. The hospital conducted by Drs. Allen and Heron treated some eleven thousand patients during the past year, and the institution is looked on with pride by the Government, which gives it all possible support. * * * Upon the coming of these missionaries to Corea I cautioned them individually against indiscreet impulsiveness in propagating doctrines. They expressed themselves content to work in Corea in giving medical and educational assistance. With much tact and practical reason they have labored so as to secure the respect and kindly regard of the whole Corean people."

It is clear that these Americans, who comprise all the citizens of the United States in Seoul outside of the American legation, do not reside there by virtue of a treaty right to open commercial establishments, but under the special permission and encouragement of the Corean Government, influenced by a desire to ameliorate the condition of the people; and the Department does not suppose that the Corean Government would regard the extinguishment of the right of foreigners to open commercial establishments at Seoul as affecting these Americans who, having gone thither on a mission of mercy and humanity, have, as the correspondence shows, up to so recent a date enjoyed the active encouragement and assistance of His Majesty's Government. The note inclosed by you from the foreign office does not intimate any purpose or desire, beyond the possible enforcement of an exclusion of merchants, which would not now work any direct injury to American citizens. The Department can not assume that the note has any ulterior meaning. But it is not out of place to say that any interference with the enlightened and charitable enterprises of the Americans now residing in Seoul would be deeply regretted, and that this Government could not view without grave concern any invasion of the property or other rights of those American citizens who, impelled by benevolent and unselfish motives, have taken up their residence in Seoul under the circumstances above narrated.

I am, etc.,

T. F. BAYARD.

No. 213.

Mr. Rockhill to Mr. Bayard.

No. 72.] LEGATION OF THE UNITED STATES,
Seoul, March 31, 1887. (Received May 7.)

SIR: I have the honor to inform you that on the 8th instant William McKay, an American citizen in the service of the Edison Electric Light Company, and then employed putting up electric lights in the royal

palace in this city, was accidentally shot by a Corean bannerman (ki-su), who was examining McKay's revolver. The following day McKay died. The testimony of all those who witnessed the accident, among whom was another American mechanic, shows that no blame can be attached to the Corean. Notwithstanding this the ki-su was thrown into prison, severely beaten, and orders given for his execution, the case being considered exceptionally grave—the victim being a foreigner.

I immediately wrote to the general commanding the corps to which the ki-su belonged and to the president of the foreign office asking that, in view of the death of McKay being purely accidental, the man who had involuntarily caused it might be set at liberty. I inclose herewith the reply of the president of the foreign office to a second note, which I wrote him on the 18th, asking him to beg of His Majesty, in my name and in that of the other Americans here, the pardon of the ki-su.

The *lex talionis* having full sway in this country, this request of Americans, that a man who had caused the death of another be pardoned, has caused great astonishment among the officials here, and their generosity has been greatly lauded.

His Majesty has shown great kindness to the wife of the deceased, paying all funeral expenses, presenting the widow with $500, and offering her a home for life if she would remain in Corea, and to have her son educated at his expense. One reason why so much concern has been shown is undoubtedly on account of the idea Coreans have, in common with many other Asiatic nations, that all foreigners residing in their country are guests, and that any mishap befalling them is to the shame of the host. Residence as a treaty right is but very imperfectly understood.

I have, etc.,

W. W. ROCKHILL.

[Inclosure in No. 72—Translation.]

Kim Yum-sik to Mr. Rockhill.

SEOUL, *March* 19, 1887.

In reply to your note of yesterday, requesting the release of the ki-su (I would respectfully state), by the laws of our country any person who occasions the death of another, although it be purely accidental, is punishable by banishment on account of the feeling against him on the part of the victim's family. The ki-su in question is therefore subject to the above condemnation.

Although the above penalty is applicable in this case, I have received from you repeated expressions of compassion (for ki-su) and of justice, tending to show that the fate of an ant should be watched over as though worth thousands of gold, and also a request from the victim when dying, and an earnest entreaty from his wife (asking that mercy be shown the ki-su). I am very grateful for these expressions of these two just persons.

I hear that the ki-su is in the prison of the special battalion (polyong) so I will at once communicate with the general (commanding), sending him your letter and requesting him in view of the circumstances, and notwithstanding the disregard of the statutes which it entails, to release the ki-su as you desire.

This action on your part is not only one to call for this ki-su's most heartfelt gratitude, but for the thanks of the whole people, and for which I sincerely and earnestly thank you.

I address you this reply while awaiting the answer of the general commanding the special battalion.

KIM YUM-SIK.

No. 214.

Mr. Rockhill to Mr. Bayard.

No. 73.] LEGATION OF THE UNITED STATES,
Seoul, March 31, 1887. (Received May 7.)

SIR: As a further reference to the question of the general foreign settlement at Chemulpo, treated of in my dispatch No. 69, of the 6th instant, I have now the honor to forward to you copy of a notice which I have issued to the Americans residing at Chemulpo concerning the rules which must be followed for procuring title deeds for the lots which they may have purchased in the settlement.

The general terms of this notice were agreed upon by the representatives of the different treaty powers, signatories of the agreement concerning the general foreign settlement at Chemulpo, and they have issued notifications to their nationals substantially the same as the inclosed.

In my dispatch No. 69 I had the honor to call your attention to the very high land rent demanded of settlers in the general foreign settlement. In view of this fact, and of the very burdensome nature of this charge on the settlers, which is admitted by all the representatives here, a clause has been inserted in the notice, stating that "as it would, however, appear that the majority of land owners considered the rent as fixed in the agreement rather onerous, and as the amount to be collected from this source is in excess of the requirements of the administration of the settlement, only half of the amount mentioned in the title deed will have to be paid at present. But it is to be clearly understood that the other half may be collected at any time hereafter, when the undersigned and the other foreign representatives may think fit."

It is to be hoped that the agreement of October 3, 1884, may be revised in a way which will make settling in the foreign settlement of Chemulpo less expensive, and the charges on residents less onerous, by which means it can not be doubted the prosperity of the place would greatly increase.

I have, etc.,

W. W. ROCKHILL.

[Inclosure in No. 73.]

LEGATION OF THE UNITED STATES,
Seoul, March 26, 1887.

Citizens of the United States are notified as follows concerning the purchase of land in the general foreign settlement of Chemulpo:

It having been arranged between the representatives of the treaty powers, signatories to the agreement of October 3, 1884, respecting a general foreign settlement at Chemulpo, and the Corean foreign office, that the said agreement shall come into force on and after the 1st of the 3d Corean moon, that is, the 25th March, 1887:

Citizens of the United States who have bought lots of land in the general foreign settlement are now called upon to pay the cost price of such lots to Her Britannic Majesty's consular representative at Chemulpo. Holders of land who have already paid the price or part of the price of it to the Corean Government directly, will be required to show the receipts they hold in proof of such payment.

As it appears that during the last two years several lots have been purchased by foreigners, the limits of which had not been previously marked, the Corean authorities have appointed Mr. Sabatin, of the Corean customs service, to mark out the

boundaries of such lots. Mr. Sabatin will, moreover, mark with suitable stones the limits of the settlement and the streets.

Any citizen of the United States wishing to have the lot or lots of which he is holder remeasured and properly marked off, may apply for that purpose to Her Britannic Majesty's consulate at Chemulpo.

The remeasuring of lots and the erection of boundary stones thereon will be done by the said Mr. Sabatin, in the presence of Her Britannic Majesty's consular representative at Chemulpo, Mr. Sabatin receiving for every lot of land resurveyed a fee of $2, to be paid by the holder of lot, the cost of corner stones for lot to be at the charge of the owner of land.

Should the Corean local authorities on their part demand a remeasurement of any lots before issuing title-deeds therefor, they shall of course be entitled to do so, but in this case no fee shall be paid by the holder of the land.

After payment of the cost price shall have been made, or proof shown that such payment has been made partly or in full to the Corean authorities anteriorly, the undersigned will cause the said authorities to issue proper title-deeds, in accordance with the provisions of the agreement of October 3, 1884.

The amount of land rent to be inserted in the title-deed will be as fixed by the agreement, and is payable from the 25th of March of the current year. As it would, however, appear that the majority of land owners consider the rent as fixed in the agreement rather onerous, and as the amount to be collected from this source is in excess of the requirements of the administration of the settlement, only half of the amount mentioned in the title-deed will have to be paid at present. But it is to be clearly understood that the other half may be collected at any time thereafter when the undersigned and the other foreign representatives may think fit.

The amount thus due for the present calendar year ending December 31, that is, for nine months and five days, is to be paid into Her Britannic Majesty's consulate at Chemulpo within eight days after the title-deeds have been received by the owners.

It is, however, to be understood that, besides the above payments, land owners may be required to pay for the time elapsed since the date of the auction at which their lot or lots were bought till the 24th of March of this year a land tax to the Corean Government of 30 cents per 100 square meters, as provided for in the agreement of October 3, 1884.

The date for an election of three land owners to constitute with the local Corean official and the consuls of the treaty powers a municipal council for the administration of the settlement, and also the mode of election, will be published hereafter.

W. W. ROCKHILL,
Chargé d'Affaires ad interim of the United States.

No. 215.

Mr. Bayard to Mr. Dinsmore.

No. 11.] DEPARTMENT OF STATE,
Washington, May 11, 1887.

SIR: I have received Mr. Rockhill's dispatch No. 72, of March 31 last, reporting the accidental killing of William McKay, an American citizen, by a Corean on the 8th of that month, at Seoul.

Although interference with the course of municipal law, even though it be to solicit clemency for the author of an injury to a foreigner, is delicate and exceptional, yet, under the circumstances and in view of the wide gulf which separates Corean judicial methods from our own, the appeal of Mr. Rockhill, responding as it did to the widow's earnest solicitation, is most commendable.

I am, etc.,

T. F. BAYARD.

COSTA RICA.

CORRESPONDENCE WITH THE LEGATION OF COSTA RICA AT WASHINGTON.

No. 216.

Mr. Peralta to Mr. Bayard.

LEGATION DE COSTA RICA,
Liege, July 25, 1887. (Received August 6.)

DEAR SIR: * * * I am extremely happy to see that the boundary question between Costa Rica and Nicaragua is to be decided by the President of the United States, and I am proud to have been the first person who, since the days of President Grant, advocated submitting that question to the arbitration of your Government.

I avail myself of this opportunity to call your attention to a mistranslation of the convention between Costa Rica and Nicaragua, signed in Guatemala December 24, 1886, inserted in the Senate document, Forty-ninth Congress, second session (Ex. Doc. No. 50, page 51).

The translation says:

8. * * * From the time the treaty shall be declared null, and during the time there may be no agreement between the parties, or no decision given fixing definitely the rights of both countries, the *limits* established by the treaty of the 15th of April, 1858, shall be provisionally respected.

The Spanish text of the convention says literally:

Desde que el tratado se declaró nulo y mientras no haya acuerdo entre las partes ó no recaiga sentencia que fije los *derechos* definitivos de ambos paises se respetarán provisionalmente *los* que establece el tratado de 15 de Abril de 1858.

The word *limits* of the translation is not to be found in the Spanish text, and instead of limits the article *los* refers to the word *derechos*—rights.

Instead of the translation above quoted, I should propose the following one:

From the time the treaty shall be declared null, and during the time there may be no agreement between the parties, or no decision given, fixing definitely the rights of both countries, the rights established by the treaty of the 15th of April, 1858, shall be provisionally respected.

* * * * * * *

I remain, etc., MANUEL M. PERALTA.

No. 217.

Mr. Perez to Mr. Bayard.

[Translation.]

LEGATION OF COSTA RICA,
Washington, D. C., July 30, 1887. (Received July 30.)

SIR: I have the honor herewith to inclose a copy of the treaty* relative to arbitration which was signed at Guatemala December 24, 1886,

* Printed, page 89.

by plenipotentiaries of Costa Rica and Nicaragua, through the friendly mediation of the Government of the Republic first named (Guatemala), in which treaty it is stipulated that both contracting nations shall submit the question of the validity or invalidity of the boundary treaty concluded by them on the 15th of April, 1858, to the decision of the President of the United States of America.

In the name of, and in obedience to, special instructions received from the Government of Costa Rica, I beg your excellency to be pleased to use your good offices with his Excellency the President, to the end that that high magistrate may deign to lend my country the eminent service in question.

My Government entertains the hope that it will obtain this signal favor, which hope is based upon the confidence which it feels in the good will of your Excellency's Government, and in the traditional interest felt by this great nation in the peace, tranquillity, and welfare of its sister nations in America.

I have, etc., PEDRO PEREZ, Z.

No. 218.

Mr. Bayard to Mr. Perez.

DEPARTMENT OF STATE,
Washington, D. C., July 30, 1887.

SIR: I have the honor to acknowledge your esteemed note of to-day, inclosing a copy of the convention which was signed at Guatemala on the 24th December, 1886, by the respective plenipotentiaries of Nicaragua and Costa Rica through the friendly mediation of the Government of Guatamala, stipulating that the question of territorial boundary between these two Governments, under their treaty dated April 15, 1858, should be submitted to the arbitration of the President of the United States.

The President has been duly informed of the proposed submission of the question at issue between the Governments of Nicaragua and Costa Rica to his arbitrament, and I am instructed to communicate to you his willingness to accept the execution of the responsible trust which he is thus invited by both of the parties interested.

The President will be prepared to proceed in the execution of the duty thus proposed to him and to that end will receive their respective proofs.

Accept, sir, etc., T. F. BAYARD.

No. 219.

Mr. Perez to Mr. Bayard.

[Translation.]

LEGATION OF COSTA RICA,
Washington, D. C., July 31, 1887. (Received August 1.)

SIR: I have received your excellency's esteemed communication of yesterday, whereby you were pleased to inform me that his Excellency

the President had been pleased to accept the office of arbitrator in the controversy between Costa Rica and Nicaragua, concerning the validity or invalidity of the treaty of April 15, 1858, which was concluded by the two Republics for the final arrangement of their territorial limits.

This agreeable notice has afforded me great satisfaction, and I shall communicate it to my Government by cable without delay. In fact, I never apprehended that the illustrious head of this great nation would refuse to render Costa Rica the inestimable service of hearing and deciding its differences with the Republic of Nicaragua, its sister and neighbor.

I perform a very pleasing duty in returning to the President and to your excellency, for the part taken by you in this matter, my warmest thanks for the new evidence of friendship which we have received. This duty I have been specially instructed by my Government to perform. Within the time fixed by the treaty relative to arbitration I shall have the honor to submit to your excellency's consideration the arguments which, in the opinion of the Government of Costa Rica, furnish irrefragable evidence of the validity of the treaty of 1858, which is now under discussion.

With sentiments of high esteem, etc.,

PEDRO PEREZ, Z.

No. 220.

Mr. Perez to Mr. Bayard.

LEGATION OF COSTA RICA,
Washington, D. C., September 3, 1887. (Received Sept. 3.)

MY DEAR SIR: I beg leave to transmit herewith, unofficially and for your information, a certified copy of the treaty* signed at Managua on the 26th of July ultimo, by the President of Costa Rica, Bernardo Soto, and the President of Nicaragua, E. Carazo, for the purpose of settling the questions pending between the two Republics.

This being the only copy in my possession, I will thank you to return it after being acquainted with its contents. Should you desire it, I would be pleased to furnish you with one.

Very truly, yours,

PEDRO PEREZ, Z.

No. 221.

Mr. Bayard to Mr. Perez.

DEPARTMENT OF STATE,
Washington, September 13, 1887.

MY DEAR SIR: It gives me pleasure to acknowledge receipt of your unofficial note of the 3d instant, transmitting for my information a certified copy of the treaty signed at Managua, July 26, 1887, by the Presidents of Costa Rica and Nicaragua, with a view to the adjustment of the present boundary difficulty between those two Republics.

* Printed, p. 140.

I beg to add, in respect of your kind offer to furnish me with a copy of this treaty should I desire it, that a copy has already been made and retained in the Department, and to tender you a sincere and grateful expression of my thanks for your thoughtfulness and courtesy in this matter.

I herewith return your copy of the treaty as desired.

I am, etc.,

T. F. BAYARD.

No. 222.

Mr. Perez to Mr. Bayard.

LEGATION OF COSTA RICA,
Washington, D. C., October 3, 1887. (Received October 6.)

SIR: I have the honor to inform you that I am in receipt of an official telegram, dated the 1st instant, wherein it is stated that notwithstanding the sanction given by the Government of Costa Rica, the President, the House of Representatives, and an assembly of notable citizens of Nicaragua convoked to that effect, the treaty of Managua of the 26th of July last for the final adjustment of the question pending between the two Republics has been rejected by the Senate of Nicaragua. In consequence thereof the controversy remains as heretofore, and the treaty of Guatemala which submitted it to the Government of the United States continues in force.

I avail myself, etc.,

PEDRO PEREZ, Z.

No. 223.

Mr. Bayard to Señor Perez.

DEPARTMENT OF STATE,
Washington, October 7, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, saying that the Nicaraguan Congress had rejected the treaty of July 26, 1887, for the adjustment of the boundary difficulty between that Government and Costa Rica, and to observe that I thus learn with regret that the expected course of direct settlement of the questions between two countries to which the United States are equally friendly is interrupted.

Accept sir, etc.,

T. F. BAYARD.

FRANCE.

No. 224.

Mr. McLane to Mr. Bayard.

[Extract.]

No. 298.] LEGATION OF THE UNITED STATES,
Paris, October 20, 1886. (Received November 2.)

SIR: I have the honor to send herewith two printed copies of the treaty between France and certain native tribes of Liberia, referred to in Mr. Vignaud's dispatch No. 267, of August 23.

I have, etc.,

ROBT. M. MCLANE.

[Inclosure in No. 298.—Translation.]

[Ministry of Marine and of the Colonies.—Service of the Colonies.—Colonial Archives.—Depot of Public Papers of the Colonies, created by edict of the month of June, 1776.—Extract from the documents preserved in the Colonial Archives.—French Empire.—Naval Division of the Western Coasts of Africa.]

Treaty entered into with Mané, King of Little-Bériby; Rika, King of Basha; and Damba-Gué, King of Grand Bériby.

Mané, King of Little Bériby; Couba, his brother and successor; Rika, King of Basha and Bassa-Wappoo; Damba-Gué, King of Grand-Bériby, and all the chiefs of the countries subject to their authority, having manifested their desire to open commercial relations with France, and, to that end, ask to place themselves under the sovereignty of His Majesty Napoleon III, Emperor of the French.

We, Crespin (François-Eugène), lieutenant of marine, commanding the steam advice-boat *The Renaudin*, acting conformably to the instructions of Viscount Fleuriot de Langle, rear-admiral, commander-in-chief of the naval division of the western coasts of Africa, and commandant superior of the establishments on the Gold Coast and the Gaboon, have concluded, in the name of His Majesty the Emperor, and in presence of the undersigned witnesses, with the aforesaid Kings, of Little Bériby, of Basha, and of Grand Bériby, the treaty of the following tenor:

ARTICLE 1.

The King of Little Bériby, the King of Basha, and the King of Grand Bériby cede to His Majesty the Emperor of the French the full and entire sovereignty of all the territory subject to their authority, comprehended between Point Basha on the west to the river Nahno, at the head of the Bay of Grand Bériby, on the east. The French shall then have alone the right to raise their flag and to create all the establishments or fortifications they shall judge useful or necessary, in buying the lands of the actual proprietors.

ARTICLE 2.

The Kings engage, moreover, to cede gratuitously and in full to France, when they are requested by the captain of the man-of-war which shall have received the permission, the land necessary (at least 2 square miles) for the creation of military establishments which will be necessary when the French Government shall give orders for the occupation of the country. The captain, furnished with orders to establish the office, shall be free to choose the place which shall seem to him most convenient to set up this establishment.

ARTICLE 3.

The Kings cannot form any alliance or make any treaty with foreign powers, this right remaining vested in His Majesty the Emperor of the French or in agents whom he shall be pleased to designate. Consequently, no nation will have the right to found establishments of any kind in the country without having previously obtained permission of the French Government.

In case the captain of a man-of-war or of a foreign merchantman should take steps towards obtaining from the Kings any concession for himself or his countrymen, the present treaty shall be communicated to him that he may know of the engagements made with France.

ARTICLE 4.

Peaceable frequenting of the whole country subject to the authority of the aforesaid Kings and the free navigation of all the water-courses traversing it, are secured to the French, as well the free trade in all the products of the country itself as of those which are imported into it from the interior.

The Kings and all the people they govern, bind themselves in fact to act in good faith in regard to the French, to cause them to be respected in their person and their property or merchandise in all parts of the territory they shall be pleased to visit.

French merchantmen shall be equally respected and protected, if necessary.

If one of them is shipwrecked, a donation not to exceed a third of the objects saved shall be given to the natives who shall assist in the salvage.

ARTICLE 5.

If any difficulty arises between the traders and the natives, it shall be decided by the commander of the first French war vessel coming to the country, and prompt justice will be meted to the offenders, whoever they may be, Europeans or natives.

ARTICLE 6.

In exchange for these concessions the protection of French men-of-war will be accorded to the Kings and their subjects against any aggression from any nation whatever.

As evidence of this protection and proof of the subjection of the Kings to His Majesty the Emperor of the French and their faithfulness in observing the clauses of the present treaty, the Kings should raise the French flag every time a vessel of war or a merchantman, of whatever nation, shall come to anchor, so that the French authority shall become established in the country.

ARTICLE 7.

The present treaty shall take effect dating from this very day, as to the stipulated dominions, or else the signatory powers expose their country to all the rigors of war made upon them by the French war vessels as a consequence of their bad faith.

Besides, it will not be binding upon the French until after the ratification by His Majesty the Emperor of the French, their sovereign.

Done in triplicate, of which one has been left in the hands of each King after its having been read to him and giving him a translation, on board the steam advice boat the *Renaudin*, at anchor in Little Bériby, the 4th February, 1868.

The Kings of Little Bériby, of Bassa, and of Grand Bériby, not knowing how to sign, have authorized William Moosis Owa, nephew of the King of Little Bériby, and acting as interpreter, to sign in their name.

CRESPIN (E.),
Lieutenant, Commanding the ship Renaudin.

Witnesses:
PETOU, *Second Ensign of the Renaudin.*
GUISOLPHE, *Ensign of the vessel the Renaudin.*

WILLIAM MOOSIS OWA.

No. 225.

Mr. McLane to Mr. Bayard.

No. 305.] LEGATION OF THE UNITED STATES,
Paris, November 5, 1886. (Received November 17.)

SIR: Referring to my dispatch No. 220, of May 20, 1886, and that of Mr. Vignaud, No. 225, of May 27, 1886, I have the honor to call your attention to the fact that I have not received your approval of the pro-

tocol therein inclosed, with the necessary authority to communicate such approval to the conference, which adjourned in May last to meet again on the 1st of December next.

I inclose herewith a copy and translation of a communication from M. de Freycinet containing a list of the powers that have signified their approval of the protocol and requesting me to be prepared on the 1st of December to make known to the conference the views of my Government. This protocol, as I advised you in my No. 220, was satisfactory to the two American companies, but time so presses that I have to request you to communicate by telegraph authority to approve it when the conference meets the 1st of December.

I call your special attention to so much of M. de Freycinet's communication as refers to the legislation necessary to give effect to the penal clauses of the convention of the 14th of March, 1884, and I beg to be informed as to the legislation of the United States in this connection. I am not myself aware that Congress has passed any law to give effect to the convention.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 305.—Translation.]

M. de Freycinet to Mr. McLane.

PARIS, *November* 4, 1886.

SIR: As you know, the delegates of the different powers having signed the convention of the 14th March, 1884, for the protection of submarine cables, met at Paris the 12th of last May and adjourned until the 1st of December, after having drawn up in a protocol a draft of an interpreting memorandum, which they engaged themselves to recommend for adoption to their respective Governments.

The Government of the Republic instructed, during the month of June, its representatives to communicate officially to the different contracting states the text of this memorandum, and to make it known that it was much interested in having this signed with as little delay as possible.

Of the twenty-five contracting powers fifteen, the list of whom you will find annexed, have already given their adhesion to the construing memorandum.

I should be much pleased if the American Government would intimate if it accepts it also, and would be kind enough at the same time to authorize you to sign it. This formality should be fulfilled before the 1st December. It is on this date, in fact, that the conference will recommence its sessions in order to finish on the one hand the examination of the laws of which article 12 of the convention of the 14th of March, 1884, prescribes the promulgation; and on the other hand, to agree upon a decision in regard to the contracting parties who shall not be able to show the adoption of the measures aimed at by this article 12.

In regard to this matter, the fact must not be lost sight of that the penal clauses of the convention of 14th of March, 1884, can not suffice to insure to the prevention of the violations of the convention which it foresees, the convention not specifying the penalty to be inflicted. It is then necessary, in order that the convention may be carried out in regard to this point, that the legislation of each contracting state should each contain express provisions for repressing any violation of articles 2, 5, and 6, and it is important that the Governments which had not at the time of the last conference adopted such provisions should communicate the text of them as soon as possible to the Government of the Republic, to be transmitted to the delegates of the different countries on the renewal of their deliberations; that is to say, on the 1st of December next.

I would be obliged if you would call the attention of your Government to this point, which will be kind enough, I hope, to furnish you with precise instructions, with the view of permitting the next conference to pronounce itself on the situation of the states having signed who might not be able to put the convention into operation the 1st January, 1887.

Accept, etc.,

C. DE FREYCINET.

List of the powers which have ratified the convention for the protection of submarine cables and who have already accepted the interpreting memorandum, the terms of which were agreed upon by their delegates the 21st of May, 1886: Belgium, Denmark, France, Great Britain, Guatemala, Greece, Italy, the Netherlands, Portugal, Roumania, Russia, Salvador, Servia, Sweden and Norway, Uruguay.

Protocol inclosed in Mr. Vignaud's No. 225, May 27, 1886.

The undersigned, delegates of the Argentine Republic, Austria-Hungary, Belgium, Brazil, Costa Rica, Denmark, the Dominican Republic, Spain, the United States of America, France, Great Britain, Greece, Guatemala, Italy, Japan, the Netherlands, Portugal, Roumania, Russia, Salvador, Servia, Sweden and Norway, Turkey, and Uruguay, have met together at Paris on the 12th of May, 1886, for the purpose of examining the situation of the different states signers of the convention of the 14th of March, 1884, for the protection of submarine cables, in respect to the execution of Article 12 of the said convention.

As a result of the examination to which they have applied themselves in concert, they have decided upon the draft of declaration which is annexed to the present protocol and which they engage themselves to recommend for adoption to their respective Governments.

Done at Paris May 21, 1886.

Argentine Confederation: JOSÉ C. PAZ.
Austria-Hungary: GOLUCHOWSKI.
Belgium: LEOPOLD ORBAN.
Brazil: ARINOS.
Costa Rica: FERNANDEZ.
Denmark: MOLTKEHOITFELDT.
Dominican Republic: EMANUEL DE ALMEDA.
Spain: JE. LUIS ALBAREDA, VICONTE COROMNIA, ZARTO THOS ACANA.
United States: ROBERT M. MCLANE.
France: GRANET, CLAVERY, FRIBOURG, L. RENAULT, CHASSERIAU, T. RAYNAUD.
Great Britain: M. KENNED, C. C. TREVOR, T. C. LAMB.
Greece: N. DELYANNI.
Guatemala: C. GOGUEL.
Italy: F. SALVATORI, G. SOLANO.
Japan: F. MARSHALL.
The Netherlands: A. DE STUERS.
Portugal: ANDRADE CORVO, BRISSAC.
Roumania: V. ALECSANDRI.
Russia: E. ALEXEIEFF.
Salvador: PECTOR.
Servia: T. MARINOVITCH.
Sweden and Norway: C. LEWENHAUPT.
Turkey: DJÉMAL.
Uruguay: JUAN J. DIAZ.

DRAFT OF DECLARATION.

The undersigned, plenipotentiaries of the Governments having signed the convention of the 14th March, 1884, for the protection of submarine cables, having recognized the propriety of determining precisely the sense of the terms of Articles 2 and 4 of the said convention, have decided with one accord upon the following declaration:

Certain doubts having arisen as to the meaning of the word "*voluntarily*," inserted in Article 2 of the convention of the 14th March, 1884, it is understood that the clause of penal responsibility, mentioned in said article, does not apply to cases of breakage or damages caused accidentally or necessarily while repairing a cable when all precautions have been taken to avoid these breakages or damages.

It is equally understood that Article 4 of the convention has had no other object and should have no other effect than to charge the proper tribunals of each country with settling in conformity with their laws and according to the circumstances, the question of the civil responsibility of the owner of a cable, who, in the laying or the repairing of this cable, causes the breakage or damage of another cable, as well as the consequences of this responsibility, if it is recognized that such exists.

In witness whereof, etc.

No. 226.

Mr. Bayard to Mr. McLane.

No. 174.] DEPARTMENT OF STATE,
Washington, November 24, 1886.

SIR: I have received your No. 305, of the 5th instant, inclosing a communication from M. de Freycinet, in relation to the protocol or declara

tion adopted at the submarine cables conference in Paris in May last, for the purpose of determining the construction of certain provisions of the convention of March 14, 1884. Immediately upon the reception of your dispatch, I sent you the following telegraphic instructions:

McLANE, *Minister, Paris:*

You are authorized to sign protocol explaining cables convention, subject to Senate's approval. Legislation pending before Congress, which meets December 6.

BAYARD.

In this connection I think it proper to say that I received from the French minister at this capital, under date of the 8th July last, a note transmitting proceedings of the cables conference held at Paris in May last, and requesting me to authorize you, by telegraph, to sign the protocol in question unconditionally. The reason given for this request was that, "in order to enable the different Governments, and especially the London cabinet, to adopt such decisions as may be required by an acceptance of the proposed declaration," it was important "to change this draft of a declaration, without delay, to a definitive instrument."

With this request to give you authority to sign the declaration definitely, I did not deem it proper to comply for reasons which I will proceed to state, and which you may make known in a general way to M. de Freycinet.

The object of the declaration in question is to settle the interpretation and effect to be given to the second and fourth articles of the convention of the 14th of March, 1884. The first of these articles has reference to the punishment of persons for the "breaking or injury of a submarine cable, done willfully (*volontairement*) or through culpable negligence," etc. The second article named provides that the "owner of a cable who, by the laying or repairing of that cable shall cause the breaking or injury of another cable, shall be required to pay the cost of the repairs which such breaking or injury shall have rendered necessary, but such payment shall not bar the enforcement, if there be ground therefor, of Article II of this convention."

The declaration reads as follows:

Certain doubts having arisen as to the meaning of the word *volontairement* inserted in Article II of the convention of the 14th of March, 1884, it is understood that the imposition of penal responsibility mentioned in the said article does not apply to cases of breaking or of damage occasioned accidentally or necessarily in repairing a cable, when all precautions have been taken to avoid such breakings or damages.

It is equally understood that Article IV of the convention has no other end and ought to have no other effect than to charge the competent tribunals of each country with the determination, conformably to their laws and according to circumstances, of the question of the civil responsibility of the proprietor of a cable who, by the laying or repairing of such cable, causes the breaking or damage of another cable, and in the same manner the consequences of that responsibility if it is found to exist.

By the Constitution of the United States treaties made under the authority of the United States are a part of the supreme law of the land, and the convention of the 14th March, 1884, having been made in accordance with the Constitution, is a part of that supreme law.

But, whilst it is true that treaties are a part of the supreme law of the land, they are nevertheless to be viewed in two lights; that is to say, in the light of politics and in the light of juridical law. Where the construction of a treaty is a matter of national policy, the authoritative construction is that of the political branch of the Government. It is, the function of the Executive or of Congress, as the case may be. When a political question is so determined, the courts follow that determination. Such was the decision of the Supreme Court in cases arising under the treaty of 1803 with France, of 1819 with Spain, and of 1848 with Mexico.

But where a treaty is to be construed merely as a municipal law, affecting private rights, the courts act with entire independence of the Executive, in construing both the treaty and the legislation that Congress may have adopted to carry it into effect. And while great weight might be given by the courts to an opinion of the Executive in that relation, such an opinion would not be regarded as having controlling force.

The declaration in question is intended, as has been seen, to settle two questions. The first is that of penal responsibility under Article II of the convention for the accidental or necessary breaking or injury of a cable in an attempt to repair another cable; the second is that of civil responsibility under Article IV of the convention, for injuries done to a cable in an effort to lay or repair another cable.

These are judicial questions to be determined by the courts before whom the appropriate suits may be brought. The only power that can authoritatively construe a treaty for the judicial tribunal on questions of the character described is the legislature, or the treaty-making power itself. In either case the result would be a law which would be binding upon the courts.

It is to be observed in this connection that the treaty in question is not self-executing, and that it requires appropriate legislation to give it effect. If, under these circumstances, the Executive should now assume to interpret the force and effect of the convention, we might hereafter have the spectacle, when Congress acted, of an Executive interpretation of one purport and a different Congressional interpretation, and this in a matter not of Executive cognizance.

For the reasons stated it was not deemed expedient to authorize you to sign the declaration unconditionally. And as the session of Congress was drawing to a close when the note of the French minister was received, and it seemed impracticable to secure the Senate's ratification of the declaration before adjournment, it was not thought best to send you such telegraphic instructions as were solicited.

I desire, however, to refer to an incident in our diplomatic history which bears upon the matter under consideration, and which might have been regarded as a precedent for the Executive in this case, if circumstances had seemed to require a different course from that which has been taken. I refer to the protocol which accompanies the treaty of Guadalupe Hidalgo, in the volume of treaties between the United States and other powers.

The treaty as signed at the city of Guadelupe Hidalgo, on the 2d of February, 1848, was so amended by the Senate as to create doubt of its acceptance by the Mexican Government. In order to secure its ratification by that Government, as amended, President Polk sent two commissioners, Mr. A. H. Sevier and Mr. Nathan Clifford, to Mexico, with instructions to explain to the Mexican minister for foreign affairs, or to the authorized agents of the Mexican Government, the reasons which had influenced the Senate in adopting the several amendments.

Before the arrival of the commissioners at the seat of the Mexican Government, the Mexican Congress approved the treaty as amended without modification or alteration, leaving nothing to be performed except the exchange of ratifications, which took place on the 30th of May, 1848. But between the dates of the approval of the treaty by the Mexican Congress and that of the exchange of ratifications, the commissioners had several conferences with the agents of Mexico, the results of which were reduced to the form of a protocol, which was signed by Messrs. Sevier and Clifford on the part of the United States, and Señor Luis de la Rosa on the part of Mexico.

The expressed object of this protocol was to explain the amendments of the Senate. It was defended by the administration on this ground; and in a message to the House of Representatives, the President stated that "had the protocol varied the treaty, as amended by the Senate of the United States, it would have no binding effect." But notwithstanding this explanation, the course of the President in not submitting the protocol to the Senate before the exchange of ratifications of the treaty was severely criticised in Congress.

I inclose herewith a copy of the bill now pending before Congress for the execution of the convention.

I am, etc.

T. F. BAYARD.

[Inclosure in No. 174.]

A bill to carry into effect the international convention of the fourteenth of March, eighteen hundred and eighty-four, for the protection of submarine cables.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be known as the "Submarine Cables Act of eighteen hundred and eighty-six."

SEC. 2. That the provisions of this act shall be held to apply only to cables to which the convention of the fourteenth of March, eighteen hundred and eighty-four, which is hereto annexed and herein referred to as the convention, for the time being applies; and, subject to the provisions of this act, the provisions of the convention shall be of the same force as if they were embodied in this act, and shall be taken to be a part hereof.

SEC. 3. That any person who shall willfully break or injure, or attempt to break or injure, or who shall in any manner procure, counsel, aid, abet, or be accessory to such breaking or injury, or attempt to break or injure, a submarine cable, in such manner as to interrupt or obstruct, in whole or in part, telegraphic communication, shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding two years, and to a fine either in lieu of or in addition to such imprisonment not exceeding five thousand dollars.

SEC. 4. That any person who by culpable negligence shall break or injure a submarine cable in such manner as to interrupt or obstruct in whole or in part telegraphic communication shall be guilty of a misdemeanor, and, on conviction thereof, shall be liable to imprisonment for a term not exceeding three months, and to a fine not exceeding five hundred dollars in lieu of or in addition to such imprisonment.

SEC. 5. That the provisions of this act shall not apply to a person who breaks or injures a cable in an effort to save the life or limb of himself or of any other person, or to save his own or any other vessel: *Provided,* That he takes reasonable precautions to avoid such breaking or injury.

SEC. 6. That the provisions of the Revised Statutes from section forty-three hundred to section forty-three hundred and five, inclusive, for the trial of offenses against the navigation laws of the United States, shall extend to the trial of offenses against the provisions of articles five and six of the convention; and a person convicted of an offense against the provisions of the said articles shall be liable to a fine not exceeding five hundred dollars.

SEC. 7. That the penalties provided in this act for the breaking or injury of a submarine cable shall not be a bar to a suit for damages on account of such breaking or injury.

SEC. 8. That the provisions of article four of the convention, in so far as they relate to the payment by the owner of a cable of the cost of repairs of another cable broken or injured in the attempt to lay or repair the former cable, shall not apply to that part of the latter cable which is laid in a depth of water exceeding one hundred fathoms.

SEC. 9. That for the purpose of carrying into effect the convention, a person commanding a ship of war of the United States or of any foreign state for the time being bound by the convention, or a ship specially commissioned by the Government of the United States or by the Government of such foreign state, may exercise and perform the duties vested in and imposed on such officer by the convention.

SEC. 10. That when an offense against this act shall have been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, unless some other person is shown to have been in charge of and navigating such vessel or

boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly.

SEC. 11. That any document drawn up in pursuance of article seven or article ten of the convention shall be admissible in any proceeding, civil or criminal, as *prima facie* evidence of the facts or matters stated therein.

SEC. 12. That unless the context of this act otherwise requires, the term "vessel" shall be taken to mean every description of vessel used in navigation, in whatever way it is propelled; the term "master" shall be taken to include every person having command or charge of a vessel; and the term "person" to include a body of persons corporate, or unincorporate.

SEC. 13. That the district courts shall have jurisdiction of all suits of a civil nature arising under this act; and from all decrees or judgments in such suits, where the matter in dispute exceeds the sum of fifty dollars, exclusive of costs, an appeal shall be allowed to the circuit court next to be held in such district, and such circuit court is required to receive, hear, and determine such appeal.

No. 227.

Mr. Bayard to Mr. McLane.

No. 176.] DEPARTMENT OF STATE,
Washington, December 1, 1886.

SIR: I inclose a copy of a statement,* with affidavit, addressed to this Department by Mr. Edward A. Simmert, concerning an alleged estate in France left by Baron von Kuhmann, who died at the Military Academy of St. Cyr in 1811. You will be so good as to give the matter such attention as in your judgment it appears to deserve, and report the result to the Department.

For the convenience of the Department, as well as of your own legation, it would be well for you to make such a report in regard to this and the many cases of its class, embodying the provisions of the French laws regarding unclaimed estates, and the experience of your legation in searching for them, which may be printed by the Department as a circular to send, as is done in regard to estates in England, Germany, and Holland, by way of reply to the inquiries of claimants, who are in most cases the victims of designing agents.

I am, etc.,

T. F. BAYARD.

No. 228.

Mr. McLane to Mr. Bayard.

No. 317.] LEGATION OF THE UNITED STATES,
Paris, December 2, 1886. (Received December 17.)

SIR: The conference for the protection of submarine cables met yesterday at the foreign office, and it was agreed informally that to enable the states which have not yet conformed to Article 12 of the convention, it would be put in operation on October 1, instead of January. If at that date there are states unprepared to enforce the convention, it will be applicable to them as fast as they adopt the legislation required by said Article 12; each state giving notice of its action to the other con-

* Not printed herewith.

tracting parties through the French Government. At our next meeting this understanding will be put in regular shape.

I inclose herewith a printed copy* of the laws passed by Great Britain, Salvador, and Servia to enforce the convention, and beg leave to suggest the propriety of taking some means for securing similar legislation without further delay.

I have, etc.,

ROBERT M. MCLANE.

No. 229.

Mr. McLane to Mr. Bayard.

No. 323.] LEGATION OF THE UNITED STATES,
Paris, December 14, 1886. (Received December 27.)

SIR: I have to acknowledge your No. 174, of November 24, transmitting the draft of the bill now pending before Congress to give effect to the convention for the protection of submarine cables and explaining the constitutional reasons which have prevented you from giving me authority to sign unconditionally the explanatory protocol added to the convention.

I will acquaint the French Government with these reasons, which are perhaps not understood, and I will communicate the bill to the committee of the conference having charge of the matter. It came too late to be printed in the journal of the conference, which on the 6th instant adjourned until the 1st of July next, in order to enable the States which have not yet done so to adopt the legislation necessary for the application of the convention.

In the mean time the execution of the convention is deferred. The conference at its next session will fix the date upon which it is to be put in operation, which date is very likely to be the 1st of October, 1887.

I trust Congress will adopt this session the bill you kindly sent me, for if it does not we will have to ask again for delay. I beg you to communicate this information to the Committee on Foreign Affairs of the Senate and House of Representatives.

I have, etc.,

ROBERT M. MCLANE.

No. 230.

Mr. McLane to Mr. Bayard.

No. 334.] LEGATION OF THE UNITED STATES,
Paris, December 31, 1886. (Received January 11, 1887.)

SIR: Marriages of Americans in France, which some years ago were the object of much correspondence between this legation and the Department, give occasion now to renewed embarrassments, to which I desire to call your attention.

Formerly, when Americans were married at the legation without any regard to the laws of France, they had no difficulty in complying with

* Not printed herewith.

the simple formalities required by our usages and laws. The propriety and validity of these marriages being questioned, the Department very properly interfered with the practice, and the safer rule was established that Americans desiring to marry in France should conform to the laws and regulations of France. This rule created at first many embarrassments. The conditions required by the French laws for a marriage in France are substantially as follows: Each party desiring to marry must produce—

(1°) A certificate of birth, issued by some civil authority, written or translated into French. A certificate of baptism or any paper issued by a church is not accepted.

(2°) The written consent of parents or guardian, or a certificate of their death.

(3°) Evidence of six months' residence in the commune or ward in which the marriage is to take place, from at least one of the two parties.

(4°) Publication of bans on two Sundays, and at least during eleven days at the mayoralty of that commune, and if one of the two parties has not there the residence required, publication also at the mayoralty of his previous residence.

Very few Americans being able to comply literally with these conditions, the legation sought to relieve them of the embarrassment by issuing papers which might be accepted as substitutes for those required by the French authorities.

With this view three forms of certificates were prepared in French, copies of which are herewith inclosed.

Form No. 1, which is printed because very frequently applied for, is a certificate of birth. It is given upon evidence satisfactory to the legation; some family record, a certificate of baptism, or, occasionally, the statement under oath of the parties.

Form No. 2 is a statement that in the United States the consent of the parents is not necessary for the marriage of their children when they are over age.

Form No. 3 certifies that publication of bans at the domicile in the United States of an American marrying abroad is not required.

In the beginning these substitutes were frequently rejected by the French mayors, and many of our countrymen who had made arrangements to marry in France had to proceed to England or to Switzerland, where the laws are less exacting, to have their marriage solemnized. Gradually, however, the practice established itself and the Duke Decazes, minister of foreign affairs, having at the time countenanced and recommended it, although unofficially, it was respected by the French authorities and became general. It happens, nevertheless, that occasionally a new mayor or an unreasonable subordinate refuses one or more of these papers and compels thereby the legation to ask the interposition of the higher authorities. It is an instance of this kind which gives occasion to the present dispatch.

Originally the certificates above mentioned were issued only by this legation and being given simply to accommodate our countrymen, they were and are still issued without charge. Later on the consulate also issued certificates of this kind, sometimes in the identical form prepared and adopted by this legation, sometimes in another form, and generally made some pecuniary charge for them. As those who were unwilling or unable to pay for these papers could obtain them gratuitously at the legation, I did not think it advisable to question either the right of the consulate to issue such papers or the legality and pro-

priety of charging for them, as my predecessors had not done so. Recently the practice has created trouble and embarrassment, which obliges me to interfere.

A gentleman who had come from the United States expressly to marry a lady residing in Paris, called on the consul to obtain the papers he was asked to produce by the mayor of the ward where the marriage was to take place. The consul complied with his request and charged him 100 francs. But for some reason or other the mayor objected to the paper furnished by the consul, and Mr. ——— called at the legation to procure another one. He got it, and was again refused by the mayor. I then applied to the procureur of the Republic, who admitted the validity of the paper issued by the legation, but took advantage of the incident to question the whole practice. I addressed him again, to explain its true object and import, expressing at the same time the hope and desire that it will not be interfered with. When an answer is received to this communication I may have to recur again to the subject.

In the mean time, the interposition of the legation had relieved Mr. ———, and this gentleman has expressed in writing his warm appreciation of our action.

The incident having confirmed me in an impression already formed that the interference of the consulate in this specific matter was injudicious, and in regard to one or more of the certificates, without authority of any kind, I instructed Mr. Vignaud to advise Mr. Walker to abstain hereafter from issuing any of the papers required by the French authorities for the marriage of Americans in France.

Mr. Vignaud did so in a note, copy of which is herewith inclosed, in which he explains that the request is made because the intervention of the consulate might create embarrassment and bring into question the whole practice. The reply of Mr. Walker, copy of which is also herewith inclosed, shows that he did not appreciate my motive, or that he does not understand the question. He speaks of his right to issue certain certificates of the kind he alluded to as in the nature of "*certificats de coutume*," which right I did not question, and he concludes substantially that he will consider whether he can properly comply with my request. I shall enter into no controversy with the consul-general upon this subject.

It may or may not be his right to issue certificates stating what the law is in the country which he represents and what may be the age of Americans desiring to marry in France, which is in no sense a statement of the law or of the customs of his country. I submit to the better judgment and authority of the Department whether he has any such right, and if he has, whether its exercise when it can possibly work to the detriment of our countrymen, is proper; and whether all the certificates in question are of such character; and, also, whether it is not his duty to give a prompt and cordial acquiescence in the request of the minister when his action embarrasses the latter in his efforts to adjust differences with this Government in matters affecting the interests of Americans residing here.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure 1 in No. 334.]

FORM NO. 1.

Acte de —— No. ——. Paris —— 188–. Acte de —— de —— Père —— —— Mère —— —— le —— à —— État —— États-Unis d'Amérique.	LÉGATION DES ÉTATS-UNIS D'AMÉRIQUE.	LÉGATION DES ÉTATS-UNIS D'AMÉRIQUE. [Extrait des Registres de l'État Civil.] No. ——. Paris, ce —— 188–. Preuve ayant été faite à cette Chancellerie que F —— légitime de —— —— est —— le —— 188–, à ——, État de ——, États-Unis d'Amérique; le présent certificat a été délivré pour tenir lieu d'extrait des registres de l'État Civil. L'Envoyé Extraordinaire et Ministre Plénipotentiaire des États-Unis (or the Secretary): —— ——.

FORM NO. 2.

LÉGATION DES ÉTATS-UNIS D'AMÉRIQUE,
Paris, —— 188–.

A la prière de M. ——, citoyen américain demeurant temporairement en France, No. —, rue —, il est certifié par la présente qu'aux termes des lois américaines le consentement des père et mère n'est point nécessaire pour le mariage des personnes âgées de vingt et un ans accomplis.

(Signed by the minister or the secretary.)

FORM NO. 3.

LÉGATION DES ÉTATS-UNIS D'AMÉRIQUE,
Paris, —— 188–.

A la prière de M. —— citoyen des États-Unis demeurant temporairement à Paris rue —, No. —, il est certifié qu'aux termes des lois américaines la publication des mariages des américains célébrés à l'étranger n'est point requise au domicile originel aux États-Unis.

(Signed by the minister or the secretary.)

[Inclosure 2 in No. 334.]

Mr. Vignaud to Mr. Walker.

LEGATION OF THE UNITED STATES,
Paris, December 24, 1886.

DEAR SIR: Referring to my letter of the 16th instant, I am directed by the minister to say that in the matter of papers required by the French authorities for the marriage of American citizens in France, it is desirable that all such papers be issued by the legation directly to the parties interested. The propriety of this rule comes from the consideration that the original understanding with the foreign office concerning these marriages contemplated only papers bearing the seal of the legation, and any other course may create confusion and perhaps bring into question the practice itself.

Very respectfully, yours,

HENRY VIGNAUD.

[Inclosure 3 in No. 334.]

Mr. Walker to Mr. Vignaud.

CONSULATE-GENERAL OF THE UNITED STATES,
Paris, December 28, 1886.

SIR: I beg to acknowledge the receipt of your letter of the 24th instant, and to say that I have always a strong desire to defer to the wishes of the minister and the legation. The subject in question, however, seems to me to involve the abandonment of an important function pertaining to the office of consuls by international law, namely, that of certifying or declaring the laws and customs of the countries which they represent. I have always supposed this to be a strictly consular function, and a brief examination, which I have been able to give to the subject since the receipt of your letter, tends to confirm that impression. While desiring, therefore, to render the highest respect to the office and wishes of the minister, I feel it to be a duty which I owe to my own office to examine the subject with the greatest care before giving up a practice which has prevailed, as I learn, without interruption, for fifteen years past and perhaps for a longer period.

I will address you further on the subject as soon as I have been able to make such an examination of the whole question as its importance and serious character demand.

Very respectfully, yours, etc.,

GEORGE WALKER.

P. S.—Since writing the above I am informed that the consulate-general at Berlin issues certificates of custom in cases of marriage of precisely the same character as those issued by this office.

No. 231.

Mr. McLane to Mr. Bayard.

No. 336.] LEGATION OF THE UNITED STATES,
Paris, January 5, 1887. (Received January 18.)

SIR: Referring to your No. 177, of December 3, 1886, requesting me to ascertain if the French Government would authorize the "Gate City Guards" of Atlanta, which are about to visit Europe, to wear their uniforms and to carry their arms during their stay in France, I have to say that the desire of this volunteer organization meets with no objection, and I am simply asked to communicate to the French Government the date of their arrival in France.

I inclose herewith copy and translation of Mr. Flourens's note on the subject.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 336.—Translation.]

Mr. Flourens to Mr. McLane.

PARIS, *January* 6, 1887.

SIR: By a note of the 13th of December last, you were pleased to express the desire of obtaining for the volunteer "Gate City Guards" of Atlanta, the authorization to wear their uniforms, and to carry their arms during their stay in France, which they propose to visit in the summer of 1887.

After having taken the advice of the ministers of the interior and of war, I am happy to advise you that the application of this organization meets with no objection on the part of the Government of the Republic. I shall be obliged to you to kindly inform me, when the time comes, of the exact date of the arrival of the "Gate City Guards" of Atlanta.

Please receive, etc., FLOURENS.

No. 232.

Mr. McLane to Mr. Bayard.

No. 346.] LEGATION OF THE UNITED STATES,
Paris, January 13, 1887. (Received January 25.)

SIR: I have the honor to send herewith copy of a letter received from Mr. Richard King, domiciled in the United States, but temporarily residing at No. 20 Boulevard Montmartre, Paris, who applies for a passport. Mr. King is not a full American citizen; he has only declared his intention of becoming one. According to the regulations he is not entitled to a passport. Upon his insistence that he could not do without it, and that it would not be proper to apply for one at the British embassy, I advised him to make his application in writing, which I promised to submit to your consideration.

I would not have done so if your circular of June 29, 1885, with reference to changes in Articles XI and XXIV of the Consular Regulations had not led me to believe that in certain cases protection might be extended to one domiciled in the United States. As in the case of Mr. King protection can only be extended in the shape of a passport, I beg to be informed whether I can properly issue one to him, and, if so, whether the same will be a qualified one and in what sense.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 346.]

Mr. King to Mr. McLane.

20 BOULEVARD MONTMARTRE.
Paris, January 8, 1887.

SIR: In accordance with the verbal instructions given me at your office this day I have the honor to request that a passport may be granted me as an American citizen, having taken out and declared my intention to become a citizen of the United States. I may say that I made the declarations (necessary) the 20th August, 1883, copy of which was handed in by me for your perusal this day. I had then and still have every intention of taking out my final papers. For your information I may add that I am a Canadian by birth and have resided in the United States on and off for a period of about ten years.

I propose making a journey shortly to Russia to represent an American firm there, and should I be unable to obtain the necessary passport I would be (with deep regret) obliged to destroy my declaration of 1883, and once more become a British subject. Under these peculiar circumstances, and, further, my interests being entirely in and with the United States, I trust that you may be enabled to grant my request.

Apologizing for the length of my letter and awaiting an early reply, for which please accept my thanks in advance,

I have, etc.,

RICH'D KING.

No. 233.

Mr. McLane to Mr. Bayard.

No. 351.] LEGATION OF THE UNITED STATES,
Paris, January 26, 1887. (Received February 10.)

SIR: At the request of the Society of the Friends of Peace, I have the honor to send herewith three printed copies of an appeal to the civ-

ilized world, issued by that philanthropic association, of which one is intended for yourself and the two others for the presiding officers of the two Houses of Congress.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 351.—Translation.]

SOCIÉTÉ FRANÇAISE DES AMIS DE LA PAIX
(FRENCH SOCIETY OF THE FRIENDS OF PEACE),
8 *Rue St. Lazare, Paris.*

To his excellency the minister of foreign affairs of the United States of America:

MR. MINISTER: War, notwithstanding the progress of civilization, still remains in the front rank of the scourges which afflict mankind.

All nations when subjected to the ravages of this scourge agree in deprecating it. There is not one, be its power and its resources what they may, that does not shudder at the thought of the calamities that war may unexpectedly bring upon it; not one, whatever may be the nature of its institutions, that does not openly complain of the constantly increasing sacrifices required by this rivalry in arming, which, under pretense of guarantying its safety, but too often endangers it.

It must be admitted, however, that among the states of Europe at least peace, although continually menaced, has about half a century been disturbed more rarely and with greater difficulty. The wisdom of governments, influenced by the feelings of the people, is more and more inclined to settle the questions which divide them without bloodshed, and to substitute less violent and more truly effective means for the hazardous decisions of force.

Sometimes under the name of mediation, and sometimes under the juridical name of arbitration, conflicts which seemed to be on the point of setting the world on fire have, thanks to the moderation of the powers interested and to the conciliatory intervention of friendly powers, been happily appeased.

The ever-famous case of the Alabama claims, the more recent Afghanistan case, and finally the important case of the Carolines—to mention the most memorable ones only—are remembered by everybody.

Diplomacy, however, has not only, to its great honor, prepared and effected in a number of cases these beneficent combinations, it has introduced the principle thereof into the written law of Europe, and by declarations whose value can be contested by none it has more than once invested them with authority of an international character which now causes them to be adopted and respected by all.

By the twenty-third protocol of the conference of 1856 the representatives of the great powers that signed the treaty of Paris unanimously expressed the hope that those states between which any serious disagreement should arise would, before taking up arms, have recourse, as far as circumstances would permit, to the good offices of a friendly power.

The powers not represented at the conference were formally invited to adhere to this protocol, which almost all of them did.

The treaty itself officially stipulated, in its seventh article, that if any disagreement should arise between the Sublime Porte and one or more of the signatory powers of such a character as to menace the maintenance of their relations, the Sublime Porte and each one of the powers, before resorting to the use of force, should enable the other contracting parties to prevent such an extremity by their mediatorial action.

These declarations, notwithstanding the restrictions by which they were unfortunately surrounded, were very significant. They constituted on the part of the signatory powers, in the first place, and on that of the adhering powers, in the second, a positive and solemn affirmation of the duty thenceforth proclaimed by all and for all, to exhaust, before being authorized to appeal to force, every means to secure an amicable arrangement, and they established above the rival pretensions of both parties a kind of common and superior jurisdiction whose function it was to speak in the name of all.

Several European parliaments, viz, that of Great Britain, that of Sweden, that of Norway, that of Belgium, that of the Netherlands, that of Italy, and that of France, and, outside of the continent of Europe, that of the Republic of the United States, have at various times and in various ways expressed a desire that their respective Governments should enter into negotiations with other Governments with a view to extending, generalizing, and strengthening these auspicious beginnings.

The congress which met at Berlin in 1878, on whose table, among other documents submitted to its consideration, were the treaty of Paris and the protocols appended thereto, recognized and confirmed in its turn their value and authority by stating, in express terms, that the unabrogated stipulations of the previous treaties and conferences should remain in force.

Finally, another conference held at the same place, viz, that of 1884–'85, relative to the Congo State, expressed similar sentiments by making the following declaration: "In case serious disagreements relative to the boundaries of the aforesaid territories shall arise between the signatory powers and such as may hereafter give in their adhesion, these powers agree, before resorting to arms, to have recourse to the mediation of one or more friendly powers.

"In this case the same powers reserve the privilege of having recourse to arbitration."

In order to render these beneficent provisions more ample, and likewise to render them, to the great advantage of all, more imperatively and more certainly applicable to the settlement of all difficulties that might arise among the nations of Europe, it would be sufficient, as your excellency can not fail to perceive, to remove the restrictions (more apparent than real) which, contrarily, beyond a doubt, to the generous intentions of the high contracting parties, might in certain cases diminish their scope and paralyze their action.

The treaty of Paris and the Berlin conference spoke only of the differences that might be occasioned by Turkey or the Congo, because they were specially called to consider matters relating to Turkey or the Congo. It is not possible that they desired by giving to their declarations a restrictive character to confine to questions connected with those states the right and the duty of exercising vigilance and of taking care, which right and which duty they meant to recognize as being possessed by and being incumbent upon Europe, and that they desired to leave for all the rest the field open to greed, passion, and every possible hazard.

Let the powers that are already bound by previous engagements agree, by a collective declaration which will be nothing more than a confirmation of their individual declarations, to recognize these engagements as possessing the character of a general principle of international law, obligatory in all contingencies and upon all parties; they will establish by this simple act a common mediation invested with authority very different from that of the partial mediations which have, nevertheless, done such good service, and possessing almost infallible efficacy in definitely securing the maintenance of that peace which is so necessary to all and the gradual diminution of those military burdens which weigh so heavily upon all.

It will doubtless not be the compulsory introduction into international law of the principle of arbitration, which has already produced so many happy results, and which is destined to produce others of a still more decisive character when it shall be more frequently and more thoroughly put into practice. There are still weightier reasons why it will not be the formation of that high court of nations which is looked for and desired by great and noble minds as the supreme organ of international justice and a definitive guaranty of peace based upon that justice. Yet it will at least be a new and important step onward in the path in which the enlightened diplomacy of Europe has been advancing since 1856, and another unequivocal victory gained by it over the old spirit of violence and barbarity. The world can never be sufficiently grateful to those whose skillful and happy efforts shall have secured this benefit to it.

It is for you, Mr. Minister, by acting in the name of your Government, in concert with the ministers of the other Governments, to contribute to this glorious result and to receive your share of these blessings.

It surely can not enter the mind of any one to ridicule as visionary and Utopian a proceeding which, as we have already remarked, is based upon the public law of Europe, as that law has been established with equal consistency and clearness by the common and reciprocal declarations of all the powers.

We confidently submit these views to your excellency's consideration, feeling sure that we are giving expression to the aspirations of the vast majority of the civilized world, and we beg you at the same time to accept the assurance of our most profound respect.

For the peace societies of Europe and America.

The presidents:

FREDERIC PASSY.
AD. PRANEL.

Deputy and member of the Institute:

AUG. ESCHENAUER,
HIPPOLYTE DESTREAU.

No. 234.

Mr. Bayard to Mr. McLane.

No. 194.] DEPARTMENT OF STATE,
Washington, February 1, 1887.

SIR: Your dispatch No. 346, of the 13th ultimo, in regard to the application of Mr. Richard King (who has made his declaration of his intention to become an American citizen) for a passport has been received and considered.

If Mr. King should, on appealing to this Government for protection, show that he was domiciled in this country as well as an inchoate citizen by virtue of having declared his intention, the question of granting protection would be presented for consideration. But this position does not involve the admission of Mr. King's right to a passport or special protection papers. A passport can only be granted to native or naturalized citizens, and protection papers are no longer issued by the Department.

I am, etc.,

T. F. BAYARD.

No. 235.

Mr. Bayard to Mr. McLane.

No. 199.] DEPARTMENT OF STATE,
Washington, February 15, 1887.

SIR: The "appeal of the French Society of the Friends of Peace to the civilized world," which accompanied your dispatch No. 351 of the 26th ultimo, has been received and read with interest.

This Government is warmly in favor of arbitration as a method of settling international disputes, and will neglect no opportunity to give practical effect to its views.

The desire of the memorialists that their address be communicated to the two houses of Congress can be more conveniently accomplished and wider publicity at the same time given to it by including it in the volume of Foreign Relations for 1887 than by communicating the paper directly to the two houses of Congress.

I am, etc.,

T. F. BAYARD.

No. 236.

Mr. McLane to Mr. Bayard.

No. 370.] LEGATION OF THE UNITED STATES,
Paris, March 2, 1887. (Received March 15.)

SIR: I have just received your circular of February 8, forbidding diplomatic and consular officers of the United States to issue certain papers this legation has been in the habit of delivering for the purpose of enabling Americans desiring to marry in France to comply with certain forms of the French law.

As strict compliance with this instruction is calculated to be a source of serious inconvenience to many of our countrymen, I venture to call your attention to the matter with a view of obtaining a reconsideration of your action.

The principle that Americans proposing to marry abroad should conform to the laws of the country where the marriage is to be solemnized has been strictly adhered to by this legation, and for the last ten years Americans have been married in France in accordance with French law. But to comply with these laws it is necessary to furnish the French authorities with papers of a certain kind, almost impossible to procure if the legation does not provide for them. It is necessary, for instance, for an American to produce an official document showing when and where he was born, and to furnish evidence that if he is above age he can marry in the United States without the consent of his parents, and that publication of bans is only necessary where the marriage is solemnized.

An ordinary statement to that effect, such as a certificate signed by a clergyman, a physician, or a notary, will not satisfy the French authorities; they insist upon having an official paper written in French and bearing the seal of an authority recognized in France; in fact, nothing less than the seal of this legation is acceptable to them. A marriage thus solemnized in France is perfectly legal and valid, and therefore in strict conformity with the instructions issued to diplomatic and consular officers of the United States, and this explains why the legation has assumed the responsibility of issuing the papers in question.

No serious error can be committed by certifying to the age of an American, if the fact is satisfactorily established, or to his capacity to marry without the consent of his parents if he has attained his majority. The circulars of the Department No. 18 and No. 39 furnish authentic and reliable information to serve as a basis upon which such certificates can be given, and therefore they are in no sense dependent upon "hearsay," as the circular of February 8 supposes to be the case.

It is true that these certificates are not expressly authorized by statute or by personal instructions, but they are of such a character as to justify such authorization, and I recommend that I be authorized to issue them as heretofore, as they are merely matters of form.

In my No. 334, under date of December 31, 1886, I called your attention to this subject and gave you a very full explanation of the circumstances which gave rise to the practice by this legation. I did this in connection with a request that the consul-general in Paris should not issue the certificates, which this legation issued, under an understanding with the French authorities, as the intervention of the consul created embarrassment and might bring into question the whole practice. I have had no answer to this dispatch although I inclosed for your information a letter from the consul-general, advising me of his hesitation to conform to my wishes, and I informed you at the same time that the certificates he had already issued had created embarrassment and obliged me to correspond with the French authorities, which correspondence terminated most satisfactorily, and authorized and permitted the continuance of the certificates heretofore issued. I think if your attention had been called to this dispatch as particularly as I desired, the practice of this legation, which has been in existence for more than ten years, would have received your approbation and the consul-general would have been instructed not to interfere with it, whatever he might have been authorized to issue in the nature of *certificats de coutume* having no connection with the solemnization of marriages, that matter being left to

the legation as understood between it and the French authorities. Indeed the statement I had occasion to make in that dispatch as to the practice of consuls in issuing *certificats de coutume* as illustrated in the particular case noted in the same, required your personal attention, that you might not be held responsible for the abuse of the practice even when authorized by law or custom. Certificates stating what is the law or custom in the United States as to matters of general concern are constantly applied for at this legation and at our consulates, and it is generally understood that it is part of their functions to issue them. In France particularly, where foreigners in all cases involving their personal status are subjected only to the laws of their nationality, such certificates could not be refused without great detriment to their personal interest, but I am quite of opinion that it is a practice which should be regulated by law or by instruction and not permitted to become an occasion for illegal fees and exactions upon American citizens seeking the aid and protection of the diplomatic and consular agents of the United States.

Please pardon me for recurring at length to this matter in connection with your circular of February 8, but I do so because I am persuaded that while this legation may be authorized to issue certificates which are purely matters of form sanctioned by the French authorities, consular officers should not be authorized to confound them with *certificats de coutume* as to the laws or customs of the United States on matters of general concern.

I have, etc.,

ROBERT M. MCLANE.

No. 237.

Mr. Bayard to Mr. McLane.

No. 209.] DEPARTMENT OF STATE,
Washington, March 22, 1887.

SIR: Referring to previous correspondence respecting reported French aggressions on the territory of Liberia lying between the Cavally and San Pedro Rivers, I briefly state the facts on which Liberia's title to the territory in question is based.

An association called "The Maryland State Colonization Society" was duly incorporated in the State of Maryland by an act of its legislature (Acts of 1831, chap. 314), and was authorized to purchase lands in Africa for the purpose of assisting the colonization of negroes in that country. It was aided by grants of money from the treasury of the State, as well as by voluntary contributions from private persons.

Certain lands lying between Cape Palmas and the Cavally River, immediately south of the territory purchased by the American Colonization Society, were bought from the native chiefs by deed of February 14, 1834, and a colony was established at Cape Palmas.

A succession of other purchases followed; and on February 23, 1846, by deed made to the governor of the colony by Kings Darbo and Tom of Grand Berriby, and duly witnessed, signed, sealed, and delivered, the following-described territory was obtained, bounded "east by the Atlantic Ocean, west by Half Berriby" (called in the French treaty Petit Berriby) "and Majo-Najo Nation of Bushmen, north by the Yappo Nation of Bushmen, and south by the Atlantic Ocean."

On March 13, 1846, a similar deed was made to the agent and governor of the colony by Ourippi, alias King William and Hugo, governor of Half Berriby (Petit Berriby), and, on the same date, one from King George, of Bassa (apparently the Bassa or Bassa Wappoo of the French treaty), and the Kings of G. Tabou and Tabou. By other purchases all the territory between Cape Palmas and Grand Berriby was obtained.

Certified copies of these deeds,* which have been preserved since the dissolution of the Colonization Society by the Maryland Historical Society, are inclosed.

The territory lying between Grand Berriby and the San Pedro River is marked on Anderson's map of Liberia (1879) as purchased in 1850, but as appears from a certificate (a copy of which is inclosed) of James Hall, governor of Maryland, in Liberia, from the founding of the colony, it was in fact purchased in 1846, being the country mentioned in deed No. 8, page 115, of the accompanying pamphlet,† the river there called Padro being unmistakably the San Pedro.

In 1854, by agreement with the parent society, the colonists organized the Independent African State of Maryland, possessing all the territory purchased by the society, and in 1857 the State was by consent annexed to Liberia as Maryland County, all its territory passing to that Republic, which has been recognized by all the Governments of Europe and America, France among the number.

In respect to the southeast boundary, your attention is called to a report on Liberia, made in 1850, at the instance of this Government, by Rev. R. R. Gurley, and published in Senate Ex. Doc. No. 75, first session Thirty-first Congress, vol. 14, 1849 and 1850. He shows that at that date the Republic of Liberia owned by purchase the territory from Mannah Point to Grand Sesters or Cester's River, and the Maryland colony the territory extending from the latter river to the San Pedro.

Sailing Directions of the Lords Commissioners of the Admiralty, 1849 (p. 75 of same Ex. Doc.), describe the coast of Liberia as extending from Mannah Point to the San Pedro River. Reclus (Nouvelle Géographie Universelle, 1887, vol. 12, p. 572) gives the same boundary. Saint Martin (Nouveau Dictionnaire de Géographie Universelle, 1885, fasc. 29, p. 347) also adopts the San Pedro boundary, but states that France now claims the Krou coast up to Cape Palmas, and quotes from a decree published in the Bulletin des Lois, 1885, declaring the villages of Grand et Petit Biribi, Tahou, Bacha, etc., up to and including the mouth of the Garroway, west of Cape Palmas, French possessions. This information, if correct, is the first we have had that the French Government was disposed to enforce the provisions of the long dormant treaty of 1868, inclosed in your legation's No. 298, which, as you will have observed, was not ratified by it till 1883.

It appears, however, from a dispatch from Mr. Carrance, Liberian consul-general at Paris, to his Government, dated June 8, 1883, and published by the Liberian department of state in that year, that the French Government then admitted that the territory of the African Republic extended to the San Pedro. He says:

> I beg to inform you that the war office has just had maps of the greater part of the western shore of Africa sketched. * * * I was asked for information, and you may be sure, Excellence, that I did my best to give to the war office the most careful and complete information. On this occasion I saw the secretary several times. The map drawn up by the Hon. Benjamin Anderson found his approval, and was taken as the basis of the work of these gentlemen, and especially of those intrusted with the Republic of Liberia part.

* Not printed herewith. † Not printed.

This map (which is among the records of this Department) justifies the Liberian claim, and was no doubt the basis of the French map of 1882, which, as stated, also sustained the said claim.

As mentioned in your note of February 3, 1886, to Mr. de Freycinet, Mr. Waddington in 1879, and Mr. Jules Ferry in 1884, disclaimed that France had any design upon any territory which Liberia could claim.

It is not, therefore, apparent how, in view of these declarations, the French Government has been able to ratify in 1883 the treaty of 1868, nor to decree in 1885 the annexation of the villages which were recognized in 1883 as part of Liberia.

The relations of the United States Government with Liberia have not changed. It still feels justified in using its good offices in her behalf. These have been repeatedly exercised and its moral right to their exercise admitted by Great Britain in 1843 (see House Ex. Doc. No. 162, first session Twenty-eighth Congress, vol. 4, 1843–'44), and again in 1882, 1883, 1884, in the controversy concerning the northwestern boundary of Liberia, and by France in the answers of Mr. Waddington in 1879, and of M. Ferry in 1884, above referred to. We are unwilling to believe that it is now the intention of the French Government to act inconsistently with the spirit of these declarations.

You are requested to lay the facts proving the validity of the Liberian title to the territory in question before the French Government, accompanied by such observations as may seem, in your discretion, best calculated to promote the end in view, namely, the recognition of Liberia's right. If it be impossible to obtain this, a definite declaration in regard to the line dividing French and Liberian territory may be made, which will fix a boundary such as France and all the powers can recognize and respect.

I am, etc.,

T. F. BAYARD.

No. 238.

Mr. McLane to Mr. Bayard.

No. 386.] LEGATION OF THE UNITED STATES,
Paris, April 6, 1887. (Received April 19.)

SIR: By referring to my No. 323, of December 14, 1886, it will be seen that on the 8th of said month the international conference for the protection of submarine cables, after deciding to again defer the execution of the convention of 1884, adjourned to July 1, 1887, in order to enable the states which had not yet done so to adopt the necessary legislation for the enforcement of the convention.

You will also remember (see dispatches No. 225, of May 27; 317, of December 2, and 323, of December 14, 1886) that in view of removing certain objections of American and English companies to Articles 2 and 4 of the convention, the conference at a former session had agreed upon a protocol and declaration, which were submitted for your approval with the dispatch No. 225 above mentioned.

Acting upon the authority given me by your No. 174, of November 24, 1886, I signed that declaration on December 1, 1886, with all the other members of the conference except the German ambassador, who was not prepared to do so at the time. He did so on the 23d instant, and I send you herewith the original instrument, signed by the pleni-

potentiaries of the twenty-five Governments represented in the conference.

In sending me this instrument, M. Flourens remarks that the conference, when it shall meet on the 1st of July, will have to fix the date of the application of the convention, the date of October 1 being agreed upon only informally, to regulate the position of the states which may not yet have adopted the necessary legislation, and to agree upon the mode of establishing how far other states which might accede to the convention have conformed their legislation to its requirements.

In view of reaching easily an understanding upon these three points, M. Flourens suggests that each plenipotentiary be empowered to decide them at once without reference to his Government, which may be done by means of a closing protocol, stating that all or part of the states, as the case may be, have conformed to the requirements of Article 12, and in view of either of these two contingencies the French foreign office has prepared two forms of a protocol, which the French minister at Washington has been instructed to submit to you.

In the opinion of M. Flourens the approval of this closing protocol will not involve any further constitutional formality, because the authority already given by the legislature of the countries where such authority is required embraces a clause (Article 16) stating that the convention will go into operation upon the day fixed by the high contracting parties.

M. Flourens having requested me to call your attention to these considerations, in order that at the first sitting of the conference, on July 1 each plenipotentiary may be in position to settle the pending questions above referred to, I shall feel obliged if you will kindly give me your instructions before that date, and inform me at the same time of the action of Congress with reference to the legislation for enforcing the convention.

I have, etc.,

ROBERT M. MCLANE.

No. 239.

Mr. McLane to Mr. Bayard.

No. 391.] LEGATION OF THE UNITED STATES,
Paris, April 14, 1887. (Received April 25.)

SIR: In compliance with your Nos. 170, of October 25, 1886, and 201, of February 18, 1887, I have applied for the discharge from the French military service of Jean Pierre Arbios, an American citizen of French origin, who acquired his American citizenship through the naturalization of his father, under section 2172 of the Revised Statutes, and I now send a copy and a translation of the reply received from the minister of foreign affairs.

This reply is substantially the same as made to all applications of the kind, as explained in Mr. Vignaud's dispatch of November 13, 1884, viz, that questions of personal status with reference to citizenship can not be determined in France by any action of the Executive, and can only be settled by the judiciary. (See Mr. Morton's dispatches Nos. 494 and 555, and inclosures.*)

* Printed in Foreign Relations, 1884, p. 148.

In the case of Arbios, however, an appeal to the judiciary would be useless, because in all cases of this kind brought to the notice of this legation the French courts, acting upon the principle that while the conditions of the acquisition of another national character are determined by the country giving that character, the country of origin is the only judge of the conditions upon which the original allegiance can be set aside, have decided that the minor son of a Frenchman can not lose his original character through any action of his father.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 391.—Translation.]

Mr. Flourens to Mr. McLane.

PARIS, *April* 12, 1887.

SIR: On November the 9th and 1st of March last you were kind enough to appeal to my good offices with a view to obtain the striking off from the rolls of our army of the name of Pierre Arbios, a soldier in the One hundredth Regiment of Infantry, whose father, Jean Arbios, a Frenchman by birth, after having, in 1877, emigrated to the United States, there acquired American citizenship.

The minister of war, whose attention was at once called to the demand, remarks that it raises a question of status beyond the competency of the administration, and which the civil tribunals alone are qualified to decide. My colleague, General Boulanger, consequently requests me to inform you that the erasure of Mr. Arbios's name from the rolls can not be proceeded with before the production by the latter of a judgment proving his foreign citizenship.

Receive, etc.,

FLOURENS.

No. 240.

Mr. Bayard to Mr. McLane.

No. 218.] DEPARTMENT OF STATE,
Washington, April 30, 1887.

SIR: I have received your No. 391, of the 14th instant, inclosing a reply from the minister of foreign affairs, that the name of Jean Pierre Arbios can not be taken off the military lists before the production by him of a judgment of the civil tribunals recognizing his foreign citizenship. I likewise notice that you state that any appeal to the judiciary for this purpose would be useless, because in all cases of this kind brought to the notice of your legation the French courts have decided that the minor son of a Frenchman can not lose his original character through any action of his father, and you refer to Mr. Morton's Nos. 494 and 555, concerning A. P. Jacob, where the reply of the foreign office to the same effect is given. The present case is even less favorable, as the son was born in France and only lived four years in the United States, being an American citizen under section 2172 of the Revised Statutes, as he was a minor and dwelling in the United States at the time of his father's naturalization, having left France at the age of eighteen, availed himself of his father's naturalization the following year, and returned to France at the age of twenty-three, when he was at once arrested and put into the army. In your No. 391 you speak, however, of the possibility of a person in the situation of Arbios applying directly to the French Government for permission to change his nationality. You will be able to judge whether it would be of any use for him to adopt this course, and endeavor, in case

his petition was granted, to obtain a leave of absence or furlough from the French army to carry out that purpose, as his term of four years' service will not expire until July, 1889. It may be that the minister of war would not consent to indorse such a petition to the minister of justice, inasmuch as Arbios has not, like Jacob, in whose case he did it, served out his full time in the army.

It is noticed that in Mr. Vignaud's No. 665 he states, "The French Government needs not the judgment of a court of justice to exempt from military service the Frenchman who has thrown off his original allegiance. * * * The mayors of the commune, * * * the prefect of the department, * * * and the general in command have each the authority and power to erase the name of those who are disqualified from military service," and he cites the case of John B. Foichat, who was liberated without having to appear before any court of justice in support of that fact.

Whether the fact that Arbios is actually a soldier in the ranks makes any difference as regards the powers of those officials does not appear to be stated. The minister of foreign affairs states that the minister of war informs him that Arbios's name can not be erased from the lists without a decision of the civil courts, which seems to indicate that he had no power in the matter of discharge if raised on the point of citizenship, though he might possibly be able to order it as a matter of grace if the case were considered deserving of it.

I must leave to your good judgment the propriety and probabilities of success of any further appeal to the French Government in this case.

I am, etc.,

T. F. BAYARD.

No. 241.

Mr. Bayard to Mr. McLane.

No. 222.] DEPARTMENT OF STATE,
Washington, May 5, 1887.

SIR: I have received your No. 386, of the 6th ultimo, inclosing the original of the explanatory protocol of the 1st of December last to the submarine cables convention, and requesting instructions as to what action you shall take at the next conference of the representatives of the signatory powers, which is to meet in Paris on the 1st of July next. The object of this conference is to agree upon a day at which the convention shall take effect, and determine the situation of such of the contracting parties as have not adopted appropriate legislation to that end.

Under date of the 14th ultimo I received from the French minister at this capital a note transmitting a dispatch from his Government, inclosing drafts of two final protocols, to which you refer in your dispatch, and which will be laid before the approaching conference. I have answered this note, and inclose herewith a copy of the answer.*

The first of the protocols in question proposes absolutely to fix a day upon which the convention shall take effect. But as Congress has not yet adopted legislation to execute the provisions of the convention, no such day can be definitely agreed upon by this Government at the present time. A bill to provide for the execution of the convention passed the House of Representatives on the 8th of February last, and was sent

* Printed page 366, *infra*.

to the Senate, where it was referred, on the 10th of the same month, to the Committee on Foreign Relations, but no definitive action was taken.

The second draft of a protocol, inclosed by the French minister, provided that the convention shall take effect on a day to be fixed by the plenipotentiaries of the signatory powers at their next session at Paris; but it also provides that if on that day any of the Governments in question shall not have adopted the requisite legislation to execute the convention, its operation shall be suspended as regards such state until notice shall be given by it to the contracting parties, through the French Government, of the adoption of appropriate legislation. To this protocol no objection is found, and you are hereby authorized to sign it, subject to the ratification of the Senate, before which body the explanatory protocol above referred to is now pending, and as the convention is now awaiting, for its execution, the action of Congress, it is not apprehended that this course will be productive of any delay.

I am, etc.,

T. F. BAYARD.

No. 242.

Mr. Bayard to Mr. McLane.

No. 223.] DEPARTMENT OF STATE,
Washington, May 9, 1887.

SIR: I have received your No. 370 of the 2d ultimo, in which you request that this Department reconsider, so far as the legation of the United States in France is concerned, the recent circular of February 8 last, instructing the diplomatic agents, consuls, and consular agents of the United States to refrain from certifying officially, without the special authority of this Department, as to the status of persons domiciled in the United States and proposing to be married abroad, or as to the law in the United States, or in any part thereof, relating to the solemnization of marriages.

The question to which the circular relates being one of very grave importance, the Department has given it the most careful consideration before and since the issuance of the circular, and has found no reasons to change the conclusions therein stated. Whilst always solicitous to aid in every proper way and by all legitimate means citizens of the United States in foreign lands, the Department is of opinion that in respect to marriage there are more important considerations than that of the mere convenience of the contracting parties.

As was said in the circular, "if citizens of the United States desire to be married before a foreign officer who requires information as to their individual status and the laws of their domicile, the information can be obtained from persons familiar with the facts, or from experts acquainted with the laws of such domicile; and in matters involving the validity of marriage and the legitimacy of children, too great trouble in this respect can not be taken."

It appears, however, from your dispatches, as well as from other sources, that in recent years a practice has sprung up in France and certain other countries, of diplomatic and consular officers of the United States giving official certificates not only as to the personal status of Americans desiring to be married abroad, but as to the law of their supposed domicile in respect to the forms of solemnization of marriage.

This arose in France (as you state in your No. 370) from the fact that it was deemed necessary, under the law, "for an American desiring to be married in France to produce an official document showing when and where he was born, and to furnish evidence that if he is above age he can marry in the United States without the consent of his parents, and that publication of bans is only necessary where the marriage is solemnized."

But all these requisites could, it is supposed, be proved, and before the practice in question sprang up must have been proved by other evidence than the official certificate of a consular or diplomatic officer of the United States; and although such certification may be the most convenient form of proof, there are, in the opinion of the Department, serious objections to its use for the purpose indicated. Aside from the impropriety of consular or diplomatic officers certifying generally as to the law in different parts of the United States, such certification as you describe requires a judgment upon matters of fact. It is obvious that such a judgment, while it may expedite the performance of a marriage ceremony, is not conclusive as to the validity of that ceremony, and is not known to be receivable as evidence by judicial tribunals before whom the marriage might be called in question. Neither is it known to be receivable under the laws of France by the French magistrates; and this doubt is increased by the statements in your No. 334 that, when the practice of issuing the certificates in question began, they were frequently rejected by the French mayors; that "gradually, however, the practice established itself, and the Duke Decazes, minister of foreign affairs, having countenanced and recommended it, although unofficially, it was respected by the French authorities; but that even now occasionally a new mayor or an unreasonable subordinate refuses one or more of these papers and compels thereby the legation to ask the interposition of the higher authorities."

These statements suggest two conclusions: (1) That there is no law that makes those papers competent evidence in France of what they purport to prove; (2) that their reception is a matter of grace, brought about or aided by the unofficial advice of the French minister of foreign affairs, acting, it may be presumed, on the assurance of the minister of the United States, that the marriages of Americans upon such certificates would be valid in the United States.

It is, as stated in Department's circular of February 8, a principle of international law, recognized throughout the United States, that a solemnization of marriage, valid by the law of the place of solemnization, will be regarded as valid everywhere.

This rule is the principal safeguard of persons marrying abroad, and when it is relaxed in favor of the law of the domicile of the parties it is important that the greatest care should be taken to ascertain what that law is, in order that the ceremony may be not only performed, but performed validly. The Department is not, however, aware that the law of France in respect to marriage makes any difference between citizens and foreigners. It was declared at the time of the preparation of the French codes, in answer to the question of the First Consul with respect to marriages of foreigners in France: "Foreigners residing in France are subject to French laws." (See article on the international law of marriage by the late W. B. Lawrence, XI Albany Law Journal, p. 33.) It is true that the French law may, as to certain elements of personal capacity, employ the law of the domicile as the test of such capacity, but the Department is not informed that under the French law the requirements of a valid marriage between foreigners are in any other respect different from those of a marriage between citizens.

Now, as to the personal status or capacity of the parties to a projected marriage, there may be both questions of contested or contestable law and of contested or contestable fact; and to neither of these is a diplomatic or consular officer of the United States competent to certify officially. In an instruction to Mr. Fay, minister of the United States to Switzerland, under date of November 12, 1860, Mr. Cass said that when "the inquiry is made in Europe how a marriage must be celebrated there, not only to be valid but to carry with it its proper rights in the United States, no general answer can be given to the question. The answer must embrace not only the provisions of the laws of the United States so far as regards the places governed by those laws, but must embrace also the laws of thirty-three States, besides the Territories."

It may be observed that Mr. Cass while Secretary of State gave special attention to the subject of foreign marriages, and it was by his instruction, which has never been revoked, that an end was put to the practice of performing marriage ceremonies in legations, in supposed conformity with the law of the place of the American domicile of the parties. So decided was he in the opinion that the *lex loci celebrationis* should be followed, that on the occasion of the marriage of his own daughter, while he was minister of the United States at Paris, to the American secretary of legation, he did not consider the marriage of the parties at his hotel as sufficient, notwithstanding their extraterritorial immunities, and after taking the advice of the most eminent French lawyers, obliged the parties to be married at the mayoralty and to fulfill all the formalities required of a French citizen by the Code Napoléon. (XI Albany Law Journal, p. 34.)

In your No. 334, of December 31 last, you inclosed blank forms of the certificates which the legation has of late years been issuing. The first of these states generally that proof having been made to the legation of certain facts as to the birth of a certain person, it is given to take the place of an extract from the register of the civil state. The second certificate states that according to the terms of the American laws the consent of parents is not necessary to a marriage of persons twenty-one years of age. The third form states that according to the American laws the publication of the marriages of Americans, celebrated in a foreign country, is not required at the domicile of the parties in the United States.

The second of these certificates is regarded as the least open to objection, and may indeed be regarded in the light of a *certificat de coutume*, twenty-one years being the age of majority and emancipation from parental and other control all over the United States.

The first is open to the serious criticism that, while it takes the form of an official judgment upon questions of fact, it is not authorized by any law, and while it may expedite the performance of a marriage ceremony, would not, as has already been remarked, necessarily be received by any judicial tribunal before whom the marriage might be called in question as evidence of the facts stated. The third form of certificate states a general conclusion of law, which the Department is not competent to authorize. Publication of bans is a matter under the regulation of the different States and Territories, and this Department certainly is not competent to declare what the law in this relation of those States and Territories either is or may be ascertained by their judicial courts to be. The danger of such an attempt is shown by Circular No. 39, to which you refer as furnishing reliable information. The requisites of a valid marriage in the different States and Territories are sometimes matters of judicial ascertainment as well as of statutory enactment. For example, Circular No. 39, in giving the requisites of a

valid marriage in Massachusetts, wholly omits to state what has since been decided by the supreme judicial court of that Commonwealth, that a consensual marriage, without the presence of an officiating clergyman or magistrate, and to which neither party was a Friend or Quaker, is invalid. (Com. *v.* Munson, 127 Mass., 459.) It has also recently been held in the District of Columbia that a marriage in the District by consent, without some religious ceremony, is not sufficient to make a valid marriage by the law there existing.

In a general note to Circular No. 39, it is stated that in "the several States and Territories penalties are imposed by the statutes for a failure to comply with the requirements as to license or return of certificate; * * * but in none of the States or Territories is the marriage null and void because of a non-compliance with the requirements of the statute."

It is, however, understood that by an old statute of North Carolina marriages solemnized without a license first had are null and void, and the same rule has been held to exist in Tennessee, where the statute of North Carolina was in force. (Wharton on the Conflict of Laws, § 173, note 1, 2d ed., 1881.) Whether the same rule would be held to be in force in other places in the United States, under the special provision of statutes, it is not within the province of this Department to declare, and can only be conjectured.

It is important to observe that in recent years the tendency of the courts in the United States has been to require a stricter compliance than formerly with forms and ceremonies in the solemnization of marriages. As population has increased and the difficulties of complying with forms has been diminished, considerations of convenience have been given less and less weight. And, on the other hand, there has been a growing tendency, both in legislation and in judicial decisions, to place some check on inconsiderate and informal alliances.

Under these circumstances it would be highly inexpedient for this Department to undertake to declare in advance what may be the decisions of the judicial branch with whom the sole power to decide in these important matters rests. The function of delivering judgments whether orally or in the form of certificates is wholly judicial, and is not under our system confided to the executive branch. The authentication of a statute or other matter of record may be the duty of an executive officer, but not to declare its effect.

Holding these views, it would be a breach of duty in this Department to authorize its diplomatic or consular agents to issue, in matters which from the nature of things are uncertain, certificates which, if erroneous, would be productive of consequences so disastrous as the illegitimation of marriages, however innocently solemnized, on the faith of such certificates, and the bastardizing of the issue of such marriages.

All these serious responsibilities and dangers are avoided by the parties conforming to the *lex loci celebrationis*.

I am, etc., T. F. BAYARD.

No. 243.

Mr. McLane to Mr. Bayard.

[Extract.]

No. 403.] LEGATION OF THE UNITED STATES,
Paris, May 12, 1887. (Received May 27.)

SIR: In a conversation with Mr. Flourens yesterday at the foreign office, I touched upon the relations of France with the different European

countries in reference to the exhibition to be held here in 1889, and I expressed my regret that the French Government had taken so little interest in the legislation proposed for the inspection of foreign salted meats. The repeal of the prohibitory decree excluding American meat having been made dependent upon the enactment of such a law, I felt at liberty to recur to the subject whenever circumstances seemed in my judgment to render such reference appropriate. In recalling his attention to this subject I said that while full liberty was conceded to France to tax American meat at as high a rate as the meat of any other country, its exclusion could not fail to create a very unpleasant feeling when the sanitarial consideration which originally caused its exclusion no longer existed. He listened with great attention and interest, recognizing, as M. de Freycinet always did, that the real obstacle was in the strong feeling which dominated in the Chamber of Deputies in favor of protecting all agricultural products and which always found a representative in the cabinet. He said his colleague, M. Develle, at the present time represented this opinion very strongly, and though M. Lockroy, the actual minister of commerce, might be favorable to an immediate repeal of the prohibitory decree, he would encounter opposition from several of his colleagues. Mr. Flourens requested me to confer with Mr. Lockroy at my earliest convenience, and it was agreed we would renew our conversation after I had conferred with Mr. Lockroy.

I have, etc.,

ROBERT M. MCLANE.

No. 244.

Mr. McLane to Mr. Bayard.

No. 405.] LEGATION OF THE UNITED STATES,
Paris, May 13, 1887. (Received May 24.)

SIR: I received this morning from Mr. Flourens a dispatch having reference to the language of section 8 of a bill pending before Congress to enforce the convention for the protection of submarine cables. Mr. Flourens reminds me that the protocol and declaration of May 21, 1886, was intended to correct the construction placed upon Articles 2 and 4 of the convention by Article 4 of the British act of 1885, and remarks that all the powers parties to the convention, Great Britain and the United States comprised, having agreed to this proctocol and declaration, the bill before Congress should conform to its disposition; otherwise the date of the application of the convention will have to be again deferred.

In my dispatch No. 325, of December 17, 1886, I had called your attention to the fact that section 8 of our bill reproduced Article 4 of the British act, to which the conference had taken exception, and explained the intention of the authors of the convention.

Not having heard of the matter since, I was under the impression that the necessary change had been made, and I feel much embarrassed that such has not been the case. Mr. Flourens hopes that you will be able, through the Committee of Foreign Affairs, to induce Congress at the opening of the next session to conform the bill in question with the text and spirit of the convention.

I respectfully join him in making this recommendation, and earnestly request that I be authorized to assure the conference, when it meets

again in July, that the bill in question will be amended as desired, and that there will be no objection on the part of the United States to the enforcement of the convention on the 1st of January next at the latest.

I have, etc.,

ROBERT M. MCLANE.

No. 245.

Mr. McLane to Mr. Bayard.

No. 406.] LEGATION OF THE UNITED STATES,
Paris, May 16, 1887. (Received May 27.)

SIR: Since writing and telegraphing to you on the 13th instant, with reference to the bill for the execution of the submarine cables convention, I have received your dispatch No. 222 of May 5th and your telegram of the 14th, informing me that the bill in question had not been acted upon by Congress, and instructing me accordingly, to sign, when the conference meets again in July, the second of the protocols submitted by the French Government, which provides that, if on the day fixed for the convention to go into effect any of the signatory powers have not adopted the requisite legislation, its operation shall be suspended, as regards such state, until notice shall be given by it to the French Government of the adoption of the appropriate legislation.

I inclose herewith copy and translation of Mr. Flourens's note of the 13th instant, mentioned in my No. 405 of the same date, requesting me to call your attention to the fact that section 8 of the bill which passed the House is contrary to the sense of the convention as explained by the declaration of May 1, 1886.

Being satisfied that you would have this defect corrected, I shall add nothing to what I said in my No. 405 with reference to the subject.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 406.—Translation.]

Mr. Flourens to Mr. McLane.

FOREIGN OFFICE,
Paris, May 12, 1887.

By a communication dated December 26, 1885, the minister of foreign affairs has made known to the United States legation at Paris that a divergency had been noticed between the dispositions of Articles 4 of the convention for the protection of submarine cables and those of section 4 of the submarine telegraph act of 1885, voted by the British Parliament to secure the observation of the international act of March 14, 1884.

On account of the difficulties raised by the restrictions which section 4 of the British act made with reference to one of the stipulations of the convention, the Government of the French Republic proposed, at the date above mentioned, to the different signatory powers to defer the execution of the convention and to call at Paris in May, 1885, another conference to examine what solution could be given to the question.

This conference met on the 12th of May last year, and, as known by the United States minister at Paris, who represented there his Government, the delegates of the different powers agreed upon a project of explanatory declaration of Articles 2 and 4 of the convention of March 14, 1884.

The acceptance by Great Britain of the terms of this project removed the divergency existing between the language of the convention and that of the British act, and caused the abandonment by the English Government of the dispositions inserted in section 4 of the act in question; consequently another act, a copy of which is herewith annexed [not received], was adopted September 25, 1885, to repeal that section.

On the other side the explanatory declaration agreed upon by the delegates, May 21, 1886, has been accepted by the twenty-five signatory powers of the convention of March 14, 1884. The diplomatic instrument of this declaration was signed at Paris, December 1 and March 23 last, by the representatives of the different Governments at Paris, and it was transmitted to the legation of the United States on April 1.

In explaining the sense of Articles 2 and 4, the declaration of December 1 and March 23, 1887, suppressed the divergency of the interpretation and the difficulties which had caused the insertion in the submarine telegraph act of 1885 of the section 4, since repealed.

Now, according to information which has reached the French Government, the bill presented by the Committee of Foreign Affairs, and voted by Congress to insure the enforcement of the convention of March 14, 1884, contains in its Article 8 a disposition identical with the old section 4 of the British act. The insertion and the maintenance in a bill already voted by the American Congress after the third reading of this Article 8, which is contrary to the stipulations of the International Convention of March 14, 1884, must come from a misunderstanding, for the United States Government have adhered to the explanatory declaration of December 1, 1886, and March 23, 1887, which had precisely for its object to avoid the article in question.

The minister of foreign affairs has the honor of pointing out specially this subject to the United States minister at Paris, who has taken such an active part in the debates of the conference concerning the execution of the convention, and begs him to call the attention of his Government to this misunderstanding which might bring further delays in enforcing the convention. If this article (8) was definitively adopted it would be impossible to state that the different interested powers have all enacted similar measures for the execution of the convention of 1884; consequently it would be impossible to fix the time from which it would become operative.

The Government of the Republic hopes, therefore, that the Federal Government will take without delay the necessary steps in order that the Committee for Foreign Affairs introduce urgently a rectifying bill repealing the dispositions of Article 8 of the one already adopted by Congress, or, if preferable, that the American Senate, which has not yet considered the bill, amend it by suppressing this Article 8 contrary to the convention, and without any object since the interpretation given to Articles 2 and 4 of the convention by the explanatory declaration.

Mr. Flourens seizes this occasion, etc.,

No. 246.

Mr. McLane to Mr. Bayard.

No. 431.] LEGATION OF THE UNITED STATES,
Paris, June 13, 1887. (Received June 27.)

SIR: In your dispatch No. 176, of December 1, 1886, you requested me to communicate to the Department the information in possession of this legation regarding the proper steps to be taken to discover the traces of unclaimed estates in France in which American citizens may be interested.

The experience of this legation in searching for estates of that class has not resulted in anything very satisfactory. There is no practical or easy method by which any one not already possessed of information concerning an estate opened in France can find out what he is interested in knowing.

In nearly all cases the liquidation of an estate devolves upon a notary. In some instances only a court of justice is called upon to give its sanction to the proceedings. Usually the intervention of a notary is necessary. This furnishes a means of getting upon the trace of an estate, which, though not entirely free from uncertainty, provides for the vast majority of cases. Unfortunately, in such cities as Paris it is by no means easy to find the notary charged with the liquidation of a particular estate. The course adopted by Mr. Kelly, who occasionally acts as counsel of this legation, has been to issue a circular letter to every notary

of the city and department where the information is likely to be had, giving as nearly as possible the name and date of death of the deceased person, and asking which of them is or was charged with the liquidation of his estate.

In order that such a circular letter should have any result, it is important that the name be rightly given, that the date of death be at any rate approximately correct, and that the place of domicile or residence be accurate beyond question. The importance of this latter consists in the fact that as it is at this place of domicile or residence that the notary is appointed, in case of application to the court the inquiry will remain unanswered if made at any other place than that where the notary was in fact appointed. Regard, however, must be had to the fact that if the deceased has had several residences, he may have made his will or had it deposited with a notary other than the one of the place where he died, and in that case this notary remains charged with the liquidation of the estate.

When there is no real estate, the heirs or next of kin can divide the estate between them without judicial or notarial proceedings.

If nobody claims an estate, a curator is appointed by a court of first resort, but during the period of prescription the state keeps the property in trust for those who are entitled thereto, so that any party showing title within that period can recover the property from the state.

The department to which application should be made in that case is the department of justice, through which notices are published in the official journal, giving, with reference to each unclaimed estate, names and dates.

The period of prescription with reference to unclaimed estates is thirty years from the date of decease. This period is therefore sufficient to bar the title of any claimant, unless it can be shown that only a provisional liquidation has been made, or that some irregularity in the liquidation can be proved. In such cases the claimant might plead that, the liquidation having been only provisional, the statute of limitation does not apply to him.

In conclusion, it appears from the foregoing that the proper course for an American claimant to take in order to get information about the estate of a relative deceased in France is for him to request one of the American lawyers practicing in Paris, or any business man, to address a circular letter to every notary of the place where he thinks his relative had a domicile or residence, asking for the desired information.

I have, etc.,

ROBERT M. MCLANE.

No. 247.

Mr. Bayard to Mr. McLane.

No. 235.] DEPARTMENT OF STATE,
Washington, June 14, 1887.

SIR: In a dispatch recently received, under date of 6th April last, from Mr. William E. Morgan, American commercial agent at Nouméa, New Caledonia, the following statement is made:

I must call your attention to the convict question of New Caledonia, which is exciting so much interest in Australia. The liberated convicts who leave this colony have it distinctly stated in their permit that they are not allowed to settle in any

English or in any other French colony, and they are consequently making their way to San Francisco. A proposition is actually before the local parliament to vote £1,000 for the purpose of landing in San Francisco all the worst of these men, as they will not be received in Tahiti or elsewhere. The French Government are offering a subsidy of £120 per month for a steamer to run between Nouméa and Tahiti and on to San Francisco.

The Treasury Department has been informed of Mr. Morgan's statement, and vigilance will be exercised at San Francisco to apply the statutes prohibiting the landing of criminals in the United States.

I desire you to invite the attention of the minister for foreign affairs to this statement with a view to its denial if the reported action of the local parliament be not as represented, or to check at once, in case it be verified, any attempt on the part of the agents of France in New Caledonia (or possibly in Tahiti) to deport persons of the criminal classes to the United States.

If such a movement be really contemplated it could not but cause grave concern; and if executed by French governmental authority would be regarded as a distinctly unfriendly act, against which unequivocal remonstrance would be necessary. I can not, however, believe that such a step could have the sanction of the Government of the Republic, and I confidently look for such action on its part as will evince its friendliness and dispel all ground for apprehension.

I am, etc.,

T. F. BAYARD.

No. 248.

Mr. McLane to Mr. Bayard.

No. 432.] LEGATION OF THE UNITED STATES,
Paris, June 17, 1887. (Received June 27.)

SIR: On the 11th instant I received from you a telegraphic instruction directing me to use my personal good offices to ascertain the cause of Baron Seillière's detention, and obtain his release if possible.

I had already received a visit from the friends of Baron Seillière, and, upon their representation that he had made declaration of his intention to become a citizen of the United States, I interested myself in his behalf so far as to request that he might be seen by his American friend and a physician. This request was addressed to the director of the insane asylum wherein he was confined, who declined to admit any one to his presence. Meanwhile I referred his friends to Mr. Kelly, an American lawyer in Paris, through whose intervention it was ascertained that he had been regularly confined on the certificate of two physicians as to his insanity.

On the receipt of your telegram I gave Mr. Kelly a letter of introduction to the minister of justice, and I took him in person to see the minister of foreign affairs, to whom I also addressed a note, copy of which is here annexed, advising him that I had been instructed to use my personal good offices in behalf of Baron Seillière, and if possible to procure his release. Mr. Kelly read to the minister a memorandum of the facts in the case, with full reference to the authorities, both French and American, which would justify the French Government in releasing Baron Seillière, leaving to his American friends the responsibility of taking care of him.

I had some conversation myself with Mr. Flourens in support of the views presented by Mr. Kelly, but I was careful to inform him that my intervention was purely personal, and that I did not intend to exceed the limit prescribed in your instruction.

Mr. Flourens observed in reply that he so understood my intervention, and that it would give him great pleasure to comply with the wishes I had expressed in behalf of Baron Seillière if it should be in his power to do so.

The difficulty he suggested in the case had reference to the rights of Baron Seillière's family, which had been the subject of judicial proceedings and inquiry before he left France for America. He did not enter into detailed statement of how important he considered these proceedings, but he said they would be the subject of inquiry, if not by the minister of the interior, who has charge of the insane asylums, then by the minister of justice, to whom all legal questions would be referred.

Mr. Kelly is now in charge of the case, representing Baron Seillière's American friends, and he informs me that he hopes to secure the active co-operation of Baron Seillière's brother in the efforts he is making to secure his release.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 432.]

Mr. McLane to Mr. Flourens.

LEGATION OF THE UNITED STATES,
Paris, June 15, 1887.

SIR: I am instructed by Mr. Bayard to use my personal good offices to ascertain the cause of Baron Seillière's detention, and obtain his release if possible.

With this view I gave a letter of introduction to the director of the Maison de Santé, where he is confined, to his friend and his physician, but they were not allowed to see him, and I also gave a letter of introduction to the minister of justice to his lawyer, Mr. Kelly. After conference with the minister, Mr. Kelly requested me to present him to you that he might have the opportunity of presenting the case and his views of the personal and legal aspect thereof, and I now beg for him your considerate attention, in the hope that, after an examination of the case, you will recommend the release of Baron Seillière.

I avail, etc.,

ROBERT M. MCLANE.

No. 249.

Mr. Bayard to Mr. McLane.

No. 238.] DEPARTMENT OF STATE,
Washington, June 24, 1887.

SIR: On the 10th instant, at the instance of certain friends of Baron Seillière, I sent you the following instruction by cable: "To use your personal good offices to ascertain the cause of Baron Seillière's detention and to obtain his release if possible."

I now transmit for your information copies of three letters addressed to me by Mr. John Mullaly, of New York, respecting the alleged unlawful detention of Baron Seillière and of my reply thereto.

It is represented to me that you are fully conversant with the facts of the case, and that you only await the instructions of the Department

to make formal official demand upon the French Government for Baron Seillière's release. It is, of course, impossible to act upon such representations in the absence of report or suggestion from you. I necessarily confide in the judgment which you on the spot are in a position to form of the merits of the complaint, and I have yet to receive from you any intimation that a case is presented for the intervention of this Government directly with that of France. Hence my letter of this date to Mr. Mullaly, to which I refer you for a fuller expression of my views.

I may add that, from personal correspondence exhibited to me, and in particular a letter written by Commander d'Ullmann to Father Justin, the Director of Manhattan College, Manhattanville, N. Y., it appears that Baron Seillière, having passed some months in the United States, where he declared his intention to become a citizen, upon his return to France, and at the instance of his sister, the Princess de Sagan, was, upon medical certificates, confined in the private "insane retreat" of Dr. Fabret, at Vanves, near Paris.

It is probable that an early mail will bring from you a report in the case, which will enable its more intelligent consideration than at present.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 238.]

Mr. Mullaly to Mr. Bayard.

223 EAST FORTY-NINTH STREET, *New York, June* 10, 1887.

DEAR SIR: Allow me to thank you for your early consideration of, and prompt reply to, my two letters of the 2d and 5th instant.

A dispatch sent to you to-day, signed by Rev. Brother Justin and myself, informed you that we had received a cablegram from Paris that "Baron Seillière's life is in danger unless Minister McLane receive formal order from Secretary Bayard to act for him as an American citizen entitled to full rights."

Reference was made in the dispatch to the action of Minister Washburne in saving many French lives during the Commune. "In humanity's name," said the writer in conclusion, "help us."

I would respectfully submit that as this is a case involving not only the liberty ut the life of a gentleman, who, in absolutely good faith, has taken the necessary steps to become a citizen of the United States, it appeals with particular force to the highest instincts of humanity, and to the special consideration of a Government like ours.

The baron has been a resident of this country about twelve months, and left New York the 7th of May for France, on a business visit, having purchased a return ticket for the 16th of July, intending to make this country his permanent home.

In your communication of the 7th instant, you say that "should justice be arbitrarily denied to him, etc." I would respectfully suggest that as the case has now assumed a most serious character, involving not only the liberty but the life of Baron Seillière, and as it manifestly requires prompt action to be effective, that you cable to Mr. McLane the necessary authority for his intervention.

I feel that in making this request I am not, as a citizen of the United States, asking too much of our Government, especially as I feel assured that its kindly offices in this matter will be treated with due consideration and respect by the French Government. It may be that while of itself it cannot take the initiative in the case of an American citizen, it will so far respect the wishes of a friendly power and an ancient ally as to second the efforts of our minister to secure Baron Seillière's release.

Very respectfully, yours,

JOHN MULLALY.

P. S.—I take a most earnest interest in this case, having formed during my acquaintance with the baron a high respect for his character and admiration of his abilities. Let me add that, as this is a matter in which humanity as well as statecraft is concerned, I would earnestly entreat you, Mr. Secretary, to take counsel of Thomas F. Bayard.

Brother Justin to Mr. Bayard.

NEW YORK, *June* 10, 1887.

DEAR SIR: Please to accept my most cordial thanks for your great kindness to my friend, Baron Seillière. I need hardly say I am under no obligations whatever either to the baron or Commander d'Ullmann, the author of the letter I take the liberty of sending you.

I have known these gentlemen for a year, and I have found them to be worthy of any kindness I could show them.

The cablegram I inclose from Mr. Kelly, the counsel of our legation, is significant. It means that Mr. McLane desires instruction to act, and it means, further, that both Mr. Grévy, the President, and Mr. Wilson, his son-in-law, both of whom are friendly to the baron, only wish for an excuse to release the baron.

Dear Mr. Secretary, permit me, in the interests of justice and our common humanity, to beg of you to cable immediately to our minister, Mr. McLane, to ask for the release of the baron.

The cablegram from Mr. Monroe Livermore is not signed, but he is one of our leading citizens, and went to Paris on the same steamer with the baron and Commander d'Ullmann. He and his wife are the American friends referred to in Commander d'Ullmann's letter.

Begging to be excused for giving you so much trouble, I am, my dear sir, very truly,

BRO. JUSTIN.

I was just down to see Mr. Develin, and requested him to telegraph you.

I was urged to engage Senator Evarts, but I said I have faith enough in the distinguished gentleman who presides over the State Department.

[Cablegram.]

PARIS, *June* 10, 1887.

To FATHER JUSTIN, *Manhattan College, New York:*

French laws allow no public investigation in case of confinement on ground of lunacy; best chance securing release through action our minister, who is anxious to be of service, but requires instructions. Get Bayard cable him authorizing him to ask French Government deliver Seillière to ours; procureur says French Government would probably make no objections.

KELLY,
Counsel of United States Legation.

[Cablegram.]

PARIS, *June* 9, 1887.

To BROTHER JUSTIN, *Manhattan College, New York:*

Spino's [the baron's] life in danger unless McLane receive formal order from Bayard to act for him as American citizen entitled to full rights. Washburne saved in this matter during Commune many French lives. In humanity's name help us; wire commander.

This cablegram is from Mr. Monroe Livermore, one of our wealthiest New Yorkers

---

Commander d'Ullmann to Brother Justin.

3 AVENUE FROCHOT, PARIS, *May* 27, 1887.

REVEREND BROTHER: The outrageous crime which I foresaw, when I left in your hands the naturalization papers of Baron Raymond Seillière, has taken place under the following circumstances:

We arrived here on Sunday night; the baron during his trip conceived the plan of a reconciliation with his family, and with that idea decided to ask the aid of his aunt, the Duchesse Gabrièle de Berghes.

Consequently, on Monday, November 9, he called upon his aunt, and told me after leaving her that she had not only promised him that, but even more, entire satisfaction and the punishment of those who had wronged him.

I remarked to him that her cordiality seemed unnatural, but he replied to me, don't disturb yourself, for in spite of myself I am deeply attached to my sister, the Princesse de Sagan, who is separated from her husband, a most honorable man, for the most scandalous reasons, and on her account I shall not allow myself to get excited against her. The same day he had a long interview with Wilson and Grévy, the President of the French Republic.

On Tuesday morning he received a letter from his aunt, asking him to call at 11 a. m. He went and returned so satisfied with the result of the interview that he sent her some beautiful flowers.

The same day he saw Wilson again and several persons upon the subject of tramways [or street cars. B. JUSTIN.] The balance of his time was occupied in showing his American friends, Monroe Livermore and family, Paris.

On Wednesday he had interviews with his conseil judiciaire, his lawyer, and several friends. Each day he lunched with his brother-in-law, the Prince de Sagan.

Thursday was fête day. He went to church, and at 5 p. m. again went to the Duchesse de Berghes by appointment. From that moment he has not been seen.

As I know that he had an appointment with President Grévy on Friday to appoint a day when his American friends, Livermore and wife, shall breakfast with him at the Élysée, I did not call upon him. At 3 p. m. his servant, who is paid by his sister, came to inform me that the baron went out from the Duchesse de Berghes in such excited condition that he forgot his carriage which was waiting at the door.

In addition he said that the princesse wished him to inform me that she had induced her brother to join the Baron Frank, who was in Wildbad in Germany, at the same time requesting him to bring her the baron's traveling bag which contained his papers.

The strange fact that the baron had left without telling his friends, but also that this man had delivered to the princesse his bag, *contrary* as I know to the desire of his master to deliver it to any save myself, was proof to me that the crime was committed.

I immediately went to his conseil judiciaire, Mr. Vernier, 4 Rue Florentin, and told him to send word to Grévy that the Princesse de Sagan had made away with her brother, and to notify the préfet de police without delay.

I was authorized by the baron to take this step (although as to this time it was only a suspicion) should he in any case miss an appointment by more than an hour, knowing himself the intentions of his sister.

Grévy at once sent for the préfet de police. The latter asked forty-eight hours to trace him. Knowing that the baron is no more insane than myself, and any honest man must certify who knows him, my only fear was that the extreme measure they had taken, and the violence to which he had been subjected, would render him crazy or unnaturally excited.

I took an old detective of the Empire in my confidence, and on Saturday night I was on the right track.

The following is what passed between Thursday 5 p. m. and Saturday, as it was subsequently confirmed by the préfet de police:

The rendezvous which the Duchesse de Berghes had appointed on Tuesday at 11 a. m. was a plot, and I have her letter to confirm it.

She excited the baron by any means in her power, having previously concealed the Princesse de Sagan and Dr. Mottet, with a medical reporter, Mr. Lequair, behind a curtain.

The latter was unfriendly to the baron.

The two physicians made their first report crouched behind the curtain, but as the law requires that the physicians must be at the same room, the fatal rendezvous was on Thursday.

On that very day the director of the insane asylum at Vanves, Dr. Fabret, had already been requested to send three strong men to bind a madman of great strength, then at the house of the Duchesse de Berghes.

The baron entering found himself face to face with his sister, his aunt, the Colonel Gibert [his relation and sworn enemy of Seillière], also the two doctors.

On discovering the plot he became angry. He was bound and taken to the insane asylum of Dr. Fabret, who received him in good faith. Unfortunately the French law exacts that his family shall have absolute power in this case. Consequently Dr. Fabret was forced to refuse admittance to his conseil judiciare and lawyer, they having an authorization from the préfet de police to see the baron, who was shut up in a separate building and guarded by three of the princess's servants.

Dr. Fabret stated that the baron gave no signs of insanity, but that he was excited, what was only natural, considering the violence which had been done to him.

Finding that the préfet was powerless, I returned to my own man, and I have proof that the baron had received the message that his friends were working for him.

His reply was to Dr. Fabret: "I know very well that I have fallen into a trap. I will remain calm, whatever may happen. I shall take measures when honest physicians have decided my case." He then explained with perfect lucidity all the enormities of the French law of insane to Dr. Fabret, who said that it seems to him impossible to keep him.

The conseil judiciaro received also a letter of the princess, in which she positively asserts that the baron is with his brother Frank in Germany, and that there is no reason to be anxious about him. He telegraphed to Frank, asking if it was true.

Frank replied: My brother is not here. Something serious must have happened. I come to Paris in 24 hours." He came, saw the conseil judiciare and said with tears in his eyes, "I can do nothing. My sister asks me to take her side, but I must remain neutral, and I think my sister is in a fix. Should any misfortune happen to my poor brother I will never return to France."

As it appears that nobody who has the right to oppose the princess will do something, the best friend of Seillière, Mr. Wilson, son-in-law of President Grévy, assured me that if the doctors who make the second examination shall be influenced by the princess or by medical etiquette and state that the baron is incurably mad and dangerous there remains but one chance to save him from this terrible state—his *American citizenship*. Mr. Wilson has promised in this event to do all in his power towards this demand through Mr. McLane, the American minister, and with the least possible delay.

My dear brother, you assured me that the baron and myself could always count on you. Here is the chance to do us an infinite service.

Immediately without a moment's delay after the reception of a dispatch signed by me, saying, "*Act immediately," do all that is necessary, to be sure that the American Minister McLane receives by cable a formal demand to release citizen No. ——, who is confined* to the insane retreat of Dr. Fabret, at Vanves, near Paris.

Send me at same time a dispatch by which I shall be authorized to explain the facts to the minister.

They can interfere but one obstacle, which is false—that he is dangerous to society. I will have an American in Paris who will in such case take charge of him and not allow him to come out until Dr. Fabret shall agree to it. I will myself arrange an interview between the American minister and Wilson as soon as I get your cable to haste the solution.

Above all things let no time be lost between the dispatch which I shall send you, if necessary, and the authorization to proceed, which must be without delay.

Excuse this long letter; but such incredible things require full explanation.

Believe me always faithfully yours,

CR. D'ULLMANN.

[Inclosure 2 in No. 238.]

Mr. Mullaly to Mr. Bayard.

233 EAST FORTY-NINTH STREET,
New York, June 19, 1887.

DEAR SIR: We have received information of a confidential character from our friends in Paris, who convey to us the positive assurance that the French minister of foreign affairs will, upon the official demand of our minister, Mr. McLane, release Baron Seillière.

Thus far our representative has, we are told, used only his "good offices," which are insufficient to meet the urgency of the case.

In the meantime, Mr. Secretary, a gentleman, who, in good faith, has declared his intention to become an American citizen, is subject to an incarceration of the most cruel and inhuman character, the result of a foul and unnatural conspiracy by which he is not only deprived of his liberty, but put in immediate peril of his life.

Surely, Mr. Secretary, this is a case which appeals with special force to our Government and fully justifies its official intervention.

As M. Flourens has given assurance that an official demand from our minister for the baron's liberation will not only meet with respectful consideration, but that it will be promptly acceded to, we ask you in the name of justice, in the name of humanity, and for the honor of our country to use your official power in procuring the release of this gentleman from a condition worse than death itself, and which, to a sensitive mind, must be more unendurable than the most excruciating torture.

This appeal, Mr. Secretary, is made to your best feelings as a man as well as to your high sense of the vital principle involved, and in the confidence that with the assurance given, your official authority will be exerted promptly and to the fullest extent allowable by the law applicable to the case.

Permit me to say further that on his release the Baron Seillière will be taken care of by his American friends in Paris, who are most earnestly working in his behalf.

Very respectfully, etc.,

JOHN MULLALY.

[Inclosure 3 in No. 238.]

Mr. Mullaly to Mr. Bayard.

223 EAST FORTY-NINTH STREET,
New York, June 21, 1887.

DEAR SIR: The inclosed cablegram, which I have just received from Commander d'Ullmann, in Paris, speaks for itself. The commander is the friend and companion of Baron Seillière and was with him in this country.

Let me again appeal to you, Mr. Secretary, to save this man. It is in your power to do so, and, I believe, that as you have the power you will not allow him to be lost.

The case, however, is urgent, and the danger of delay so serious to contemplate that I feel I must make another appeal to your generous sympathies and your sense of justice in this extremity.

Very respectfully, etc.,

JOHN MULLALY.

P. S.—The word "requested" in the dispatch should evidently read "demanded."

[The Baltimore and Ohio Telegraph Company Cable.]

PARIS, *June*, 1887. (Received June 21.)

To MULLALY, 223 *East Forty-ninth Street, New York:*

Many thanks for aid and sympathy; please tell brother that his enemies will render him lunatic if he is not requested and released soon.

COMMANDER.

[Inclosure 4 in No. 238.]

Mr. Bayard to Mr. Mullaly.

DEPARTMENT OF STATE,
Washington, June 23, 1887.

SIR: I have received your letters of the 19th and 21st instant. The action you desire me to take in the case of Baron Seillière is official, and I am the representative of the laws of the United States, and by them and not by my personal sympathies must my action be requested.

The case of Baron Seillière is not, even as informally stated in your letters, one arising between two Governments; but, as placed by you before this Department, is an application of the municipal laws of France to an individual who has voluntarily placed himself within their jurisdiction.

In view of his inchoate American citizenship, the United States minister at Paris was promptly instructed by cable to use his personal good offices to ascertain the true condition of Baron Seillière and the cause of his confinement, and to extend to him any relief in his power, and, if possible, to procure his release.

Knowing, as I do, the energy and ability of Mr. McLane, and that his interest has been thoroughly aroused, I feel confident that he will forsake no duty in carrying out his instructions, and that so soon as he discovers that Baron Seillière is not legally treated, according to the laws of France, he will make such report to the Department as will enable me to take such action in the name and in behalf of the Government of the United States as may be justly called for.

While I comprehend your anxiety to affect the relief of your friend, and fully sympathize in your distress, yet the measure of my duty must be determined by the law, whose instrument alone I am.

I am, sir, etc.,

T. F. BAYARD.

[Inclosure 5 in No. 238.]

Mr. Mullaly to Colonel Lamont.

223 EAST FORTY-NINTH STREET, NEW YORK, *June* 24, 1887.

DEAR SIR: As the inclosed letter to the President has reference to a matter of special importance, involving the right of protection of Baron de Seillière, who declared his intention to become a citizen of the United States, I would request as a favor its delivery by you to the President.

Baron de Seillière is now in France.

Very truly, etc., JOHN MULLALY.

Mr. Mullaly to the President.

223 EAST FORTY-NINTH STREET, NEW YORK, *June* 24, 1887.

DEAR SIR: There is now immured in an insane asylum, near Paris, a friend of mine named Raymond de Seillière, better known as Baron Seillière, a Frenchman, who, while in San Francisco, last August, declared his intention to become a citizen of the United States. He had been in this country about a year and had in good faith resolved to transfer his allegiance from the country of his birth to the land of his adoption. He is of an ancient and distinguished French family and his father was the head of the first banking house of the French capital, of which the baron is by right of inheritance the principal.

Last May he left this city for Paris on business connected with important enterprises in which he was interested, and purchased a return ticket for the 16th of next month. He was accompanied by Commander d'Ullmann, a friend with whom he came to this country, and who had been his companion and fellow-traveler during his residence in the United States.

This gentleman sent a cablegram some days after their arrival in Paris to Rev. Brother Justin, the superior of the Christian Brothers in this country, and who is an earnest friend of both gentlemen, informing him that the baron had been seized during an interview with his sister, the Princess de Sagan, and at her instigation. It was part of an atrocious conspiracy against her brother and his interests in the family estates. He was bound by three strong men in his sister's presence, carried off and incarcerated in an insane asylum at Vanves, under the charge of Dr. Fabret. In a letter dated Paris, May 27, Commander d'Ullmann described in detail this infamous plot and the manner in which it was carried into execution. The particulars disclose a fiendish crime against not only the liberty, but from what appears in a subsequent cablegram against the life of Baron Seillière.

This letter of the commander is now on file in the State Department, and I respectfully ask for it your careful consideration.

Immediately on receipt of the first cablegram, Rev. Brother Justin and myself sent a joint dispatch to Mr. Bayard, informing him of the facts. This was followed by several letters, giving further and more minute information, in compliance with the request of the Secretary of State. To be brief, Mr. Bayard finally informed both the reverend brother and myself, in a communication dated June 11, that "Mr. McLane was yesterday notified by cable to use his good offices in the matter." I regret to say that these have been found ineffectual and insufficient to meet the emergencies of the case, which I need hardly tell you, Mr. President, are of the most pressing and urgent character.

On the 22d instant the reverend brother received the inclosed important cablegram, which, it appears to me, meets the objections raised as to the right of official intervention. Here the vital questions of "protection" and "domicile" are presented, and reference made to the case of Martin Koszta, which, we contend, does not present the same strong ground as that of Baron Seillière's case for the action of our Government.

As this is a matter in which, I respectfully submit, the honor and self-respect of our Government and its high position among civilized nations is involved, I would earnestly invite your attention to the position taken and successfully maintained by the illustrious statesman who held the office of Secretary of State under President Pierce. In his communication to the Austrian minister, Mr. Hulsemann, Mr. Marcy says [Ex. Doc., first session, Thirty-third Congress]:

"It is not said that this initiatory step [declaration of intention] in the process of naturalization invested him [Koszta] with all the civil rights of an American citizen, but it is sufficient for all the purposes of this case to show that he was clothed with an American nationality, and, in virtue thereof, the Government of the United States

was authorized to extend to him its protection at home and abroad. Mr. Hulsemann, as the undersigned believes, falls into a great error by assuming that a nation can extend its protection only to native or naturalized citizens. This is not the doctrine of international law, *nor is the practice of nations circumscribed within such narrow limits.* This law does not, as has been before remarked, *complicate questions of this nature by respect for municipal codes. In relation to this subject it has clear and distinct codes of its own.* It gives the national character of the country not only to native-born and naturalized citizens, but to all residents in it who are there with, or even without, intention to become citizens, provided they have a domicile therein. * * * Whenever, by the operation of the law of nations, an individual becomes clothed with our national character, be he a native-born or naturalized citizen, an exile driven from his early home by political oppression, or an emigrant enticed from it by hopes of a better fortune for himself and his posterity, he can claim the protection of this Government, and it may respond to that claim without being obliged to explain its conduct to any foreign power, *for it is its duty to make its nationality respected by other nations and respectable in every quarter of the globe.*"

It appears from the inclosed dispatch that according to the French civil code Baron Seillière is no longer a French citizen, and that Mr. Kelly, the counsel to the American legation, takes the same ground held by Mr. Marcy in the Koszta case, and which I respectfully submit, Mr. President, constitutes a precedent on which our Government not only can act, but in which it is bound to act in accordance with the principle laid down by one of our most eminent Democratic statesmen.

Trusting that the information herein presented may determine you to demand through our minister to France the immediate release of Baron Seillière,

I remain, etc.,

JOHN MULLALY.

No. 250.

Mr. McLane to Mr. Bayard.

No. 437.] LEGATION OF THE UNITED STATES,
Paris, June 25, 1887. (Received July 9.)

SIR: Referring to my dispatch No. 432, of June 17, I have the honor to inform you that I have continued to use my personal good offices to obtain the release of Baron Seillière, and that his counsel, Mr. Kelly, to whom I referred in that dispatch, has conferred very fully with the minister of the interior on the subject.

Meanwhile the friends of Baron Seillière have engaged in a very active crusade against the law in virtue of which he was confined, several newspapers and members of the Chamber of Deputies participating therein, which under their direction assumed the form of an attack upon the ministry of foreign affairs and the interior and led to an interpellation upon the subject in the Chamber of Deputies yesterday, the result of which was an acknowledgment on the part of the minister of the interior that the law was defective and ought to be amended, but that it was his duty to execute it and that no fault whatever could be found with the manner in which it had been executed in Baron Seillière's case.

He had been confined in a private asylum by the police authorities upon the certificate of the two physicians required by law and he had been duly visited by the prefect of police, under whose jurisdiction these private asylums are placed, and that there could be no reasonable doubt of his insanity.

He concluded his statement by offering to the Chamber amendments to the law already adopted by the Senate, and the Chamber, by a unanimous vote, accepted his explanation and afterwards voted the immediate consideration of the amendments.

Referring to your telegram of June 10, authorizing me to use my good offices, I telegraphed you yesterday, before this debate took place,

that my personal good offices would not obtain release, the confinement being in conformity with French law, and the Government's inquiry having established present lunacy.

I had already been informed by Mr. Flourens that these inquiries had been instituted by the minister of the interior, and this morning, referring to my telegram of yesterday, I telegraphed to you that in the evening the minister of the interior explained in the Chamber the legality of the action taken under the present law and introduced a bill for its modification, upon which urgency was voted.

The minister of foreign affairs assured me yesterday afternoon that legal measures would be taken for release when insanity no longer existed.

He further called my attention to the provisions of law which authorized the wife or children, or even the friend of Seillière, to obtain his release when actual insanity no longer existed, which provisions were independent of the appointment of the curator at the suggestion of the administration to which the minister of the interior referred in the Chamber, and to which I have called the attention of Seillière's counsel.

In my intercourse with Mr. Flourens, though I did not permit my intervention to exceed the limit prescribed in your instruction, I discussed with him the question, which was very fully presented by Baron Seillière's counsel, as to whether his declared intention of becoming a naturalized citizen of the United States deprived him of his French citizenship, and Mr. Flourens did not conceal from me his decided opinion adverse to such a construction of international law. He said that the French Code, in contemplating the loss of French citizenship, assumed that a new citizenship had been acquired, and I am very sure that had I been instructed to demand Seillière's release it would have been refused, and I should have been involved in a discussion of a great international question, embarrassed by the facts and circumstances of a case involving the police and health laws of this country.

I have, etc.,

ROBERT M. MCLANE.

No. 251.

Mr. Bayard to Mr. McLane.

No. 244.] DEPARTMENT OF STATE,
Washington, July 2, 1887.

SIR: Your dispatch No. 432, of the 17th ultimo, reporting the exercise of your personal good offices in behalf of Baron Seillière, has been received.

Your course in execution of the Department's instructions appears to have been discreet and proper.

It is represented by the baron's friends that the present French law in respect of lunacy works much injustice in his case, and that considerable attention has been attracted to that fact. Your telegraphed statement that the Government has moved an amendment to the existing law, upon which the Chambers have voted "urgency," appears to confirm those representations.

In view of the circumstances, so far as known, this Department has confidence in your discretion, and leaves it to you to exhibit all proper interest in the case.

I am, etc.,

T. F. BAYARD.

No. 252.

Mr. McLane to Mr. Bayard.

No. 442.] LEGATION OF THE UNITED STATES,
Paris, July 6, 1887. (Received July 25.)

SIR: I have the honor to acknowledge the receipt of your instruction No. 238, of June 24, in relation to the case of Baron Seillière.

I have nothing to add to my Nos. 432 and 437, under dates June 17 and June 25, unless it be to assure you that I never gave any occasion for the friends of Seillière to represent to you that I only awaited instructions to make a formal official demand upon the French Government for his release. My personal good offices were promptly given him in view of his inchoate American citizenship, as you express it in your letter of June 23 to Mr. Mullaly, and they were continued in obedience to your instructions by cable.

Judicial proceedings have been instituted in behalf of his children to obtain his release, and his counsel, Mr. Kelly, continues to urge me to make a formal demand upon the French Government for his release. I shall not, of course, accede to his wishes without your instruction to that effect, nor shall I, as at present advised, recommend any such action on your part.

I inclose herewith a printed memorandum signed Edmund Kelly of counsel, together with sundry affidavits communicated to me as an appeal for diplomatic intervention in this case.

I do not feel called upon to discuss the three propositions submitted in this memorandum for your consideration or to analyze the analogy between the case of Seillière and the numerous citations submitted therein.

Mr. Kelly has from the outset acted as the counsel of Seillière's American friends, and has always been of opinion that the only effective service he could render his client was to secure for him the diplomatic intervention of the American Government, and he has maintained this view with great zeal and ability.

He knows very well that I have not felt at liberty to recommend such intervention, and that I am of opinion that the French law, in pursuance of which Seillière was confined, although open to much criticism and liable to abuse, has been complied with.

I inclose herewith copy and translation of Mr. Flourens's note, in reply to my letters to him, under date of 15th and 20th ultimo, tendering my personal good offices in behalf of Seillière, and I refer you to the French Journal Officiel of the 25th ultimo,* sent you last week, for the report of the debate in the French Chamber, to which Mr. Flourens refers, as embodying the views of the French Government in relation to the law of 1838. In this debate you will find set forth all the principal facts connected with Seillière's confinement.

I have, etc., ROBERT M. MCLANE.

[Inclosure 1 in No. 442.]

Mr. Flourens to Mr. McLane.

PARIS, *July* 7, 1887.

SIR: In accordance with your desire, I have the honor to acknowledge the receipt of your communications of the 15th and 23d of last month.

The information which Mr. Bayard had instructed you to procure, in an entirely unofficial and friendly manner, as you have been careful to remind me on different

* Not printed herewith.

occasions, in regard to the circumstances under which the confinement of Baron Raymond Seillière has taken place, was given, as you know, in a most complete manner ta the tribune of the Chamber of Deputies by my colleague, the minister of the interior, in the session of the 24th of June.

As to the release of the patient, as you also know, by the provisions of the law of the 30th June, 1838, it can only be ordered by a judicial decision. It is henceforth for those persons, to whom the aforesaid law gives the power of applying for such a decision, to have recourse, if they judge it expedient to do so, to the proper civil courts for that purpose.

Accept, etc., FLOURENS.

[Inclosure 2 in No. 442.]

Mr. Kelly to Mr. McLane.

36 AVENUE DE L'OPÉRA,
Paris, July 8, 1887.

DEAR SIR: In view of establishing the facts necessary in order to justify a petition to the United States Government to demand the surrender of the person of Baron Seillière, now confined in a lunatic asylum under conditions which his friends consider an outrage upon his rights of personal liberty, I have caused to be prepared a series of affidavits by such persons in France as happen to have knowledge of the matters of fact necessary to be proved. In view also of the questions of international law, public and private, raised by this case, I have prepared a memorandum, of which I hand you herewith two copies. the object of which is to show that, upon the affidavits presented, Baron Seillière has made a case for the intervention on his behalf of the Government of the United States.

I have been particularly induced to make this application in this form by the fact that it is, as I understand, the rule of the Department that such application be made upon affidavit, and by the fact that in a letter of the Secretary of State to John Mullaly, of the 7th of June, in regard to this case the Secretary of State wrote that "should justice be arbitrarily denied him (Baron Seillière), and the facts showing such to be the case be laid before the Department, supported by affidavit, the case, when so presented, will be examined in connection with the inchoate rights of American citizenship of Baron Seillière, as expressed by his declaration, made in California in August last, of his intent to become a citizen of the United States, and such steps will be taken as our national duty prescribes."

I hand you inclosed lists of the affidavits accompanying this memorandum; twelve as to the sanity of Raymond Seillière, six as to his domicile in the United States. Four more affidavits have not been signed as yet, in consequence of the absence of the affiants; they will be handed to you next week. I beg to point out that most of the witnesses on the subject of domicile are in the United States of America. The friends of Baron Seillière will put a list of those persons able to testify on the subject at the disposal of the Department.

I beg on this occasion to express my own hearty thanks, and those of all Baron Seillière's friends, for the great personal trouble you have taken to secure the release of Baron Seillière, by the tender of good offices on his behalf. Conscious that, under the instructions you have received from Washington, it is impossible for you to go further than you have already done, I now venture to express the hope that you will communicate the memorial and affidavits accompanying this letter to the Department, with such an expression of opinion on your own part as you may consider the unfortunate condition of Baron Seillière to-day, and the peculiar circumstances which surround his case, may justify.

Your obedient servant,

EDMUND KELLY.

[Inclosure 3 in No. 442.]

Affidavits as to domicile of Baron Seillière.

A.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
City of Paris, Republic of France, ss:

ALEXANDER D'ULLMANN, commander, being duly sworn, deposes and says:

I reside at 3 avenue Frochot, Paris, and am of the age of twenty-one years and over. I am intimately acquainted with the Baron Raymond Seillière, as appears by my affidavit made this day before the consul-general of the United States in Paris. It is of my per-

sonal knowledge that Baron Raymond had definitely abandoned his domicile in France, and had finally made his home in the United States of America, with the further intention of becoming an American citizen. As appears by my affidavit above referred to, I have been on terms of intimate acquaintance with the baron for a long time. He has expressed himself freely to me as to his intentions, both on business and personal matters, and he has repeatedly declared to me in the most positive manner that he had left France for good, and that it was his intention to settle permanently in America. He had to my most certain knowledge made business arrangements and plans which would of themselves have involved a long stay in America. He had, moreover, made there many warm friends, socially, to whom he had become attached. He came abroad on business with the intention of remaining not more than six weeks or two months, and of returning towards the end of July to the United States. His coming to Europe was purely for business reasons. He had engaged for himself and valet a return passage to the United States. He had engaged a villa at Newport, the lease to commence on the first of August. In the month of April he had engaged through me a civil engineer, M. Henri Guasco, to go out to America for a term of ten years. He was to be personally attached to the baron, and in his personal service, and was to join the baron in New York in the month of October. The baron suggested that in the interval M. Guasco should perfect himself in the English language. I annex copy of the letter which, at the request of the baron, I wrote to Guasco conveying these terms, which he accepted.

I also annex receipt from C. G. Gunther's Sons, showing that the baron had deposited with them his furs to keep during the summer. I could probably adduce many other instances in proof of the baron's intention to return; but it has been for so long a time well understood and accepted as a matter of course that he intended to make America his home that I have long ceased to remark any indications of his intention. I always regarded that as perfectly settled.

I recall two further instances: First, the baron, in going to America in 1886, had obtained and taken with him the *papiers de famille*, which, under French law, it would be necessary for him to produce in matters affecting his status. Secondly, that it was his intention, more than once expressed, of purchasing, in his own name, real estate in America, and that he was aware that for this purpose it would be necessary for him to become an American citizen.

Commander ALEXANDER D'ULLMANN.

Sworn to before me this 7th day of July, 1887.
[SEAL.]

ROBT. M. HOOPER,
Vice-Consul-General, Paris.

Bought of C. G. Gunther's Sons, fur dealers and furriers, etc., 184 Fifth avenue, storage charge, 33,947, $7, for 1887. Paid May 5, 1887.

[Signature illegible.]

B.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At London, England, ss:

CHARLES H. GIFFORD, being duly sworn, deposes and says:

I am a resident of the city of New York; a dental surgeon by profession, and am of the age of twenty-one years and over. I am thoroughly well acquainted with the Baron Raymond Seillière, as I have stated in another affidavit, which I hereby make a part of this affidavit. The baron was called to France on business early in May. Just before sailing he expressed to me his intention of purchasing a return ticket, and thought that his business in Europe would not occupy him more than six weeks. He made his plans for returning in August to America, and had made arrangements which would involve his presence there for years thereafter. He had, for example, engaged my time for five years to work for him there in developing certain enterprises. The baron had frequently expressed to me, and to others in my presence, his intention definitely to leave France and permanently make his home in America. I have heard him repeatedly say he had met with bad treatment in France; that his family and relatives had abused his generosity, and deeply wronged him; that it was his intention to abandon France; that he was greatly delighted with America; that America was the place to live in; that it was only among a people of such energy and push as the Americans possess that he could find congenial associates. All his plans, both business and otherwise, were to my knowledge based upon his intention to take up his home in America. He unquestionably had the intention of becoming an American citizen, as he had made his plans for purchasing real estate in various

parts of the country. He had left instructions that all his letters and correspondence should be sent to my house and retained by me. The business enterprises in which he was engaged would be of a kind to require his personal attention and supervision for many years to come. He often expressed his liking for America and the Americans, and great weariness of France. He had made a great many warm social friends, and his repeated expressions of attachment to the country confirmed in my mind his declared intention to make America, not only his place of business, but his home.

CHAS. H. GIFFORD.

Sworn and subscribed to before me.
[SEAL.]

THOMAS M. WALLER,
Consul-General.

LONDON, *July* 6, 1887.

C.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At London, England, ss:

PHILIP M. HARDER, being duly sworn, deposes and says:

I am a resident of the city of Brooklyn, and am of the age of twenty-one years and over. I am well acquainted with the Baron Raymond Seillière, and have been for several months connected with him in business matters. On the 7th May he sailed for France, intending to remain abroad not longer than six weeks, in which time he then expected to be able to attend to those business affairs which alone called him to France. He informed me, just before he sailed, that he had purchased a return ticket, and should be back in New York early in August. The baron had acquired an interest in certain business enterprises in America which required his return by that time, and which would require his supervision and personal attention for many years to come. It is of my personal knowledge, therefore, that his business interests were such as to require his immediate and permanent return. It is also of my personal knowledge that he had acquired these business interests out of his determination to make America his home. I have heard him declare dozens of times that America was the only place for him; that America was his home. I have frequently heard him make use of such expressions as "I have done with France," "I will make America my home," et cetera. He most unquestionably had the intention of becoming an American citizen. He had planned making large investments, in his own name, in real property throughout the United States. This I know of my own personal knowledge, and also from the instructions he had given to various assistants to that effect. The baron had taken a great liking to the Americans and to their ways of doing things, and frequently asserted that America was the only place to live. The statements as to his intention to return were made not only to me, but in my presence to a variety of gentlemen, sometimes in a business, sometimes in a purely personal way, but always in a most unmistakable and positive manner. He was always emphatic on that point.

PHILIP M. HARDER.

Signed and subscribed to before me.
[SEAL.]

THOMAS M. WALLER,
Consul-General.

LONDON, *July* 6, 1887.

D.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At Paris, France, ss:

CHARLES F. LIVERMORE, of the city of New York, being duly sworn, deposes and says as follows:

I am well acquainted with Baron Seillière, as I have already stated in another affidavit this day subscribed by me, which I hereby make a part of this affidavit.

Both in America and during the voyage the baron has repeatedly expressed to me and to others in my presence, his intention of abandoning France and making his home in America. I recall that he spoke on this subject with great earnestness and decision, making use of such expressions as "America is the only place to live in"; "I am tired of France"; "I have left it for good"; "I like America and the Americans, and I mean to make my home there"; "I mean to be an American"; "I have come to America to stay," and the like. He was in this respect one of the most enthusiastic proselytes, and his enthusiasm for the country of his adoption knew hardly any limits. The ex-

pressions and declarations made use of on these occasions were such as to leave no doubt in my mind that he had definitely abandoned his domicile in France, and had permanently established himself in America with the intention of there remaining.

CHAS. F. LIVERMORE.

Sworn and subscribed to this 8th day of July, A. D. 1887, before me,

[SEAL.] ROBT. M. HOOPER,
Vice-Consul-General, Paris.

E.

UNITED STATES COUNSULATE-GENERAL,
City of Paris, Republic of France, ss:

JOHN DARLING, being duly sworn, deposes and says:

I have resided for the last nineteen years in the United States of America, and have made them my permanent home. I am of the age of twenty-one years and over. About nine months ago I was engaged by Baron Raymond Seillière as his valet, and accompanied him throughout the United States, spending much of the time in New York and Washington. Towards the latter part of April I was offered a similar position in the service of Mr. Secretary Whitney, of the United States Navy. I then asked the baron what were his intentions in regard to myself. He asked me why I wished to know, and I told him of the position which had been offered me, and that I wished to be in the United States. He replied that he could pay me as much as Secretary Whitney could, and engaged me for two years—for a minimum term of two years—in the same capacity then held by me, saying: "I shall only be gone to France two or three months. Come with me. Although you do not speak French, I can probably make you useful. We shall return by the 1st of August." I cite this instance as one of the many which I could recall that the Baron Seillière intended to return permanently to the United States and make his home there, an intention which he had frequently expressed in my presence. I have never heard him express any other intention since I have been in his service. The engagement that I made with him for a minimum term of two years was upon the distinct understanding that we were to remain in America.

JOHN DARLING.

Sworn and subscribed to before me this 7th day of July, 1887.

[SEAL.] ROBT. M. HOOPER,
Vice-Consul-General.

F.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
City of Paris, Republic of France, ss:

JOSEPH BAUDRAIS, being duly sworn, deposes and says:

I reside at 29 Rue der Chateau, Neuilly-sur-Seine, and am of the age of twenty-one years and over. I am intimately acquainted with Baron Raymond Seillière, as I have set forth in an affidavit signed by me before the American consul on the 30th of June. I desire to supplement that affidavit by stating that the baron had made known to me his formal decision to establish himself permanently in the United States. The various interviews which I had with him at the Hotel Vendôme, referred to in my aforesaid affidavit, were based upon his decision to make his home in the United States. Their object was to come to an understanding as to the assistance which I, through my business relations in Paris, could, by representing him here, render to the affairs which he was himself to conduct in America. These arrangements had nearly been concluded in a manner satisfactory to myself, and apparently so to him, when he was seized and confined. I certainly should not have desired or attempted to enter into any such business relations with the baron, or assume the responsibility of representing him in Paris, if I had not believed him to be in the full possession of his faculties and entirely sane, and this I most positively affirm that I believed him to be, and still believe that he was, up to the last moment when I saw him.

JOSEPH BAUDRAIS.

Sworn and subscribed to before me this 7th day of July, 1887.

[SEAL.] ROBERT M. HOOPER,
Vice-Consul-General, Paris.

[Inclosure 4 in No. 442.]

Affidavits as to sanity.

I.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
City of Paris, Republic of France, ss:

ALEXANDRE D'ULLMANN, being duly sworn, deposeth and says:

I am a resident of the city of Paris, France, and am of the age of fifty-three years. I have been acquainted with the Baron Raymond Seillière for more than ten years, and have known him intimately for more than eight years. During all that time he has always impressed me as being a man of great mental and bodily vigor, extremely generous, warm-hearted, earnest, and of keen sensibilities. He has always been extremely generous and free-handed, especially towards the members of his own family. He has, to my knowledge, for fifteen years past spent something like 200,000 francs per annum for his sister, the Princess of Sagan, to enable her to live in the luxury which she craved. It was the intention of his father to leave him the lion's share of his estate, to the disadvantage of the sisters and brothers of Baron Raymond, and it was only on the refusal of Baron Raymond to accept a larger portion than those of his brothers and sisters that the father made his four children legatees in equal parts. For many years a partner in the banking-house of Demachy, R. et F. Seillière, he became the leading spirit of that house, and practically took upon himself the entire responsibility for the conduct of the business. He was a man of enormous energy, and great executive ability. Supported by his iron frame and robust physical health, he was able to do the work of many ordinary men.

After having been robbed of more than two million of francs at the Cercle de la rue Royale, under circumstances which brought to light the famous scandal of that club, he found himself obliged to reduce his expenses, to cease his allowance to Madame de Sagan, and to call in various loans, which he had made with his accustomed generosity. It was at this moment that the exasperation of his family, at seeing this source of supplies shut off from them, took the form of the application for the appointment over him of a *conseil judiciaire*. This act on the part of his relatives—relatives to whom he had shown such generosity—deeply wounded him. He spoke often of it; usually in a tone of great sadness. There were times when the ingratitude thus manifested deeply angered him, but as a rule his tone was one of grief. He often declared that it was impossible for him to comprehend how his brothers and sister, of whom he had always been so fond, who had always seemed fond of him, and upon whom he had showered so many benefits, could take this hostile attitude. It is true that he had just lost a large sum of money, but he was certainly the only one of his family who worked, and the only one who made money. His brother Frank had been for many years a member of the banking-house, but had done absolutely nothing in its affairs, and for years had not even appeared at its offices. The entire weight of the responsibility of the business had for years rested upon the baron's shoulders. He alone of his father's heirs had been active and successful in business, whereas the others did nothing but profit by his activity and toil. He earned and spent; they did nothing but spend; and, in large part, they spent what he earned. All this which I affirm is of my personal knowledge, as well as the substance of repeated declarations made to me by the baron. It was in recounting these facts that the grief and indignation of the baron against his family were most commonly manifested. He finally determined to expatriate himself and go to live in the United States, with the idea of commencing life anew. He accordingly left France on the 6th of June, 1886. I have been, as I have already stated, his intimate friend for many years, and was thoroughly acquainted with the circumstances under which he came to leave France.

I know well how strong and deeply-rooted was the feeling which had led him to abandon his country. On the first day of October, 1886, he cabled to me to join him in America. I left France on the 16th of that month, and from the 28th of October, 1886, to the 19th of May, 1887, I have not left him a single day.

I assisted him at New York in the creation of business relations and in the establishment of certain business projects of his, explained and elaborated by him with such clearness, accuracy, and vigor as to be the subject of common remark among those with whom he came in contact. He was busily occupied for months in explaining his projects to the leading financiers of Wall street, and this became known to many of the most prominent men of business circles and otherwise of New York, Washington, and elsewhere in America. He developed his projects with such success that in spite of the fact that a French court had appointed a *conseil judiciaire* over him in France, a body of capitalists commissioned

him to return to Europe to make preparations for a business enterprise of great importance, interesting directly both America and France.

I was present at numberless interviews between the baron and financiers and business men of all shades; have myself often conversed with them in regard to him, and been present when he was made the subject of conversation with others. I never heard a suggestion that there was the least taint of insanity or mental aberration about him. On the contrary he was always referred to as a man of unusual mental ability and of remarkable clearness and sagacity. He frequently spoke with great warmth and energy when advocating his plans, for he was a man who put the whole force of his powerful nature into whatever he had on hand. I never heard the slightest intimation made, either with reference to such occasions or to any others, that his mental condition was in any way abnormal.

I do not feel myself at liberty, for obvious reasons, to mention freely the names of the persons with whom he entered into business relations, or what those relations were, but I may mention that among the persons who were interested with him in business enterprises were Mr. Levi K. Morton, late minister of the United States to France; Mr. Charles F. Livermore; Mr. C. Waterbury, 5 New street; Mr. John E. Develin; General Newton, the engineer; Mr. Hoguet, of the Emigrants' Savings Bank; and ex-Mayor Grace, all of New York. He was on more or less confidential relations with his banker, Mr. Drexel, of Drexel, Morgan & Co., and Mr. White, of White, Morris & Co. He was on intimate social relations with many of the above-mentioned gentlemen and others; as, for example, Mr. Newcombe, Admiral Baldwin, Mr. W. K. Vanderbilt, Mr. Henry Clews, and August Belmont, of New York; Mr. George P. Lathrop and his brother Francis, of Boston, but then of New York; Mr. William Goddard and Professor Gammell, of Providence, R. I.; Mr. Leland Stanford, of San Francisco, whose guest he had been in California; Mr. Fairbank, the dealer in lard; Mr. Decoven, the banker; and General Chetland, all of Chicago; also many of the members of the diplomatic corps at Washington; as, for example, Mr. West, the British minister; Baron Struve, the Russian minister; Count Lippe, the Austrian chargé d'affaires; Señor Muruaga, the Spanish minister; M. Roustan, the French minister, and also George C. Bancroft, the historian, and Brother Tobias, for many years chief of the School of Christian Brothers, also of Washington; Secretary Whitney of the Navy; Secretary Endicott, of the War Department, with whose family he was also acquainted. He also, on one or more occasions, in February last, had interviews with the President, Mr. Cleveland. He was also a very warm friend of Dr. Millard, the eminent physician of New York. A letter of introduction from him I hereto annex and make a part of this affidavit. In it the baron is introduced as an accomplished scientist, a friend of many of the most noted physicians, a gentleman whom it is a pleasure to know. The baron was being constantly entertained at dinner and otherwise by many of the gentlemen above named, and many of them have repeatedly dined with him. I was myself present on some of those occasions, antedating but a few weeks his seizure and confinement as a raving lunatic.

For the fact that he was well known in business and social circles, particularly in New York and Washington during the last winter, I need only refer to the daily papers of those cities during that period, which contained constant mention of his movements.

I most positively affirm that up to 4 o'clock in the afternoon of the 19th May he had not in any respect altered or changed from what he was while in America.

The baron and myself sailed on the *Gascogne* from New York on the 7th day of May, and during the eight days of the voyage he was almost continually in the society of such people as Mr. and Mrs. C. L. Livermore, Mrs. Pearson, the Baroness Itajuba, Mr. Chambers, of the New York Herald, Count Sala, the secretary of the French embassy at Washington, Mr. Baudais, of Paris, and myself. We saw each other continually. I can positively affirm that there was nothing in his conduct during the voyage which bore the least trace of mental aberration, or which excited any remark or suspicion that came to my knowledge.

We arrived at Havre on the 15th of May, and at Paris on the evening of that day. He had spoken to me during the voyage of an idea which he said had just occurred to him, of attempting a reconciliation with his family, and had said to me that he thought his aunt, the Duchesse de Berghes, seemed to him the most suitable person to effect that reconciliation; but I recollect that the baron on leaving me said, "If ever at Paris I am as much as an hour late at any appointment, have me searched for by the police, for I certainly shall have fallen into some trap laid for me by my sister."

On Monday, the 16th May, the morning after his arrival, he went to visit his aunt, the Duchesse de Berghes, and on leaving her house he came to see me. He said, "It was quite an inspiration of mine to charge my aunt with the mission of this reconciliation; she has just said to me, my dear Raymond, it is not a reconciliation that you need, but a satisfaction, a punishment of those who have wronged you." During that day (Monday) he received from the Duchesse de Berghes a note, asking him to return and see her the following day, Tuesday, the 17th, at 11 o'clock. This appointment he kept. I saw him on

his return, and he said to me that his aunt had greatly excited him against his family, and that he had spoken with vehemence of his wrongs and of their base ingratitude. He said his aunt seemed entirely to sympathize with him, and begged me to have a magnificent bouquet of roses sent her as a token of his gratitude for her sympathy and kind reception. On the following day, the 18th, he did not call on his aunt or any member of his immediate family, but he received from his aunt an appointment for Thursday, the 19th, in the afternoon, on the occasion of the fête of the Assumption. I have subsequently learned that it was at this interview he was entrapped and carried to the insane asylum at Vanves. I saw him on Wednesday, the 18th, and Thursday, the 19th, the day of his disappearance. A number of us were assembled on that day in the parlor of Mr. Livermore, at the Hotel Vendôme. I remember present, among others, Mr. and Mrs. Livermore, Mrs. Pearson, Mrs. Robin, as well as myself. We talked for some time together, up to the time when the baron had to leave to keep his appointment with his aunt, and I solemnly declare and affirm that he was not in the least excited, and that he was in his normal state of mental and physical vigor, genial, affable, and entertaining, and that there was absolutely not the slightest mark of mental aberration about him, or anything which gave rise to comment after his departure, or which, in my opinion, could give rise to any suspicion of insanity. I can, therefore, positively affirm that Baron Raymond Seillière was seized and locked up as a lunatic on a day when more than ten people had seen him in good health and perfectly sound mind.

The prefect of police subsequently caused an investigation to be made with the object of establishing what was the state of Baron Seillière in America, and also in Paris during the four days which followed his arrival there. This investigation was made by Mr. Veron, the *commissaire* of police, and the following witnesses were examined: Mr. and Mrs. C. L. Livermore; the Prince de Sagan, the husband of the Princess de Sagan, at whose written request Baron Seillière was confined; Comte Sala, the first secretary of the French embassy at Washington; M. Baudrais; Georges de Cassagnac, brother of Paul de Cassagnac; M. Vernier, the *conseil judiciaire* of the baron, and myself. All these persons declared that the baron was in a perfect state of health, mental and physical, not in the least insane, as was also declared by the minister of the interior at the Chamber of Deputies, session of Friday, 24th June, as appears by the official report of that session, in the Journal Officiel of June 25, 1887. Mr. Veron, the *commissaire* of police, permitted me to examine the certificates of the doctors, which are now in the possession of the Government, and on examining them I discovered that the report had been signed on the 18th May.

It should be recalled that, as I have already stated, the baron had not gone to see his aunt on that day, and could not have been then and there examined by the doctors Mottet and Decaisne. As I have already stated, Baron Raymond called upon his aunt on the 17th, but he always declared to me that he was alone with her, and that no one else was present. My memory is perfectly clear, from his various accounts of his interviews with his aunt, that he had had no interview with these doctors up to the last time I saw him, at 4 o'clock on the 19th.

Since his confinement at Vanves repeated attempts have been made to obtain an interview with him, both by me and by other persons who were intimate friends of the baron, traveling with him and associated with him in business. These attempts, although supported by all the influence we could bring to bear, have proved fruitless; whereas the Princess de Sagan, at whose written request he was confined, and certain friends of hers have been allowed free access to him. None of his friends from America have been permitted to see him.

The foregoing affidavit, having been carefully read over by me, is hereby subscribed by me in evidence of its correctness.

Commander ALEXANDER D'ULLMAN.

Sworn to before me this 6th day of July, 1887.

[SEAL.]

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

4 EAST FORTY-FIRST STREET, NEW YORK, *April* 22, 1887.

DEAR DR.: This will introduce to you the Baron de Seillière, of Paris. Monsieur de Seillière is an accomplished scientist and friend of many of the most noted physicians of Paris. He desires to perform some experiments, which he desires some young physician to aid him in, and which he will describe to you.

I shall be very glad if you can be of any service to Monsieur de Seillière. You will find Monsieur de Seillière a gentleman whom it is a pleasure to know.

Very truly yours,

H. B. MILLARD.

The envelope is addressed: "Dr. Wm. N. Hubbard; Bellevue Hospital, foot of East Twenty-sixth street.

"From Dr. Millard, to introduce Monsieur de Seillière."

II.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At London, England, ss:

CHARLES H. GIFFORD, being duly sworn, deposes and says:

I am a resident of the city of New York, and a dental surgeon by profession. I am of the age of twenty-one years and over. I have been acquainted with the Baron Raymond Seillière in the city of New York from the month of March, 1887. I first met him on business, but our acquaintance was both business and social, and I had ample opportunities of knowing him in both ways. For the month preceding his sailing in the *Gascogne*, 7th May, I saw him almost constantly every day, and sometimes all day long. I was interested with him in business affairs which called for the exercise, in the highest degree, of judgment, common sense, clear-headedness, prudence, and sagacity.

In all these qualities he was a constant surprise to me; I have never met the man who was his equal in these respects.

He had also the most remarkable memory, both in accuracy and scope, which has ever come under my observation. From a business point of view I found him to be a born organizer, with great grasp of mind and correctness of action. He was a man of exuberant energy, both physical and mental. His energy in conversation often took the form of great vigor of expression. He was impressionable, excitable, and rather sanguine.

He entered into every project and every matter with great warmth. The test, however, which he was constantly applying both to his own actions and to any projects submitted to him was that of their soundness from the point of view of common sense. I never saw a trace of anything irrational in any word or act of his. He was a man remarkably accurate and precise in his speech, and I have invariably found the representations that he made to be scrupulously correct. Although a sanguine man, as I have already said, he was emphatically free from anything like hallucination, either in regard to business affairs or resources, and I have always found his statements to be understatements rather than otherwise. He lived well, slept well, ate well, and took a good deal of exercise with great regularity. He was extremely abstemious as to drinking, and rarely touched anything but a glass of Bordeaux with his dinner. His time was very fully occupied with business affairs, his appointments succeeding one another all day long with many of the prominent business men of New York City and elsewhere.

I have often heard him made the subject of conversation, and have conversed with others regarding the baron, and have never heard a suggestion or intimation made that he was in any respect lacking in mental soundness, or had shown the least trace of aberration of mind. I can positively affirm that, during the time that I knew him, up to the time that he sailed on the 7th of May in the *Gascogne*, he was a perfectly sound and remarkably able and clear-headed man.

CHAS. H. GIFFORD.

Sworn and subscribed to before me.

THOMAS M. WALLER,
United States Consul-General, London.

JULY 6, 1887.

III.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At London, England, ss:

PHILIP M. HARDER, being duly sworn, deposes and says:

I am a resident of the city of Brooklyn, and am of the age of twenty-one years and over. I first became acquainted with Baron Raymond Seillière in New York, in the month of April last. I was introduced to him by business friends, and our meeting was for business purposes of an important nature. The interview was satisfactory, and we, from that time forth, became interested in certain business enterprises, relating, among other things, to an invention for the preparation of food for the army, etc., which greatly reduced the food in bulk. The nature of these enterprises was such that I was constantly brought into communication with him. I saw him every day, and frequently two or three times a day, from that time up to the time when he sailed, on the 7th of May, in the *Gascogne*, for France. I had frequent occasions to discuss business affairs with him. Baron Raymond was the clearest-headed business man I ever saw in my life. Although a free and brilliant conversationalist, his speech, when he was talking business, was extremely brief, pointed, and clear. The instructions which he gave to persons who were his assistants were always strikingly brief and clear. He could al-

ways be understood, and there was never any occasion to ask him a second time. He had the most remarkable memory I have ever known in regard to facts and figures, and could give facts which happened ten years ago, with the day and the hour of their occurrence, perfectly. I could not pick out in the city of New York, nor, in all my business relations, a man who was clearer-headed in matters of business than he was. I frequently heard him made the subject of conversation, and never heard it suggested or hinted in any way that he was other than a perfectly sane and remarkably able man. He was a man of marked personality. I know at the time of sailing he had purchased a return ticket, and intended to be back in New York early in August; our business relations required that he should be back at that time, and the baron was satisfied that in six weeks' time he could transact the business affairs which had called him abroad. If any man is sane, Baron Raymond Seillière was sane up to the moment when I last talked with him on the deck of the steamer about to sail from New York.

PHILIP M. HARDER.

Sworn and subscribed to before me.

THOMAS M. WALLER,
United States Consul-General, London.

JULY 6, 1887.

IV.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Paris, France, ss:

CHAS. F. LIVERMORE, of the city of New York, being duly sworn, deposes and says as follows:

I am a resident of the city of New York, and of the age of sixty years and over. I am well acquainted with Baron Raymond Seillière, who is, as I am informed, now confined in an asylum in or near Paris. I first met the baron socially in America and after came frequently into contact with him and came to know him very well. I crossed the ocean on the same steamer with him, the *Gascogne*, which sailed from New York on the 7th of May, arriving at Havre on the 15th of that month.

We proceeded at once to Paris, arriving there the same evening, and I saw him daily thereafter until and including the 19th. On the 19th, the day of his disappearance, he came to see me in reference to a dog he had agreed to purchase for me. He was perfectly natural, calm, and composed. There were several persons present on that occasion. There was nothing in his manner which appeared to excite their suspicion as to his sanity. We conversed for some little time, and he left my parlor at or about half-past four, saying that he had an appointment with his aunt, the Duchesse de Berghes, and showing me a note from her requesting him to call at that hour. He told me that he had already seen her since his arrival in Paris, and that through her he hoped to bring about a reconciliation with his family. The baron, on leaving me at half-past four, agreed to return at half-past eight to receive my answer with reference to a breakfast to which we were invited on the following day. He did not return that evening, and I sent him a note asking him to call the following morning. I have never seen him since. I remember that the baron said in my presence to a friend on the day of his arrival in Paris, "If I am ever an hour late in keeping an appointment, you may be sure that I have fallen into some trap, of which I long had a suspicion. In such case, notify the police and hunt me up."

I had known him socially and otherwise, more or less intimately, for six months in America. I had been in daily and almost hourly companionship with him on the steamer, and in Paris had seen him almost as much. From the first to the last I found him always sociable, genial, and entertaining; remarkably well-informed, the possessor of a memory which in exactitude and scope I have never seen equaled; a man of very sound judgment and with more than usual vigor, physical as well as mental.

I have never heard the suggestion or intimation made that he was in any respect lacking in mental health, nor has the suspicion ever occurred to my own mind. Since his confinement as an alleged lunatic I have searched my memory for any action, gesture, or word which would support such a theory, and I can recall none.

I am absolutely convinced that, up to the moment when I last saw him, Baron Raymond Seillière was a man in unusually perfect mental and physical health, as sane as any man I ever knew, although eccentric.

Sworn and subscribed to this 8th day of July, A. D. 1887, before me,

ROBERT M. HOOPER,
Vice-Consul-General.

V.

[Translation.]

UNITED STATES CONSULATE-GENERAL,
City of Paris, Republic of France, ss:

Mr. J. BAUDRAIS, being duly sworn, deposes as follows:

I reside at Neuilly-sur-Seine (Seine), No. 29, rue du Château. I have known Baron Raymond Seillière intimately since my visit to the United States. I knew him most intimately during the time which preceded his confinement. I saw the said Raymond Seillière at New York on the 7th day of May, 1887. I saw him in Paris every day up to the time when he was taken to the asylum. I was at the house of the aforesaid Baron Raymond Seillière on the evening before he was taken to the asylum, at the beginning of a conversation which he had with Mr. Vernier, his counsel, and I heard him talking about his affairs with the said Vernier in the most rational manner; I was even struck with the touching sentiments of affection which he expressed in speaking of his brother, Frank Seillière. I saw him on the morning when he was confined, and I left him at about 10 o'clock in the morning at the door of the Prince de Sagan.

He was then perfectly calm and rational. During all my relations with the said Raymond Seillière I have never known him to be subject to any hallucinations whatever. He was of a mercurial temperament, and became easily excited when he spoke of his difficulties with his family. He was a man of great energy, and inclined to believe in the success of the affairs which he undertook; he was not, however, any more unreasonable than persons inclined to engage in great enterprises usually are.

I declare especially that, on the morning of May 19th, during our whole conversation, he was perfectly calm and rational, and had entire control of himself.

BAUDRAIS.

Sworn and subscribed to this day, 30th of June, A. D. 1887, before me.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

VI.

[Translation.]

UNITED STATES CONSULATE-GENERAL,
City of Paris, Republic of France, ss:

Mr. C. RAVAUT, being duly sworn, deposes as follows:

I reside at No. 15 rue de la Paix, where I am engaged in business as a jeweler. I have known Baron Raymond Seillière since the year 1864. He called at my house on Wednesday, the 18th of May last, at half-past 12 o'clock; our conversation lasted for twenty minutes. I observed nothing in his manner that could lead me to think that he was mentally unsound; on the contrary, he impressed me as a man having perfect control of himself.

C. RAVAUT.

Sworn and subscribed to this 30th of June, A. D. 1887, before me.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

VII.

[Translation.]

UNITED STATES CONSULATE-GENERAL,
City of Paris, Republic of France, ss:

Mr. LOUIS BONTRON, being duly sworn, deposes as follows:

I am the door-keeper of the Hotel Vendôme, in the Place Vendôme, at Paris. Baron Raymond Seillière put up at the Hotel Vendôme during the night between the 15th and 16th of May. I may be mistaken with regard to the date, but it was between the 15th

and 16th or the 14th and 15th. I remember that he was expected until 1 o'clock in the morning, at which hour he arrived. I saw him constantly at the hotel; he repeatedly conversed with me in relation to some commissions which were to be performed for some friends who were to come to see him, and concerning the duties of my position. I saw him for the last time on the afternoon of May 19th. During the whole time that he remained at the hotel he was perfectly rational, showing no signs of mental aberration whatever, and always giving me his instructions in a very precise manner, and without the slightest confusion.

I did not observe the shadow of any hallucination in him. His condition on the 19th of May was the same that it had been on the days preceding; he went out and came in frequently, and I saw him every time he did so; I consequently saw him a good many times. His condition was always that of a rational man having perfect control of himself.

BONTRON.

Sworn and subscribed to this 29th day of June, A. D. 1887, before me.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

VIII.

UNITED STATES CONSULATE-GENERAL,
City of Paris, Republic of France, ss.

JOHN DARLING, being duly sworn, deposes and says:

I am thirty-nine years of age. For the last nine months I have been valet to Baron Raymond Seillière and constantly in his service, traveling with him in the United States, and being with him day and night. He was a man most actively engaged in business matters, and everywhere he went, notably in San Francisco, Chicago, New York, and Washington, was in relation with men of great prominence in business and social circles. I remember, for example, that he had frequent business interviews and dined with Armour, the pork packer of Chicago, and that he dined with Mr. Medill, the editor of the Chicago Tribune. He was entertained at dinner by many of the leading men of New York, including Mr. W. K. Vanderbilt, the Goelets, the Burdens, August Belmont, Mr. Levi P. Morton, the ex-minister of the United States to France, and the Livermores. I repeatedly had to leave cards with these persons after the dinners. I also recollect that he entertained at dinner, at the Hotel Brunswick, ex-Mayor Grace, Henry George, Father Doucey, and the Marquis de Mori. All these men were his friends, and he was on terms of intimate social relation with them.

I have frequently heard him in conversation with them and with hundreds of others. I have watched his dealings with men; I have been present at his interviews, both business and social, with men of all grades, and I have never observed the least indication on his part of anything like unsoundness of mind. He talked with great clearness and force. He was a man of somewhat excitable temperament, and when roused expressed himself with warmth. He slept well, ate well, worked hard, walked a great deal, and was very energetic, both physically and mentally. I should call him a remarkably healthy man. I never knew him ill a day except once, when he had a sore throat, which was cured the next day. He was not subject to headaches or depression of spirits. He was cheerful and genial. He was not irritable. I never saw him out of temper all the time I have been with him, nor had a cross word from him. He was not at all erratic or changeable. I never observed in him anything like a tendency to change his mind without apparent reason. As already stated, I have been with him constantly during these nine months, often day and night. It never once occurred to me that he was otherwise than a sane man. I never had the least fear. There was never anything in his conduct which appeared to me strange, and I can positively affirm from the intimate acquaintance I have thus had with him that he is as sane a man as ever I saw, and a far more able and clear-headed man than almost any one I know.

JOHN DARLING.

Sworn to before me this 7th day of July, 1887.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

IX.

[Translation.]

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
City of Paris, Republic of France:

PAUL LE DUC, being duly sworn, deposes as follows:

My name is Paul le Duc, and I am at present residing at No. 15 rue Ponccelet, Paris. I have been the *valet de chambre* of Baron Seillière since 1883, during which time I have not left him, except from the month of September last until the 15th of May, which was the day of his arrival in France.

In my capacity as a confidential servant I know the disagreements which have separated the baron and his family, but I do not think it proper for me to state what they were. Things being viewed from the baron's standpoint, he had serious grievances against his family. He was of a lively, sanguine, and excitable temperament, and I always found him very deeply affected when he spoke of his family or when any one spoke to him on that subject. I have, however, never seen him in an irrational condition, and I have never seen him under any hallucination; especially I have never heard him say that he was a cousin of the Virgin Mary, the son of Jesus Christ, or anything of that kind. He was exceedingly talkative, and made use of a great many gestures; his condition was that of a man greatly excited by anger, but he never did anything that might not have been expected from a man in anger.

He arrived in France on the 15th of May last. In obedience to his orders I met him at Havre. I accompanied him to the Hotel Vendôme at Paris. He went out and came in without telling me where he was going, but always appeared perfectly sane.

On Ascension Day, May 19, he returned at 4 o'clock, as usual, threw himself on his bed, telling me that he had an appointment at the house of his aunt, the Duchess de Berghes, at half-past 4, and told me to wake him at twenty-five minutes past 4. I woke him at twenty-five minutes past 4, and he told me to let him sleep a quarter of an hour longer. At the end of that quarter of an hour I roused him again. He arose, and when leaving the house told me to wait for him. There was nothing abnormal in his conduct when he left me. We conversed a few minutes before he went out. He told me that he would not be gone for more than three-quarters of an hour at the utmost, and that I must not leave the house until he came back. Since then I have not seen him.

P. A. LE DUC.

Sworn to before me this 7th day of July, 1887.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

X.

[Translation.]

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
City of Paris, Republic of France, ss:

Madame JOSEPHINE KRANTZ, being duly sworn, deposes as follows:

I am a lady's maid. In that capacity I accompanied my employers on board the *Gascogne*, which sailed from New York on the 7th of May, and arrived at Havre on the 15th of the same month. I was in the first cabin with my employers. Baron Raymond Seillière was one of the passengers, and conversed freely with my employers and with every one on board. I frequently had occasion to hear him talk, and saw a great deal of him; he always conversed in a rational manner, and never said anything indicating mental aberration; he was under no hallucination, and always appeared like a man who was mentally sane and had perfect control of himself.

JNE. KRANTZ.

Sworn and subscribed to this 29th day of June, 1887, A. D. Before me.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

XI.

[Translation.]

UNITED STATES CONSULATE-GENERAL,
City of Paris, Republic of France, ss:

DOMINIQUE BONARDI, being duly sworn, deposes as follows:

I reside at No. 15 rue Cauchois, Paris. I am sixty-two years of age. I have known the Seillière family for more than forty years. I was brought up there. I have known Baron Raymond Seillière since he was a little child. I saw him very often just before his departure for America in the summer of 1886. I saw him on the day after his return from America, that is to say, on the 16th of May. Since then I have seen him every day and even several times a day until the 19th of May, on which day I saw him for the last time between 11 and 1 o'clock. He sometimes remained for an hour in conversation with Commander d'Ullmann, in whose service I am.

On all these occasions he was very calm, and apparently in good health. I never observed any excitement in him or heard him raise his voice higher at one time than at another in the course of these interviews. They conversed about business matters. When I saw him on his return from America I did not find him at all changed since I had seen him before, except by age. I never observed the slightest sign of mental aberration in him, and he always appeared to me as sound in mind as he was in body.

DOMINIQUE BONARDI.

Sworn before me July the 7th, 1887.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

XII.

[Translation.]

UNITED STATES CONSULATE GENERAL,
City of Paris, Republic of France, ss:

PAULINE CUILLERIER, wife of Dominique Bonardi, being duly sworn, deposes as follows:

I am the wife of Mr. Dominique Bonardi, who has signed the foregoing deposition. I have been in the service of Commander d'Ullman for a number of years. I have carefully read the statements made by my husband in the foregoing deposition, and I declare that they are true, to my own knowledge. I confirm every word that he has said. I am convinced that Baron Raymond Seillière was perfectly sound in mind the last time that I saw him, namely, about noon on the 19th of May.

PAULINE BONARDI.

Sworn before me July the 7th, 1887.

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

[Inclosure 5 in No. 442.—Translation.]

Affidavit as to the law.

CITY OF PARIS,
Republic of France, ss:

RAYMOND MAGNIER, being duly sworn, deposes as follows:

I am an attorney of the court of appeals. I live at 16 Boulevard Malesherbes, Paris. Was called to the bar November 18, 1848, and have practiced my profession before the court of appeals of Paris since that date. In the practice of my profession, I have daily had occasion to occupy myself with the consideration and decision of questions of French law. Being consulted as to the rights which may be enforced by the friends of a person in an insane asylum, as to the legal course which his friends may take in behalf of the person confined, before what courts the case should be brought, and as to the method of procedure before these courts, I have given the following opinion:

Paragraph 1 of Article 29 of the law of June 30, 1838, reads as follows: "Any person detained or confined in an insane asylum, his tutor, if he is a minor, his curator, any relative or friend, may at any time apply to the court of the place where the asylum is situated, which, after the necessary proof has been made, will decree the immediate release [of the person confined] if there be ground therefor."

The right of the friends of the person confined to petition the court in their own names to relieve the person detained is therefore formally established by paragraph 1 of Article 29 of the law of June 30, 1838.

The same article, in the same paragraph, defines the competent court. It is the court of the place where the asylum [in which the insane person or the person alleged to be insane is confined] is situated.

What are the methods of procedure before this court?

Paragraph 4 of the said Article 29 of the law of June 30, 1838, defines them in the following terms:

"The decision shall be rendered merely on the petition in chambers and without delay; the grounds thereof are not to be stated; the petition, judgment, and the other proceedings to which the complaint may give rise are to be stamped and recorded, (*en débet*), the costs not being taxed."

The law in this paragraph of Article 29 "establishes a rapid and economical course of procedure."

No summons; no plea in bar; a mere petition in chambers; no charge for stamps and recording; directions to the court to decide immediately and without delay.

The jurisdiction of the court in chambers was not established by any special law nor by any title of the code of civil procedure fixing generally the competence of this court and the course of procedure in it. It is only in particular cases, specified in each instance, that various provisions of the laws and of the code of civil procedure have declared that legal proceedings should be set in motion merely by petitions to the court filed, not in the open court, but before the court in chambers.

The proceedings before the court in chambers are not, then, generally speaking at least, by the method of petition and answer, and they are essentially secret—no notification of motions, no pleadings.

The Tribunal de la Seine is, however, accustomed, on request made, to authorize the party petitioning to make, either himself or through his attorney or counsel, an argument in support of his petition.

The court in chambers may and should surround itself with all the proof calculated to aid it in rendering its judgment; it can commission physicians to examine the person whose release is requested; it can even cause this person to appear and examine him; but it can not order arguments or examination in public; it can not proceed to the examination of witnesses—in a word, the power conferred on the court in chambers is a discretionary power.

What characterizes this power belonging to the court, which is secret, absolute, within its discretion, and without public control, is that, while every judgment, under pain of nullity, must contain the statement of the reasons determining the court's decision, in this case paragraph 4 of Article 29 of the law of June 30, 1838, expressly declares that the grounds of the decision are not to be given.

The court in chambers enters judgment in the following words: The petition is refused, or granted.

The procedure is, therefore, absolutely established as discretionary in the interest of the person confined; but it may also be turned against him.

The judgment may, however, be appealed to the court of appeals, which proceeds in the same manner as the court below.

Paris, July 2, 1887.

R. MAGNIER.

Sworn and subscribed to this the 11th day of July, A. D. 1887.

[L. S.]

ROBT. M. HOOPER,
Vice-Consul-General, Paris.

[Inclosure 6 in No. 442.]

Memorandum re Raymond Seillière.

The Baron Raymond Seillière has been for many years one of the most notable characters in Paris. The fortune which he inherited from his father has not laid idle in his hands, as in the hands of his brothers. An active partner in the firm Demachy and Seillière, he has devoted himself to large enterprises with an indomitable energy and extraordinary business insight. What, however, has served most to popularize him in France is the open-handed liberality he has always shown to those who were immediately around him. The millions that he made with one hand he distributed in magnificent largesses with the other. This munificence, of which his family did not hesitate to profit, as is shown by one of the affidavits annexed to this memorandum, appears when

exercised in other directions to have excited the jealousy of one of his brothers and of his only sister.

I am not in possession of the exact details of the family quarrel which ended in the appointment of a *conseil judiciaire;* the only person who could give me these details with accuracy is the Baron Seillière himself, to whom I am refused access. Such facts as I have, however, I shall endeavor to present as nakedly as possible, without comment, and particularly without setting down all the explanations thereof offered by the Baron Seillière's friends, hoping thereby to eliminate from this memorandum the personalities which have already played too important a part in the political treatment of the question.

Upon the threat of François Seillière, the brother of Raymond, to have a *conseil judiciaire* appointed over the person of Raymond under articles 513, 514, and 515 of the Code Civil, Raymond served upon his brother by huissier a solemn declaration in the nature of an affidavit, dated the 10th September, 1885; which opens with the following passage:

"That Baron Raymond Seillière has certain knowledge of the fact that the threat to appoint a *conseil judiciaire* is the result of an unavowable conspiracy entered into between François Seillière and Georgina Galiffet, the wife of Galiffet, the mother-in-law of the latter, who together have circumvented the Princesse de Sagan, sister of the affiant; that the plot resulting from this conspiracy, of which François Seillière is the active instrument, has one object, namely, to secure the fortune of the affiant by the pressure of vain and chimerical threats in the nature of blackmail and with a view to preparing the way to attack later on any will the affiant may make in case such will be not favorable to them."

It goes on to say that the persons so conspiring have not even had the delicacy to conceal their veritable intention, and have not hesitated to communicate it to strangers, whose testimony the affiant declares himself able to produce.

The above declaration is important as it tends to show that the relations of Raymond Seillière were, as early as the 10th September, 1885, endeavoring to create the impression that Raymond was not in the possession of his mental faculties.

Whether confinement in a lunatic asylum was then contemplated is not clear; it is important, however, in this connection, to point out that the Princesse de Sagan had already had recourse to confinement in a lunatic asylum with two members of her own family; in 1875 she got her brother, the Baron Roger, confined in a lunatic asylum, and in 1881 she had recourse to the same plan with her own eldest son. Both these gentlemen were released from the asylums in which they were confined with the greatest difficulty and are now alive, well, and in full possession of their faculties.

The proceeding for the purpose of securing the appointment of a *conseil judiciaire* was at last instituted, and ended in the appointment of Mr. Vernier in that capacity. Raymond has always claimed that the decision rendered in this case was an outrage; I confine myself to pointing out that the judgment did not in any way cast imputation upon the mental sanity of Raymond. In order to secure the appointment of a *conseil judiciaire* it is only necessary to show that the person for whom the appointment of the *conseil* is requested is prodigal in his expenditure. Such a proceeding is entirely unknown to our courts. The effect of it was to place the whole of Raymond Seillière's fortune in the hands of a stranger, and to put a dangerous check to all the enterprises in which Raymond was at that time engaged.

These circumstances have been dwelt upon because it is important to explain the reasons of Raymond's departure for America. He became thoroughly imbued with the conviction that he could not obtain justice in France, and he then decided once and forever to shake off the bonds that bound him to the country under the laws of which such an affront had been put upon him, and to start anew in one with whose institutions and people he had long been in cordial sympathy.

In America Raymond appears to have been presented to persons occupying the highest positions in our State; he appears also to have had financial transactions with some of our shrewdest business men and to have immediately become interested in a variety of American enterprises to which he had made up his mind to devote himself.

He immediately took steps to have himself naturalized a citizen and filed a declaration of intention in California. He hired a house in Newport; and finding that there was a great field in France for working a patent of which he was negotiating the purchase in America, he sailed for that country on the 7th of May, taking a return ticket and securing his return passage in the City of Rome, leaving for New York on the 3d of August next. Not anticipating the importance it might have hereafter to have it carefully set forth that he had abandoned the intention of returning permanently to France and had acquired that of making his permanent domicile in America, he took no precautions to have this made a matter of record, except by the declaration filed in California as above stated. His own lips are now sealed by the application of the law of 1838. It is

only, therefore, by the observations which he may have let fall during his stay in America, and by such details in his life as throw light upon the subject, that we can come to any conclusion as to what his real intention was. Trivial though the incident may be, it is useful in this connection to note that upon going to France he took the precaution to have his furs stored with Gunthers, in New York, thereby clearly showing his intention of spending the following winter in our country. He left also a deposit of money with Wright, Morris & Co., 102 Broadway. The amount of this deposit was originally $20,000. It is not known how much he has drawn on this sum, but it is supposed that there still remains a considerable balance in their hands. The annexed affidavits also show that he had induced some Frenchmen, and had endeavored to induce others, to abandon France and join him in his new home in the United States. They also abundantly prove that at all times he declared it to be his fixed intention to acquire a permanent domicile in the United States and that he had abandoned all idea of resuming his original domicile in France.

He arrived in Paris on the 15th May, took rooms at the Hotel Vendôme, and saw a great number of people upon his arrival.

It appears that there was one subject upon which it was difficult for him to speak without losing his temper. Whenever reference was made to the treatment he had received at the hands of his family his anger was apt to express itself in loud language and violent gesture. As, however, he approached France his naturally good heart and forgiving disposition seemed to get the ascendancy and he often spoke of his desire to reconcile himself with his family. The person whom he thought best able to bring about such a reconciliation was the Duchesse de Berghes, upon whom he called. It was at the house of the Duchesse de Berghes, we are now given to understand, that the doctors saw him; it was there that he was bound by three men and carried off by violence to the asylum of Dr. Fabret.

The circumstances under which this was done are not certainly known to us; they are only gathered by inference from such papers as have come to us, and by the failure to contradict those inferences on the part of the family. They are not, however, likely to be erroneous, inasmuch as there has been, in the first place, a violent newspaper controversy, in which certain papers have been inspired by the friends of Raymond, and certain others by those at whose demand he was confined. In the second place, there has been a debate at the Chamber on the subject, at which important statements were made and left uncontradicted, though a contradiction thereof was challenged.

It appears from the papers, which were put into the hands of Mr. Jules Gaillard, the deputy who raised the question in the Chamber, that there was a first certificate made by Drs. Mottet and Decaisne on the 18th of May, and a second certificate on the 20th of May, signed by Dr. Decaisne. On the 16th May Raymond made his first visit to the Duchesse de Berghes. He has stated to his friends that he was received by her with the greatest cordiality; that she went so far as to say that she would secure for him, not merely a reconciliation, but an apology. She made an appointment with him by letter for 11 o'clock on the next day. Raymond showed the letter to Mr. Livermore. Raymond has given his friends—notably Commander Ulmann and Mr. Livermore—a detailed account of that interview. It appears that she did much to excite him on that occasion against his family, dwelling in emphatic terms on the wrong they had done him; at that interview she made a subsequent appointment with him for the 19th. It is important to observe in this connection that the first medical certificate was made on the 18th, a day which he spent exclusively with friends who certainly played no part in his confinement. It is certain that on the 18th no doctor had access to him. It seems probable, therefore, that the medical certificate is wrongly dated the 18th May, or that if it were executed on that day it referred to an interview on the preceding day. In order that the certificate should have been written at all prior to the 20th the only reasonable hypothesis is that the doctors were concealed in the room of the Duchesse de Berghes, and that she deliberately excited him by emphasizing the wrong that he had suffered at the hands of his family for the purpose of working him up to a condition that would justify a medical certificate to the effect that he was in a state of cerebral excitement. The doctors, however, on that occasion were unable to make a positive report that Raymond was sufficiently insane to justify confinement. They concluded, however, from the state of excitement in which they saw him, that "if he does not become calm it will be necessary to confine the invalid."

This is not a declaration under which confinement is permissible under the law of 1838. It appears however that a more categorical report was made on the 20th May by Dr. Decaisne, couched in the following terms: "Referring to the opinion rendered on the 18th May, 1887, I consider that, both with a view to the security of Raymond Seillière and of the rest of his family, whom he threatens, it is proper to put him in a lunatic asylum."

Now, the day that he disappeared was not the 20th May, but the 19th May. We know that he left the hotel at a quarter to 5 on the 19th May, having given instructions to his

valet not to go out, as he expected to return shortly. We also know that before arriving in France he had requested his American friends, if he was an hour late for an interview, to immediately put detectives on his track, as he feared that his relatives might endeavor to put him in an asylum, that being a favorite plan with the Princesse de Sagan. We also know the reasons he had for suspecting that such a plot was being hatched. It seems, therefore, certain that he was seized and bound on the 19th May, and kept in the house of the Duchesse de Berghes, in a state, probably, of uncontrollable rage during the night between the 19th and 20th, and that it was in this condition that Dr. Decaisne saw him on the 20th and rendered his final certificate. It seems difficult to believe that any man possessed of human temper could remain bound during twenty-four hours and continue to express himself in pleasant terms with regard to those who had so handled him.

On the 20th May Raymond Seillière was expected to breakfast at Mr. Livermore's. For reasons we know now he did not keep his engagement. On the 20th Mr. Livermore received the following card from the Princesse de Sagan, whose acquaintance he did not have the honor of enjoying:

"La princesse de Sagan présente ses civilités et prie qu'on ne s'inquiète pas de son frère, le baron Seillière; il a été rejoindre son frère Franck à Wildbad. Il est en bonne santé et reviendra sous peu."

"The Princesse de Sagan presents her compliments and begs that no one be anxious about her brother, the Baron Seillière; he has gone to join his brother Frank at Wildbad. He is in good health and will return shortly."

The statement contained in this letter was a delicate falsehood made for the purpose of misleading Mr. Livermore and preventing the inquiry which the Princesse de Sagan seemed at that time to fear.

Since his confinement none of his friends have had access to him, not even his counsel. Only two letters have been seen from his hand; these two letters are addressed to the minister of the United States asking for his intervention. The first of these letters referred to a previous letter which the minister has never received. Both of these letters, though written in very poor English, betray no evidence of insanity.

The *prefet de police*, upon being called upon to examine into the case, called seven or eight witnesses to testify as to the condition of the baron just prior to his confinement. These seven or eight witnesses testified unanimously that Raymond Sellière, though excitable, was absolutely sane.

A few days after his confinement a doctor was deputed by the procureur de la République, in compliance with the law of 1838, to examine him. The report of this doctor was read to me by the assistant district attorney "substitut," who has special charge of lunatic asylums. This certificate stated that he was suffering from maniacal loquacity "*loquacité maniaque*;" that he was under certain hallucinations—namely, that he had purchased an American patent called *poudre de viande*, with which he expected to make his fortune; that he had acquired American nationality; that he had written to the American consul, and that he was waiting for the intervention of the American Government. These were the only so-called hallucinations set forth in this certificate. So far from being hallucinations every statement contained in that certificate was practically true. While in America he had begun negotiations to secure the control of an American invention called Meat Powder, with which not only he but all his friends expected to make their fortunes. He had taken such steps in America as, according to the advice he had received, were sufficient to entitle him to the protection of the United States Government. Whether he had written to the consul is a thing we can not know; but we do know that he had written to the minister, though the first letter written was apparently intercepted. Nevertheless it was upon these supposed hallucinations that the doctor designated by the district attorney (procureur de la République) decided that Baron Raymond Seillière was mad.

The access of his friends and of his counsel was refused on the ground that the medical man had decided that he was in such a mental condition as to require "repose and medical care." It is interesting to observe now what has apparently been the effect of the "repose and medical care" to which he has been subjected. The minister of the interior having received notice that the matter was to be brought before the Chamber by Mr. Gaillard, requested the head of the police department to himself visit Raymond Seillière and make report thereupon. On the 20th of June Mr. Gragnon, the préfet of police, reports that the effect of "repose and medical care" upon the man that entered the house of the Duchesse de Berghes sane and left it bound hand and foot to be conveyed to a lunatic asylum upon the certificate of Drs. Mottet and Decaisne, was that he was now a raving maniac, "the son of Jesus Christ and the cousin of the Virgin Mary."

If the "repose and medical care" which Raymond Seillière enjoys at Dr. Falret's can make a man who was sane on the 19th of May a raving maniac on the 20th June it does not seem unreasonable on the part of Raymond Seillière's friends to take every measure the law, whether private or public, can give and imagination can devise to save him from a continuation of the same.

From all these facts it appears incontrovertible that a man of large heart and powerful intellect, who had abandoned the country of his nationality out of a sense that a wrong had been done him there and thrown himself upon the protection of the United States, by taking such steps as under the precedents established by the Government itself were declared sufficient to entitle him to such protection, has been while in full possession of his faculties bound in a private house by his own relations, kept in that house for twenty-four hours, carried away to a lunatic asylum, and there subjected to treatment which has had for consequence to make him to-day, if we are to believe the accuracy of Gragnon's report, a raving maniac. All this has been done in secret. I shall show that no public investigation is allowed under the law; that under the law he is deprived of the benefit of counsel; deprived of the opportunity of cross-examining witnesses; deprived of every proceeding in the nature of habeas corpus; deprived of every safe-guard thrown around personal liberty under the Constitution of the United States.

Under the circumstances above stated, Baron Seillière has, in two letters addressed to the United States minister at Paris, requested the intervention of the United States Government on his behalf. The United States minister, in compliance with instructions from Washington authorizing him to use his good offices to secure Baron Seillière's release, has proceeded as far with the minister of foreign affairs as his instructions permit. By frequent personal visits he has represented to the French Government the interest which he unofficially takes in the case. I understand that no definite answer has as yet been given by the French minister; but I learn that the French minister does not consider himself authorized to order the release of Baron Seillière upon a mere tender of good offices for that purpose, inasmuch as Baron Seillière is regularly confined in conformity with the law of 1838.

The contention of Baron Seillière is that the law of 1838 violates admitted rules for the maintenance of justice in judicial inquiries to an extent that the United States Government has in previous cases considered sufficient to justify intervention whenever a person entitled to protection was concerned.

In order to sustain this contention, I propose to consider:

(1) What are the rules of international law which have guided the United States Government heretofore as to intervention?

(2) Assuming that Baron Seillière is entitled to the protection of the United States Government, does this case come within the rule?

(3) Does the status of the Baron Seillière entitle him to the protection of the United States Government?

I shall confine myself in the following argument to the precedents cited by Francis Wharton in the International Law Digest, published last year, going outside of this work only where I have to discuss such questions as that of French nationality, which do not come within its scope. My object in adopting this course is that the citations made herein will be the easier verified by the Department, and because the principles and precedents therein cited are sufficiently exhaustive and complete to make recourse to other works unnecessary.

I.—What are the Rules of International Law which have Guided the United States Government Heretofore as to Intervention?

In his first volume Mr. Wharton, after explaining that the general principle which has guided the Government heretofore has been that of non-intervention, proceeds, on page 187, to state the exceptions to this rule, first and foremost amongst which is the following:

RELIEF AND PROTECTION OF CITIZENS ABROAD.

"This exception applies not merely to citizens of the United States, but to persons domiciled in the United States. The rule is that wherever a person of either of these classes claims the protection of the Department, or redress in case of injury, the Secretary, on affidavits showing the nature of the danger or wrong will instruct the Minister, in the country from which the danger or wrong proceeds, to ask explanation, and in case of danger or wrong being proved, to insist on relief or redress."

In vol. 2, p. 649, Mr. Wharton lays down the principles which have been adopted by the Department on this subject, as follows:

Quoting Mr. Bayard, Secretary of State, to Mr. Morrow, February 17, 1886.

"When application is made to this Department for redress for the supposed injurious actions of a foreign judicial tribunal, such application can only be sustained on one of two grounds:

"1. Undue discrimination against the petitioner as a citizen of the United States in breach of treaty obligations; or

"2. Violation of those rules for the maintenance of justice in judicial inquiries which are sanctioned by international law."

Quoting again Mr. Bayard, Secretary of State, to Mr. McLane, June 23, 1886:

"That the state to which a foreigner belongs may intervene for his protection when he has been denied ordinary justice in the foreign country, and also in case of a plain violation of the substance of national justice, is a proposition universally recognized.

"One of the highest authorities on international law, Valin, says:

"To render legitimate the use of reprisals, it is not at all necessary that the ruler against whom this remedy is to be employed, nor his subjects, should have used violence, nor made a seizure, nor used any other irregular attempt upon the property of the other nation or its subjects; it is enough that he has been denied justice."

Not only the principle therein laid down, but the cases which I shall now cite clearly show that in case redress is required against the application of a law under which the applicant deems himself to have been wronged, it is by no means necessary to show that the law is inhuman or barbarous. It is only necessary to show that it has worked "palable injustice" or that "justice has been denied" or "undeserved indignities have been inflicted" or that the law is "exceptional and harsh in operation," "dispensing with all the safe-guards of personal security," or that there has been a "denial of the usual means of redress," a "refusal of counsel," a "refusal of the opportunities of examining witnesses face to face on trial, and of producing witnesses in defense;" or that it is "absurd to seek justice by judicial processes." The Department has gone so far in this direction as absolutely to insist on the release of an American who was imprisoned for debt, on the ground that "imprisonment for debt, where no criminal offense is committed, is contrary to what are now considered recognized principles of international law."

I beg now to quote the words of the dispatches instructing our diplomatic agents abroad to intervene in the cases above referred to:

Wharton, II, 434, quoting Mr. Cass, Secretary of State, to Mr. Body, March 3, 1860:

"The United States believe it to be their duty, and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances, and by the law of nations."

Wharton, II, 436, quoting Mr. Evarts, Secretary of State, to Mr. Foster, September 4, 1880:

"If the meaning of the action of the Russian Government in a particular case 'is that a citizen of the United States has been broken up in his business at St. Petersburg simply for the reason that he is a Jew,' then it should be made clear to the Government of Russia that the religion professed by one of its citizens has no relation whatever to that citizen's right to the protection of the United States."

Wharton, II, p. 437, quoting Mr. Frelinghuysen, Secretary of State, to Mr. Morton, March 25, 1884:

"Undeserved indignities inflicted by French authorities on a naturalized citizen of the United States, traveling with a passport, on a process for compelling him, as a Frenchman by birth, to perform military service, will, though followed by a release, be ground for diplomatic appeal to France for redress."

Wharton, II, p. 437, quoting Mr. Frelinghuysen, Secretary of State, to Mr. Lowell, October 22, 1884:

"The United States nevertheless contend that such special laws as to persons exceptional in character and harsh in operation, dispensing with all the safeguards of personal security, can not be applied with propriety to citizens of the United States who may be peacefully sojourning or traveling in any part of Her Majesty's dominions."

Wharton, II, pp. 437, 438, quoting Mr. Frelinghuysen, Secretary of State, to Mr. Morgan, February 17, 1885:

"The Government of the United States recognize the right of Mexico to prescribe the reasonable conditions upon which foreigners may reside within her territory, and the duty of American citizens there to obey the municipal laws; but those laws can not disturb or affect the relationship existing at all times between this Government and its citizens. The duty is always incumbent upon a government to exercise a just and proper guardianship over its citizens, whether at home or abroad. A municipal act of another State can not abridge this duty, nor is such an act countenanced by the law or usage of nations."

Wharton, II, pp. 438, 439, quoting Mr. Bayard, Secretary of State, to Mr. Gebhard, September 9, 1885:

"The case in which this Government assumes to interfere in behalf of one of our citizens, where redress may ordinarily be had in the courts of the country in which he claims to have been wronged, is that of a denial to him by those courts of the usual means of redress."

Wharton, II, pp. 439, 440, quoting Mr. Bayard, Secretary of State, to Mr. Jackson, July 20, 1886:

Without quoting from this dispatch, I may briefly say that it referred to the Cutting case, and the main contention of it was that the Mexican law had been "harshly executed." "an interpretation of the evidence against him refused"; that he was "refused counsel"; that he "was given no opportunity for cross-examination"; that "bail was refused," and other aggravations fully set forth in the report.

Wharton, II, p. 443, quoting Mr. Bayard, Secretary of State, to Mr. Jackson, July 26, 1886:

"Under these circumstances, I instruct you to call upon the Mexican Government to direct that the prosecution against Messrs. Gaskill and Ward be brought at once to trial, and that the proceedings should be conducted in such a way as to give the accused in advance a statement of the witnesses to be produced against them, and the opportunity of cross-examining these witnesses on their behalf in defense."

Wharton, II, p. 444, quoting the opinion of Dr. Miller in the Slaughter-House cases, 16 Wall, 79, 80:

"Another privilege of a citizen of the United States is to demand the care and protection of the Federal Government over his life, liberty, and property when on the high sea or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranted by the Federal Constitution."

Wharton, II, pp. 444, 445, quoting U. S. Cruikshank, 92 U. S., 1542:

"Citizens are members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights."

Wharton, II, 445, 1 Op., 53, Bradford, 1794:

"A nation ought not to interfere in the cause of its citizens brought before a foreign tribunal except in a case of refusal of justice or of palpable injustice."

Wharton, II, 612, quoting Mr. Forsyth, Secretary of State, to Mr. Semple, February 12, 1839:

"The proposition that those who resort to foreign countries are bound to submit to their laws as expounded by the judicial tribunal is not disputed. The exception to this rule, however, is that when palpable injustice, that is to say, such as would be odious to all the world, is committed by that authority towards a foreigner, for alleged infractions of municipal law, of treaties, or of the law of nations, the government of the country whereof the foreigner is a citizen or subject has a clear right to hold the country whose authorities have been guilty of the wrong accountable therefor."

Wharton, II, 613, quoting Mr. Conrad, Acting Secretary of State, to Mr. Peyton, October 12, 1852:

"The refusal of a Chilian court, in 1852, on the trial for crime of an American citizen to hear testimony on behalf of the defendant, would, if sustained by the Chilian Government, be considered by the United States as a gross outrage to an American citizen, for which it will assuredly hold Chili responsible."

Wharton, II, 614, quoting President Buchanan, second annual message, 1858:

In this case the United States Government notified the Mexican Government that if it carried into effect a decree banishing from the country an American citizen who had refused to pay a tax called a forced loan which had been imposed upon all capitalists, irrespective of nationality, and therefore without discrimination against him, that it would adopt "the most decided measures that belongs to the powers and obligations of the representative office." The banishment having been enforced, political relations between the two countries were suspended.

Wharton, II, 618, quoting from Mr. Fish, Secretary of State, to Mr. Foster, December 16, 1873:

"In case of a denial of justice the right of intervention through diplomatic channel is allowed, and justice may as much be denied when, as in this case, it would be absurd to seek it by judicial process, as if it were denied after having been sought."

Wharton, II, 620, 621, quoting from Mr. Fish, Secretary of State, to Mr. Cushing, December 27, 1875:

"This Government has not claimed that citizens of the United States who place themselves in a foreign jurisdiction carry with them the particular immunities surrounding trials in their own country, nor has it insisted that peculiar advantages to the accused, such as trial by jury and the habeas corpus, are or must be a part of the jurisprudence of foreign countries, but we have claimed that by international law and by the usages and customs of civilized nations, a trial at law must be conducted without unseemly haste, with certain safeguards to the accused, and in deference to certain recognized rights, in order to mete out justice."

Wharton, II, p. 626, quoting Mr. Evarts, Secretary of State, to Mr. Goodloe, March 14, 1879:

"The state to which a foreigner belongs may interfere for his protection when he has received positive maltreatment, or when he has been denied ordinary justice in the foreign country, and the state of the foreigner may insist upon immediate reparation in the former case."

Wharton, II, p. 626, quoting from Mr. Blaine, Secretary of State, to Mr. Lowell, June 2, 1881:

"But whatever may be the necessity, in the estimation of Her Majesty's Government, for the existence and enforcement in Ireland of the exceptional legislative measures recently enacted in respect to that country, this country can not view with unconcern the application of the summary proceedings attendant upon the execution of these measures to naturalized citizens of the United States of Irish origin, whose business relations may render their presence necessary in Ireland or any other part of the United Kingdom, or whose filial instincts and love for kindred may have prompted them to revisit their native country."

Wharton, II, p. 642, quoting Mr. Bayard, Secretary of State, to Mr. Langston, March 28, 1885:

"The release of Van Bokkelen is now asked on independent grounds. It is maintained, first, that continuous imprisonment for debt where there is no criminal offense imputed is contrary to what are now generally recognized principles of international law."

Wharton, II, p. 645, quoting Mr. Bayard, Secretary of State, to Mr. Jackson, July 20, 1885:

"Oppression of a citizen of the United States by a Mexican customs officer is a subject for diplomatic intervention and the party concerned is not confined to a judicial remedy."

Nor is intervention denied in case the person who claims the protection of the United States Government suffers maltreatment under the laws of the Government to which he once belonged. Not only did the Government interfere to protect a naturalized citizen who was wrongfully detained by Germany in violation of a treaty (see Mr. Fish, Secretary of State, to Mr. Davis, November 21, 1876, quoted by Wharton, II, p. 435), but it intervened in behalf of a Frenchman by birth in the absence of all treaty, who had suffered undeserved indignities from the French authorities (see case above cited, Frelinghuysen to Morton, March 25, 1884). And the intervention of the United States Government on the imprisonment of naturalized citizens under the coercion bill in 1881, above referred to, took place in favor of persons who were originally British subjects.

I have not found, amongst all the precedents that I have examined, a single case reported where the American Government has had occasion to demand the delivery of persons confined under the French law of 1838, but for the simple reason that no such demand has ever before been refused. Such demands were made when both Messrs. Washburn and Morton were ministers at Paris, and in no case was the right of the American Government to make this demand questioned; on the contrary, the American citizen so confined was immediately delivered over at the request of our Government.

In these cases I am given to understand that the American citizens confined under the law of 1838 had suffered no illtreatment and had set forth no special grievance. There was no allegation that the parties were not insane, no reason for suspecting the entire good faith of the confinement. These cases, therefore, were entirely free from the aggravating circumstances which make the present case one having special right to the sympathy of the public and the protection of our Government.

I now come to the study of the next question.

II.—ASSUMING THAT BARON SEILLIÈRE IS ENTITLED TO THE PROTECTION OF THE UNITED STATES GOVERNMENT, DOES THIS CASE COME WITHIN THE RULE?

In order to intelligently discuss this branch of the question, it is necessary to refer briefly to the French law of 31 May, 1838, under which Raymond Seillière was and is still confined.

Upon a first reading of this law one is struck by the number of apparent safeguards by which it is surrounded. It is only upon a careful examination of it that the inutility of these safeguards is discovered.

The only details of the law which it is necessary for me to discuss are those connected with the recourse given by the law to those persons who desire to investigate into the conditions under which a friend or relation has been confined.

The confinement having taken place under the circumstances hereinbefore stated, the only recourse given to Seillière's friends is that set forth in articles 14 and 29.

Article 14 provides that even before the person confined is cured he must be set free on the demand of either, first, a curator appointed as set forth in a subsequent article;

second, a husband or wife; third, in the absence of husband or wife, an ascendant; fourth, in the absence of ascendants, a descendant; fifth, the person who shall have signed the request to have a party confined; sixth, any person authorized by the family council. This article has little or no application to the present case. Raymond Seillière has neither ascendant, nor wife, nor legitimate descendants to intervene. The family council is composed of the very persons who have had him confined. The person who signed the request to have him confined is the Princesse de Sagan, his sister, and, as he alleges, his bitterest enemy. A curator has been appointed at the instance of the attorney-general, but in view of the fact that Raymond Seillière is to-day positively declared to be a maniac, the curator will of course take no steps to have him set at liberty.

Article 29 provides that any person may apply to the court having jurisdiction over the lunatic asylum in which the alleged insane person is confined, and the court "shall, after having made the necessary verifications, if it thinks proper, order an immediate release. This decision shall be rendered upon a simple petition *en chambre de conseil* and without delay. The judgment shall contain no explanation of the reason therefor."

The important feature of this procedure is its clandestinity. It is purely *ex parte*. There is no public debate, no production of the person of the party alleged to be insane, no examination of witnesses on the one side or the other, and consequently no cross-examination of either. The judges decide *en chambre de conseil*—that is to say, in a private room. All other judgments, save in the case of adoption, have to set forth the reasons which determine them. This case, therefore, is one of two exceptions to a salutary rule. Experience has shown the practical working of this procedure to be as follows: Upon petition for the release of a person confined in a lunatic asylum being addressed to the court, the court, in perfect good faith, appoints a physician to examine into the case; the physician, guided by the medical certificates already rendered, his own responsibility being covered thereby, reports conformably to those certificates, and the judgment rendered maintains the *status quo*.

I must not abstain from admitting that the law provides for an examination of every person confined in a lunatic alsylum, as in this case, by a doctor prescribed therefor by the prefect within three days after notice, and that within fifteen days after his admission the doctor at the head of the asylum is bound to deliver a certificate to the prefect setting forth the progress of the lunatic's disease.

All these apparent safeguards, however, remain in the same vicious circle. The original medical certificate on which confinement is obtained determines the direction which all these other procedures ultimately take. All persons charged by the law with the duty of examining into the condition of the insane person feel that their responsibility is covered by the original certificate. They have no interest themselves in the matter, and prefer the personal security assured by a confirmation of what has already been done to the annoyance which would result from a controversy with a professional comrade.

But it is not necessary for me to dwell upon the defects of this law: the whole press, even that part of it which had most warmly taken up the defense of those who had secured this confinement, has admitted that the law of 1838 was a blot upon their statutes,* and the minister of the interior himself, when challenged upon this case in the Chamber, found it inexpedient to propose a law amending the same, a proposition to which the Chamber responded by a vote of urgency. A comparison of this law with our own statutes on this subject will bring into strong relief the features of it against which Raymond Seillière has most to complain. Had he enjoyed the real safeguards thrown around the liberty of the individual by our Constitution and by our laws, full light would have been made upon all the circumstances attending this case before the "repose and medical care" to which he has been subjected, had reduced him to the state of lunacy in which he is now declared to be.

The minister of the interior in the debate at the Chamber expressed his astonishment that no application had been made to the court under article 29 above referred to. The reason why this application has not been made is that there is considerable precedent to maintain the argument that if a party has voluntarily submitted to the jurisdiction of a foreign court, he has no longer the right to demand the protection of his government.

Wharton II, p. 445, quoting the opinion of Attorney-General Bradford, 1 Op. 53, 1794: "When a suitor applies to a foreign tribunal for justice he must submit to the rule by which that tribunal is governed."

See also Mr. Bayard, Secretary of State, to Mr. Gebhard, September 9, 1885, quoted by Wharton II, p. 439.

* Dr. Colineau in 1870 summed up the provisions of the law of 1838 as follows:
"Les asiles des fous sont des enfers à la porte desquels il faut laisser toute espérance. Ce sont des fabriques d'aliénation chronique. Une fois leur seuil franchi, l'emprisonnement y est élevé à la hauteur d'une méthode. C'est l'arbitraire illimité, l'arbitraire sans rivages qui préside aux placements. C'est le régime du bon plaisir clandestin, ou le despotisme organisé. Les asiles sont des oubliettes. Le premier venu peut, armé de la signature du premier médecin venu, jeter un citoyen dans un asile sans autre forme de procès."

I am not sure that this principle applies to the present case and that if recourse had been taken under article 29, it would have precluded Baron Seillière from demanding the protection of the American Government, but as all counsel I consulted agreed with me that recourse under article 29 would be absolutely futile, it was not deemed advisable to expose Seillière to the chance of having this recourse used against him, there being some weight in the argument that if Seillière had submitted his case to a French court, he had thereby admitted the jurisdiction of these courts and must abide, therefore, by their decision.

But Seillière has systematically declined to avail himself of any opportunity for securing his release except such as might be exercised through the intervention of the American Government. All the information we have concerning his attitude is consistent with this statement; indeed, his attitude in this connection was considered by one of the doctors as one of the evidences of his insanity.

But there is still a better reason for not appealing to the French courts to-day, for we are informed that however sane Seillière may have been on the day he was confined, the treatment to which he has been subjected since has succeeded in bringing about the very lunacy his confinement was intended by the law to prevent. The only remedy given under the law is a recourse by petition to the court to have the sanity of the party confined looked into with a view to securing his release if found not to be insane. If Seillière is insane—and far be it from us to deny so high an authority as the prefect of police on this subject—then the French courts are bound to keep him where he is. Now, his friends contend, and assuredly with reason, that a treatment which has begun by destroying a man's intellect may very well end by encompassing his death, and it is for the life of Raymond Seillière that they appeal to the Government upon which he had been advised he had a right to rely. They are sure that in proper hands he will recover the reason he has lost; they are equally apprehensive that if allowed to remain where he now is he will be driven to suicide or gradually brought, as hinted by the report of a medical statement of the case by Dr. Mottet—*in articulo mortis.** Recourse to French

This article appeared in several papers:

SOCIÉTÉ MÉDICO-PSYCHOLOGIQUE.—LE CAS DU BARON SEILLIÉRE.

La Société médico-psychologique, qui tient ses séances, 13 rue de l'Abbaye, est une Société savante qui s'occupe exclusivement de l'étude de l'aliénation mentale et des maladies nerveuses. Fondée depuis cinquante ans, elle compte parmi ses membres presque tous les médicins aliénistes, quelques philosophes et jurisconsultes.

Il y avait foule pour entendre les explications du docteur Mottet sur l'internement du baron Seillière. Nous allons citer un des passages de cette conférence, à titre de document.

Après avoir relaté les premiers incidents de l'incarcération à la maison Falret, le docteur lit quelques extraits écrits par Seilliére:

"Ma généalogie précise, Jupiter et Junon, Confucius, Salomon, etc. Un rejeton apparaît dans le désert, c'est Mahomet, d'où moi. — Je suis petit-fils de don Juan d'Autriche. Mohamet eut une seule fille légitime, ma grand'mére, la reine des pures."

Ce délire, vous le reconnaissez sans peine, dit M. Mottet, n'est pas un délire de fraîche date. On y trouve des idées systématiquement liées entre elles.

M. Gaillard, à la tribune de la Chambre, nous a reproché de ne pas avoir écrit le mot "aliénation." Mais aliénation mentale est un terme vague; le mot manie est, au contraire, un diagnostic, la manie étant une variété d'aliénation, M. Gaillard devait pourtant se rappeler l'histoire récente d'un de ses collèagues, M. Villeneuve, dont la maladie a débuté comme celle du baron Seillière et qui est aujourd'hui à l'article de la mort.

M. Falret raconte ensuite jour par jour la maladie de M. Seillière depuis so internement.

Le malade est complètement isolé. Il n'a jamais vu d'autres malades de la maison. Il a de véritables crises épileptoïdes suivies de syncopes. Le 23 juin, il en a eu trois. Pendant ces accès, il a brisé deux portes et a moitié assommé un domestique, avec un verre enveloppé dans une serviette. Il a refusé des ailments pendant deux jours, voulant jeûner quarante jours, mais se prétendent au trente-huitième jour de jeûne. Le colonel Gallet, dans une de ses visites, fur complètement déshabillá par lui et forcé de se promener tout nu dans le jardin. Il a simulé la cécité, la surdité, la paraysie, se prétendant empoisonné. Il n'a jamais eu la comisole.

Depuis deux jours, il a de fréquents retours à la raison. Hier, dans un de ses moments lucides, il m'a remercié de mes soins et m'a dit: J'ai été bien malade, je viens d'avoir une crise, j'en ai déjà eu à la suite de ma fièvre typhoïde. Ce ne sera rien. J'ai été remis à la suite d'un séjour dans ma propriéte de l'Oise. Je demande à y retourner."

Après une discussion intéressante sur l'état du malade, qui peut, paraît-il, mourir rapidement à la suite d'une crise, la Société médico-psychologique vote à l'unanimité l'order de jour suivant:

"La Societé médico-psychologique, en présence des attaques violentes qui sont produits contre deux de ses membres, après avoir pris connaissance de l'affaire, renouvelle à MM. Falret et Mottet sa sympathie, approuve complètement leur conduite et passe à l'ordre du jour."

courts, therefore, was at all times futile as to relief; it was injudicious in the effect it might have on this applicaiion, and to-day is rendered useless in form as well as in fact by the success of the conspiracy with which it was powerless to cope.

Assuming for a moment that Seillière is entitled to the protection of the United States, and for the purposes in argument, assimilating his position to that of an American citizen, I deferentially submit that to be bound by force, removed from the friends of one's adoption, all access to them interrupted, all assistance from them shut off, and to be ex-

[* Extract from *la Petite Rèpublique française* 30th June, 1887.]

posed to such "repose and medical care" as has succeeded in transforming a man unanimously declared by all who know him to have been sane on the 19th of May into a raving lunatic on the 20th June is a case of such palpable injustice and ill-treatment as our Government has not hesitated to consider justifying its intervention in the past.

The friends of Seillière declare this whole proceeding to be a conspiracy and the law of 1838 to have in this case connived at the perpetration of a crime. It is not necessary, however, to have recourse to this theory in order to justify the intervention of the Government. Admitting that all has been done in perfect good faith, I repeat that it is not unreasonable on the part of the friends of Baron Seillière to make every effort to rescue him from "repose and medical care" which have reduced him to the condition in which he is alleged to be; and that a law the regular working of which has had for effect to derange the reason of a man who all his life enjoyed the reputation of unusual business sagacity comes within the class of legislation which justifies the intervention of our Government on behalf of those persons entitled to its protection who have proved its victims.

I come to the third and last part of this argument. Does the status of Baron Seillière entitle him to the protection of the United States Government?

III.—DOES THE STATUS OF BARON SEILLIÈRE ENTITLE HIM TO THE PROTECTION OF THE UNITED STATES GOVERNMENT?

Assuming that the law of 1838 in its application to this instance has occasioned palpable injustice of such a nature as to justify the intervention of the American Government on behalf of a person entitled to its protection, the question now arises whether the status of Raymond Seillière entitles him to the protection which he has claimed.

As has been already stated Wharton in his first volume, page 87, says that, although the rule is non-intervention, an exception is to be found in the case of relief and protection of citizens abroad, and in this connection adds: "This exception applies not merely to citizens of the United States, but to persons domiciled in the United States.

As early as 1804 the Supreme Court of the United States was called upon to express an opinion as to the effect of domicile on status. In the case of *The Venus*, 8 Cranch, p. 254, the Supreme Court laid down several principles which are applicable to the present case. Amongst others, it confirmed the principles laid down by the court of England that "a person who removes to a foreign country, settles himself there and engages in the trade of the country, furnishes by these acts such evidence of an intention permanently to reside there as to stamp him with the national character of the state where he resides."

It also laid down the principle that "in questions of this subject the chief point to be considered is the *animus manendi*. If it sufficiently appear that the intention of removal was to make a permanent settlement or for an indefinite time, the right of domicile is acquired by a residence of even a few days." The opinion in this case was written by Judge Washington, and was approved by Judge Story, who is at pains to state that "the question of the effect of a domicile on national character has received the peculiar attention of the court," and that he "entirely approves of the opinion expressed by Judge Washington on this point."

The same question arose as to the domicile of Kosciusko in the case of Ennis *vs.* Smith, 14 Howard, p. 422. It was answered according to the principles laid down in *The Venus*.

In the case of the *Friendschaft*, 3 Wheaton, 14, the court held that "the native character does not revert by a mere returning to his native country to a merchant who is domiciled in a neutral country at the time of a capture, and who after the capture leaves his commercial establishment in the neutral country to be attended to by clerks in his absence, visiting his native country merely on mercantile business, and intending to return to his adopted country."

In Thrasher's case, Mr. Webster, then Secretary of State, for the first time, in unmistakeable language, laid down the principle that domicile acquired in the United States had for effect the transfer of the allegiance of those acquiring such domicile from the government to which they originally belonged to the government of the place where they acquired the new domicile. (See Wharton, II, 482.)

This theory was maintained and insisted upon by Mr. Marcy, the Secretary of State, in 1853, in the famous Koszta case. The force and eloquence of the arguments by which he maintained the right of the United States to interfere on behalf of a Hungarian who had acquired a domicile in the United States, and by force to rescue him from the hands of the Austrian Government, who had secured his arrest in Turkey, have become classical on this subject. (Wharton, II, 485.)

"Whenever, by the operation of the law of nations, an individual becomes clothed with our national character, be he a native-born or naturalized citizen, an exile driven

from his early home by political oppression, or an emigrant enticed from it by the hopes of a better future for himself and his posterity, he can claim the protection of this Government, and it may respond to that claim without being obliged to explain its conduct to any foreign power, for it is its duty to make its nationality respected by other nations and respectable in every quarter of the globe.

"This right to protect persons having a domicile, though not native-born or naturalized citizens, rests on the firm foundation of justice, and the claim to be protected is earned by considerations which the protecting power is not at liberty to disregard. Such domiciled citizen pays the same price for his protection as native-born or naturalized citizens pay for theirs. He is under the bonds of allegiance to the country of his residence, and if he breaks them incurs the same penalties; he owes the same obedience to the civil laws, and must discharge the duties they impose on him; his property is in the same way and to the same extent as theirs liable to contribute to the support of the Government. In war he shares equally with them in the calamities which may befall the country; his services may be required for its defense; his life may be imperiled and sacrificed in maintaining its rights and vindicating its honor. In nearly all respects his and their condition as to the duties and burdens of government are indistinguishable, and what reasons can be given why, so far, at least, as regards protection to person and property abroad as well as at home, his right should not be coextensive with the rights of native-born or naturalized citizens. By the law of nations they have the same nationality, and what right has any foreign power, for the purpose of making distinction between them, to look behind the character given them by that code which regulates national intercourse? When the law of nations determines the nationality of any man, foreign governments are bound to respect its decision."

Mr. Marcy's position is sustained by Calvo, Vol. II, p. 95, one of the authorities most quoted in France. The facts of the Koszta case are best given by President Pierce in his message of 1853, quoted by Wharton, vol. 2, p. 358:

"Martin Koszta, a Hungarian by birth, came to this country in 1850, and declared his intention, in due form of law, to become a citizen of the United States. After remaining here nearly two years he visited Turkey. While at Smyrna he was forcibly seized, taken on board an Austrian brig of war, then lying in the harbor of that place, and there confined in irons, with the avowed design to take him into the dominions of Austria. Our consul at Smyrna and legation at Constantinople interposed for his release, but their efforts were ineffectual. While thus imprisoned, Commander Ingraham, with the United States ship of war *Saint Louis*, arrived at Smyrna, and after inquiring into the circumstances of the case, came to the conclusion that Koszta was entitled to the protection of this Government and took energetic and prompt measures for his release. Under an arrangement between the agents of the United States and of Austria he was transferred to the custody of the French consul-general at Smyrna, there to remain until he should be disposed of by the mutual agreement of the consuls of the respective Governments at that place. Pursuant to that agreement he has been released, and is now on his way to the United States. The Emperor of Austria has made the conduct of our officers who took part in this transaction a subject of grave complaint. Regarding Koszta as still his subject, and claiming a right to seize him within the limits of the Turkish Empire, he has demanded of this Government its consent to the surrender of the prisoner, a disavowal of the acts of its agents, and satisfaction for the alleged outrage. After a careful consideration of the case, I came to the conclusion that Koszta was seized without legal authority at Smyrna; that he was wrongfully detained on board of the Austrian brig of war; that at the time of his seizure he was clothed with the nationality of the United States; and that the acts of our officers, under the circumstances of the case, were justifiable and their conduct has been fully approved by me; and a compliance with the several demands of the Emperor of Austria has been declined."

It is difficult to conceive language more explicit than that in which Mr. Pierce describes Koszta as being "clothed with the *nationality* of the United States." Now, Koszta had not been in the country quite two years, and had done no more towards completing his naturalization than the mere declaration of his intention to do so. He is therefore relatively in exactly the same position to the American Government as Raymond Seillière.

It has been alleged that Seillière does not come within the Koszta case, because he had returned to the country of his original nationality. It is not possible to maintain this objection in the face of the cases already cited, where the Government was not deterred from interfering on behalf of naturalized citizens who had suffered ill treatment or arrest at the hands of a foreign government by the fact that these naturalized citizens had originally belonged to the foreign government in question. The *Friendschaft* case (3 Wheaton, 14) established the principle that a return to his native country merely on mercantile tile business does not affect the status of one who has acquired a domicile in an adopted country. And the United States Government have followed this principle in matters of intervention, for it did not hesitate to intervene on behalf of a naturalized citizen of French

origin who had suffered "undeserved indignities" at the hands of French authorities (Wharton, II, 437); and on behalf of another of German origin who had been arrested by the German Government (Wharton, II, 437); and still another who had been ejected from German territory (Wharton, 437).

Again, if the United States Government has not hesitated to interfere in behalf of naturalized citizens who were originally British subjects, and to demand in their favor from the British Government the safeguards to personal liberty which were assured to United States citizens by the Constitution of their adopted country, in face of the fact that England had long stood out alone among all the countries of the world against the doctrine of expatriation, maintaining her position in the terse and arrogant maxim: "Once an Englishman, always an Englishman," it does not seem possible to maintain that the United States Government will decline to intervene in a similar case when it finds itself in the presence of a country which has always admitted the right of expatriation, and has in the seventeenth article of its Code expressly provided that French nationality is abandoned by the acquisition of a permanent domicile abroad, accompanied by a loss of *animus revertendi*.

This point of French law is of sufficient importance to justify a moment's study. The words of the French Code are unmistakable:

"La qualité de Française perdra par * * * tout établissement fait en pays étranger, sans esprit de retour. Les établissements de commerce ne pourront jamais être considérés comme ayant été faits sans esprit de retour."

An effort has been made to throw a certain amount of confusion on this subject by citing the numerous cases in which the court of cassation has held that a mere declaration of intention to acquire a foreign nationality was not sufficient to strip a born Frenchman of his original nationality. It has apparently been taken for granted that the contention that Seillière had lost his French nationality was founded upon the declaration that he filed in California of his intention to become an American citizen. I cannot, however, state too emphatically that this is a great mistake. Seillière has never contended that his declaration of intention had either stripped him of his French nationality, or invested him with that of the United States. The declaration is simply one of the elements that go to show the acquisition by him of domicile in the United States. It is his domicile in the United States, and not the declaration of intention, on which he depends. In taking this stand he is as much protected and supported by the law of the land which he has abandoned as by the law of the land on whose protection he has thrown himself.

As I have before stated, the language of the code on the subject can not give rise to interpretation or construction, for the words are too free from ambiguity or uncertainty of meaning. The cases to which I refer have held very properly that a mere declaration of intention to acquire foreign citizenship is not sufficient to strip a born Frenchman of his original nationality. They are all of them based upon the plain principle of common sense, that a man can not escape the responsibility he owes to his own government by performing an empty formality relatively to another. In other words, a declaration of intention unaccompanied by the acquisition of a permanent domicile has no effect upon nationality.

This principle has not only decided every case that can be cited on this subject in France, but also inspired the caution of the United States Government in certifying the papers of those persons who can show no better proof of a right to its protection than the mere declaration of intention. It is evident that one who has not resided in the United States long enough to complete his nationality is put at a disadvantage by the fact that he is not able, without considerable difficulty, to prove the fact of his domicile in the United States. And in the absence of this proof it is difficult, and indeed improper, for the United States Government to clothe him with the full rights of an American citizen. It would be unseemly in the extreme for the United States Government to give passports entitling to its full protection Frenchmen and Germans who had merely filed a declaration of intention to be naturalized for the purpose of escaping military duty in their own country. On the other hand, there is not a single case in all the books where the United States has failed to give its fullest protection to every person who has been able satisfactorily to prove the fact that he has acquired a permanent domicile in the United States. On the contrary, every case on the subject has given rise to language on the part of those who had a right to speak which entitled the counsel of Seillière, in America, to advise him that he could go to France without fear, certain that under the precedents laid down by the officers of our Government he could count upon its protection.

As a matter of fact, both under the French law and under own, the whole question of the right of Seillière to our intervention is confined to the examination of not a question of law, but a question of fact. Whether Seillière acquired a domicile in the United States or no is, under the circumstances of the case, reduced to the question "did he abandon France without the intention of returning, to acquire a permanent domicile in the United

States." The French law of domicile differs from the American law in its application to the study of this question in only two points:

First. According to French law, an establishment in America for the mere purpose of commerce cannot be deemed sufficient to strip him of French nationality, whereas it would be considered sufficient under our law if coupled with *animus manendi* to entitle him to the protection of our Government under existing precedents.

Second. Story considers that a permanent domicile is acquired wherever there is an indefinite intention to remain, and does not think it dependent upon a definite decision never to return, whereas the French Code, in order that a new domicile in a foreign country should effect a change of nationality, exacts a definite decision never to return.

It would not be necessary to entitle Seillière to the intervention of our Government that he should be able to satisfy the requirements of the French law as well as those of our own; on the contrary it has always in the past protected persons domiciled within its territory regardless of the law of the country to which the person so domiciled originally belonged; but, as a matter of fact, he is able to satisfy the requirements of both laws; he has stripped himself of his French nationality by the abandonment of *animus revertendi* as completely as he has acquired right to the protection of our Government by the acquisition of a permanent *animus manendi*. Taking therefore the more exacting requirements of the French law on this subject, the question whether Seillière has acquired a permanent domicile in America under the requirements of this law is a pure question of fact, and must be treated as such.

I venture to submit that the affidavits annexed upon which this memorial is founded prove satisfactorily that Raymond Seillière had definitely abandoned all intentions of returning permanently to France, and had a bona fide intention to make his home in the United States. There being no doubt as to the correctness of the thesis that such a state of facts is sufficient to entitle him to the protection of the United States Government under our law, even though it did not strip him of French nationality under French law, the duty of our Government appears to be confined to a study of the question whether Raymond Seillière has indeed acquired a domicile within the terms above stated.

In the study of this question the facts that we have to guide us are briefly as follows:

(1) On leaving France for the United States he provided himself with a certificate of the death of both his parents—these being the papers that it would be necessary to produce under French law in all matters affecting status.

(2) He has filed a declaration of his intention to become an American citizen.

I have already explained that the only importance attached to this declaration is that under the existing decisions it constitutes prima facie evidence of domicile in the United States. I understand this to mean that it throws the burden of proof on those who deny the acquisition of a domicile in the United States.

(3) He has hired a house at Newport from the 1st of August.

(4) Before leaving America on a journey to France to extend over two months he had taken a return ticket, and had actually secured room No. 70 on board the *City of Rome* returning the 3d August. His stay in France was to be only for two months.

(5) Before leaving for France he stored his furs with Gunther, thereby indicating his intention to spend the winter in New York.

(6) On the 1st of October, 1886, he cabled to Commander Ullmann requesting Ullmann to go out to him to America. Commander Ullmann states that at Seillière's invitation he promised to make his home in America with him. Commander Ullmann from that time became his confidential adviser.

(7) On the 19th of April, 1887, Commander Ullmann wrote to an engineer, Henry Guasco, of Poissy, a letter copy of which is annexed to this memorandum requesting him to go out with his family to America for ten years, and suggesting that he complete his studies in the English language. He was to be in the personal service of Raymond Seillière; the engagement with him was to be countersigned by Mr. Waterbury. This letter indicates the intention of the Baron Seillière to remain at least ten years in America.

(8) Testimony of friends as to the numerous and emphatic declarations made by Raymond Seillière to the effect that he had abandoned France for ever, and intended to make his home in the United States.

It has been alleged that the Koszta case must not be cited as a precedent, because the Government had in that case to defend a somewhat arbitrary act already committed, and that its action might have been different had it been called upon to deliberately decide the course it would adopt, instead of having to defend a course already adopted. I venture to submit that the Koszta case was not the first in which a great principle had been laid down. The same principle had been established in Thrasher's case, and it naturally flowed from the decision of the United States Supreme Court in the *Venus*. Moreover, I can not believe that the United States Government would in glowing language assert a great principle to defend an action in the past and with unconscious hypocrisy abandon it to avoid responsibility in the future. Raymond Seillière cut himself adrift

from France, where he believed himself to have been wronged, in order to throw himself upon the protection of the Government where he hoped that his future, at least, would be safe. He took all the steps which, under the precedents already established by the Government itself, entitled him to its protection; and under the guaranty which these precedents gave him, returned for two months to his own country in the sincere belief that he would receive at the hands of our Government all the protection to which a citizen is entitled. His generous desire, on the one hand, to discredit the suspicions as to the intentions of his family, which we now know to have been only too well founded, and his strong belief, on the other hand, in the ability of his adopted country to help him, lured him into the trap into which he has now fallen. The wrong that has been done him is irreparable—for more hopeless of remedy than all other wrongs, it has been done under the color of law. However culpable the conspiracy which insnared him, it was authorized by the French law of 1838, against the provisions of which he now appeals to the Government of his adoption. If it is possible to imagine that pecuniary damages would compensate him for the loss of personal liberty, and for the anguish of mind, which his enemies now boast has dethroned his reason, even these would be refused to him by French courts, in view of the regularity of the proceedings under which the crime has been committed. It is difficult to see how the case of Raymond Seillière can be distinguished from that of Koszta, so far as the questions of law and justice in it are concerned. It is inconceivable that the principle which the United States with one-half of its present power in population had the courage to assert and to act upon in 1853, will be abandoned by them to-day in a cause which is undistinguishable from that in which these principles were first asserted, and which has fully as much claim upon the sympathies of mankind. If it required courage to assert this principle in 1853, in 1887 the assertion of any other would be inconsistent with its dignity and self-respect. But it is not necessary to entertain the possibility of an abandonment of the strong policy adopted in the Koszta case, for the present Secretary of State has during this very administration not hesitated to insist on full justice being rendered by foreign governments to all persons entitled to his protection. It is, therefore, with entire confidence that we leave the lamentable history of Raymond Seillière in his hands.

EDMOND KELLY,
Of Counsel, 36 Avenue de l'Opéra, Paris.

PARIS, *July* 5, 1887.

No. 253.

Mr. McLane to Mr. Bayard.

No. 446.] LEGATION OF THE UNITED STATES,
Paris, July 15, 1887. (Received July 25.)

SIR: The conference relative to the protection of submarine cables met pursuant to its resolution of adjournment on the 1st of July at the ministry of foreign affairs.

The minister of foreign affairs opened the session, and explained that five powers, namely, the Argentine Republic, Austria, Brazil, the United States, and Roumania, had not yet passed the necessary laws to carry into execution the twelfth article of the convention. Since the adjournment in December last Germany, Spain, Guatemala, and Russia, all four of which were then in default, have enacted the necessary laws for carrying out the convention.

The minister of foreign affairs requests the representatives of the five states named as still in default to make such explanations in reference to this default as they might think necessary.

These explanations were made, and there appeared to be no material obstacle to the passage of the necessary laws at such time as might suit the convenience of the legislative bodies of the several countries in question, and all five of the representatives agreed to sign protocol No. 2, adopted at the December session of the conference, in virtue of which the convention would go into operation for all the powers that

had voted the necessary laws to execute it, leaving the others to communicate through the French Government the adoption of their respective laws for its execution, at which time they would become subject to the operation of the convention.

At this stage of the conference the representative of Great Britain expressed the desire of his Government that the convention should not go into operation until all the parties to it had adopted the necessary legislation to give it full effect, and he referred especially to the United States as one of the powers most interested in the question whose legislation had not yet been consummated. In pursuance of this view he proposed an adjournment until all the parties to the convention had enacted the necessary laws to give it effect. This view of the British delegate met with very little encouragement, and with entire unanimity the conference determined to fix a day (1st of May, 1888) for the convention to go into operation, provided all the parties to it had enacted laws for its execution, and protocol No. 2 was modified in that sense, and all the representatives to the conference agreed to sign it as modified *ad referendum* to their respective Governments.

I inclose herewith a translated copy thereof and the original duly signed by the representatives of all the powers, and I can not too strongly urge upon you the necessity of legislation by Congress prior to the 1st of May to give effect to the convention. In this connection I beg to call your attention to the fact that the law which passed the House of Representatives at its last session, and which was pending in the Senate at its adjournment, was defective in fixing a particular depth, say 100 fathoms, within which limit its provisions should not apply. No limit whatever would satisfy the terms of the convention, and Great Britain was obliged to amend the original statute enacted for its execution because of such a limitation.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure in No. 446—Translation.]

Protocol No. 2, as modified.

The undersigned, plenipotentiaries of the Governments parties to the convention of the 14th March, 1884, for the protection of submarine cables, assembled at Paris, for the purpose of deciding, in conformity with Article 16 of this international convention, upon the date of putting said convention into execution, have agreed upon the following:

I. The international convention of the 14th March, 1884, for the protection of submarine cables shall go into force the 1st of May, 1888, provided, however, that at that date those of the contracting Governments who have not yet adopted the measures provided for by Article 12 of the said international convention shall have conformed with this stipulation.

II. The measures that the above-mentioned states shall have taken in execution of the aforesaid Article 12 shall be made known to the other contracting powers through the intermediation of the French Government, charged with examining the general character of them.

III. The Government of the French Republic remains also charged with the examination of the same legislative provisions or rules that the states who have not taken part in the convention, and who shall wish to take advantage of the power of adhesion provided for by Article 14, may adopt in their respective countries, in order to conform to Article 12.

In witness whereof the undersigned plenipotentiaries have agreed upon the present final protocol, which shall be considered as making an integral part of the international convention of the 14th March, 1884.

No. 254.

Mr. McLane to Mr. Bayard.

No. 447.] LEGATION OF THE UNITED STATES,
Paris, July 20, 1887. (Received August 1.)

SIR: I have to-day sent you a telegram, announcing that the prefect of police, in pursuance of the provision of the law of 1838, had ordered the release of Baron Seillière, after full examination of his present condition.

As I advised in my former dispatches, the private insane asylums in France are, by the law of 1838, placed under the supervision of the prefect of police, and, when Baron Seillière was first confined, the prefect of police reported to the minister of the interior that he was then certainly insane, and that he would be dangerous to the community and to himself if at liberty. Meanwhile, under the provision of the law of 1838, a judicial proceeding was instituted for his release by the guardian of his children. The court refused to release him, but his condition had greatly improved, and the prefect of police was induced to make another examination, aided by the physician of the public asylums, the result of which was his release yesterday afternoon.

I am very glad that I have your approval of the manner in which I have carried out your instructions in this case.

I have, etc.,

ROBERT M. MCLANE.

No. 255.

Mr. Vignaud to Mr. Bayard

No. 450.] LEGATION OF THE UNITED STATES,
Paris, July 22, 1887. (Received August 1.)

SIR: In addition to the papers in support of Baron Seillière's claim, forwarded with Mr. McLane's dispatch No. 442, of the 6th instant, I have the honor of sending herewith, at the request of Mr. Kelly, supplementary affidavits as to domicile and to sanity. Mr. Kelly requests me also to state that as the baron has been released on the 19th instant the intervention of our Government to reach that end is no longer sought. Mr. Kelly adds, however, that as it is the intention of the baron to submit to the Attorney-General certain questions affecting his rights and remedies, and as to the nature and extent of the protection and assistance to which he is entitled from our Government, the Department would greatly oblige the baron and himself, his counsel, by holding all the papers submitted to the order of the Attorney-General.

I send herewith a corrected list of said papers.

I have, etc.,

HENRY VIGNAUD.

[Inclosure 1 in No. 450.]

Corrected list of affidavits accompanying memorandum re Raymond Seillière.

As to his sanity.—Affidavit of (1) Commander d'Ullmann, (2) Dr. Charles H. Gifford, (3) Dr. Phillip M. Harder, (4) Charles F. Livermore, (5) J. Baudrais, (6) M. Ravaut, (7) Louis Bontron, (8) John Darling (valet), (9) Leduc (valet), (10) Mme. Krantz (ladies' maid), (11) Bonardi (butler), (12) Mme. Bonardi ((ladies' maid); and subsequently submitted: (13) Mrs. Pierson, (14) Miss DeWolfe, (15) Kate Carroll (maid).

As to his domicile.—Affidavit of (A) Commander d'Ullmann, (B) Dr. Gifford, (C) Dr. Harder, (D) Mr. Livermore, (E) John Darling (valet), (F) Joseph Baudrais; and subsequently submitted: (G) Mrs. Pierson, (H) Miss DeWolfe, and (I) Kate Carroll (maid), (J) John Mullaly, (K) Louis de L'Espée, (L) Adolph von Hügel, (M) Antoine Jakomet, and (N) certified copy of oath and declaration of intent to become a citizen.

[Inclosure 2 in No. 450.]

Affidavits as to sanity.

XIII.

CONSULATE-GENERAL OF THE UNITED STATES
At Paris, France, ss:

AUGUSTA PIERSON, being duly sworn, deposes and says as follows:

I am a resident of the city of New York, and of the age of twenty-one years and over; I am well acquainted with Baron Raymond Seillière; I first met him in New York in or about the month of December, 1886. Since that time I have repeatedly seen him, and for the last seven months I have known him quite well. He crossed the Atlantic in the same steamer as myself and my party, viz, the *Gascogne* of the French line, which left New York on the 7th of May. He was in our society during nearly all the voyage. We all landed at Havre on the 15th of May, and came directly to Paris, where we were at the same hotel—Hotel Vendôme. I saw him every day during our stay in Paris up to and including the 19th of May. I saw him on the afternoon of that day within half an hour of his keeping an appointment with his aunt, the Duchesse de Berghes. During all the several months of our acquaintanceship, which was there abruptly terminated (for I have not seen him since he left to keep this appointment), the baron was a cheerful, healthy, energetic man, of great vigor, both mental and physical. He talked much and extremely well. He was extremely clear-headed, and always impressed me as being one of the best informed men of my acquaintance, and in all topics of conversation he manifested a sagacity and acuteness which were most stimulating and interesting. His bodily vigor was remarkable; he had the air of being a very healthy man. He was a man of strong personality, and was not wanting in the small eccentricities which are commonly found in such a character. I have talked with him and have heard him talking with others, and have often heard him made the subject of conversation. I have never known his saying or doing anything which has either suggested to my mind or called forth the suggestion or intimation from others in my presence that he was at all wanting in mental soundness, or other than a perfectly sound man. I have always, since I knew him at all, considered him a man of unusual ability and soundness of judgment. During the few days which we spent in Paris, up to and including the 19th of May, and at the moment I last saw him, which, as I have said, was half an hour before his disappearance, he was unchanged, and to the best of my knowledge and belief a perfectly sane man.

S. AUGUSTA PIERSON.

Sworn to before me this 13th day of July, 1887.
[SEAL.]

ROBT. M. HOOPER,
Vice-Consul-General, Paris.

XIV.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At Paris, France, ss:

ELSIE ANDERSON DE WOLFE, being duly sworn, deposes and says:

I reside at 139 West Thirty-fourth street, New York City, and am of the age of twenty-one years and over. I am well acquainted with the Baron Raymond Seillière.

I knew him in America and saw him frequently during the last winter. I have known him quite well for the last five months prior to the 19th May. I have often conversed with him and heard him converse with and made the subject of conversation by others. I have had frequent opportunities of observing his bearing and demeanor, but it never occurred to my mind nor was it ever suggested in my hearing that he was other than a perfectly sane but somewhat eccentric man. He was always genial, cheerful, and kindly, and apparently in as perfect health mentally as he was physically.

ELSIE ANDERSON DE WOLFE.

Sworn to before me this 13th day of July, 1887.
[SEAL.]

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

XV.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At Paris, France, ss:

KATE CARROLL, being duly sworn, deposes and says:

I reside at 154 Madison avenue, New York city, and am of the age of twenty-one years and over. I was a passenger by the steamer *Gascogne* of the French line, which left New York on the 7th day of May, 1887, and arrived at Havre on the 15th day of May. Baron Raymond Seillière was a passenger on the same steamer. I saw him continually, and had frequent opportunities of remarking his bearing and demeanor. It never crossed my mind that he was other than an entirely sane man. He was vigorous and energetic, conversing freely with his fellow-passengers, and being constantly about with them. I have heard him talk a great deal, but it never occurred to me that there was anything irrational or peculiar in what he said. He never in my presence, to my knowledge, manifested anything which seemed to me like hallucination. Taking in review the circumstances of the ocean trip and the impression I then formed, I am satisfied that Baron Seillière was a sane man.

It never would have crossed my mind that he was not a sane man had not the allegation subsequently been made. Although Baron Seillière was frequently the subject of conversation in my presence, I never heard it suggested or hinted that he was in any sense insane or wanting in mental health; and I confidently affirm from my own knowledge that the general opinion of his fellow-passengers was that he was a sane man.

After landing at Havre on the 15th May, the baron, as well as the party with which I was traveling, proceeded at once to Paris, and both he and they took rooms at the Hotel Vendôme. I do not now remember whether we arrived at Paris on the 15th or 16th May. I saw him not only on that day but on several subsequent days, and repeatedly. There was nothing altered in his bearing and nothing to suggest to me that he was otherwise than sane, or to excite remark. He seemed to be in no respect altered from what he was on the steamer. I always considered and still consider that Baron Raymond Seillière, at every time when he came under my observation, was a sane man.

KATE CARROLL.

Sworn and subscribed to before me, Robert M. Hooper, vice-consul-general, this 13th day of July, 1887.
[SEAL.]

ROBT. M. HOOPER,
Vice-Consul-General, Paris.

[Inclosure 3 in No. 450.]

Affidavits as to domicile.

G.

CONSULATE-GENERAL OF THE UNITED STATES
At Paris, France, ss:

AUGUSTA PIERSON, being duly sworn, deposes and says as follows:

I am a resident of the city of New York and of the age of twenty-one years and over. I wish to supplement the affidavit this day made by me with the statement that I have repeatedly heard Baron Raymond Seillière declare to me and to others in my presence that he had definitely left France, abandoned his domicile there, and had made and should make his home in America. I understood him also to say that he

intended to become an American citizen. He was always very enthusiastic about everything in regard to America, and his expressions were such as to leave no doubt in my mind that he had determined to make it his permanent home.

S. AUGUSTA PIERSON.

Sworn to before me this 13th day of July, 1887.
[SEAL.]

ROBERT M. HOOPER,
Vice-Consul-General, Paris.

H.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA
At Paris, France, ss:

ELSIE ANDERSON DE WOLFE, being duly sworn, deposes and says:

I reside at 139 West Thirty-fourth street, New York city, and am of the age of twenty-one years and over. I am well acquainted with the Baron Raymond Seillière. I knew him in America, and saw him frequently during the last winter. I have repeatedly heard him express in a very emphatic manner his liking for America and the Americans, and I remember to have heard him state that he had left France, and that he had made and should make his home in America. I think I have also heard him say that he intended to become an American citizen. His expressions were such as to leave no doubt in my mind that he had determined permanently to reside in America.

ELSIE ANDERSON DE WOLFE.

Sworn to before me this 13th day of July, 1887.
[SEAL.]

ROBERT M. HOOPER,
Vice Consul-General, Paris.

I.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Paris, France, ss:

KATE CARROLL, being duly sworn, deposes and says:

I reside at 154 Madison avenue, New York city, and am of the age of twenty-one years and over. I know the Baron Raymond Seillière, and crossed the Atlantic in the same steamer with him, the *Gascogne*, of the French line, which left New York on the 7th of May. I remember to have heard him declare to others in my presence that it was his intention permanently to reside in America; that his present visit to France was of short duration, and that he had left France for good. His expressions of his intentions to make America his home were most emphatic.

KATE CARROLL.

Sworn and subscribed to before me this 13th day of July, 1887.

ROBERT M. HOOPER,
Vice-Consul General, Paris.

J.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

JOHN MULLALY, of said city, being by me duly sworn, doth depose and say, that he is personally and intimately acquainted with Baron Raymond Seillière; that he is informed, and believes the fact to be, that the said Baron Seillière is being now detained in an asylum for the insane at Vanves, in the Republic of France; that he has seen and now has in his custody a certified copy the original of his declaration of intentions, in which he declared his intention to become a citizen of the United States, which declaration was made on the 6th day of August, 1886, in the district court of the United States for the district of California; and further deponent says that said baron intends to become a citizen of and to reside permanently in the United States. All of which is to the best of deponent's knowledge, information, and belief.

JOHN MULLALY.

Subscribed and sworn to before me this 8th day of July, 1887.

JACOB WASHBURN,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Jacob Washburn, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 8th day of July, 1887.

JAMES A. FLACK,
Clerk.

[SEAL.]

K.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

LOUIS DE L'ESPÉE, being by me duly sworn, doth depose and say as follows:

That he is personally and intimately acquainted with Baron Raymond Seillière; that he is informed, and believes the fact to be, that the said Baron Seillière is being now detained in an asylum for the insane at Vanves, in the Republic of France; that during his acquaintance with said baron, and in social intercourse with him, on several occasions he has heard him, the said baron, state with emphasis that he "would never return permanently to France;" and he further stated that his purpose was fixed to make these United States his permanent home.

LOUIS DE L'ESPÉE.

Subscribed and sworn to before me this 7th day of July, 1887.

JACOB WASHBURN,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for the city and county, the same being a court of record, do hereby certify that Jacob Washburn, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 8th day of July, 1887.

JAMES A. FLACK,
Clerk.

[SEAL.]

L.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

ADOLPH VON HÜGEL, being by me duly sworn, doth depose and say as follows:

That he is personally intimately acquainted with Baron Raymond Seillière; that he is informed and believes the fact to be that the said Baron Seillière is being now detained in an asylum for the insane at Vanves, in the Republic of France; that during his acquaintance with said baron and in social intercourse with him on several occasions he has heard him, the said baron, state, with emphasis, that he "would never return permanently to France;" and he further stated that his purpose was fixed to make these United States his permanent home.

ADOLPH VON HÜGEL.

Subscribed and sworn to before me this 7th day of July, 1887.

JACOB WASHBURN,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court of the said city and county, the same being a court of record, do hereby certify that Jacob Washburn, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of the said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 8th day of July, 1887.

JAMES A. FLACK.
Clerk.

[SEAL.]

M.

UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

ANTOINE JAKOMET, being by me duly sworn, doth depose and say as follows:

That he is personally intimately acquainted with Baron Raymon Seillière; that he is informed and believes the fact to be that the said Baron Seillière is being now detained in an asylum for the insane at Vanves, in the Republic of France; that during his acquaintance with said baron and in social intercourse with him on several occasions he has heard him, the said baron, state, with emphasis, that he "would never return permanently to France;" and he further stated that his purpose was fixed to make these United States his permanent home.

ANTOINE JAKOMET.

Subscribed and sworn to before me this 7th day of July, 1887.

JACOB WASHBURN,
Notary Public, New York County.

STATE OF NEW YORK,
City and County of New York, ss:

I, James A. Flack, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county; the same being a court of record, do hereby certify that Jacob Washburn, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 8th day of July, 1887.

JAMES A. FLACK,
Clerk

[SEAL.]

N.

[Notarial certificate.]

UNITED STATES OF AMERICA,
State of New York, ss:

By this public instrument be it known to all to whom the same doth or may in anywise concern, that I, Otto Laddey, a public notary in and for the State of New York, by letters patent under the great seal of the said State, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that I have this day carefully compared the declaration to become a citizen of the United States of America, made and executed by Marie Nicolas Raymond Seillière, at the United States district court for the district of California, on the 6th day of August, 1886, with the copy thereof hereunto annexed, and that said copy is a true and literal copy of the said original.

In testimony whereof I have subscribed my name and caused my notarial seal of office to be hereunto affixed, the eighth day of July, in the year of our Lord one thousand eight hundred and eighty-seven.

[SEAL.]

OTTO LADDEY,
Notary Public, New York County.

DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA,
District of California, ss:

I, Marie Nicolas Raymond Seillière, a native of France, do declare on oath that it is bona fide my intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly to the Republic of France, of which I am now a citizen.

MARIE NICOLAS RAYMOND SEILLIÈRE.

Sworn to and subscribed this 6th day of August, 1886, before me.

SOUTHARD HOFFMAN,
Clerk of the District Court of the United States for the District of California.

UNITED STATES OF AMERICA,
District of California, ss:

I, Southard Hoffman, clerk of the district court of the United States for the district of California, do hereby certify the foregoing to be a full, true, and correct copy of the original oath of intention remaining of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, this 6th day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and eleventh.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk of the District Court of the United States for the District of California.

No. 256.

Mr. Bayard to Mr. McLane.

No. 250.] DEPARTMENT OF STATE,
Washington, July 27, 1887.

SIR: Your dispatch No. 442, of the 6th instant, relative to the status of the Baron Seillière at that date, has been received and read with interest. The case having been since disposed of by the release of the baron, under the operation of the French law of lunacy, it is unnecessary further to discuss the subject. Your energetic and prompt action in this case has given great satisfaction to the Department.

I am, etc.,

T. F. BAYARD.

No. 257.

Mr. Porter to Mr. Vignaud.

No. 252.] DEPARTMENT OF STATE,
Washington, August 3, 1887.

SIR: With reference to the Department's instruction No. 218, of the 30th of April, relative to the application for the discharge of Jean Pierre Arbios from the French army, I have to request you to report as to the present condition of the case.

I am, etc.,

JAS. D. PORTER,
Acting Secretary.

No. 258.

Mr. Vignaud to Mr. Bayard.

No. 467.] LEGATION OF THE UNITED STATES,
Paris, August 25, 1887. (Received September 6.)

SIR: In reply to Mr. Porter's note of August 3, asking to report as to the present condition of the case of Jean Pierre Arbios, I regret to say that it remains unchanged since Mr. McLane's dispatch No. 391.

As your instructions of April 30 were understood to be discretionary, it was not deemed advisable to press the case any further at the time, because nothing could be gained in so doing; the French Government having apparently made up its mind to make no other reply to applications of the kind referred to but the one already known.

I have, however, lately given much attention to this subject, and I propose to address a note to Mr. Flourens, which will, I hope, draw out something more satisfactory than has hitherto been the case. The cases of Arbios and Truchier will be particularly referred to.

I have, etc.,

HENRY VIGNAUD.

No. 259.

Mr. Vignaud to Mr. Bayard.

No. 472.] LEGATION OF THE UNITED STATES,
Paris, August 29, 1887. (Received September 13.)

SIR: I have communicated with Mr. Flourens with reference to the subject-matter of your instruction of June 14, 1887, No. 235, and under date of the 26th instant he writes that our commercial agent at Nouméa has been misinformed, but that in view of complying more fully with your desire the governors of New Caledonia and of Guiana have been instructed to abstain, until further orders, from issuing authorization to liberated convicts to proceed to the United States.

I send herewith a copy and a translation of Mr. Flourens's note.

I have, etc.,

HENRY VIGNAUD.

[Inclosure in No. 472.—Translation.]

Mr. Flourens to Mr. McLane.

PARIS, *August* 26, 1887.

MR. MINISTER: As I had the honor to write you, on the 22d of July last, I hastened to transmit to the minister of the marine and the colonies the letter you kindly addressed to me to signal the facilities which the authorities of New Caledonia, according to the American commercial agent at Nouméa, granted to liberated convicts to get to the United States.

In answer to this communication Mr. Barbey has just informed me that the information gathered by the agent of the United States Government at Nouméa is not in conformity with the real facts. In fact, on one hand, the number of those liberated and authorized to leave temporarily the colony is excessively limited, and on the other hand, it has never been a question to subsidize a line of steamers between Nouméa and San Francisco with a view to facilitate the passage of these individuals to North America.

At all events, with a view to give surer satisfaction to the desire you have expressed, the minister of the marine and the colonies has just written to the governors of New Caledonia and Guiana to request them to suppress, until further orders, all authorizations for departure of liberated convicts having the United States for destination.

Accept, etc.,

FLOURENS.

No. 260.

Mr. Vignaud to Mr. Bayard.

No. 473.] LEGATION OF THE UNITED STATES,
Paris, September 5, 1887. (Received September 19.)

SIR: In compliance with Mr. Porter's request of June 29 (No. 240), I have brought before the French foreign office the case of Mr. J. C. Carlin, an American citizen of French origin, who deserted some years ago from a French ship, and who desires now to return to France for the purpose of visiting his aged mother.

Under date of the 1st instant, Mr. Flourens writes that he has submitted the matter to his colleague of the navy department, and that the desire expressed to him can not be complied with.

I inclose herewith a copy and a translation of Mr. Flourens's note.

Very respectfully, etc.,

HENRY VIGNAUD.

[Inclosure in No. 473.—Translation.]

Mr. Flourens to Mr. Vignaud.

PARIS, *September* 1, 1887.

SIR: On the 15th of July last Mr. McLane appealed to my good offices, in view of obtaining the pardon of Joseph Charles Carlin, originally from Nice, who, after having deserted from the merchant vessel upon which he had embarked, acquired in 1885 American citizenship.

The minister of marine, to whom I had immediately submitted the question, informs me that there would be a serious inconvenience in authorizing Carlin to return to France. This sailor, inscribed provisionally at Nice, had only served nine months and twenty-three days when he deserted the ship *l'Avenir* at New Orleans.

Belonging to the class of 1876, he did not respond to the call for the army and was declared to be in state of insubmission February 15, 1878. He is therefore liable to two charges, having incurred, first, imprisonment from one to three months for desertion to a foreign country (Article 66, decree and law of March 24, 1852); second, imprisonment from one month to one year for insubmission (Article 61, law of July 27, 1872).

These two offenses being successive, can not fall under the law of limitation.

Nothing, therefore, in the prior conduct of this delinquent would justify a favor which might be invoked as a precedent by the numerous deserting sailors from the quarter of Nice.

To obtain permission to come to France, Carlin alleges his desire to see his family, which is domiciled at Nice; but the proximity of the frontier enables him to easily see his relatives on Italian territory.

In this state of affairs my colleague, Mr. Barbey, requests me to express to you his regret that he is not in a position to comply with the demand in question.

Receive, etc.,

FLOURENS.

No. 261.

Mr. Bayard to Mr. McLane.

No. 270.] DEPARTMENT OF STATE,
Washington, November 8, 1887.

SIR: Referring to recent correspondence in the case of Baron Raymond Seillière, I inclose for your information copies of certain papers filed in the Department by Mr. Bullock, of California, and of correspondence with Messrs. Develin and Miller, of New York, all relating to the request that the Department should certify to Baron Seillière's domicile.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 270.]

The following papers were left with the Secretary of State by Mr. L. L. Bullock, personally, on the 30th of September, 1887. Immediately after Mr. Bullock's departure the Secretary of State made the following memorandum of what took place at the interview:

SEPTEMBER 30, 1887.

Mr. Bullock called with the annexed paper and asked whether as Secretary of State I would sign it.

I declined, saying I had no official authority to do so; that the question of citizenship was submitted to the judicial branch, and that their certificate was a matter of record and receivable without contradiction anywhere as to the facts it contained.

T. F. BAYARD.

Present:
J. B. MOORE.

I hereby certify that I have received at the State Department Marie N. R. Seillière, who made application to become a citizen of the United States of America on the 6th day of August, 1886, in the United States district court, as is shown by the original certificate of application now on file in this Department, a certified copy of which is attached to this certificate.

That the said Marie N. R. Seillière has permanently taken up his residence in the United States of America, and has domiciled at the city of New York. By such acts as above set forth, the said Marie N. R. Seillière has secured the domiciliary rights and protection of the American citizen under the laws of the United States Government as to person and property, and is entitled to recover under the laws of the United States and under international law such personal and real estate as is just and legally belonging to him in the Republic of France.

Papers left by Mr. Bullock.

Know all men by these presents, that I, Lothrop L. Bullock, a citizen of the United States, having his residence in San Francisco, Cal., make the following affidavit:

I am personally and intimately acquainted with Baron Marie N. Raymond Seillière, formerly of France, but now a resident of the city of New York.

I first made the acquaintance of Baron Seillière in San Francisco, Cal., in July, 1886; visited several portions of the State of California in company with the baron, with the purpose of examining property, in view of purchasing large tracts of land, resulting in entering into negotiations with the Union Land Company of San Francisco, wherein the baron was to purchase a large amount of land in Owens Valley, and locating a valuable water right on Owens River for the purpose of diverting the waters of Owens River, constructing a large canal, and to use the water so diverted for irrigation, the baron to furnish the capital for such enterprise.

From conversation with the baron I learned that he intended to become a citizen of the United States, and on the 6th of August, 1886, he made application for citizenship in the United States district court in the city of San Francisco, Cal., stating that he was attached to this country and its institutions, and declared his future residence to be at the Hotel Brunswick, New York. The baron left California in October, 1886, and permanently located at his declared place of residence.

In January, 1887, I again met Baron Seillière in Washington, D. C., visiting the capital for a week, where he informed me that all his correspondence must be addressed to Hotel Brunswick in the future, and that he intended to make a visit to France for the purpose of settling up his business and returning to this country and permanently reside here.

In April, 1887, I visited the baron at the Hotel Brunswick, New York, and found him at home, having his apartments there.

In May, 1887, he left his residence at New York for a short visit to France and returned to New York in August, 1887, where he now resides.

The baron has suffered much persecution in France from his family and political enemies, and he has concluded to transfer his entire estate in France to the United States, and has employed Messrs. Develin and Miller, of New York city, as his attorneys to negotiate a settlement of the baron's affairs in France. I have been shown an itemized schedule of the baron's estate, consisting of one-third interest in the banking house of Demarcy, Seillière & Seillière, of Paris, France, value $1,500,000, and interest on same at 8 per cent. per annum for two years; silverware, diamonds, and paintings, valued at $500,000; besides his one-third interest in woolen factories located in the eastern portion of France, his interest being valued $1,500,000, with the earnings of the past two years added; in the aggregate amounting to over $4,000,000.

The baron has his domicile at the Hotel Brunswick, city of New York, doing business at that place, and having his bank account with White & Co., bankers, 103 Broadway street, New York. I make this affidavit for the purpose of informing the State Department of the condition of the affairs and property of Baron Seillière, who is negotiating to purchase property and enter into manufacturing in this country, with the respectful request that the Secretary of State will issue a certificate under seal of his office that he has met Baron Marie N. R. Seillière in the State Department; that the baron has his domicile, at the Hotel Brunswick in New York, and is negotiating for property in this country.

All of which is most respectfully submitted.

LOTHROP L. BULLOCK.

Subscribed and sworn to this 30th day of September, 1887.

[SEAL.]

WM. M. SMITH,
Notary Public.

[Inclosure 2 in No. 270.]

Mr. Develin to Mr. Bayard.

NEW YORK, *October* 10, 1887.

SIR: I have been for some time one of the counsel of Baron Marie Nicholas Raymond Seillière, and his principal adviser on this side of the Atlantic, in regard to the complications which have arisen concerning his personal liberty and the large estate and interests of which he is the owner in France.

The baron some years ago declared his intentions in the United States district court, northern district of California, to become a citizen of the United States. As evidence of this fact a copy of the declaration, certified by Hoffman, district judge there, and verified by the French consul resident at San Francisco, has been forwarded to Paris.

This declaration standing by itself might or might not entitle the baron to the protection abroad of this Government, but when it is supplemented by properly authenticated evidence that the baron has his domicile in this country, he is, according to the practice and utterances of this Government and by international law, entitled to domiciliary protection to the same extent as native born or naturalized citizens.

See quotations from communications of Mr. Webster, Secretary of State, and Mr. Marcy, Secretary of State; and decisions of U. S. Supreme Court, as cited in Mr. Webster's communication, "Treatise on International Law," Wharton, vol. 2, sec. 198.

When, therefore, a party having a domicile in this country has cause to avail himself of the protection it affords, it becomes necessary that he should be fortified by such evidence of the fact and in such form as may be satisfactory to the foreign Government in which his property or interests lie, and in which he needs the protection of his Government. There is no mode of which I am aware by which this evidence can be procured and authenticated by any court or judge of the United States. Besides, it is not a judicial but a diplomatic question, properly cognizable, I respectfully submit, by the fountain-head of the diplomatic power of the country, to wit: the Secretary of State.

If there be no precedent in your Department for such a certificate, its absence may be accounted for by the fact that no application was ever made to it for such a docu-

ment. If this, then, be *res integra*, the following considerations are apposite: that this man has shown his intention to become a citizen of the United States, as appears by the certified copy of his declaration to that effect on file in your office; that he has had his domicile in this country for the last two years; and that when in May last he left this country for France, it was *animo revertendi* shown before his departure by the purchase of a return ticket, and by his actual return to this country in August last, and since his return by his continuous residence here, and his own repeated statements of his intention to remain, showing the *animus manendi* (*vide* The *Venus*, 8 Cranch, p. 278, *et seq.*), all of which are established by the affidavit of Lothrop L. Bullock, on file in your Department.

In addition I would state that it is well and publicly known in Paris that this young man, although perfectly sane, as certified to by eminent physicians abroad and here, and as shown by his personal appearance, manner, and conversation on his presentation to you, was seized in Paris and thrown into a lunatic asylum by a hard, unnatural sister, for the purpose of preventing him from realizing his property in order to transfer it to the United States, and that she was assisted by the head of the banking-house (a regent of the Bank of France) of which he was a member, and sustained by other strong and social political influences. All these powerful antagonists the baron's attorney in France, Commandeur d'Ullman, will meet in his attempt to recover the property of his principal, and I respectfully submit the enormity of the case and the almost insurmountable obstacles which are piled up, impeding the assertion of his rights by this inchoate American citizen with domicile here, ought to induce the Secretary of State to establish a precedent and to certify that from the proof submitted to him he is satisfied that the Baron Marie Nicholas Raymond Seillière has a domicile in this country, and according to the views of the Government of the United States, as often expressed by various Secretaries of State as well as by international law, he is entitled to "protection to person and property abroad as well as at home * * * co-extensive with the rights of native-born or naturalized citizens." In no other way than by such a certificate can the baron have his domicile in this country authenticated so as to be of any avail to him in France, and this fact is the only absent link in his chain of evidence to protect himself and establish his rights.

I take the liberty of inclosing you a form such as the situation justifies, and which I hope may commend itself to your approval.

Very respectfully, etc.,

JOHN E. DEVELIN.

To all it may concern: Know ye that I, Thomas F. Bayard, Secretary of State of the United States, by reason of and relying upon the affidavit of Lothrop L. Bullock, a resident of San Francisco, State of California, in which are detailed and which substantiates the following facts in regard to Marie Nicholas Raymond Seillière, viz, that the said Seillière some two years ago declared his intentions to become a citizen of the United States, that he has resided in the city of New York since November, 1886, *animo manendi*, and has remained in said city except for some three months in the year 1887, when he made a visit to France, but left this country then with the intention of returning, and that in August, 1887, he did return to the city of New York, where he now has and ever since continuously has had his residence, with the intent of remaining, as he has frequently and consistently stated, do hereby certify that it is thus proven to my satisfaction that the said Marie Nicholas Raymond Seillière has now and has had continuously for more than a year past his domicile in the city of New York in the United States.

[Inclosure 3 in No. 270.]

Mr. Bayard to Mr. Develin.

DEPARTMENT OF STATE,
Washington, October 12, 1887.

SIR: Your letter of the 10th instant requesting this Department to certify to the domicile of Baron Marie Nicholas Raymond Seillière has been received.

It is not competent for this Department to give a certificate of any of the facts which are usually recognized in law as constituting the domicile of an individual. Except in the issuance of passports to citizens of the United States, no such power of certification is vested by law in this Department.

I am, etc.,

T. F. BAYARD.

[Inclosure 4 in No. 270.]

Mr. Develin to Mr. Bayard.

NEW YORK, *October* 18, 1887.

SIR: I have the honor to acknowledge the receipt of your communication of 12th instant in answer to my letter of 10th instant concerning the domicile of Baron Marie Nicholas Raymond Seillière.

In your communication you remark, "It is not competent for this Department to give a certificate of any of the facts which are usually recognized in law as constituting the domicile of an individual," etc.

If you will do me the favor to read or cause to be read to you my letter of the 10th instant, it will be manifest that there is no request for a certificate of any of the facts usually recognized in law as constituting the domicile of an individual. All that was requested in that letter and the substance of the certificate inclosed in it was that you should certify that you were satisfied that Baron Seillière had his domicile in the United States. The reference to the affidavit of Mr. Bullock and the facts stated in it were not inserted in the certificate, and I submit can not be fairly claimed to have been inserted, for the purpose of having your Department certify "as to the facts constituting" the domicile of the baron, but were only thus inserted that it might be made known to whom it might concern what evidence you had before you upon which you based your certificate as to your being satisfied as to the single fact of Seillière's domicile.

Mr. Marcy, in his letter, from which quotations are to be found in section 198 of International Law Digest, Wharton, although speaking in the name of the President, as is the form in communications between our Government and foreign Governments, says, "Koszta was, therefore, vested with the nationality of all American citizens at Smyrna, if he, in contemplation of law, had a domicile in the United States. * * *" (1, p. 484.) "The conclusions at which the President has arrived * * * are that Koszta when seized and imprisoned was invested with the nationality of the United States," etc. (Id., 485.)

This is certainly a certificate by the State Department under Secretary Marcy of the fact that Koszta had his domicile in the United States and would seem to establish a precedent.

If it be answered that this was not an independent certificate issued to an individual, but was part of an official communication, I would respectfully ask the Department to officially communicate to Mr. McLane, our minister to France, to whose attention this matter of Seillière's has already been brought by the highest authority, the fact that Seillière has his domicile in the United States.

If the Department wish further proof of the fact of Seillière's domicile being in the United States I will gladly furnish it.

Very respectfully, yours,

JOHN E. DEVELIN.

[Inclosure 5 in No. 270.]

Mr. Bayard to Mr. Develin.

DEPARTMENT OF STATE,
Washington, October 21, 1887.

SIR: I have your letter of the 18th instant, in which—after quoting from my letter of the 12th instant, written in reply to your request that the Department give a certificate of domicile to Baron Seillière according to a form which you then submitted, and my statement to you that it is not competent for this Department to give a certificate of any of the facts which are usually recognized in law as constituting the domicile of an individual—you say that you did not ask for such certificate, but that I should "certify" that I am "satisfied that Baron Seillière had his domicile in the United States."

By referring to my letter of the 12th instant, you will find that the reason stated for my declination to execute the desired certificate was that "no such power of certification is vested by law in this Department."

By act of Congress there is vested in this Department the power to issue passports to citizens of the United States. This is the only certification of national status which the Department is authorized by law and which it is its practice to make.

The reason of this practice is obvious. The question of citizenship is a matter of fact, whether the citizenship be by birth or by naturalization. In the latter case certain legal conclusions have to be reached by inference from facts which are ascertainable only by the judicial branch, whose judgments thereon are accepted as conclusive.

The question of domicile is a matter of inference from circumstances which are often shifting, uncertain, and complex. Such a certificate as you request would, therefore, not be a statement of fact which the Department is authorized by law to certify, but the promulgation of a judgment, which is not an executive function.

The practice of the Department is invariable and correct in principle; it is also impartial, and applies equally to those who are and those who are not citizens of the United States. The rights of domicile and of nationality are not identical, and are often entirely distinct and independent.

The case of Koszta has no relevance to the present question. That was the case of international controversy existing, and entertained as such by the President, in which his decision was required.

It was not a judgment or opinion in anticipation of a case that might arise; nor did it constitute an exception to the uniform course of this Department, which is to decline to pronounce anticipatory judgments.

I am, etc.,

T. F. BAYARD.

No. 262.

Mr. Bayard to Mr. McLane.

No. 276.] DEPARTMENT OF STATE,
Washington, December 1, 1887.

SIR: I inclose for your further information in reference to the question of official certificates as to the domiciliary laws of this country for Americans desiring to be married abroad, a copy of a dispatch from our consul-general in Paris (No. 462 of the 18th of March last), together with my instruction in reply to the same.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 276.]

Mr. Walker to Mr. Porter.

No. 462.] UNITED STATES CONSULATE-GENERAL,
Paris, France, March 18, 1887.

SIR: I have to acknowledge the circular instructions of the honorable Secretary of State, dated February 8, ultimo, in relation to the certification by diplomatic and consular officers of the American law and of the particular facts bearing upon American citizens desiring to contract marriage in foreign countries. At the conclusion of the circular it is ordered by the Secretary that "it is not competent, without special authority of this Department, for diplomatic agents, consuls, or consular agents to certify officially as to the status of persons domiciled in the United States and proposing to be married abroad, or as to the law of the United States or any part thereof relating to the solemnization of marriages."

In view of this order I respectfully ask that I may be specially authorized by the Department to give certificates on the application of American citizens desiring to marry in France, in which shall be officially declared the status of such citizens and the law of their State of American domicile relating to the solemnization of marriages.

I make this application for the following reasons: As I have already advised the Department in my dispatch No. 452, dated January 7, 1887, the practice of giving certificates to American citizens intending to marry in France has existed at this consulate for many years past. Such certificates have embodied declarations both as to the status of the applicants and as to the law of their American domicile relating to marriage.

That the Department should carefully inquire into the competency of a consular officer authorized to give certificates of this character is a step the propriety of which I fully recognize, and to such a scrutiny I am quite ready to submit myself.

I am a lawyer of forty years' standing at the bar of Massachusetts, where I had for many years a considerable practice; I am a bachelor of laws of Harvard University, and I am a counselor of the Supreme Court of the United States. I have at my own expense, since I came to Paris, purchased the latest revisions of the statutes of the most important States of the Union, such as New York, Pennsylvania, Massachusetts,

Louisiana, California, etc., and I have access to those of all the States at the law library of the ministry of justice, to which I resort in all doubtful cases; I have also general manuals which give the changes made in these laws from year to year. With this education, experience, and equipment I believe myself to be more competent than any French magistrate or public officer can be, and as competent as any American lawyer in Paris, to ascertain and certify the exact status and capacity for marriage of American citizens desiring to marry here.

The purpose of the Department's action is to protect American citizens from illegal marriages abroad. I do not believe that there is any person now in France more competent to do this than myself.

I have not in any certificates heretofore given presumed to state a general rule of American law in respect of marriage, except in those particulars on which there is a unanimity of legislation. As for example in the capacity of persons of full age to marry without consent of parents. In all other respects I certify the law of the actual State of American domicile.

I apprehend that a very great hardship would be imposed on American citizens if if they were called upon to prove their birth and parentage in a foreign country, without the intervention of the diplomatic or consular officers of their country. It is often impossible to obtain witnesses to these facts. But the diplomatic or consular officer can always exercise the same care in obtaining the facts by declarations and the examination of the parties themselves, which is exercised by licensing officers, magistrates, or clergymen in the United States, and they are much better judges of such evidence than any foreign functionary can be. Moreover it is, as I conceive, a function especially belonging to consuls by international law to make such certificates. In proof of this, I beg to refer again to the recent treaty on the subject of marriage between France and Great Britain, and inclose herewith translation of the instructions transmitted to French consuls in England by the minister of foreign affairs, under date of December 23, 1884.

By the law of October 23, 1883 (*Lois Usuelles*), French consuls are made "officiers de l'état civil" (officers to receive, record, and certify births, marriages, and deaths), in respect to their countrymen in foreign countries.

The Revised Statutes of the United States recognize the official relation of consular officers to marriages of Americans taking place within their jurisdiction by providing (section 4082) that the marriage so solemnized between persons who would be authorized to marry if residing in the District of Columbia may be certified to the Department of State and shall have the same effect as if solemnized within the United States.

I beg also to state that a registry of births has been kept at this consulate since 1830, and perhaps from an earlier period. It would seem, therefore, that the functions of an "officer of the civil state" so far as consistent with American legislation have been accorded to consuls both by statute and by usage. If I rightly understand the circular instructions of February 8, it authorizes a consular officer to certify that a solemnization of marriage valid by the law of the place of solemnization will be regarded as valid anywhere (that is, in the United States, the country of domicile). In respect of evidence to be given by consuls, either by oral testimony or where that is not required, by certificate respecting American law. I understand that this is still permitted to be done where the consul is an expert as to such a law. There is, however, a limitation in the circular which I respectfully suggest may properly be omitted. This limitation is covered by the words "when called upon in a court of justice." In point of fact most applications for certificates made at this consulate are at the instance of notaries, avoués, or other legal advisers of Government bureaus, or of banks or other incorporated companies, and relate to such questions as the power of married women to mortgage their separate property, to receipt for legacies, to sell and convey real and personal property, etc., of executors and administrators to receive and receipt for, sell and give title to, property in France.

In all such cases the certificate is based upon the statute law of the State of domicile in the United States in the case of married women, or of the State where the letters testamentary or of administration have been granted when the powers of such functionaries are in question.

I suggest, therefore, that the limitation to evidence before, or certificates given to, a court of justice shall not be insisted on.

Great respect is here paid to consular certificates in such cases, and if the granting of them were prohibited much embarrassment would be imposed on American citizens doing business in France.

The certificate of an American lawyer, however competent, will not be received unless the consular or diplomatic representative of his country also certifies that the lawyer is in regular standing and competent to give the certificate and that the opinion given by him is good law.

With high respect, I am your obedient servant,

GEORGE WALKER,
Consul-General.

[Inclosure 2 in No. 276.—Translation.]

Marriage between French and English.

[Instructions addressed by the minister of foreign affairs to the consuls of France in England, 23d December, 1884.]

SIR: In consequence of the difficulties that have arisen with regard to mixed marriages celebrated in Great Britain between French citizens and English subjects, the Government of the Republic has, in concert with that of Great Britain, sought means for preventing certain irregularities in the accomplishment of the formalities prescribed by French law, the omission of which renders such marriages voidable.

It has been agreed by diplomatic correspondence between the two cabinets that consuls of France in England shall be henceforth authorized to deliver a certificate which, in order the better to secure the validity of mixed marriages shall certify the accomplishment of the formalities in question. You will find annexed hereto a copy of the certificate and I beg you, sir, to comply upon the occasion presenting itself with the terms of the adopted agreement. In case you are called upon to deliver a certificate of this character please charge therefor the fee set forth in Article 174 of the consular tariff, except in the case provided for in number one of the general observations regarding Article 1 of the said tariff. You will please also open a special register, in which you will transcribe the certificates, which interested parties may ask of you, in the order in which you deliver them.

Permit me, sir, to assure you of my highest consideration.

JULES FERRY.

[Certificate annexed to the instructions of the premier, minister of foreign affairs.]

The consul of France at ——— declares:

1. That French citizens may not marry without having previously published in France the notices of the marriage required by law, and without having obtained the consent of their parents or such other persons as are set forth in the law.

2. That from the papers and documents produced:

(a) It appears that M—— (surnames, Christian names, and profession) ——, born at ——, the ——, residing at ——, who proposes to marry M——, (surnames, Christian names, and profession) ——, born at ——, the ——, residing at ——, is of French nationality.

(b) That the notices of the proposed marriage prescribed by the law of France have been duly published at the domiciles specified in the law.

(c) That the party to the proposed marriage has produced papers (specify them) which prove either that he has obtained the consent of the parents or relations, whose consent is necessary, or that the relations whose consent was necessary are dead; or that the *actes respectueux* have been duly served on the parents, the which service takes the place of consent (the consul may here set forth from what persons consent has been obtained.)

(d) That no opposition to the marriage has been made to date, and that if none is made prior to the celebration of the marriage the parties would be permitted to marry in France.

The consul declares further, that a marriage celebrated in a foreign country between a French citizen and an alien is valid if it has been celebrated in conformity to the laws of their country, but on the following conditions:

1. That the publications in France and the consent of the persons required by law shall have preceded the marriage. (Articles 148 to 159 of the Civil Code.)

2. That the parties be of the age prescribed by law—eighteen for the man and fifteen for the woman. (Article 144 of the Civil Code.)

3. That the consent of the parties be absolutely unconstrained. (Article 146 of the Civil Code.)

4. That neither of the parties be already bound by a subsisting marriage. (Article 147, Code Civil.)

5. That the proposed marriage do not violate the provisions of the law prohibiting marriage between relations and connections within defined degrees.* (Articles 161 to 163, Civil Code.)

The consul further declares that an alien woman who marries a citizen of France becomes French by the mere fact of marriage, and that all children born of such marriage, even abroad, are French. (Articles 12 and 10, Civil Code.)

In witness whereof we have delivered the present certificate to certify that which is set forth therein.

* It should be observed that inasmuch as dispensations will not be given to aliens in France on this score, it is highly probable that French courts would not admit the validity of a dispensation accorded to a French citizen by a foreign Government.

[Inclosure 3 in No. 276.]

Mr. Bayard to Mr. Walker.

No. 231.] DEPARTMENT OF STATE,
Washington, April 7, 1887.

SIR: I have before me your No. 462 of date of the 18th ultimo, and note your comment upon a circular order lately issued by this Department that "it is not competent, without special authority of this Department, for diplomatic agents, consuls, or consular agents to certify officially as to the *status* of persons domiciled in the United States and proposing to be married abroad or as to the law of the United States or any part thereof relating to the solemnization of marriages."

Among the causes which induced this order were statements made to this Department that not only had the law as to marriage in the United States been erroneously certified to by its representatives abroad, but that for such certificates excessive fees had been exacted. Printed certificates had also been issued by certain United States consuls in Europe which stated, without qualification, that in no part of the United States are bans of prior publication or the assent of parents or the presence of any particular civic or ecclesiastical official essential to the due celebration of marriage. I need scarcely say that such certificates are on their face erroneous.

You remark that the practice of granting certificates as to both *status* and marriage laws "has existed at this (your) consulate for many years past," and, after saying that you recognize "the propriety" of the Department carefully inquiring "into the competency of a consular officer authorized to give certificates of this character," you proceed to give reasons why you, from your prior experience and knowledge and from the books at your command, are to be considered as "competent" to give such certificates.

It is evident that you have misapprehended the meaning and application of the word "competent" as used in the circular order. It had no bearing upon the individual qualifications of the parties addressed nor their capacity as legal experts, but relates solely to the extent of their *official* functions and their *official* capacity or competency to perform certain acts. No reflection was implied or intended upon your professional attainments as a lawyer nor your ability to give reliable opinions in the line of that profession.

But, as it is not within the competence of any officer of the executive branch of this Government to create new law or in any sense to exercise legislative powers, it is equally outside of executive duty or power to invade judicial functions and to certify *construction* of laws. The *status* of the parties to a projected marriage may be a matter of contestable fact, and equally the legal requisites of marriage in a particular jurisdiction may be a matter of contestable law. To neither of these is a consul of the United States legally competent to certify.

It is proper for this Department and its representatives to advise citizens of the United States proposing to marry in foreign countries to comply in all respects with the *lex loci* of the solemnization, but it can not authorize its representatives to certify to disputed or disputable facts, nor as to the condition of law throughout the United States. Certificates of such a character having no legal authority could have no effect whatever on the judiciary before whom such questions of law or fact would necessarily come for decision. Many illustrations could be given of the danger of exposing marriages contracted abroad in reliance upon such official certificates to being invalidated by the subsequent judgments of courts having jurisdiction of the parties and the contract.

The order in question is intended to restrain the official action of consuls, but in no degree to prohibit unofficial advice and counsel to individuals or giving personal opinions or testimony as to law or facts with which the consuls themselves may be familiar. The inhibition applies only to official certification of facts or law outside the scope and function of official duties and power.

I am, sir, etc.,

T. F. BAYARD.

CORRESPONDENCE WITH THE LEGATION OF FRANCE AT WASHINGTON.

No. 263.

Count Sala to Mr. Bayard.

[Translation.]

LEGATION OF THE FRENCH REPUBLIC
IN THE UNITED STATES,
Washington, July 8, 1886. (Received July 9.)

Mr. SECRETARY OF STATE: By a circular bearing date of the 19th of December last the representatives of the Republic near the various Governments which signed the convention of March 14, 1884, for the protection of submarine cables were instructed to propose to those Governments the holding of a conference with a view to the execution of Article 12 of that international instrument.

The delegates of the various powers which accepted the invitation of the French Government met at Paris on the 12th of May last, and suspended their labors on the 22d of the same month, after having arranged, in a protocol, the terms of the draft of a declaration which they pledged themselves to recommend to their respective Governments for adoption.

I have the honor herewith to transmit to you twenty copies of the report of the proceedings of the conference in question. This report contains the text of the protocol that was signed by the delegates on the 21st of May last, official notice of which it is incumbent upon the Government of the Republic to give to the various states which signed the convention of March 14, 1884, or which have acceded thereto. This instrument consists of a declaration explanatory of Articles 2 and 4 of the convention of March 14, 1884, and removes the difficulties that were originated by the restriction introduced in Article 4 of the English law for the execution of the convention relative to the scope of its fourth article.

In order to enable the different Governments, and especially the London cabinet, to adopt such decisions as may be required by an acceptance of the proposed declaration, it is important to change this draft of a declaration, without delay, to a definitive instrument. I am consequently instructed, Mr. Secretary of State, to request you to be pleased to authorize the representative of the Federal Government at Paris, as soon as possible, by telegraph, to sign the declaration. My Government would be very glad if this formality could be accomplished without any unnecessary delay.

In the course of its labors the conference found that of the twenty-five states that have ratified the convention relative to submarine cables, or that have acceded thereto, twelve (Germany, the Argentine Republic, Austria-Hungary, Brazil, Spain, the United States, Guatemala, Roumania, Russia, Salvador, Servia, and Turkey) have not yet enacted or promulgated the laws necessary to render the convention operative. In this connection it is well not to lose sight of the fact that the penal clauses of the convention are not sufficient to secure the repression of the infractions for which it provides, since that instrument does not specify what punishment is to be inflicted. It is therefore necessary, in order that the convention may become operative on this point in each state, that the laws of that state should contain express provisions for the repression of any violation of the articles which declare punishable certain acts of injury or destruction (Article 2) of submarine cables; or that they should

prescribe for vessels engaged in laying or repairing cables certain rules calculated to facilitate operations relative to cables. (Articles 5 and 6.)

Owing to the deficiencies thus found to exist in the laws of a certain number of countries, the conference was able to perform but a part of its task, and it adjourned to the 1st of December next, with a view to allowing to the above-named states the time necessary for them to make known what legislative enactments they propose to promulgate in order to meet the engagement growing out of Article 12 of the convention.

As most of the Governments have adhered, at least in principle, to the second proposition, which formed the subject of Mr. de Freycinet's circular of 19th of December last, and the object of which was to fix the 1st day of January, 1887, as the time when the international instrument of March 14, 1884, should take effect, the convention, at its meeting on the 1st of December next, will not only have to examine the new laws that shall be communicated to it, but it will also have to prepare definitively the list of the states forming the union for the protection of submarine cables. It is therefore necessary that the delegate of the United States should be furnished with precise instructions as regards the decision to be adopted in the case of states that shall not be able by the 1st of December next to show that they have enacted laws that meet the requirements of Article 12 of the convention. I need not, therefore, remind you, Mr. Secretary of State, how important it is that all legislative enactments necessary to render the convention operative should be adopted by the United States before the next meeting of the delegates in order that the conference may take cognizance thereof.

I will recapitulate these remarks. The object of the communication which I am instructed to make to the American Government is twofold, viz:

1st. To request it to authorize its representative at Paris, with as little delay as possible, to sign the explanatory declaration adopted by the conference which met at Paris on the 12th of May last.

2d. To call its attention to the necessity of enacting, before the 1st of December next, such laws or of adopting such regulations as may be necessary to render the convention operative, and, further, to call attention to the fact that it is very important that the delegate of the United States should be able to make known at the next meeting of the conference the views of his Government in relation to the situation of the signatory powers that shall be unable to put the convention into execution on the 1st day of January, 1887.

I should be grateful to you, Mr. Secretary of State, if you could enable me, as speedily as possible, to make known at Paris the reply of the Federal Government.

Be pleased to accept, etc.,

SALA.

No. 264.

Mr. Bayard to Mr. Roustan.

DEPARTMENT OF STATE,
Washington, November 19, 1886.

SIR: I have the honor to inform you that Mr. McLane, our minister in Paris, has been authorized by cable to sign the explanatory protocol to the Submarine Cables Convention of 14th March, 1884, subject to the

approval of the Senate of the United States. The legislation necessary to carry the above convention into effect is now pending before Congress, which will meet on the 6th proximo.

I have, etc.,

T. F. BAYARD.

No. 265.

Mr. Roustan to Mr. Bayard.

[Translation.]

LEGATION OF THE FRENCH REPUBLIC IN THE UNITED STATES,
Washington, November 29, 1886. (Received Nov. 30.)

MR. SECRETARY OF STATE: The conference which met at Berne in 1884 and 1885, with a view to the formation of an international union for the protection of literary and artistic works, terminated its labors by the signing of a convention, to which ten states adhered.

Mr. Winchester, the representative of the United States, who took part in the last conference, as well as in the two preceding ones, was not authorized to affix his signature to the final instrument. He made, however, important declarations before the conference concerning the intention of the Federal Government to enter the union which has just been formed. He expressly recognized the principles that underlie the protection of intellectual property, remarking, however, that the action of Congress is, by the Constitution, required in this matter, and that consequently the executive branch of the Government is prevented by existing laws from acceding to the new convention.

You are aware, Mr. Secretary of State, that American authors who by their numbers and talents have gained a high rank in the intellectual world receive the fullest protection in foreign countries, especially in France. I may add that, in another point of view, they could but be the gainers by the establishment of a régime that would compel publishers to recognize in the United States the rights of foreign authors. It is now an admitted fact that, so far from impairing the literary resources of a country, protection granted to foreign authors, by preventing literary piracy and by placing obstacles in the way of the translation of their works, diminishes the competition of foreign productions, and accelerates the progress of the national literary and artistic movement.

In view of these considerations of equity and interest, and feeling confidence in the assurances given to the conference by Mr. Winchester, my Government has deemed itself authorized to make a request of the Federal Government.

I am, therefore, instructed, Mr. Secretary of State, now that Congress is about to resume its labors, to solicit, in behalf of literary property in this country, the powerful support of the influence of the Chief Magistrate of the nation, requesting him to be pleased, in his annual message, to advocate the accession of the United States to the union in question.

I should be very grateful to you if you would be pleased to transmit this request to its high destination.

Accept, Mr. Secretary, etc.,

TH. ROUSTAN.

No. 266.

Mr. Bayard to Mr. Roustan.

DEPARTMENT OF STATE,
Washington, December 1, 1886.

SIR: I have the honor to acknowledge your note of the 29th ultimo in reference to the co-operation of the United States in the acts of the conference for the protection of literary and artistic works which met at Berne in 1884 and 1885 and terminated its work by the convention of 1886.

I especially notice the flattering wish of your Government that the United States should join the other nations in the laudable objects of the conference, and that to this end the President should, in his forthcoming annual message to Congress, pronounce himself in favor of such a course.

I have, in response, the pleasure to assure you that the well-known and favorable interest of the Administration of the United States in this important international project continues and will doubtless be reiterated on the reassembling of Congress.

Accept, sir, etc.,

T. F. BAYARD.

No. 267.

LEGATION OF THE FRENCH REPUBLIC, WASHINGTON.
(Received December 23, 1886.

Pro memoria.

[Translation.]

By a letter dated January 2, 1886, this legation transmitted to the State Department a circular of the minister of foreign affairs of the Republic, proposing a new meeting of the conference relative to the protection of submarine cables.

According to the explanations given by M. Freycinet, this meeting was suggested by the necessity of reconciling the general measures adopted by the conference with section 4 of the act of the English Parliament, which provides that Article 4 of the convention does not apply to the part of a cable submerged at a depth exceeding 100 fathoms.

This difficulty rendered the execution of the convention impossible at the date originally fixed for it, viz, the 15th of January, 1886. At the suggestion of the French Government, and with the assent of all the signatory powers, the going into effect was then adjourned until the 1st of January, 1887.

In the interval another meeting of the conference took place at Paris on the 12th of May last, as the result of which the delegates of the different Governments interested agreed on the drafting of an act which would remedy the difficulties caused by the restriction introduced in the fourth section of the English law.

This act was communicated to the State Department by the legation of France on the 8th of July last.

Now, it seems by the annexed dispatch of the minister of foreign affairs of France that the provisions of the English act which led to the delay of a year in the putting in force of the convention in question are found reproduced in the bill which has just been introduced in the Congress of the United States.

If this information is exact, the Department of State can see that the law, of which it was good enough to recommend the urgency, would be insufficient to insure the carrying into effect of the convention, and would become, on the contrary, a point of departure for fresh negotiations and the cause of further delay.

Copy of a telegram addressed by the minister of foreign-affairs to M. Roustan, minister of France to the United States.

[Translation.]

PARIS, *December* 21, 1886.

I am semi-officially informed that the American bill concerning the submarine cables convention contains in section 8 a provision identical with the former section 4 of the English act which formed the subject of M. de Freycinet's circular of the 19th of December, 1885.

Referring to my predecessor's letter of June 17 last, I beg you to urge upon the Secretary of State of the Union the elimination of this section. Pray state to him that as a result of the conference of May 12 last, and of the adoption of the declaration interpreting Articles 2 and 4 of the convention signed by the representative of the United States and by those of the other powers, the English Parliament passed on the 25th of September another act repealing section 4 of the "submarine telegraph act" of 1885.

It is important that the American law should likewise take into account the declaration aforesaid.

No. 268.

Mr. Roustan to Mr. Bayard.

[Translation.]

LEGATION OF THE FRENCH REPUBLIC
IN THE UNITED STATES,
Washington, April 14, 1887. (Received April 14.)

Mr. SECRETARY OF STATE: I have the honor herewith to transmit to you a copy of a dispatch, with inclosures, which has just been addressed to me by my Government in relation to the convention for the protection of submarine cables.

I should be very grateful to you if you could enable me, at no distant date, to reply to the inquiry of the minister of foreign affairs.

Be pleased to accept, etc.,

TH. ROUSTAN.

[Inclosure 1.]

Mr. Flourens to Mr. Roustan.

[Translation.]

MINISTRY OF FOREIGN AFFAIRS,
BUREAU OF COMMERCIAL AND CONSULAR BUSINESS,
Paris, March 28, 1887.

SIR: By a circular bearing date of January 14, I requested you to transmit to the Government to which you are accredited the reports of the sessions which the delegates of the signatory powers of the convention of March 14, 1884, for the protection of submarine cables, held at Paris from the 1st to the 8th of December last, with a view to having that international instrument put into execution.

As I stated at that time, it appeared from those reports that the delegates had adjourned their labors until July 1, 1887, and that the date at which the convention in question was to be put into execution was then to be finally determined.

Referring to that communication, and to the statements made by the presiding officer of the conference during the session of November 1, I will thank you to inform the minister of foreign affairs of the United States that the German Government has just signed the declaration which serves to explain Articles 2 and 4 of the convention of March 14, 1884. The signatures of the representatives of the twenty-five powers that ratified the convention have thus been affixed to this declaration.

The time has consequently now arrived for the various Governments to agree, in accordance with the provisions of Article 16, as to the final appointment of a day on which the convention of March 14, 1884, is to become operative. It is proposed that an agreement on this subject be adopted at the projected meeting, which is to take place on the 1st of July next, and that two other points be likewise settled there, viz:

(1) The determination (the case arising) as to what is to be the situation of such of the signatory powers of the convention as may not yet have adopted the measures provided for by Article 12 of that diplomatic instrument.

(2) The determination how the various contracting states are to ascertain that those powers that have not signed the convention, and that avail themselves of the privilege of accession, have taken, as regards themselves, the measures stipulated for in the convention in order to secure its observance.

With a view to practically facilitating an understanding on these different points, inasmuch as the attainment of such understanding is hampered by the number of the contracting parties, it would be well for the delegate of the United States at the conference which is to be held in July next to be invested with the character of a plenipotentiary, and furnished with the necessary power or authority:

1. To accept, not in his own individual name but in that of his Government, as regards the taking effect of the convention, the date that shall be approved by the different Governments, which, if we may judge from the views exchanged during the last conference, will probably be the 1st of October next.

2. To determine, as regards their co-signers, the situation of those contracting powers that may not be able to put the convention into execution at the time fixed upon.

3. Finally, to decide upon the method to be adopted in order to ascertain whether such states as desire to accede to the convention have laws that permit them to guaranty the enforcement of its stipulations.

In the opinion of the Government of the Republic, the agreement reached on these different points should be placed on record in a final protocol (*protocole de clôture*), which might be drawn up in the form of either of the accompanying drafts, the first of which has been prepared on the more probable hypothesis, viz, that all the signatory states will be able to show that article 12 of the convention has been put into execution; and the second in case that one of those states may be unable fully to execute the stipulations of the convention of March 14, 1884.

The signing and putting into execution of the provisions of this draft of a final protocol do not seem likely to require any new constitutional formalities in the different contracting countries.

The convention, before the exchange of the ratifications was submitted to the legislative bodies in those states in which their sanction was necessary, and as article 16 of the convention stipulated that it should be put into execution on the day on which the high contracting parties should agree, the directing powers have been authorized to decide among themselves upon the measures designed to secure the execution of this international instrument.

I will thank you, sir, to transmit a copy of this dispatch to the Government to which you are accredited, requesting it to be pleased to inform you, with as little delay as possible, before the meeting of the delegates, whether, as we hope, the inclosed draft of a final protocol of the conference for putting into execution the convention of March 14, 1884, calls for no observation in principle on its part.

You will be pleased at the same time to represent to the Washington Cabinet, which has not yet adopted the measures provided for in the twelfth article of the convention, how important it is that these measures should be definitively decided upon by the competent authorities before the 1st of July next, so that the conference may be informed thereof at its first meeting.

Accept, etc., FLOURENS.

[Inclosure 2.]

Draft of a final protocol.

The undersigned, plenipotentiaries of the signatory Governments of the convention of March 14, 1884, for the protection of submarine cables, having met in conference at Paris, for the purpose of deciding, in pursuance of Article 16 of that international

instrument, upon a day for putting the said convention into execution, have agreed upon the following:

I. The convention of March 14, 1884, for the protection of submarine cables, shall take effect on the —— ——, 1887.

II. The Government of the French Republic is charged with the examination of the legislative or reglementary provisions to be adopted in their respective countries, in order to meet the requirements of Article 12 of the convention, by such states as have not become parties to the said convention, and as may desire to avail themselves of the privilege of accession provided for in Article 14.

In testimony whereof, the undersigned plenipotentiaries have adopted this final protocol, which shall be considered as forming an integral part of the international convention of March 14, 1884.

PARIS, —— ——, 1887.

[Inclosure 3.]

Draft of a final protocol.

The undersigned, plenipotentiaries of the signatory Governments of the convention of March 14, 1884, for the protection of submarine cables, having met at Paris for the purpose of deciding, in pursuance of Article 16 of that international instrument, upon a day for putting the said convention into execution, have agreed upon the following:

I. The international convention of March 14, 1884, for the protection of submarine cables, shall take effect on the —— ——, 1887.

II. In case that at the time above fixed for the convention to take effect, the Governments of —— —— which have not yet adopted the measures provided for in Article 12 of that international instrument, shall not have acted in conformity with that stipulation, it is understood that the effects of the convention of March 14, 1884, shall be suspended, as regards each of those states, until the time when notice of the measures adopted by them, in execution of the said Article 12, shall have been given to the other contracting powers, through the French Government, which is charged with the examination of such measures.

III. The Government of the French Republic is likewise charged with examination of the legislative or reglementary measures that are to be adopted, in their respective countries in pursuance of Article 12, by such states as have not yet become parties to the convention, and as may desire to avail themselves of the privilege of accession provided for in Article 14.

In testimony whereof, the undersigned plenipotentiaries have adopted this final protocol, which shall be considered as forming an integral part of the international convention of March 14, 1887.

PARIS, —— ——, 1887.

No. 269.

Mr. Bayard to Mr. Roustan.

DEPARTMENT OF STATE,
Washington, May 5, 1887

SIR: I have had the honor to receive your note of the 14th ultimo, transmitting a dispatch, with inclosures, addressed to you by your Government in relation to the convention for the protection of submarine cables, and particularly requesting you to ascertain the situation and intentions of this Government with respect to that convention.

As the bill which was pending before the last Congress to execute the provisions of the convention was not definitively acted upon by that body it is not thought that this Government is in a position to authorize its diplomatic representative at Paris to sign the draft of a final protocol, marked in your note as inclosure No. 1, which is intended to fix a certain day for the convention to take effect.

The second draft of a protocol, marked inclosure No. 2, provides that the convention shall take effect on a day to be fixed by the plenipotentiaries of the signatory powers at their next session at Paris; but it also provides that if, on that day, any of the Governments in question shall not have adopted the requisite legislation to execute the convention, its operation shall be suspended as regards such state until notice shall be given by it to the contracting parties, through the French Government, of the adoption of appropriate legislation. To this protocol no objection is found, and the minister of the United States at Paris will be empowered to sign it. In order, however, that it may be considered, in the terms of its last clause, "as forming an integral part of the international convention of March 14, 1884," the protocol will be submitted to the Senate (before which body the explanatory protocol signed on the 1st of December last is now pending) at its next session; and as the convention is now awaiting for its execution the action of the next Congress, it is not supposed that the course stated will be productive of any delay.

Accept, etc.,

T. F. BAYARD.

No. 270.

Mr. Roustan to Mr. Bayard.

[Translation.]

LEGATION OF THE FRENCH REPUBLIC
IN THE UNITED STATES,
Washington, November 1, 1887. (Received Nov. 1.)

Mr. SECRETARY OF STATE: The international conference for putting into execution the convention of March 14, 1884, for the protection of submarine cables, reassembled at Paris on the 1st of July last.

This conference, the object of which was explained to you by the ministerial circular contained in my note of April 14, 1887, terminated its labors on the 7th of July by signing a final protocol, according to which the convention of March 14, 1884, is to go into operation on the 1st day of May, 1888, on condition, however, that the five states that have not yet adopted the measures provided for by Article 12, viz, the Argentine Republic, Austria-Hungary, Brazil, the United States, and Roumania, shall at that time have conformed to the said stipulation.

It is consequently important that the American Congress should take, before that date, such action as is necessary to secure the observance of the convention of March 14, 1884, in the United States.

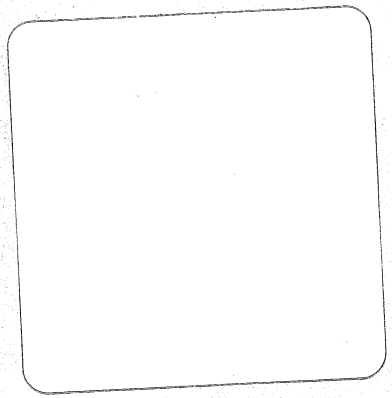
The House of Representatives, having this object in view, passed a bill on the 8th of February last, which contained in its eighth section a provision which conflicted with the convention, inasmuch as it limited the scope of Article 4, as had previously been done by the English act of 1885, in lieu of which the submarine telegraph act of 1886 has since been passed. The bill in question, which would have caused additional delays before the convention could have gone into operation, was not passed at the time by the Senate, and is now null and void, owing to the fact that the present Congress is a new one. The Government of the Republic therefore hopes that the Federal Government will be pleased to arrange matters with the committees of Congress on foreign

affairs, so that the bill of February 8 may not be taken up again, or at least so that the eighth article may not be inserted therein, as that article must have grown out of a misunderstanding, inasmuch as the United States Government adhered to the interpretative declaration of December 1, 1886, and March 23, 1887, which should have resulted in preventing the presentation of the article in question.

In pursuance of my instructions, I have the honor, Mr. Secretary of State, herewith to transmit to you twenty copies of the report of the two meetings held during their last session by the representatives of the powers that were parties to the international instrument of March 14, 1884. You will observe that the German Government, although not represented at the conference, signed the final protocol, which has consequently been approved by all the powers composing the Union for the protection of submarine cables.

Be pleased to accept, etc.,

TH. ROUSTAN.



GERMANY.

No. 271.

Mr. Pendleton to Mr. Bayard.

[Extract.]

No. 191.] LEGATION OF THE UNITED STATES,
Berlin, February 8, 1886. (Received February 24.)

SIR: I inclose herewith a copy and translation of a note from the foreign office, under date of the 3d instant, giving the results reached in the cases of Karl Simon Petersen, Christian Nielsen Hansen, and Lars Hoeck, heretofore reported.

I have, etc., GEORGE H. PENDLETON.

[Inclosure in No. 191.—Translation.]

Count Bismarck to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *February* 3, 1886.

The undersigned has the honor to return the inclosures of the esteemed notes of the 21st and 26th of December last and to inform the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. George H. Pendleton, that the requests for the discontinuance of the measures of expulsion taken against Karl Simon Petersen of Friebluma, Christian Nielsen Hansen of Harknag, and Lars Hoeck of Markernpheide, at the time sojourning in their native land, have been made the subject of careful examination.

The result of the investigations leaves no room for doubt that the same views apply to Petersen and Hansen which were stated with respect to the expulsion of S. M. Boyson and associates, under Nos. 2 to 6, in the note of the undersigned of December 21st last. Both received, a short time before attaining the age of military liability, upon their request, a discharge from Prussian allegiance, and the assumption appears to be justified that in seeking this discharge they were actuated solely by the purpose of withdrawing themselves from the performance of the general military duty in Prussia.

As regards Lars Hoeck, the views and conclusions are pertinent which are contained in the above-mentioned foreign office note respecting the persons designated therein under Nos. 7 to 9. Hoeck in 1876 presented himself before the Prussian recruiting authorities, but escaped then to America without having been discharged from Prussian allegiance.

A sojourn of several months in their native land, sufficient for a visit to their relations and for the settlement of such business matters as may have claimed their attention, having been allowed them, the decree of expulsion issued against them will now have to be carried into execution.

I am, etc.,

H. BISMARCK.

No. 272.

Mr. Bayard to Mr. Pendleton.

No. 106.] DEPARTMENT OF STATE,
Washington, March 12, 1886.

SIR: I have received your No. 191, of the 8th ultimo, inclosing copy of a note of the 3d ultimo from Count Bismarck, which confirms the orders of expulsion from Germany previously issued against Karl S.

Petersen, Christian N. Hansen, and Lars Hoeck, and deferred on account of your protest. As these appear to be fair examples of the numerous expulsions which have occurred of late, I propose now to give you the views of this Department on the question of the interpretation of the Bancroft treaty of 1868, as applied to naturalized Americans returning on a visit to Germany.

The decisions of the foreign office given in your No. 191 do not appear to be consistent with those rendered in previous years in similar cases, although, as far as this Department is advised, the aspect of the cases of returning Americans has not essentially varied during the last two years; and it would seem as if there could be no more necessity of expulsion now than existed two years ago. The doctrine now laid down by the foreign office seems to embody two propositions. The German Government appears to claim, first, that any American, whether he be native or naturalized, may be expelled from Germany whenever, in the opinion of the authorities, the welfare of the state demands it; and, second, that a good and sufficient ground for such expulsion is to be found in the purpose on the part of an emigrant to avoid military duty by emigration, the sufficient proof of which purpose for the German Government is the fact that the emigrant demanded an official permit to leave his native land.

I will now examine these two points in turn.

The claim made by the German Government of a general right of expulsion raises the question of what rights of sojourn naturalized Americans have under the treaty of 1868. Article I of that treaty reads as follows:

> Citizens of the North German Confederation, who have become naturalized citizens of the United States of America, and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

This appears to be the only sentence in the treaty relating to the status of naturalized American citizens pending the two-years' stay which is referred to in the fourth article of the treaty, and we must, therefore, turn to our treaty with Prussia of 1828, which is still operative, for a definition of the status and treatment of American citizens. Article I of that treaty says:

> There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.
>
> The inhabitants of their respective states shall mutually have liberty to enter the ports, places, and rivers of the territories of each party wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, on condition of their submitting to the laws and ordinances there prevailing.

There would seem to be no question that under the concurrent effect of these two treaties, Americans, both native and naturalized, should have a free and equal right of peaceable sojourn in Germany if they submit to the laws.

I notice the statement of Count Bismarck in his note to you of the 6th of last January, inclosed in your No. 154, of January 18, 1886, and in reply to your note to him of December 24, 1885, that the provisions of the treaty of 1828 do not conflict with the right of every independent state to expel foreigners from its territory when such course is considered requisite upon grounds of the welfare of the state, or of the public order, and that the treaties of 1868 regulating nationality do not

conflict with this, and that returning emigrants, even when recognized as naturalized Americans, may, when the accompanying circumstances require, be expelled like any other foreigner, but that on principle this right will be invoked only when maturely considered grounds of the public welfare compel. This opinion, which would seem to put our relations with Germany as regards naturalized Americans on exactly the same footing as they were before the Bancroft treaty of 1868, and to open the door to the same endless and unsatisfactory discussions as then took place, does not, therefore, meet with the assent of this Government.

I notice also in this connection that in your No. 110, of the 16th November, 1885, you transmit a decision of the Austrian foreign office acknowledging the right of the German Government to expel Austrian subjects at its pleasure, in spite of existing commercial treaties. But the mutual, political, and geographical and commercial relations of those two nations are so totally different from those which either of them have with the United States, that no valuable deductions applicable to ourselves can be drawn from that statement.

The only question which it seems to this Government can be raised as to the right of Americans under our two treaties to remain in Germany would be of how long a period of time is covered by that right in the case of naturalized Americans; and, to decide this, reference to the fourth clause of the treaty of 1868 is necessary.

Now, it would seem to be impossible to apply the *prima facie* test of an intent to renounce American citizenship as provided for in the last clause of that article, namely, a residence in Germany of over two years, if the returning emigrant is liable to be expelled, as is now proposed, before the expiration of the two years, and no right is reserved in the treaty to the German Government to decide what period less than two years is sufficient, as Count Bismarck intimates, to attend to their affairs. This "intent" to renounce American nationality may, it is true, be expressed in some other way than a stay of over two years, and this not infrequently is the case, as is shown by dispatches from your legation reporting cases of deliberate and voluntary resumption of German allegiance on the part of naturalized Americans returning to their native land; but this Government contends that in the absence of any such voluntary and express manifestation of intent to renounce American citizenship, our citizens can, under the treaty of 1868, claim recognition of their status and all rights of sojourn pertaining thereto during the first two years following their arrival in Germany. The two Governments interpreted the treaty in this sense soon after its adoption, as is shown by the correspondence in your legation, and by that authoritative interpretation this Government thinks both are bound.

If such is not the case it is difficult to see what advantages are derived by our naturalized citizens from that treaty, and in what respect they are differently situated from those of other nations who we know are not entitled to further protection by their own Government on returning to Germany after their naturalization than would be secured by an ordinary traveler's passport.

That the intention of the German Government at the time of the signing of the treaty coincided with the views of this Government, as above expressed, appears clearly from the words of the decrees from the ministries of justice and the interior issued on the 6th of July, 1868, to all royal courts of appeal, supreme courts, state attorneys-general; to all the governments of the monarchy; to the chief president at Hanover,

and to the presidency of police in Berlin, for their guidance and distribution. These provide—

That the punishment incurred by punishable emigration is not to be brought into execution on occasion of a return of the emigrant to his original country if the returning emigrant has obtained naturalization in the other country, in conformity to the first article of the said treaty. Also:

In conformity to Article 2 of this treaty, the punishable action committed by the unauthorized emigration of a citizen of the United States of America should not be made the ground of a penal prosecution upon the return of such person to his former country after absence of not less than five years, etc.

The royal Government is therefore instructed in such cases to abstain from recommending trial and punishment, and in general from *every kind of prosecution* whenever the person in question is able to produce proof that he has become a naturalized citizen of the United States of America in conformity with the first clause of article I.

Yet, notwithstanding these edicts, the proceedings and sentences against returning Americans appear to emanate from the local authorities in disregard of their instructions "to report officially the remission by way of grace of the declared punishments and costs," the possibility of condemnation and execution of the penalties not being apparently in any case contemplated by these decrees. These orders are entirely pertinent to the present discussion, although they may be admitted to have more especial reference to military fines for non-performance of military duty, with a term of imprisonment in default of payment, the greater number of which are eventually repaid after the cases have been brought to the notice of the foreign office by your legation. The correspondence in none of the cases of expulsion discloses that the central Government in Berlin was furnished with any such reports for remission of punishment until called for by request of the legation. It may be that some of the sentences are issued from the military courts and authorities which are apparently not included among the officials addressed in the decrees; but in many of the cases, as, for instance, that of S. M. Boyson and others in the Island of Föhr, Schleswig-Holstein, the order of expulsion was issued from the royal Landrath at Tondern, and it allowed only three weeks' time for preparation to the emigrant, a married man with five children, who had left the country at the age of 17, and had not the slightest intention of remaining permanently in Germany.

Surely such a case as this was deserving of a report by way of remission of punishment, and certainly peremptory expulsion at three weeks' notice may be fairly included under the term "in general from every kind of prosecution," for expulsion is evidently a worse punishment than the ordinary fine, after the emigrant has incurred all the expense of a return to his native land, under the supposed protection of a treaty to remain there undisturbed for at least two years. In the case of Peter Jepsen, from the same province, the notification that he must leave the country within four weeks was issued by the chief of police of the district, the official (Hardesvogt) even refusing, according to Jepsen's statement, to issue the order of expulsion in writing. The hardship of the thirteen cases of expulsion from Schleswig-Holstein was aggravated by the fact that the characters of several of the individuals as law-abiding and orderly citizens were all testified to by an official (Ortsvorstand) of the district, and that all of them had originally received permission to emigrate.

This brings me to the second point made by the German Government for its refusal to rescind the orders of the local authorities, namely, that the application or request of these young men of sixteen years for permission to emigrate *before attaining the age of military liability* appears to justify the assumption that in seeking the discharge from Prussian allegiance, which the application apparently involved, *they were actuated*

solely by the purpose of withdrawing themselves from the performance of the general military duty in Prussia.

The minister of the interior on the 6th July, 1868, in his circular says:

> In concluding the treaty of the 22d February of this year between the North German Confederation and the United States of America *it was the prevailing intention* that in conformity to art. 2 of this treaty the punishable action committed by the unauthorized emigration of a citizen of the Confederation to the United States of America should *not be made the ground for a penal prosecution* upon the return of such person to his former country after absence of not less than five years, and that the punishment for such action, even though already declared, should *not* be consummated if the person has acquired in America the right of citizenship in conformity to Article I of said treaty.

The circular of the minister of justice is to the same effect, and in almost the same words. It seems to be a self-condemned proposition, whose refutation is contained in its statement that, if the punishment for unauthorized emigration was in every case to be remitted, authorized emigration was to be a punishable offense, and yet this is what the German Government asserts.

Nor is it apparently quite logical to state (see Count Bismarck's note of December 21, 1885, transmitted in your No. 142) that the discharge from Prussian nationality could not lawfully be refused in time of peace to persons who have not yet reached the age of military liability (that is, the completion of the seventeenth year), and yet to say: "The assumption seems therefore to be well founded that the persons in question (all under seventeen) sought discharge from their native allegiance, and emigrated to the United States only for the purpose of withdrawing themselves from all performance of military duty in Germany, and the same purpose must be assumed in the cases of H. P. Jessen, H. F. N. Rohlffs, and C. H. E. Rohlffs" (though these three were over seventeen years of age, and therefore might have been refused permission), "because these three persons emigrated to the United States after attaining the military age, without permission, and without having responded to the duty of presenting themselves for military service."

If discharge from military obligation is a necessary result and inseparable from a permit to emigrate, how is the emigrant, in asking for the latter, to avoid asking for the former? And if the man emigrating with permission is to be held guilty of evading military duty, and the man emigrating without permission is held to evade military duty, it is difficult to see how any one can innocently emigrate or safely return.

This Government has always in its consideration of these cases proceeded upon the supposition, which has thus far not been contradicted by the foreign office, that the military liability, *the avoidance of which was culpable and punishable*, did not begin until the age of military service, which is given in the German constitution as the completion of the twentieth year, and when a recruit is sworn into the service under the flag and assigned to a regiment. A disregard of this liability is understood to be desertion, and as such never defended by this Government.

But whatever may be the age of military liability, the circular* of the minister of justice, issued in pursuance of the treaty, says, "*The punishment incurred by punishable emigration is not to be brought into execution on the return of an emigrant who has obtained naturalization in the other country*," and this decision is given in execution of the treaty in which no distinction is made between those who emigrate before or after the age of

* Printed Foreign Relations, 1868, Part II, p. 55.

military liability, excepting only those persons referred to in Article 2, understood to be deserters.

It seems unreasonable on the part of the German Government to grant a request to emigrate which carries with it necessarily a release from military duty whether the applicant asks for such release or not, and then years after this permission has been availed of to violate and invalidate its own permit, and impute motives to the emigrant which could have had no effect when applying for the permit, inasmuch as the authorities are obliged by law to grant it. But there surely ought to be a just and reasonable distinction drawn between the acts and intent of a mere lad of sixteen emigrating, and usually in obedience to his parents, and those of a young man of twenty who may have received his summons to appear, and hastens to escape from the country in order to evade its laws. Out of the thirteen persons expelled from Schleswig-Holstein since the 1st December, 1885, eleven were under eighteen years of age, and nine, who were under seventeen, had permits to emigrate.

The complaint by the German authorities has appeared heretofore to be not so much of the fact of emigration, whether with or without permission, as of the return to Germany after naturalization and by acts and words inciting the embryo recruits in their native villages to discontent and emigration.

But even as regards this species of offense, which is more legitimate in its basis than the one alleged in the Schleswig-Holstein cases, great allowance should be made for the difference in popular habits and customs between America and Germany. In this country the emigrant travels freely and frequently. The sedate German becomes more active and migratory, and his proverbial and innate love for his father-land naturally tempts him on acquiring his new nationality to return as often as possible to the home of his childhood from which he has been long absent. It was in contemplation of and to meet this feeling and this necessity, which it would be unwise and contrary to the instincts of humanity to ignore, that the treaty was made. The returning emigrants do not enter Germany as Germans seeking to evade military service, but as American citizens carrying the proofs of their naturalization as required by the treaty, and generally with a passport recognizing them as American citizens, and claiming for them protection as such. How much more favorably then should their cases be considered when they hold a discharge by German authority from their original military obligations, and a permit to emigrate to foreign lands.

This Government considers that it has a right to ask that these passports and naturalization certificates shall be respected by the German authorities, and that the right to unmolested sojourn of returning naturalized German-Americans whose papers are evidence that they have complied with the United States laws and the provisions of the treaty of 1868 in regard to change of nationality, shall be acknowledged and respected, and that if a continuous residence in Germany of two years may be held to imply a renunciation of American allegiance no such implication shall arise in any shorter period, excepting in cases where the intent to reassume German nationality shall have been expressed explicitly by the returning emigrant. Consequently, during the said stipulated period of two years the naturalized American is entitled to protection from molestation or expulsion as long as he submits himself to the laws of Germany. The recent course of Germany in expelling a number of naturalized American citizens, whose quiet and inoffensive character was officially testified to, is considered contrary to treaty provisions, and as affecting the rights of a large class of our citizens who

are not included in the special exceptions stipulated for in Article 3 of the treaty of 1868 regarding criminals and fugitives from justice.

You are therefore instructed to present these views to the German Government, requesting at the same time that it will reconsider its decision in the recent cases of expulsion (and which I must believe to have been inadvertently made) in the light of the above recitals. The general doctrine of the right of a nation to expel obnoxious foreigners, whose presence is dangerous to its peace and welfare, from its shores, is well known to this Government, and by none more readily acknowledged, but this right was not lost sight of in framing the treaty of 1868, and while the right is admitted, yet its particular application as regards naturalized Americans is considered in and limited by that treaty.

You may read this instruction to the minister of foreign affairs and furnish him with a copy of the same for his information.

I am, sir, etc.,

T. F. BAYARD.

No. 273.

Mr. Pendleton to Mr. Bayard.

No. 245.] LEGATION OF THE UNITED STATES,
Berlin, April 16, 1886. (Received May 3.)

SIR: I have received from the Imperial foreign office the note dated April 4, 1886, in reference to the case of Knud Nielsen Knudsen, of which I inclose copy and translation, a copy of my note of intervention having been transmitted to the Department with my dispatch* No. 214, of the 23d ultimo.

It seemed to me that the time and occasion were opportune to present in very definite form the views contained in your instruction No. 106, of the substance of which I had made a statement to Count Bismarck in a conversation of an earlier date. Accordingly, I prepared the note to the foreign office of April 10, 1886, of which I also inclose a copy, and sent it with a copy of your No. 106. I hope my note and action will meet your approval.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 245.—Translation.]

Count Bismarck to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *April* 4, 1886.

The undersigned does himself the honor to inform Mr. George H. Pendleton, the envoy extraordinary and minister plenipotentiary of the United States of America, at the same time that he returns the inclosure of the note of the 8th of the past month, concerning the expulsion from the Prussian territory of the American citizen Knud Nielsen Knudsen, temporarily sojourning at Apterp, that the inquiries which have been made show the following:

The said Knudsen in the year 1875 prayed release from allegiance as a Prussian subject for the purpose of emigrating to America. As he was then little more than sixteen years old, and consequently the certificate from the recruiting commission prescribed (§ 15 of section 2, No. 1, of the imperial law concerning the acquisition and loss of imperial and state citizenship, R. G. B., 1870, S. 355, ff.) needed not to be produced by him, his request had to be granted. The release, prepared on the 9th November,

*Printed p. 323, Foreign Relations, 1886.

1875, was immediately thereafter handed to him. It was, however, afterwards declared null and recalled, according to the provision of section 18 of said law, because the said Knudsen had not within six months, counting from the delivery of the release, removed his residence outside the territory of the Empire, but instead remained until the autumn of 1887 in Borrig, Kreis Tondern.

At the beginning of his proposal for a release the authorities were scarcely in doubt that Knudsen's only purpose was to withdraw himself from the performance of military duty in Prussia. Obviously, with this view, he did afterwards withdraw himself from his home in 1878, and betake himself to the United States of America.

Since, after his return to his home on the 26th of December of last year, he has been allowed to remain for more than three months in the house of his parents, the order of expulsion against Knudsen, based on the general grounds developed by the undersigned in his former communication, must now be put into execution.

The undersigned takes advantage, etc.,

H. BISMARCK.

[Inclosure 2 in No. 245.]

Mr. Pendleton to Count Bismarck.

LEGATION OF THE UNITED STATES,
Berlin, April 10, 1886.

The undersigned, envoy, etc., of the United States of America, has the honor to acknowledge the receipt of the esteemed note, under date of the 4th instant, of Count Bismarck-Schönhausen, under secretary of state in charge of the Imperial foreign office, in relation to the threatened expulsion of the citizen of the United States now temporarily sojourning at Apterp, Knud Nielsen Knudsen, and respectfully begs the indulgence of Count Bismarck to submit some considerations in reference thereto.

The said esteemed note of Count Bismarck informs the undersigned, as the result of investigations made in the case, that the said Knudsen applied in the year 1875 for a release from Prussian allegiance in order that he might emigrate to America, which, as he was little more than sixteen years old, had, according to law, to be granted; that the release was prepared and immediately delivered to him, but was afterwards declared null and revoked because Knudsen had not within six months removed his residence outside of the imperial territory, but had rather remained in Borrig until the autumn of 1877; that, in the beginning of his application for a release from Prussian allegiance, the authorities had scarcely a doubt that Knudsen's only purpose was to withdraw himself from the performance of military duty in Prussia, and that obviously with this view he afterwards withdrew from his home, and went to the United States in 1878; that he has been permitted to remain more than three months in the house of his parents, after his return to his home on December 26 of last year, and that now the decree of expulsion must be executed on the general grounds developed in the former communication of Count Bismarck.

By way of supplement to the foregoing statements the undersigned permits himself to add, as he has before stated, that Knudsen was naturalized in the United States, and, after having resided there for the full term of seven years and three months, returned to Germany; that he desired to remain in Germany only until the 11th day of April, 1886, in order that his sister, who was to accompany him to America, might receive her confirmation. There is no reason to believe that he desires to prolong his stay beyond that period, or for any other purpose. The declaration of the nullity of the discharge from allegiance and the revocation of the same are certainly in accordance with the imperial law cited by Count Bismarck; but the undersigned is not aware that such revocation entails any injurious consequences upon Knudsen, except only the loss of the express permission to emigrate; and therefore Knudsen must be considered as having emigrated without permission at the age of nineteen without having been before his emigration specially called into military service or assigned in such wise to military duty, that his unauthorized emigration could be considered as desertion or punishable.

It has become an established rule of interpretation of the second article of the treaty regulating nationality, of February 22, 1868, between the North German Confederation and the United States, now adhered to without exception, that unauthorized emigration is not punishable on the return of the emigrant to his original country if he has obtained naturalization in the other country, except in case of actual technical desertion. Therefore Knudsen is to-day a returned naturalized citizen of the United States, who has resided more than seven years there, and who has been guilty of no act in contravention of, or punishable by, the laws of Prussia.

A series of well-considered cases, extending from the time of the mission of my honored predecessor, Mr. George Bancroft, the negotiator of the above-named treaty, to

wit, from 1875 down to and including the period when my immediate predecessor, Mr. John A. Kasson, had charge of this legation in 1885, has interpreted the third clause of the fourth article of the treaty to mean that a naturalized citizen of the United States, having resided there five years, returning to Germany shall have a right of uninterrupted sojourn in the last-named country for the period of two years, provided he obeys the laws thereof. The gentleman in charge of the imperial foreign office yielded an assent to this interpretation as often as it was asserted by the envoys of the United States. The undersigned would willingly point out the several cases to which he refers, but he is satisfied that these records of the diplomatic correspondence are very familiar to Count Bismarck. He permits himself, however, to mention the cases of Solomon Moritz Stern in 1876, of Ellis Block in 1878, of Edmond Klein in 1879, of Arft A. Rörden in 1880, of Lazard Rosenwald in 1880, of Jurgen I. Grau in 1882–'83, and the correspondence connected therewith, among many others of a similar tenor. The argument on which this conclusion was reached need not now be discussed. It was entirely conclusive to the officials of the two Governments, and the result they reached seems to be no longer an open question.

As a reason for not applying this well-settled interpretation of the treaty to the case of Knudsen, Count Bismarck says in the above-mentioned esteemed note that, on the general grounds developed by him in former communications, the measure of expulsion must now be executed after a sojourn of more than three months in the house of his parents has been permitted to Knudsen. The undersigned understands these former communications to be the notes of Count Bismarck of December 21, 1885, and of January 6, 1886. The note of December 21, 1885, says (the undersigned quotes only that he may not possibly unintentionally misrepresent:)

"The assumption seems therefore well founded that the persons in question sought discharge from their native allegiance and emigrated to the United States only for the purpose of withdrawing themselves from the performance of military duty in Germany. This same purpose must be assumed in the cases of: (7) Hans Peter Jessen (note of the 9th ultimo, foreign office, No. 116); (8) Heinrich Friedrich Nikolaus Rohlffs (note of the 13th ultimo, foreign office, No. 124) and (9) Constantine Heinrich Edward Rohlffs, (note of the 13th ultimo, foreign office, 123).

"These three persons emigrated to the United States, after attaining the military age, without permission, and without having responded to the duty of presenting themselves for military service. * * * Should a further sojourn, and one for an indefinite period, such as they desire, be permitted them, a furtherance would thereby be afforded to the purpose of those persons, manifestly aiming at evasion of the performance of military duty, which does not appear to be in accord with the interests of the state and the public order."

And the note of January 6, 1886, after quoting the substance of the former note, adds:

"If such persons were permitted, after they have acquired American citizenship, and while appealing to this change of nationality, to sojourn again according to their pleasure, unhindered, for a shorter or longer period, in their native land, furtherance would thereby be given to similar endeavors, and respect for those laws would be endangered upon which is based the general liability to military service, one of the most essential and important foundations of our State life."

It is not asserted that Knudsen has violated any law or committed any breach of the peace, or order of the community, or that he has by word or deed, by persuasion or example, sought to mislead, or to excite discontent among the people with whom he associated. This would seem, therefore, to be a case in which would apply with special force the instruction given by the royal Prussian minister of the interior to the authorities of the Royal Government, "to abstain from recommending trial and punishment, and in general from *every kind of prosecution*."

The undersigned respectfully calls the attention of Count Bismarck to the decree issued by the royal Prussian minister of justice July 5, 1868, and to the decree issued by the royal Prussian minister of the interior July 6, 1868. They are an authoritative interpretation on the part of the German Government of the provisions and intent of the treaty of 1868. The first expressly declares that it was the prevailing intention "that, in conformity to the second article of that treaty, the punishment incurred by punishable emigration is not to be brought to execution on occasion of a return of the emigrant to his original country if the returning emigrant has obtained naturalization in the other country in conformity to the first article of the said treaty.

"In consideration whereof, in every case where legally valid condemnation of this kind exists against such persons, an official report is to be made to the minister of justice respecting the remission of the declared punishments and costs by way of grace."

And the second of the above-named decrees declares that it was the prevailing intention—

"That in conformity to Article 2 of this treaty the punishable action committed by the unauthorized emigration of a citizen of the confederation to the United States of America should not be made the ground for a penal prosecution upon the return of

such person to his former country after absence of not less than five years, and that the punishment for such action, even though already legally declared, should not be consummated if the person has acquired in America the right of citizenship in conformity to Article 1 of said treaty.

"The Royal Government is therefore instructed in the cases indicated to abstain from recommending trial and punishment, *and in general from every kind of prosecution*, whenever the person in question is able to produce the proof that he has become a naturalized citizen of the United States of America, in conformity with the first clause of Article I."

The undersigned therefore submits that the act of emigration by Knudsen was not an offense against the laws of Prussia; that the officials were directed to abstain from recommending trial and punishment and every kind of prosecution against him; that, indeed, by virtue of the treaty and these decrees, the emigration was expressly permitted. The intention with which he emigrated, the mental process by which he was brought to a decision, in no wise impaired the lawfulness of the emigration. So, also, the return to his native country of the emigrant as a naturalized citizen of the other country, after a five years' sojourn therein, is expressly permitted and provided for by the treaty. The emigration is permitted, the return is permitted, the sojourn is permitted. How, then, can the recognition of these three permitted events be a furtherance of a reprehensible desire to evade military service? The very act of emigrating involves the avoidance of military duty. There can be no emigration before the extreme limit of age at which the subject may be called on, which does not involve such avoidance.

If there shall be no emigration which involves such avoidance, that is simply to say there shall be no emigration at all before such old age. If the recognition of the right of emigration is an improper furtherance of the escape from military service, that is simply to say there shall be no recognition of the right of emigration. Emigration is the event; the escape from military service is the subordinate, even though inseparable, incident. The emigration is lawful; the consequent avoidance of military service is *quoad hoc* lawful. To describe the recognition of the rights of emigration, and return, and sojourn, each guarantied by the treaty, as an encouragement on the part of the authorities of the effort to escape military service and to bring the laws into disrespect, seems to be inadmissible. But if it were admissible, can it be that an emigrant may be subjected to a curtailment of his treaty right of sojourn simply because the exercise of his admittedly lawful rights is deemed by one of the parties to that treaty to constitute an inconvenience, in this, that it puts that party in the attitude at home of furthering avoidance of military duty? Was not such furtherance afforded, if at all, at the time of negotiating the treaty?

The performance by the emigrant of acts which are separately permitted and sanctioned by the German Government, to wit, emigration, return, and sojourn, can not, when they are combined, give him a quality which, in the absence of any offensive conduct, is dangerous to the State, and thus justify an exception to the rule of two years' residence. No German-born naturalized citizen of the United States can sojourn for any length of time in Germany if the facts of emigration and return are to be considered as proof that the emigration was merely from a desire to avoid the performance of military duty, and such desire renders the person dangerous to the state, and therefore justifies expulsion. If all a man's acts are lawful, his motives, his desires can not be the subject of animadversion; they become important only when the acts themselves are unlawful.

In truth, the desire to avoid military service as an inducement to emigration is not a fact of which the treaty takes any cognizance. It does not invalidate the *bona fides* of the emigration or of the return, nor lend a quality to the person affecting, in any sense, his relation to the state. To better one's condition is always the inducement to emigration. It may be believed that intending emigrants would hold exemption from a long military service, in times of peace as well as of war, to be one of the incidents which contribute to the general bettering of their condition.

Count Bismarck will not do the undersigned the injustice to suppose him guilty of the indiscretion of discussing, or even questioning in this paper the wisdom of any of the institutions of the German polity. Such an impropriety he urgently disclaims. He is speaking only of the concurring inducements which influence honest, upright men to leave their homes and friends to establish themselves in another country, and which might apply as well in inducing Germans to go to one of the colonies of Germany as to the United States.

The undersigned is quite aware that Count Bismarck, in his note of January 6, 1886, says that these expulsions are not by way of punishment, but lest a "furtherance would thereby be given to similar endeavors, and respect for those laws would be endangered upon which is based the general liability to military service, one of the most essential and important foundations of our state life."

Still the question recurs, How can these three acts, all sanctioned expressly in solemn treaties and decrees by the Prussian Government, constitute in the persons

performing them a quality dangerous to the state; how can the person who performs them be expelled without punishing him for having done one or all of the permitted acts? And, in fact, no punishment is more severe to a returning German than to expel him from his fatherland, to which his affections make him yearn to return for the sight of his old home, as a person dangerous to its welfare and unfit to visit it.

It is very true that Count Bismarck says repeatedly, and with great consideration, that this right of expulsion will be exercised with moderation, and only on occasions of imperative necessity. For this assurance the undersigned is duly appreciative, but he can not avoid saying that this is a question of right under treaty stipulations, and not of grace and favor, however kindly and constantly exercised.

The undersigned feels at liberty to address Count Bismarck at such great length on this subject, because, so far as his researches in the correspondence enable him to judge, the views he is combating are put forth and insisted upon now, in these late cases from Schleswig-Holstein, for the first time, and involve a change in the course hitherto pursued.

The undersigned is instructed by his Government to bring these views to the attention of Count Bismarck, and to ask that they may have due weight in the further consideration of the case of Knudsen. He at the same time asks the consent of Count Bismarck to avail himself of the permission of his Government to submit a copy of the instruction which he has lately received, containing at length the views of the Government of the United States on these questions so interesting to its very many valuable citizens of German origin, who, by their virtues, have in a new home done honor to their race and to their fatherland, and in whom that fatherland must feel an honorable pride.

This case of Knudsen seems to stand upon the same ground as the others from Schleswig-Holstein, particularly referred to in that instruction, and therefore the undersigned ventures to ask in this note that the adverse decisions in those cases may be reviewed, as he is required to do by his Government, and gladly avails himself, etc.

GEO. H. PENDLETON.

No. 274.

Mr. Pendleton to Mr. Bayard.

No. 370.] LEGATION OF THE UNITED STATES,
Berlin, January 13, 1887. (Received February 1.)

SIR: I have to acknowledge the receipt, on the 9th instant, of your instruction No. 176, of December 17, 1886, covering the copy and translation of a note of July 8, 1886, from Mr. von Alvensleben, the German minister at Washington, concerning the expulsion of naturalized American citizens from Germany. Mr. von Alvensleben acknowledges the receipt by the foreign office here of my two notes of the 10th and 16th April, 1886, in reference to the cases of Knudsen and Burmeister, and of a copy of the instruction of the State Department (No. 106) of March 12, 1886, and after several observations on the contents of the said instruction and notes, uses the following language:

The political interest of the Empire in repressing abuses of the treaty, resorted to with the view of evading military duty, is so vital that, after past experience, the denunciation of the treaties of 1868 would become necessary to German interests if the interpretation of the treaties, as set forth in Mr. Pendleton's note, should be accepted as final. The Imperial Government has thus far not abandoned the hope of being able, by a judicious exercise of the right of expulsion, to avert the evil consequences which, from the German standpoint, are naturally connected with the continued existence of the treaties.

The Department of State takes the view that if the principles recently asserted are to be enforced, any German who has emigrated to the United States will, in case of his speedy return, have cause to fear immediate expulsion, and thinks that this state of affairs would be equivalent to a *de facto* restoration of the condition of things which existed before the treaties were concluded. Neither of these assumptions, however, seems well founded. In the case of persons who have emigrated to the United States in good faith, that is to say, who can show that they have done so from motives not connected with the general military service, there will be no occasion for

expulsion. Yet, even persons liable to military duty who have emigrated notoriously for the purpose of evading the performance of military duty, are better off now than they were before the conclusion of the treaties, or than they would be after their denunciation, since now, provided that they do not expressly or tacitly renounce their American naturalization, they suffer expulsion only, and can not be punished or compelled to serve in the standing army or navy. * * *

Mr. von Alvensleben says also that—

Mr. Pendleton's statement in his note of April 10, 1886, that both parties have hitherto been agreed concerning an interpretation of the treaty that recognizes the right of undisturbed sojourn for two years, is based upon a misapprehension.

I can not admit the entire justice of this statement. In my note of the 10th of April last, which Mr. von Alvensleben had before him, I cited in support the cases of Salomon Moritz Stern, Elie Bloch, Edmund Klein, Arfst A. Rörden, Lazard Rosenwald, Joseph Wackermann, and Jürgen J. Grau, by name, not by quotations, from the correspondence. I was justified in supposing that the correspondence, being in the foreign office there would be no need to quote passages in my note.

CASE OF SALOMON MORITZ STERN.

In this case Minister Davis intervened on February 10, 1876, addressing Mr. von Bülow, Imperial secretary of state for foreign affairs, and asking that a decree of expulsion should be revoked, but referring in no way to the treaty provision respecting a two years' stay. On May 29th following, Mr. von Bülow informed the legation, in reply, that the decision had been reached that the measure of expulsion should not be proceeded with "*before the expiration of the period of two years provided for in section 4 of the treaty of February 22, 1868.*"

CASE OF ELIE BLOCH.

In this case the property of the complainant had been attached, and he had left Alsace-Lorraine in apprehension of being arrested. Minister Taylor, on October 23, 1878, addressed a note of intervention to Mr. von Bülow, Imperial secretary of state for foreign affairs, requesting that—

* * * The sentence against him (Bloch) may be removed in order that he may visit *Elsass for the two years allowed to naturalized Americans.* * * *

Under date of January 25, 1879, Mr. von Bülow replied to the note of intervention, saying:

* * * That he had not failed to recommend to the appropriate authority, that, if feasible, Elias Bloch, of Isenheim, * * * *should be permitted to return to Alsace-Lorraine for a period of two years' sojourn without being exposed to the penalty pronounced against his person and property.* * * *

CASE OF EDMUND KLEIN.

Klein had been ordered by the authorities to leave Alsace-Lorraine. Mr. Everett, chargé d'affaires, addressed, under date of January 21, 1879, to Mr. von Bülow, Imperial secretary of state, a note which contains the following:

* * * The undersigned ventures to express the hope that his excellency, Mr. von Bülow, will cause the above case to be investigated, and if the facts should prove to be as stated, *that the said Klein may be allowed to remain in Sargemünd during the two years provided by treaty of* 1868. * * *

Under date of April 28, 1879, Mr. von Bülow replied:

* * * *that the further sojourn of Klein would be permitted.* * * *

CASE OF ARFST A. RÖRDEN.

Rörden had been ordered by the authorities to leave Prussia. Minister White addressed, under date of September 15, 1879, a note of intervention to Mr. von Bülow, Imperial secretary of state for foreign affairs, asking—

* * * *That Mr. Rörden may be accorded his full rights, under the treaty of* 1868, *to remain unmolested two years in his native country.* * * *

In reply, Mr. von Philipsborn, in charge of the Imperial foreign office, informed the legation, under date of December 20, 1879, that—

* * * Pursuant to a communication of the minister of the interior the *measures instituted against Arfst Andreas Rörden had been desisted from, and that his sojourn in the country until further notice had been allowed.* * * *

CASE OF LAZARD ROSENWALD.

Rosenwald had been ordered to leave Alsace-Lorraine. Minister White, in his note of intervention, dated May 20, 1880, addressed to Prince Hohenlohe, in charge of the Imperial foreign office, says:

On July 1, 1879, he (Rosenwald) returned to visit his native country *for a period of two years, only about eleven months of which have as yet expired.* * * *

Under date of June 17, 1880, Prince Hohenlohe informed the legation in reply that Rosenwald *would be permitted to sojourn in Alsace-Lorraine for another year.*

CASE OF JOSEPH WACKERMANN.

Extract from note, dated August 28, 1880, of Minister White to Prince Hohenlohe, in charge of the Imperial foreign office, relating to Alsace-Lorraine cases:

Although the case of Wackermann was decided adversely, the undersigned nevertheless cites it for the reason that in the note of August 28, 1878, of the late minister of the United States at Berlin, Mr. Bayard Taylor, in which this case was presented to the Imperial foreign office, *the ground on which the right of Wackermann to sojourn for two years in Alsace-Lorraine was claimed was distinctly stated to be the provisions of the treaty of February* 22, 1868, *as were indeed almost invariably the claims for relief addressed by this legation to the Imperial foreign office in kindred cases.*

Mr. Taylor, in the note referred to, after acknowledging the receipt of the communication of the 25th instant, of his excellency Mr. von Radowitz, in charge of the Imperial foreign office, "communicating the decision of the Imperial Government expelling Joseph Wackermann, of Reichshofen, in Alsace-Lorraine, *before the expiration of the two years' stay permitted to all German-American citizens by Article 4 of the treaty of February* 22, 1868," adds: "While trusting the Imperial foreign ministry possesses full and satisfactory reasons for making this case an *exception to the above stipulation of the treaty*," etc., stating further on:

The undersigned does not mean to question in any way the action of the Imperial Government in accordance with existing laws, but he would most respectfully request that in future cases where the provision contained in Article 4 of the treaty of February 22, 1868, is suspended or set aside, a distinct specification of the nature of the offense may be furnished to this legation.

In the reply to this note by his excellency Mr. von Bülow, Imperial secretary of state for foreign affairs, no dissent whatever was expressed to the position respecting the two-years clause of the treaty of February 22, 1868, thus distinctly assumed by Mr. Taylor, the expulsion of Wackermann being based solely on his bad behavior.

CASE OF JÜRGEN J. GRAU.

Grau had been threatened with expulsion from Prussia. In Minister Sargent's note of intervention, dated December 15, 1882, addressed to Count Hatzfeldt, Imperial secretary of state for foreign affairs, the following passages occur:

It would appear by the inclosed document from the hardesvogt (sheriff) of Norburg, that Grau has expressed the intention of remaining in that locality, which the authorities will permit him to do on condition that he will furnish certain certificates therein mentioned. Mr. Grau, on the contrary, expresses to the legation his intention of returning to the United States at the end of *the two years' visit here, to which he believes himself entitled under the treaty of* 1868.

The undersigned begs that his excellency will cause this case to be investigated, and if the facts prove to be as stated, *that Mr. Grau be permitted to remain the full two years in his native place,* and that no fine may be levied on him.

In the note of reply, dated May 1, 1883, from Count Hatzfeldt, the legation is informed as follows:

* * * That pursuant to the request made, Jürgen Jessen Grau, of Hohn, who returned on November 23, 1881, from America, on a temporary visit to his former home, *will be permitted to remain in Schleswig until the expiration of his two years' period of sojourn in this country.* * * *

I am not unmindful of the fact that I have heretofore called the attention of the Department to these cases, but I have thought that their citation again, with the proper italics as above, in connection with the charge of misapprehension, would not be inappropriate.

It is true that in the case of Bäumer there is a statement that "every sovereign state is entitled, under international law principles, from actuating motives of internal state police or state policy, to refuse to foreigners the privilege of sojourn. A renunciation of the right is, as has been pointed out by this Government on former occasions, nowhere contained in the treaty of February 22, 1868." But it is very apparent that this statement is made in view of the circumstances of that particular case. The claim was for damages for expulsion, which the Imperial authorities assert they cannot recognize and pay, for several reasons, among others that Bäumer did not object to, but rather hastened to meet half way the expulsion, and that in addition he had made all his preparations to return to America about the time the order of expulsion was made. The foreign secretary says:

It is to be regretted that Baümer did not complain of this expulsion either to the appropriate internal authorities or to the Imperial Government through the medium of the envoy of the United States. The undersigned does not hesitate to declare that on the basis of such a complaint the decree in question of the Royal Government at Münster, although its legality is beyond question, would have been canceled in view of the circumstances that in the decision of the case by the higher authorities, the existing circumstances of a local nature would have been subordinated to the general points of view involved, and in view of this circumstance the royal minister of the interior gladly holds himself in readiness to direct that Bäumer, should he return to Prussia, be permitted to sojourn for the period of two years on Prussian territory, in so far as other and different valid reasons for the prohibition of such sojourn than those indicated by the Royal Government at Münster are not made to appear.

As this is the only case cited by Mr. von Alvensleben, and is, so far as is known, the only case which could be cited, I may be permitted to say that it hardly countervails the many declarations which have been quoted above, in cases arising before and after it was argued and decided, and hardly sustains the claim of Mr. von Alvensleben that "the Imperial Government has on the contrary always maintained this position on several occasions."

I have, etc.,

GEO. H. PENDLETON.

No. 275.

Mr. Bayard to Mr. Pendleton.

No. 195.] DEPARTMENT OF STATE,
Washington, March 7, 1887.

SIR: I inclose herewith copies of two communications from the Commissioner of Agriculture with reference to the importation of American plants into Germany.

In replying to the Commissioner's first letter, I referred him to Mr. Sargent's No. 211, of the 4th of November, 1883, which gave a full history of the phylloxera convention of the 3d November, 1881, and the German law of July 3, 1883, to carry out the same.

Mr. Sargent appears by that dispatch to have endeavored to obtain from the German Government some mitigation of the restrictions on the importation of American plants, but thus far, it does not appear, with any success.

As there does not seem to be any immediate prospect of the United States becoming one of the signers to the phylloxera convention, or of passing such preventive laws as the terms of that convention require, you are instructed to invite the attention of the foreign office to the matter with a view to informing this Government whether the prohibitory regulations are still in force, and if so, whether any exemption or exception can be obtained for American plants under the provisions of section 5 of the decree of July 4, 1883, and, in this case, what forms must be complied with by American exporters.

You will notice that the Commissioner hopes for an early reply.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 195.]

Mr. Colman to Mr. Bayard.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., January 5, 1887.

SIR: I am frequently asked by correspondents who desire to ship plants to Germany in regard to the construction of the German laws governing such importation, and within a few days the following question has arisen: It is understood that a certificate to the effect that the plants to be imported have not been grown near potatoes or grapes is required; what is the form of this certificate, and by whom should it be indorsed?

I should like to procure through your Department, as soon as possible, an authoritative answer to this query, and I should also esteem it a favor if you can secure for me copies of the whole law governing this traffic.

I am, sir, etc.,

NORMAN J. COLMAN,
Commissioner.

[Inclosure 2 in No. 195.]

Mr. Colman to Mr. Bayard.

DEPARTMENT OF AGRICULTURE,
Washington, D. C., January 28, 1887.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, replying to mine of the 5th, which asked for certain information regarding the German laws governing the importation of plants from the United States into Germany.

On consulting Minister Sargent's dispatch No. 211, dated November 4, 1883, to which you have referred us, we find that the whole matter hinges upon sections 2 and 5 of the Imperial decree of July 4, 1883.

The translation of section 2 reads: "The importation of plants with roots, coming from states which were not represented at the phylloxera convention, into the Empire, is prohibited."

The translation of section 5 reads: "The Imperial chancellor is empowered to grant exemption to the provision of section 2."

Inclosure 7 to this dispatch No. 211 is a copy of a communication from Mr. Sargent to Count Hatzfeldt, calling the latter's attention to the fact that the United States is thus prohibited from exporting plants to Germany, and practically desires that this restriction be removed, and that the plants of American exporters be admitted into the Empire under the same terms with those of states which were represented at the convention of Berne. The case in point was the complaint of Messrs. Roelker & Sons, of New York City.

I have the honor to inquire as to the result of this communication of Minister Sargent's, and as to whether the prohibition has ever been removed.

Hoping for an early reply, I remain, etc.,

NORMAN J. COLMAN,
Commissioner.

No. 276.

Mr. Coleman to Mr. Bayard.

No. 399.] LEGATION OF THE UNITED STATES,
Berlin, March 7, 1887. (Received March 21.)

SIR: I have the honor to inclose herewith for the files of the Department of State the official text of the speech* from the throne, read at the opening of the newly elected Reichstag on the 3d instant by Minister of State von Bötticher on behalf of the Emperor.

The portion of the speech which relates to the foreign policy of the Empire will command interest at home and abroad, and reads in translation as follows:

The relations of the German Empire to foreign powers are still the same as they were at the time the last session of the Reichstag was opened [in November]. By command of the Emperor I have to convey the expression of His Majesty's satisfaction at the manifestations of the Pope, by which His Holiness betokened his well-wishing interest in the German Empire and its domestic peace.

The foreign policy of His Majesty the Emperor continues to aim at preserving and fostering peace with all the powers, especially with our neighbors.

This pacific policy of the Emperor may receive most effective support from the Reichstag if it quickly, cheerfully, and unanimously assent to the bills having for their object the immediate and enduring increase of our defensive power. If Parliament without hesitation and schism give unanimous expression to the will of the nation to meet every attack on our frontiers, now and ever, with the full armed force of all our defensive power, then the Reichstag, by its very decisions alone and before they are carried out, will have materially strengthened the pledges of peace and dispelled the doubts which may have been created by our parliamentary proceedings hitherto with respect to the increase of our army. His Majesty the Emperor believes of the present Reichstag that its resolutions will afford a secure foundation for the national policy of the allied Governments, and derives from this confidence the conviction that His Majesty's endeavors to preserve the peace and security of Germany will be blessed by God.

As the Emperor declares the relations of the Empire to foreign powers to be the same they were at the opening of the last session of the Reichstag, it may not be out of place to recall His Majesty's utterances on this subject on that occasion, on the 25th of November last, which were as follows:

The relations of the German Empire to all other states are friendly and satisfactory. The policy of His Majesty the Emperor unceasingly aims, not only at preserving

* Inclosure not printed.

to the German people the blessings of peace, but also at maintaining unity among all the Powers, by turning to account that influence in the council of Europe accruing to German policy from its approved love of peace, from the confidence of other Governments thus acquired, from the lack of interests of its own in pending questions, and especially from the close friendship uniting His Majesty the Emperor to the courts of his two Imperial neighbors.

The Government bill increasing the peace strength of the German army, defeated in the late Reichstag, will be brought before the newly elected one to-day, with every prospect of being speedily adopted.

I have, etc.,

CHAPMAN COLEMAN.

No. 277.

Mr. Pendleton to Mr. Bayard.

No. 410.] LEGATION OF THE UNITED STATES,
Berlin, April 3, 1887. (Received April 16.)

SIR: Yesterday morning I received from the foreign office a note, of which I send herewith a copy and translation. It informs me that the Emperor, owing to ill health, will probably be prevented for some time from granting audiences; that His Majesty regrets very sincerely his inability to receive me in person for the purpose of the delivery of the congratulatory letter of the President of the United States; and that he has instructed Count Bismarck to express his thanks for the kind wishes of President Cleveland and of the Secretary of State, Mr. Bayard, and to receive from my hands the original letter. Count Bismarck, therefore begs that I may either deliver the President's letter to him personally or convey the same with a note, that it may be presented to His Majesty. I preferred the latter course, and therefore prepared and sent last evening the note, of which I also annex a copy, inclosing with it the original letter of the President.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 410—Translation.]

Count Bismarck to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *March* 31, 1887.

The undersigned, has the honor to state in reply to the esteemed note of the 26th instant, of the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. Pendleton, that His Majesty the Emperor and King will, in consequence of his illness, probably be prevented for some time to come from granting audiences.

His Majesty regrets very sincerely his inability to receive in person the envoy for the purpose of the delivery of the congratulatory letter of the President of the United States, and has instructed the undersigned to express his thanks for the kind wishes of President Cleveland and of the Secretary of State, Mr. Bayard, and to receive the original letter from the hands of the envoy.

The undersigned, therefore, begs that the letter referred to may be either handed to him, or conveyed to him by means of a note, in order that it may be presented to His Majesty, and avails himself, &c.

H. BISMARCK.

[Inclosure 2 in No. 410.]

Mr. Pendleton to Count Bismarck.

LEGATION OF THE UNITED STATES,
Berlin, April 2, 1887.

The undersigned, envoy, etc., of the United States of America, has the honor, in accordance with the permission granted by his excellency Count Bismarck-Schönhausen, Imperial secretary of state for foreign affairs, in his polite note of the 31st ultimo, received to-day, to hand herewith to his excellency the letter of the President of the United States, addressed to His Imperial Majesty the Emperor, expressing the respectful and cordial congratulations of the President on the happy completion by His Majesty of the ninetieth year of his life, crowned with the prosperity of his Empire and the affections of his people.

The undersigned can express but feebly the sentiments of regret and sympathy which he is assured will fill the breast of the President when he shall learn that ill health, which all good men hope may be merely a passing indisposition, affects His Majesty, and will prevent an audience in which the undersigned might place in the hands of the Emperor personally this letter of the President, with the verbal assurance of the profound respect and good will of the people and Government of the United States, which he was commissioned by the President to communicate, and to explain the unfortunate *contretemps* of adverse winds and stormy seas, by which the arrival of the President's letter was delayed beyond the fête of His Majesty's birthday.

The undersigned gladly avails himself, &c.

GEO. H. PENDLETON.

[Inclosure 3 in No. 410.]

Grover Cleveland, the President of the United States, to His Majesty William, Emperor of Germany.

EXECUTIVE MANSION,
Washington, March 11, 1887.

GREAT AND GOOD FRIEND: Accept, I pray you, my sincere felicitations upon the attainment of your ninetieth year, in peace and honor, in health and strength, with unclouded faculties to perceive, a heart to enjoy the affection and respect of the people over whom, in the providence of God, you have ruled so long and wisely.

I am confident that I truly reflect the sentiment of tens of thousands of native Germans, who are now prosperous and happy citizens of this Republic, when I express the hope that your life may be prolonged for the welfare of your people and the peace of your Empire.

May God have your Majesty and your Majesty's family in His wise keeping.

Your good friend,

GROVER CLEVELAND.

No. 278.

Mr. Pendleton to Mr. Bayard.

No. 418.] LEGATION OF THE UNITED STATES,
Berlin, April 7, 1887. (Received April 25.)

SIR: The Berliner Tageblatt, in its morning issue of to-day, contains a local article giving what purports to be a decision of the administrative authorities concerning the acquisition and loss of citizenship in Germany and the effect of the treaty of February 22, 1868, in reference thereto.

There seems to be nothing particularly new in this resumé of the decision, except possibly in the notice that remonstrance against proceedings of expulsion will not be heard by the administrative authorities, and that the provisions of the fifth paragraph of Article 21, of the

law of June 1, 1870, does not apply to persons who have lost their German citizenship by reason of naturalization in a foreign country.

I fail to see the pertinency of this local article to any matter discussed to-day in the above paper, or to any course or matter depending before the Imperial or state authorities, so far as this legation is advised.

I send herewith the extract from the Berliner Tageblatt, with translation, and the original and translation of subdivision 5 of section 21 of the Imperial law referred to.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 418.—Translation.—Berliner Tageblatt, April 7, 1887.]

In the mean time a decision of the superior court of administration has been communicated to the Prussian administrative authorities which settles the following:

(1) The provisions of the treaty concluded with the United States of America in relation to citizenship have undergone no change by reason of section 21 of the Imperial law of June 1, 1870, concerning the acquisition and loss of German citizenship in the Empire and state, but have rather received a clear interpretation, that the acquisition of citizenship in the United States, in conjunction with five years uninterrupted residence there, works a loss of citizenship in Germany, and that hence such persons are subject to expulsion from the country until their reacquisition of German citizenship, and that this expulsion can not be called in question by remonstrance to the administrative authorities.

(2) The right of reacquiring citizenship in Germany, according to section 21, subdivision 5, of the Imperial law of June 1, 1870, does not extend to persons for whom the acquisition of a foreign citizenship has worked the loss of German citizenship in the Empire and state.

[Inclosure 2 in No. 418.—Translation.]

Subdivision 5 of section 21 of the Imperial law of June 1, 1870, is as follows:

German subjects "who have lost their citizenship by ten years' residence in a foreign country and subsequently return to the territory of the North German Confederation, acquire citizenship in that state of the confederation in which they take up their residence by a decree of admission of the superior administrative authorities, which must be issued to them at their application."

No. 279.

Mr. Pendleton to Mr. Bayard.

No. 424.] LEGATION OF THE UNITED STATES,
Berlin, April 25, 1887. (Received May 7.)

SIR: Referring to your instruction No. 195, of the 7th ultimo, covering communication from the Commissioner of Agriculture with reference to the importation of plants into Germany, I have the honor to inclose herewith copies and translations of a note from the foreign office, dated the 23d and received the 24th instant, and of an Imperial decree dated on the 7th of April, 1887. From these it will appear that the prohibition contained in section 2, Imperial decree of July 4, 1883, is suspended, and that importations may be made on the conditions specified.

As the decree of April 7, 1887, suspending the operation of the former decree has been issued since my note, under your instruction, was sent to the foreign office, I think it reasonable to conclude that the action has been taken in consequence of the suggestions therein made.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 424.—Translation.]

Count Bismarck to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *April* 23, 1887.

The undersigned has the honor to communicate to the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. George H. Pendleton, in reply to his note of the 26th of last month, the inclosed printed copy of an imperial decree published on the 7th of April of this year.

In consequence of this decree the importation into Germany of plants with roots from the United States of America, under the stated conditions, is permitted, and the prohibition in section 2 of the decree of the 4th of July, 1883, is superseded.

The undersigned avails himself, etc.,

H. BISMARCK.

[Inclosure 2 in No. 424.—Translation.]

IMPERIAL LAW BULLETIN No. 13.

Contents: Decree concerning the importation of plants with roots from the states which did not take part in the International Phylloxera Convention. Page 155.

(No. 1712.) Decree concerning the importation of plants with roots from the states which did not take part in the International Phylloxera Convention, April 7, 1887.

We, William, by the grace of God German Emperor, King of Prussia, etc., decree in the name of the Empire, with the consent of the Bundesrath, the following:

SECTION 1. The importation of plants with roots not belonging to the category of grapes, which come from the states which did not take part in the International Phylloxera Convention, of the 3d November, 1881 (Imperial Law Bulletin of 1885, page 125), over the borders of that territory which is composed of the German customs domain and the Imperial possessions lying beyond the German customs limits, is permitted under the following conditions:

(1) The importation must be exclusively through the places of entrance designated by the imperial chancellor according to section 4 (1) of the decree of July 4, 1883. (Imperial Law Bulletin, page 153.)

(2) The plants must be securely packed, but in such wise that a close examination can be made of the plants as well as of the packing.

(3) The importation can only be made when an investigation, made at the place of entrance at the cost of the importer, removes the suspicion of phylloxera.

In the foregoing circumstances the provisions of the section 6, of the decree of July 4, 1883, apply.

SECTION 2. The Imperial chancellor will take the necessary measures to carry into effect the foregoing regulations, particularly the appointment of experts, who are to be intrusted with the execution of the investigation mentioned in section 1 (3), and the regulation of the cost of the investigation.

SECTION 3. The instruction in section 2, of the decree of July 4, 1883 (Imperial Law Bulletin, page 153), is revoked.

Witness our hand and Imperial seal.

Given, Berlin, April 7, 1887.

WILHELM.
VON BOETTICHER.

No. 280.

Mr. Bayard to Mr. Pendleton.

No. 219.] DEPARTMENT OF STATE,
Washington, May 13, 1887.

SIR: With reference to your dispatch No. 424, of the 25th ultimo, I beg to inform you that the Department has learned with satisfaction of the success of your efforts to secure a favorable modification of the German laws regulating the importation of plants from the United States into Germany.

I am, etc.,

T. F. BAYARD.

No. 281.

Mr. Bayard to Mr. Pendleton.

No. 221.] DEPARTMENT OF STATE,
Washington, May 21, 1887.

SIR: It appears from Mr. Everett's dispatch No. 95, of the 21st of March, 1879 (Foreign Relations for 1879, page 373), that by the law of Wurtemberg, where property is attached to enforce the payment of a fine imposed upon a person found guilty of desertion for failing to perform military duty, the attachment expires by limitation.

In order that the Department may be enabled to answer inquiries upon the subject I will thank you to furnish, if practicable, an abstract of the limitation laws of Germany relating to attachments, fines, and other penalties for the non-performance of military duty or desertion.

I am, etc.,

T. F. BAYARD.

No. 282.

Mr. Pendleton to Mr. Bayard.

No. 448.] LEGATION OF THE UNITED STATES,
Berlin, June 6, 1887. (Received June 20.)

SIR: I inclose herewith a copy of my note to the foreign office of the date of March 30, 1887, and of the note of the foreign office dated May 25, 1887 (with translation), in the case of Albert Bernhard, a citizen of the United States, who emigrated from Alsace-Lorraine in 1872.

It will be observed that Count Berchem questions the citizenship in the United States of Bernhard, notwithstanding his naturalization, because—

(1) The code civil prevailed in Alsace-Lorraine until 1873 (a year after Bernhard's emigration). That code provides that French nationality could be lost by an "établissement fait en pays étranger sans esprit de retour," and "les établissements de commerce ne pourront jamais être considérés comme ayant été faits sans esprit de retour," and that after Bernhard's declaration before the chief state's attorney at Mülhausen it can not be accepted that at the beginning of his residence in America he had the intention not to return to his home. Such intention must be proven affirmatively and clearly.

(2) When Bernhard acquired his United States citizenship, the German law of June 1, 1870, introduced into Alsace-Lorraine in 1873, prevailed for the inhabitants of those provinces; and that Bernhard had not complied with its provisions, neither obtained a dismissal from his German allegiance according to section 13, No. 1, nor remained abroad ten years, according to section 13, No. 4.

Having thus contested Bernhard's release from German allegiance, the statement is made that the evidence of his affiliation with the "league of patriots," resulting from the finding of the statutes of that organization (alleged to be in favor of forcible separation of the province of Alsace-Lorraine from the German Empire) in his possession, subjected him to grave suspicion, and that such suspicion fully warranted the arrest, isolation, and the interception of his mails whilst his examination was progressing, and that all these measures were taken in exact compliance with the provisions of the law.

The contention that Bernhard is not freed from his German allegiance would seem to have force, if, indeed, the provisions of the Bancroft treaty of 1868 with the North German Confederation do not apply to the provinces of Alsace-Lorraine, and that they do not seems to be very strongly implied in the instruction of Mr. Fish, Secretary of State, to Mr. Bancroft, April 14, 1873, in which the fact that "the provisions of none of the treaties extend to Alsace and Lorraine" is urged as a reason for the negotiation of a treaty which shall be coextensive with the limits of the Empire.

I have not yet answered the note of the foreign office, because of some hesitation in what sense the answer may be most effectively presented, either as to the question of citizenship or as to the other question of the reasonableness and fairness of the measures of arrest, search, and surveillance of mails, etc., as to which I have no proof except the statements of Bernhard, whose protests rather admitted the presence of the inculpating evidence, but sought to avoid the conclusion by the allegation that they were only casually in his possession, and were, in fact, the property of his brother. If you have any suggestion to make as to the answer which you desire should be presented, or as to the course which I shall hereafter pursue, I would be glad to have early instructions.

I have not failed to advise Bernhard of the position taken by the foreign office, and of the possibility of his being subjected to great inconvenience and discomfort if there should arise further cause for the action of the German police; and I did this the more readily because he had written to me and inquired whether his absence from Alsace would prejudice his claim against the German Government, and expressed his great willingness to accept a lucrative position in Paris which had been offered to him, if his presence were not essential. From his last letter, received yesterday, I infer that he has changed his mind, as he philosophically remarks that he has suffered so much annoyance that a little more or less additional inconvenience would not seem a matter of any importance. I ought to have stated above, that a few days after his arrest Bernhard was released from custody, and that soon afterward he was notified that the examination in his case had been concluded and he would not be prosecuted.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 448.]

Mr. Pendleton to Count Bismarck.

LEGATION OF THE UNITED STATES OF AMERICA,
Berlin, March 30, 1887.

The undersigned, envoy, etc., of the United States of America, has the honor to invite the attention of his excellency Count Bismarck-Schönhausen, Imperial secretary of state for foreign affairs, to the case of imprisonment of Albert Bernhard, a naturalized citizen of the United States.

The facts of this case, as stated by Bernhard, are as follows: He was born at Mülhausen, in Alsace, on September 28, 1845, and emigrated in June, 1872, to the United States, where he was naturalized as a citizen on October 23, 1878. In August, 1880, he returned to Müihausen, where he has since been engaged in business.

On the morning of the 13th of February last, two policemen entered the dwelling of Bernhard, at 42 Illsacher street, Mülhausen, and without showing any warrant or stating any grounds for their action, thoroughly searched every part of the same and everything contained therein. The search resulted in the finding, among refuse periodicals, of a little pamphlet containing an invitation to subscribe to a French newspaper, Le Drapeau, which was seized by the policemen. With respect to this pamphlet, which seems to have furnished the occasion of the arrest of Bernhard, which

immediately ensued, he asserts that it was casually handed to him years ago by his brother as an advertisement to read, and was thrown aside with other waste paper to be ultimately burned or used for wrapping, without any attention having been since given to it. Bernhard was at once taken to the police station, whence, after a detention there of about an hour, he was, without any examination having taken place, conducted on foot through the crowded streets to the prison and placed in confinement there in a small cell. After having passed the night and the next day in his cell, without being permitted counsel or visits of family or friends, though frequently requesting the same, he was, together with another prisoner, placed in a carriage, informed that he would be handcuffed and made to walk through the streets if he spoke a word to the other prisoner, and conducted before a judge.

The judge questioned him asking if he were a member of or if he had collected for or sent money to the French "Ligues des Patriotes," or if he then was or at any time had been in any way connected with the same. To these inquiries Bernhard replied in the negative, and truthfully, he states, protesting as a law-abiding man and an American citizen against arbitrary arrest, and stating that he attended solely to his business and never meddled with such matters. He was then remanded to prison. It was not until after an imprisonment of over five days that Bernhard was permitted to see counsel in the presence of the clerk of the court, when he protested against the treatment he had received, and appealed to his American citizenship for protection. From that time until his release, which took place on the evening of the 26th of February, he was allowed to write home and receive open letters which had passed through the hands of the judge. After his release and until the 8th of March all business and private mail arriving for him was, however, kept and opened by that official. Bernhard asserts that his having been thus secretly confined for some fourteen days and forbidden all communication with wife, family, or friends, resulted in his business remaining unattended to; that through his imprisonment most serious and important interests were necessarily neglected; that payments which were due, being postponed, creditors attached some of the property of his firm (horses, wagons, casks, and various articles); that drafts upon him which had become due and which he was prepared to pay have been dishonored and protested; that he has thus been brought to the verge of ruin; that his health was shaken by his imprisonment, sciatica having set in; that his character in his private and business capacity has been ruined by the harsh and unjust treatment to which he has been subjected, and that some officials and many people now look upon him with suspicion and contempt.

Bernhard protests his entire innocence of the charge, that of high treason, which appears to have been prepared against him, and declares that his life and conduct have never afforded the slightest ground for suspecting him of such or any other crime.

The undersigned begs that his excellency will kindly cause this case to be investigated, and that for the harsh treatment and losses he has sustained redress may be afforded to Bernhard, if it shall be found that the essential facts have been correctly stated by him.

Five official documents, which relate to Bernhard's case, and which are particularly enumerated below, are herewith inclosed, with the respectful request for their ultimate return. Bernhard's certificate of naturalization has been heretofore exhibited at this legation, and is now either in his possession or in that of the authorities at Mülhausen.

The undersigned avails, &c.,

GEO. H. PENDLETON.

[Inclosure No. 2 in No. 448.—Translation.]

Count Berchem to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *May* 25, 1887.

The undersigned has the honor to inform the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. George H. Pendleton, referring to the note of the 30th March of this year, concerning the arrest of the wine merchant, Albert Bernhard, at Mülhausen, Alsace, that the investigation of the circumstances of the case have shown the following:

So far as the citizenship of Bernhard is concerned, he must be considered as still a German, notwithstanding his naturalization in the United States of America. Until the year 1873 the provisions of the code civil prevailed for the people of Alsace-Lorraine in reference to the loss of citizenship. According to Article 17, No. 13, of this code an "établissement fait en pays étranger sans esprit de retour" was essential. After the declaration of Bernhard before the Imperial chief state's attorney, at Mülhausen, Alsace, a copy of which is hereto annexed, that he at the beginning of his resi-

dence in the United States had not the intention to return home. To sustain his intention there must be distinct and not doubtful proofs, as Article 17 of the code civil provides that, "Les établissements de commerce ne pourront jamais être considérés comme ayant été faits sans esprit de retour." At the time when Bernhard acquired citizenship in the United States of America the German law of June 1, 1870, introduced into Alsace-Lorraine by the law of January 8, 1873, prevailed for the subjects of Alsace-Lorraine. Bernhard never made the demand for dismissal from the German allegiance provided for in section 13, No. 1, of this law. Just as little can the loss of citizenship accrue to him by reason of a ten years' residence abroad. (Section 13, No. 3, and section 21, A. A. O.)

The provisions of the law have been rigidly observed in the proceedings against Bernhard. The search of his house was ordered and executed by competent authority in accordance with section 105, ff. of criminal process regulations. The statutes of the "Patriotic League" were found in his possession, in which circumstances sufficient indication of his membership in this secret society, seeking to effect the forcible separation of Alsace-Lorraine, is to be discovered. On the ground of this suspicion his arrest was ordered by the competent judge. The order of attachment of the letters and packages directed to the accused rests on section 99 of code of criminal process. The importance of the punishable actions charged against Bernhard justified these measures, as well as his isolation during the continuance of his examination. The investigation commenced, by the order of the 2d March of this year, has been in the mean time closed, and it is for the determination of the chief Imperial prosecuting officer, that is to say, of the Imperial court, to decide whether the prosecution of Bernhard shall be commenced.

Whilst the undersigned returns herewith the inclosures of the note of the 30th March last, he avails himself, etc.

BERCHEM.

Inclosure 3 in No. 448.—Translation.—Proceedings. Mülhausen, April 30, 1887.—Imperial prosecutor's office.]

Before the undersigned, first prosecuting attorney, appeared, in pursuance of written notice, the wine merchant, Albert Bernhard, of Mülhausen, Alsace, residing in Illsacher Strasse 42, who, in answer to question, declared as follows:

After I emigrated from here to America, in May, 1872, and had arrived in New York on the 21st June of that year I remained in that city only three days, and went immediately to Omaha (Nebraska, United States).

Here I took a position as book-keeper in the wholesale grocery establishment of the firm of Creighton & Morgan, for the monthly salary of $80, which I held until December, 1872. Then I took a fever in consequence of the climate, and lost my position because of long-continued sickness, and in December of that year left Omaha and went to Saint Louis (Missouri, United States), where I had relatives.

In that city I did not succeed at first in finding a suitable position, so that for three months I was obliged to support myself as day laborer until at last, on the 1st of April, 1873, I obtained a place as salesman in the jewelry and watch-making establishment of Musmod Zaccard's Jewelry Company, in that city. This position I occupied with ever increasing salary until my departure for Europe, on the 15th of August, 1880, after I had, in the mean time, by the decree of the circuit court at Saint Louis, on the 23d of October, 1878, which is herewith exhibited, obtained my citizenship in the United States of North America.

I came to Europe and direct to Mülhausen, Alsace, only on the request of my father, then living, who needed my aid in his business.

I have never had public employment, whether State or municipal, during my residence in America.

Read to me, approved and signed.

A. BERNHARD.
VEIT,
First Prosecuting Attorney.

No. 283.

Mr. Pendleton to Mr. Bayard.

No. 459.] LEGATION OF THE UNITED STATES,
Berlin, June 21, 1887. (Received July 9.)

SIR: I have the honor, referring to your instruction No. 221 of the 21st ultimo, to transmit herewith a report on the limitation laws of

Germany, relating to attachments, fines, and other penalties for the non-performance of military duty and desertion, which has been prepared by Mr. Coleman, the secretary of this legation.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure in No. 459.]

Abstract of limitation laws of Germany relating to fines, attachments to secure the same and to other penalties for the non-performance of military duty and for desertion.

I. Limitation for non-performance of military duty (in the words of the German penal code "*violation of military duty*").

The statute declares the offense to exist in the following three cases, assigning to each its penalty:

(1) Where a person owing military duty, in order to avoid entering the standing army or navy, leaves the territory of the Empire without permission, or after having reached the age of military duty, remains without that territory without permission.

The punishment for this offense *is a fine of from* 150 *to* 3,000 *marks, or imprisonment of from one month to one year.*

(2) Where an officer, or a physician holding the rank of an officer of the reserve, the "Landwehr," or "Seewehr," emigrates without permission.

The punishment for this offense is a fine not exceeding 3,000 marks, or arrest, or imprisonment not exceeding six months.

(3) Where a person owing military duty emigrates after the publication of a decree by the Emperor, issued with reference to the existence of war, or to the danger of an outbreak of war.

The punishment for this offense is imprisonment not exceeding two years and a fine not exceeding 3,000 marks.

The property of the person charged with this offense may be attached, in so far as in the opinion of the judge such course is requisite to secure the amount of the highest fine which might be imposed, together with the cost of the proceedings.

When prosecution is barred by limitation.—"Violation of military duty," in the sense here under consideration, is denominated a *misdemeanor*, and prosecution for the same is *barred by limitation after five years*, at which time any *attachment* imposed on the property of the offender *becomes inoperative.*

Interruptions of the running of the statute.—Every judicial measure adopted against the offender on account of the offense interrupts the running of the statute, which begins to run anew after the interruption. If the commencement or the continuation of a penal proceeding is dependent upon another question which must be first decided in another proceeding, the statute ceases to run until such decision is reached.

When execution of a judgment is barred.—The execution of a judgment for violation of military duty is *barred by limitation in five years.*

Running of the statute and interruptions to same.—The statute begins to run with the day on which the judgment becomes valid (rechtskräftig). Every act of the authority upon whom the execution of the judgment devolves which has for its aim such execution, as well as the arrest of the offender for the purpose of such execution, interrupts the running of the statute. After the interruption in the execution of the judgment the running of the statute begins anew.

The execution of a fine adjudged concurrently with imprisonment is not barred by limitation earlier than the execution of the punishment of imprisonment is barred.

II. *Limitation for desertion* (*Fahnenflucht*).

The German military penal code (Militair-Strafgesetzbuch) declares that he who, without permission, quits the military or naval service for the purpose of permanently evading the performance of the service lawfully devolving upon him shall *be regarded as guilty of desertion.*

The penalty attached to the offense under varied circumstances.—1. (*a*) The penalty for desertion is imprisonment of from six months to two years; (*b*) in the case of a second offense, imprisonment of from one to five years; (*c*) in the case of a further repetition, penal servitude (Zuchthaus) of from five to ten years.

2. (*a*) The penalty for desertion committed in the field is imprisonment of from five to ten years; (*b*) in the case of a second offense if the former desertion was not committed in the field, penal servitude of not less than five years; (*c*) and, if the desertion was committed in the field, death.

3. (*a*) The penalty of penal servitude or imprisonment incurred for desertion is, when committed by several persons together, upon an agreement to do so, increased

by from one to five years; (*b*) in case the act was committed in the field, penal servitude, instead of imprisonment, for the same period; (*c*) and as against the ringleader and the person suggesting the offense, death.

4. (*a*) The penalty for the desertion of a sentry before the enemy or from a besieged fortress is death; (*b*) a deserter who goes over to the enemy also incurs the death penalty.

(It is remarked in this connection that no fines are incurred by desertion.)

Definitions contained in the military penal code based upon the degree and character of the penalties incurred for desertion under the varied circumstances above stated.—1. An act punishable by deprivation of liberty (not including penal servitude) of not more than five years is denominated a *military misdemeanor.*

2. An act punishable by death, penal servitude, or deprivation of liberty for more than five years is denominated a *military crime.*

When prosecution for desertion is barred.—1. When the offense is a *military misdemeanor* as above defined, *in five years.*

2. When the offense is a *military crime* as above defined prosecution is barred as follows: (*a*) *In twenty years,* if the penalty is death or penal servitude for life; (*b*) *in fifteen years,* if deprivation of liberty for a longer period than ten years; (*c*) and in ten years, if deprivation of liberty for a shorter period.

The running of the statute barring prosecution for desertion begins with the day on which the deserter, if he had not committed the act, would have completed his lawful term of service, and is, as far as pertinent to the limitation of prosecution for desertion, subject to the same conditions as are hereinbefore stated under the head of limitation for violation of military duty.

When execution of a judgment is barred.—The execution of a judgment for desertion is barred as follows:

1. *In thirty years,* if the penalty adjudged is death, penal servitude for life, or confinement in a fortress for life.

2. *In twenty years,* if penal servitude or confinement in a fortress for more than ten years.

3. *In fifteen years,* if penal servitude of not more than ten years, or confinement in a fortress of from five to ten years, or imprisonment of more than five years.

4. *In ten years,* if confinement in a fortress or imprisonment of from two to five years

5. *In five years,* if confinement in a fortress or imprisonment of not more than two years.

It is remarked in conclusion that the German military penal code, from which the foregoing abstract, as far as it relates to desertion, is taken, went into effect on October 1, 1872, and thereby superseded all other military penal provisions of law affecting material rights, leaving in force only certain forms of procedure existing in individual states of the Empire.

No. 284.

Mr. Bayard to Mr. Pendleton.

No. 236.] DEPARTMENT OF STATE,
Washington, June 28, 1887.

SIR: I have to acknowledge the receipt of your dispatch No. 448, of June 6, 1887. According to the statement contained therein and in the accompanying exhibits, Albert Bernhard whose case you present, was born in Mülhausen, in Alsace, September 28, 1845. He left the latter country in May, 1872, and, after a stay of three days in New York, took up his residence in Omaha, where he was engaged as a bookkeeper until December, 1872, when he left in consequence of ill health and moved to Saint Louis, in which city he obtained a position as sales man on the 1st of April, 1873, and on the 23d of October, 1878, was duly naturalized a citizen of the United States by the decree of the circuit court of Saint Louis. He returned to Mülhausen in August, 1880, in order to aid his father in his business, and on the 13th of February last he was arrested by the local authorities of Mülhausen on the charge of being concerned in a seditious conspiracy against the German Government.

On the questions which you present as to his right to claim the interposition of this Department, I answer as follows:

In the first place, there can be no question but that Mr. Bernhard, as residing in Mülhausen, is amenable to the local authorities for seditious conspiracy, no matter what may be his nationality. If injustice is done by making a charge against him without probable cause, or in the subsequent trial of such charge, his immediate remedy is by proceedings against the individuals by whom the charge is preferred. If justice be denied him in such proceedings, then, supposing him to be a citizen of the United States, he may claim, in due course, the interposition of this Department.

Such being the case, I proceed to consider the questions presented by you as to the right of Mr. Bernhard, as an American citizen, to ask our intervention in such contingency. Although his naturalization papers are not attached to your dispatch, yet I assume that naturalization was duly granted. But you state that certain difficulties are, or may be, made by the German Government in the way of recognizing in Germany the validity of such naturalization, and first, that the German Government maintains that the Bancroft treaty, affirming and limiting the rights of Germans naturalized in the United States, does not apply to the district of Alsace-Lorraine. It is true, that in the instruction of Mr. Fish to Mr. Bancroft, April 4, 1873, quoted by you, it was suggested to the German Government that it should assent to a naturalization treaty covering the whole Empire; but this position was taken, not because any doubt existed that the Bancroft treaty was not coextensive in its operation with the Empire, but because an intimation had been given that it would be more consistent with the views then held by the German Government that a new treaty should be executed, and because, in case of such a new treaty, it seemed proper that it should be made expressly to apply to all the newly-acquired territory which the German Empire included.

So far from this Government acquiescing in the view that the Bancroft treaty did not cover Alsace-Lorraine, Mr. Evarts on December 30, 1882, in reply to a dispatch from Mr. White in Loeb's case, in which an arrest had been made on the basis of such non-applicability, wrote as follows:

> This Department fully approves of Mr. White's action in reference to Mr. Loeb's case, and, moreover, heartily concurs in the view expressed by the minister that this Government can not assent to the doctrine of the non-applicability of the treaties of 1868 to Alsace-Lorraine. You will therefore continue to discreetly but firmly press Mr. Loeb's case upon the attention of the Imperial German Government until a favorable disposition of it is secured.

As far as I can learn from the records of this Department, the German Government never insisted on final action adverse to citizens of the United States based on the assumption that the Bancroft treaty was not applicable to Alsace-Lorraine.

It is hardly necessary for me to remind you how serious would be the consequences if such a position should be conceded. The United States in a case in which the position of the parties in respect to such extension of treaties over the German Empire was reversed, took the ground, in response to the application of Germany, that such extension could not be contested. Thus it was held by Mr. Evarts, as Attorney-General, that as by the formation of the North German Union, after the battle of Sadowa, the entire navy of the union was placed under the command of Prussia, the provisions of the treaty of May 1, 1828, between the United States and Prussia for the arrest of deserters from the pub-

lic vessels of the respective countries, applied to public vessels sailing under the flag of the North German Union. (Op's Att'ys-General, Vol. XII, pp. 463–467.)

The United States have never denied the applicability of all treaties executed by them to territories acquired by them subsequent to the date of such treaties. On the hypothesis that territories annexed by a sovereign are not bound by the treaties previously entered into by him, California, annexed by the United States by the treaty with Mexico of 1848, would not be subject to the provisions of the treaty with Prussia of 1828. It is difficult to suppose that Germany would insist on a construction which would divest her, so far as concerns the California coast, of the valuable commercial rights conferred on her by that treaty, and would deprive her consuls at California ports of the important prerogatives which that treaty gives; the very one-sidedness of such a construction discloses its incompatibility with the principles of justice as well as of international law. All the citizens of the United States, with their commerce, would be entitled to the protection of the treaty everywhere in Germany, except in Alsace-Lorraine; but German subjects and German commerce would be equally deprived of the protection of the treaty on our Pacific coast.

Assuming, however, that Germany refuses to recognize the Bancroft treaty as operative in Alsace-Lorraine, and that we acquiesce in that construction, and assuming as a consequence of this position that Mr. Bernhard was bound by French law when he left Alsace-Lorraine, you then inquire whether by non-compliance with that law his naturalization in the United States is not to be considered, so far as concerns Germany, inoperative, from the fact that his declaration of April 30, 1887 (made before the Imperial prosecutor at Mülhausen), shows that he did not leave Alsace-Lorraine with the intention of the permanent settlement abroad required by that law.

Two interesting and important questions may be thus presented for consideration:

(1) Whether after the annexation of Alsace-Lorraine by Germany the French law continued to bind Mr. Bernhard, then in the United States; and,

(2) Whether, if it did, such limitation of the right of expatriation is consistent with that right, as now recognized by Germany and ourselves.

I do not now consider it necessary to discuss these questions, since it is clear that the declaration of April 30, 1887, so far from negativing Mr. Bernhard's intentions to settle in America, implies such an intention. He says that in May, 1872, he had "ausgewandert" to America, and "ausgewandert" you translate as "emigrated," and in the judgment of this Department correctly. That "emigration" and "Auswanderung" imply intended expatriation is shown by the fact that the words have in numerous cases been used by both the German Government and ourselves in that sense; and that the word "ausgewandert" was used by Mr. Bernhard in the same sense is shown by the next statement made by him in this same declaration, that carrying out his "Auswanderung" he proceeded as soon as he found a permanent home, which was a few months after his arrival in the United States, to declare his intention to become a citizen of this country, at the same time unreservedly abjuring his former allegiance. Even on the supposition, which I hold baseless, that it is necessary, to enable him to claim the rights of an American citizen, that he should have intended when he left Alsace-Lorraine to leave it permanently, yet it is undeniable that

by the papers now before me this intention is shown by the clearest affirmation to have existed at the time he came to the United States.

I have thus answered the final question contained in your dispatch. As to the points thus presented, I hold that so far no ground is shown for a refusal to grant Mr. Bernhard the rights of American citizenship. There is, however, a serious obstacle, not heretofore noticed, to the intervention of the Department on his behalf. If a naturalized citizen of the United States of his own free will leaves his adopted country and returns to his native land, settles himself in business there in his own right, and not merely as an agent of an American house, withdraws himself from all the duties of citizenship in his adopted country and voluntarily resides abroad as a matter of choice, for such a period as reasonably leads to the inference of the *animus manendi* which constitutes domicile, then he renounces his right to call upon the United States to protect him against the government under whose control he has so chosen to place himself.

In the case before us, Mr. Bernhard returned in 1880 (and in less than two years after he had acquired American citizenship), to his native home at Mülhausen, where he regularly entered into business and established himself with every customary surrounding proof of an intention there to remain, in which no change is yet apparent, or if any intention to remove therefrom appears, it is to settle in France, and not in the United States.

It will be your duty, therefore, to collect such additional facts as will enable you to determine how far, from all the circumstances of the case, his intention of remaining permanently abroad is to be inferred, for this is an essential element in the case, which must be determined before further action can be taken under instructions of this Department.

I am, etc.,

T. F. BAYARD.

No. 285.

Mr. Pendleton to Mr. Bayard.

No. 482.] LEGATION OF THE UNITED STATES,
Berlin, July 22, 1887. (Received August 8.)

SIR: I have the honor to inclose herewith a copy of my intervention in the case of Jacob Gallewski, naturalized in the United States under the name of Jacob Phillips, and copy and translation of the note of the foreign office in response.

It will be observed from the note of the foreign office that, in declining to refund the fine which was collected from Phillips, the following statement is made: That the fine was imposed whilst Phillips was still a German subject, and was collected after he had remained in Germany beyond the two years' period allowed by the treaty of February 22, 1868, and that on the 29th of April, of this year, exactly twenty-five days after my intervention, at his earnest solicitation, Phillips declared in a sworn statement before the appropriate Prussian authority that he intended to remain permanently in Germany, and did divest himself of all the right which he had until then enjoyed as an American citizen.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure 1 in No. 482.]

Mr. Pendleton to Count Bismarck.

LEGATION OF THE UNITED STATES OF AMERICA,
Berlin, April 5, 1887.

The undersigned, envoy, etc., of the United States of America, has the honor to invite the attention of his excellency, Count Bismarck-Schönhausen, Imperial secretary of state for foreign affairs, to the case of Jacob Gallewski, naturalized in the United States under the name of Jacob Phillips.

The facts in this case as submitted by Phillips are as follows: He was born at Kempen, Regierungsbezirk Posen, September 21, 1858, and emigrated in July, 1873, to the United States, where he was naturalized in the city of New York on the 5th day of May, 1884. In the course of the same month he returned to his native country and is understood to have been of late sojourning at Liegnitz, in Schlesien, at which place he was, on the 25th of January last, compelled to pay 163 marks, and on the 14th or 15th of February following, 45 marks, in all 208 marks, fine and costs for alleged evasion of military duty in Prussia, in consequence of his name having been found on the "Vollstreckungs" list of the royal state attorney at Liegnitz. The instant payment of the amount demanded was enforced by the threat of immediate seizure of property.

Phillips further states that his certificate of naturalization and a document proving his identity with Jacob Gallewski are in the hands of the police authorities at Liegnitz, who refuse to deliver them to him.

The undersigned begs that his excellency will kindly cause this case to be investigated and the amount of the fine and costs collected from Phillips to be returned to him, together with his papers above referred to, if the essential facts shall be found to be as stated.

The undersigned incloses herewith two receipts, the one for 163 the other for 45 marks, for the money collected from Phillips, with the respectful request for the ultimate return of these papers; and avails himself of this occasion, etc.

GEO. H. PENDLETON.

[Inclosure 2 in No. 482.—Translation.]

Count Berchem to Mr. Pendleton.

FOREIGN OFFICE, BERLIN, *July* 20, 1887.

After the receipt of the note of April 5 last, from the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. George H. Pendleton, the inclosures of which are hereby returned, the undersigned has not failed to take the necessary steps to institute an examination of the affair of the former Prussian subject, Jacob Gallewski, naturalized in the United States under the name of Jacob Phillips. The result of the investigation is as follows:

The said person was condemned to pay a fine of 160 marks for evasion of military duty, by the judgment of the royal Prussian court (Landgericht) at Ostrowo on the 20th March, 1884. He was at that time still a Prussian subject, inasmuch as he first acquired American citizenship at New York on May 5, 1884. After Gallewski had, on the next day, provided himself with an American passport for his return journey to Germany, he arrived at Liegnitz on May 29, 1884, and has remained there uninterruptedly since. Only on the 25th of January last did he pay the fine imposed on him.

The costs of the proceedings, on the other hand, he has not yet settled; rather only up to this time received a demand for their payment.

Gallewski had, as it is thus seen, at the time when the fine was collected from him, already sojourned again in Germany beyond the two years period prescribed by the fourth article of the treaty between the North German Bund and the United States of America of February 22, 1868, and could therefore be considered as renouncing his naturalization. He has besides, on the 29th April of this year, declared in a protocol before the appropriate Prussian authorities that he intended to remain permanently in Germany, and did divest himself of all rights which he had until then enjoyed as an American citizen.

Under these circumstances the appropriate Prussian authorities are of the opinion that Gallewski can no longer claim the protection of the first and second article of the said treaty, and therefore have not considered it feasible to order the payment of the fine and the cancellation of the costs.

Whilst the undersigned has the honor to inform the envoy of the above, with the remark that the two papers in the said note mentioned, belonging to the said Gallewski, shall be returned immediately by the appropriate authorities, he avails himself of this occasion, etc.

BERCHEM.

No. 286.

Mr. Pendleton to Mr. Bayard.

No. 484.] LEGATION OF THE UNITED STATES,
Berlin, July 28, 1887. (Received August 13.)

SIR: I beg to acknowledge the receipt of your instruction, No. 239, of the 14th instant, relative to the limitation laws of Germany concerning attachments, fines, and other penalties for the non-performance of military duty and desertion. In reply to the inquiry contained therein, I beg to state that Mr. Coleman informs me that a repeated close examination of the German laws fails to show the existence of any provision relative to this subject exempting persons beyond seas. It appears, therefore, that the meaning of the statute of limitation is not interrupted by absence beyond seas or other absence from Germany.

I have, etc.,

GEO. H. PENDLETON.

No. 287.

Mr. Coleman to Mr. Bayard.

No. 504.] LEGATION OF THE UNITED STATES,
Berlin, September 16, 1887. (Received October 1.)

SIR: I have the honor to acknowledge the receipt on the 12th instant of your instructions, No. 249, dated the 30th ultimo, in which you request this legation to inquire and report, as upon a matter of interest, how far a privilege similar to that accorded to subjects of the German and Austro-Hungarian Empires, reciprocally, under the convention of May 9, 1886, between these powers, is also granted to citizens of the United States bringing suit in Germany.

In response to your instructions, I beg to report as follows: The German provisions of law to which Mr. von Versen, the vice-consul-general of the United States at this post, refers in his communication of the 1st ultimo to the Department of State, which you inclose, are embodied in the Imperial German Code of Civil Procedure of January 30, 1877, under the sixth and seventh heads of the same, entitled, respectively, Security for Cost (Sicherheits-Leistung) and the Law for the Poor (Armen-Recht).

Mr. von Versen states in his dispatch that—

> Under the laws of the German states persons whose poverty is shown by certificates from the local authority of their domicile enjoy the privilege to commence and prosecute lawsuits within Germany free of cost and being dispensed with depositing courts' cost in advance.

The indulgence granted as above stated to poor German subjects is, however, not confined to them; the provisions of that admirably drawn code relating to this subject are broad, and apply to foreigners also, providing only that reciprocity is assured.

Under the title, the Law for the Poor, the code declares, in paragraph 106 and paragraph 107, as follows:

> PARAGRAPH 106. Whoever is unable, without curtailment of the means necessary for the support of himself and family, to bear the costs of the suit is entitled to the privilege of the poor in case his intended prosecution or defense is not frivolous or devoid of prospect of success.

Foreigners are entitled to this privilege of the poor only in so far as reciprocity is assured.

PARAGRAPH 107. The party to whom the privilege of the law for the poor is granted acquires thereby the following benefits:

(1) Provisional dispensation from judicial costs, accrued and to accrue, inclusive of official fees, of compensation to be accorded to witnesses and experts, and of other cash disbursements, as well as of the stamp duty.

(2) *Dispensation from giving security for the costs of the suit.*

(3) The right to have assigned to him an officer for the purpose of effecting gratis, provisionally, service of papers and acts of execution, and also, if it be necessary that he be represented by counsel, the right to have assigned to him counsel for his assistance gratis, provisionally.

As regards the security for costs to be furnished by a foreign plaintiff in an action, *irrespective of the poverty of a litigant,* the Imperial Code declares, in paragraph 106:

Foreigners acting as plaintiffs must, upon the demand of the defendant, furnish security for the costs of the action.

This obligation shall not exist—

1. *When in accordance with the laws of the state to which the plaintiff belongs a German would, in the same case, not be obliged to furnish security for costs.* * * *

You will perceive from the foregoing that a foreign plaintiff enjoys under the German code immunity with respect to furnishing security for costs, provided only reciprocity be assured by the laws of the state of the foreign plaintiff.

It will thus appear that a convention is not necessary, however convenient it might be as giving wide publicity and conveying official notice to courts to secure to foreigners the benefits conferred under the two titles of the German code herein referred to, but only that it be shown that reciprocity is assured to Germans in the country to which the particular foreigner belongs. Since, therefore, the conclusion of a convention on this subject between the United States and the German Empire is not feasible, might it not be advisable to procure authoritative information from the various States of our Union as to whether, under the respective laws of those States, Germans are treated as citizens, with respect to the right to sue *in forma pauperis;* and, further, whether, irrespective of the question of the right to sue in such form, any German plaintiff in such States of the Union is dispensed from the necessity of furnishing security for cost in an action, provided a citizen of that State would enjoy like immunity in a like case in Germany?

If you shall see fit to obtain authoritative information upon the vital points bearing upon the subject in the laws of the various States and of the United States, and shall think it advisable to furnish this legation with forms of certificates to be submitted to the German courts when needed, a very useful purpose will, I believe, have been thereby accomplished. I will remark in this connection that numerous requests, which it did not feel at liberty to comply with in the absence of positive information, have been addressed to this legation by Americans resident in Germany for certificates of the character referred to, with the statement that the courts had declared they would grant the privileges and immunities sought upon the production of such certificates from this legation.

As it does not appear that a copy of the convention of May 9, 1886, between Germany and Austria-Hungary was transmitted with the communication to the Department from our consulate-general in this city, I inclose herewith a copy of the same with translation. The convenience of such a convention is obvious, even when the laws of the two countries contain like provisions respecting the subject matter of this dispatch. I am not aware what further reasons, if any, dictated the negotiation for and the conclusion of the convention in question; possibly no provisions of the character under consideration had before existed in the laws of Austria-Hungary.

I have, etc.,

CHAPMAN COLEMAN.

[Inclosure in No. 504.—Translation.]

Convention of the 9th of May, 1886, between the German Empire and the Austro-Hungarian monarchy, respecting the admission of the subjects of both countries to the benefits of the law for the poor.

His Majesty the German Emperor, King of Prussia, in the name, on the one side, of the German Empire, and His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, on the other side, actuated by the wish to facilitate the admission of the subjects of both to the benefits of the law for the poor, and to come to an agreement thereupon, have for this purpose appointed the following plenipotentiaries:

His Majesty the Emperor of Germany, King of Prussia, his adjutant-general and general of cavalry, Henry VII, Prince Reuss, ambassador extraordinary and plenipotentiary near the court of His Imperial and Royal Apostolic Majesty, and His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary, his actual privy councilor and chamberlain, minister of the Imperial house and for foreign affairs, Lieutenant Field Marshal of the Army Gustav Count Kalnoky von Korospatak, who, after mutual communication of their powers, have agreed to the following provisions:

ARTICLE 1.

The subjects of the German Empire shall, in Austria and Hungary, and the subjects of Austria and Hungary shall, in the German Empire, be admitted under the same conditions and legal assumptions to the benefits of the law for the poor as the subjects of the country in which such benefits are sought.

ARTICLE 2.

The certificate of poverty of the foreigner who seeks admission to the benefits of the law for the poor is in all cases to be made out by the authorities of his ordinary place of domicile.

If the applicant is not sojourning in the country in which he seeks the benefits of the law for the poor, the certificate of poverty must be authenticated in accordance with the treaty of February 25, 1880, betwen the German Empire and Austria-Hungary.

If, on the other hand, he is sojourning in the country in which he makes his application, information may, in addition, be sought respecting him of the authorities of his own country.

ARTICLE 3.

If subjects of the German Empire have been admitted in Austria-Hungary or subjects of Austria or Hungary have been admitted in the German Empire to the benefits of the law for the poor, they shall thereby by law be freed from furnishing any security or deposit for costs which under any name whatsoever are demanded from foreigners on account of their character as such in suits against the subjects of the country and pursuant to the laws of the country in which the suit is prosecuted.

ARTICLE 4.

The present agreement goes into effect on the day of the exchange of ratifications, and continues in force until the expiration of six months after either of the contracting parties shall have denounced the same.

In faith whereof the plenipotentiaries of both parties have signed and impressed upon this present convention their seals.

Thus done at Vienna on May 9, 1886.

[L. S.] HENRY VII, PRINCE REUSS.
[L. S.] COUNT KALNOKY.

The above agreement has been ratified and the exchange of ratifications has taken place at Vienna on February 24, 1887.

No. 288.

Mr. Bayard to Mr. Pendleton.

No. 254.] DEPARTMENT OF STATE,
Washington, October 15, 1887.

SIR: Mr. Coleman's very full and interesting dispatch No. 504, of the 16th ultimo, relative to the right of American citizens to litigate *in forma pauperis* in Germany and of American plaintiffs in general to sue in

Germany without furnishing security for costs, has been read with satisfaction.

The question whether a foreigner can sue in the United States *in forma pauperis*, and thus be relieved from giving security for costs, can be answered by the Department generally in the affirmative, without applying to the several States for information. The right was given under certain limitations to all poor persons by 11 Hen. VII, c. 12, and 23 Hen. VIII, c. 15; statutes which our colonists brought with them as part of the common law, when not expressly re-enacted. It may be safely asserted that there is no State in which the right does not exist, and in which it is not granted to foreigners. (See Whar. Conf. of Laws, 817.)

In the Federal admiralty courts any person whatsoever on proof of disability can be relieved from giving security for costs. (Wheatley *v.* Hotchkiss, 1 Sprague, 225; Collins *v.* Hathaway, Olc., 176.)

It is true that the general practice is to require from aliens security for costs. But this is at the discretion of the court, and is exercised in meritorious cases in subordination to the above principle.

I am, etc.,

T. F. BAYARD.

No. 289.

Mr. Pendleton to Mr. Bayard.

No. 534.] LEGATION OF THE UNITED STATES,
Berlin, November 8, 1887. (Received November 21.)

SIR: I have the honor to inclose herewith the report of "military cases" (prepared by Mr. Coleman, secretary of legation), which have required the attention of the legation and been brought to a conclusion.

The period embraced in this report is from November 2, 1885, to date, and refers to Cases No. 127 to No. 181, inclusive, excepting No. 128, heretofore reported with my dispatch No. 100, of November 2, 1885, and No. 176, which is unfinished. The latter, and one quite recently presented, constitute the only cases now pending.

It will be remembered that copies of the correspondence in each case as it arose were forwarded *pari passu*, on the suggestion of the Department.

I have, etc.,

GEO. H. PENDLETON.

[Inclosure in No. 534.]

No. 127. CHARLES L. GEORGE.—Born at Lampertsloch, France, January 9, 1859, as the son of a naturalized American citizen of French birth; went with his father, in May, 1875, to the United States; procured his own naturalization May 10, 1884.

The principal facts and statements in the above case, as furnished to and received from the Department of State by the legation, with instruction No. 19, of July 7, 1885, and as submitted to the foreign office on August 13, 1885, were as follows:

Peter George, the father of Charles L. George, was a native of Germany (as a matter of fact he was born in France; this error was corrected in a subsequent note to the foreign office); emigrated to the United States, and was naturalized in the month of October, 1848; returned to Germany (France) in the year 1851, and afterwards married there, where the son was born January 9, 1859. In May, 1875, when the son was about sixteen years of age, he went with his father to the United States, where they had ever since resided at Philadelphia; Charles, by virtue of his father's citizenship enjoying the rights of a citizen while a minor, and exercising the rights of voting when he attained the suitable age. In anticipation of a visit to Germany he took

the precaution of obtaining a certificate of naturalization of his own on May 10, 1884; returned to his birth-place, arriving there on the 2d of June following. Soon thereafter, on the 12th of July, he was arrested, as he was informed, on a judicial prosecution for avoidance of military duty to the German Government, and notwithstanding his appeal to his American citizenship, conveyed to prison at Strasburg, where, as he alleges, he was thrown among criminals, fed on unwholesome food, and put to hard work. When he had been imprisoned twenty days his friends petitioned for his release, but were told that he must remain in prison for forty days, which he did, and was then released. He claimed to have been ill from hard work and in consequence of poor diet when released, and to have continued to suffer for some time. When arrested he had 63 marks on his person, which were taken from, and when released 40 marks 71 pfennigs were retained, as the authorities informed him, to pay for his board whilst in prison and his railroad transportation, although he had been forced to hard labor to pay for his meager food during all that time. The legation, after presenting the above statements, expressed the hope that satisfaction would be afforded him for the injury he had sustained if the alleged facts were, after examination, found to be as stated. The certificates of naturalization of both father and son were inclosed to the foreign office in evidence of their citizenship, with a request for the ultimate return of those documents. Under date of January 22, 1886, the foreign office replied to the note of this legation, denying absolutely, as the result of the investigation made, any ill-usage of George by way of bad or insufficient food, hard work, or imperiled health during the time of his imprisonment, and claiming that he had been fined and imprisoned in strict accordance with the law for his evasion as a German subject of German military duty. It was asserted that the naturalization treaties of 1868 between the United States and the German States had no application to the territory of Alsace-Lorraine, of which George was a native, and that consequently his own personal naturalization was of no avail to protect him from the consequences of his evasion of military duty. It was also argued that his claim to American citizenship by virtue of his father's naturalization was unfounded, since he had never perfected his denaturalization as a native of France, and the son of a native of that country, for the reason that he had not made a formal declaration of his foreign citizenship before the competent French authority within a year after the attainment of his majority (the provinces of Alsace-Lorraine no longer belonged to France at that epoch), and being a Frenchman at the time of the transfer of those provinces to Germany he, by virtue of the treaty ceding them, and by German law, became a German subject. As for the father, it was stated that the fact of his acquisition of American citizenship had not been known to the German authorities, and that he had demeaned himself as a German, had drawn communal supplies, and had taken out a German passport when he returned to the United States. The legation replied to the above note on February 1, 1886, submitting reasons why George should be regarded as an American citizen, but reserving for discussion on a future occasion, if it should seem desirable, the question of the application of the naturalization treaties of 1868 to the Territory of Alsace-Lorraine. On the same day the legation transmitted to the Department of State, with dispatch No. 188, copies of its correspondence with the foreign office in relation to this case, together with copies and translations of the provisions of German law relating to the loss and acquisition of German nationality. Under date of the 26th of March following a note was received from the foreign office, in reply to the note of the legation of February 1, reiterating the claim that George was to be regarded as having become a German subject in consequence of the French law before cited, of the treaty ceding Alsace-Lorraine to Germany, and of German law, and again asserted, as regarded George's own personal naturalization, that the naturalization treaties above referred to did not apply to that territory. That cession of territory, it was argued, had deprived George of the privilege of making the necessary declaration required by French law of his foreign citizenship. The legation transmitted a copy, with translation, of the note of the foreign office above referred to to the Department of State with dispatch No. 219 of March 29, 1886, and with dispatch No. 243 of April 16 following, returned the certificates of naturalization of George, father and son, which had been received back from the foreign office. Thereafter, in an instruction No. 124, dated April 27, 1886, the Department of State, referring to the dispatches received from the legation, dissents from the position taken by the foreign office, and declares that German municipal laws and the German treaty with France can not deprive George of the American citizenship inherited from his father, and confirmed by acts manifesting his election of the same upon the attainment of his majority, and to which he is entitled by a well-established principle of international law. This instruction declared further that it was also a principle of that law that the prerogative of divesting one's self of allegiance by naturalization in a foreign land could not be taken away by the municipal legislation of any particular country to which legislation the naturalizing country was not a party, and states the conclusion that George is still a citizen of the United States, unless he has abandoned that citizenship. A further instruction, No. 174, of December 11, 1886, was received from the Department of State, inclosing a letter from the attorney of George

respecting the treatment of the latter by the German authorities, and stating that the Department had informed that attorney in reply to an inquiry that he was at liberty to file a claim for damages in case such class of claims should ever be made the subject of a demand for indemnity as a whole. The Department also stated that it was assumed that nothing further had been heard from the foreign office with respect to this case. Replying to this instruction, the legation informed the Department, in dispatch No. 389, of January 3, 1887, that such was the case; that discussion on the part of Germany appeared to be closed, although arguments had by no means been exhausted. It concurred entirely in the view of the Department that it would be useless to press our view of the case upon the German Government at present, and expressed the opinion that George would do well to avail himself of the permission granted him to file in the Department his proofs of harsh treatment, as the German Government had denied in the most formal manner any allegation of that nature against its officials, and would, it was to be expected, preserve full testimony respecting the same.

No further correspondence has, as far as the legation is aware, occurred in this case.

No. 128. J. W. THRÄNERT.—(This case was heretofore reported in annual report of military cases with dispatch No. 100, of November 2, 1885.)

No. 129. HENRY TAPPERT.—Born at Duren, in Prussia, April 9, 1855; emigrated in May, 1875; naturalized October 30, 1880. Under date of the 29th of December, 1884, Tappert addressed a communication to the legation stating the circumstances attending his emigration to the United States, and inquiring whether he could safely visit his parents in Germany, a fine of 600 marks having been there imposed on him for evasion of military duty. He was, on the date of the receipt of his letter, January 12, 1885, informed that he could do so with entire safety. After long delay, in the course of which numerous letters were exchanged between the legation and himself and his father, residing at Duren, in Germany, his apprehension being at last allayed, he paid his visit to Germany, remaining wholly unmolested during his stay there. In the course of the correspondence alluded to he was informed by the legation that the amount of the fine, which his father had unnecessarily paid on his behalf, could be recovered. It was not, however, until after his departure that he desired this should be done. His departure having ensued, the legation, on October 3, 1885, addressed a note to the foreign office, communicating the facts and statements, which were as follows: He was born April 9, 1855 at Duren, in Prussia; emigrated, without having been recruited for the German army, in May 1875, to the United States, where he was naturalized as a citizen of the United States on October 30, 1880. In the month of June, 1885, having been informed by the legation in reply to his inquiries, that he was entitled to do so, he returned to his birth-place on a visit. In the mean time, on the 28th of May preceding, his father had paid to the local authorities at Duren, under protest, the sum of 600 marks, exacted on account of his son's failure to perform military service in Germany. Having completed his visit, Tappert had returned to the United States. Tappert's certificate of naturalization was inclosed in evidence of his American citizenship, and the foreign office was in conclusion requested to cause the fine paid by the father to be returned, if the essential facts should upon investigation be found to be as stated. Under date of February 19 following the foreign office informed the legation that this had been done. On the day of the receipt of this intelligence, February 22, the legation conveyed the same to Tappert, returning to him at the same time his certificate of naturalization.

No. 130. SIMON M. BOYSON.—Born at Nieblum, Island of Föhr, Schleswig-Holstein August 23, 1847; emigrated to the United States in May, 1864; naturalized July 21, 1869. In December, 1869, he paid a visit to his native place, remained there about three months, and then returned to the United States. He again came on a visit to his native country, arriving there on September 3, 1885, bringing with him his five young children, and expressing the intention of remaining at his birth-place during the winter and returning to America in the following spring. Under date of October 22, 1885, he was ordered by the local authorities to leave Prussia by the 15th of November following. The burgomaster at Nieblum testified officially to Boyson's good character and to his peaceable, law-abiding behavior. Boyson having furnished the foregoing information in person on November 4, 1885, the legation on the same day intervened in his behalf, requesting the suspension of the order expelling him pending the investigation of the case, and its eventual withdrawal. By dispatch No. 108, of the 13th of that month, the legation informed the Department of State that it had intervened in his behalf and on that of seven other persons who had been recently threatened with expulsion under similar circumstances; and again, by dispatch No. 130, of December 7 following, that the legation had learned from unofficial sources that proceedings against Boyson and the seven others above referred to, for whom it had recently intervened, had been suspended. Under date of December 21, 1885, the foreign office informed the legation that Boyson's request, owing to the peculiar circumstances of his case, had been granted, and that he would be permitted to remain in his native country until the spring of 1886. Boyson was at once notified of this favorable decision, which was communicated to the Department of State with dispatches Nos. 142, of December 25, 1885, and 151, of January 4, 1886.

It is remarked in connection with the above case of Boyson that the note from the foreign office, dated December 21, 1885, above referred to, in which the relief applied for was granted, conveyed answers in eight other cases, in which the legation had intervened, asking in behalf of the persons concerned the withdrawal of the orders to leave the country which had been issued against them. These eight cases are numbered hereinafter 131 to 138, inclusive. The reasons, or some of them, assigned in these eight cases are referred to in all subsequent answers from the foreign office in later adversely decided cases of intervention, requesting the withdrawal of orders of expulsion, in which different grounds for such adverse action are not stated by the foreign office. In order to avoid needless repetition in reporting individual cases, the grounds upon which the relief asked was declined in the note from the foreign office of December 21, 1885, are briefly stated here. They are of two kinds. With respect to the cases Nos. 132, 133, 134, 135, and 138 the foreign office states that, to its great regret, after mature consideration and after suspension until then of proceedings in all the cases referred to, it has found itself unable to grant the relief asked. The individuals concerned had, without exception, after seeking and obtaining a discharge from Prussian nationality, which, as the law stood, could not be refused, emigrated within a few months before the attainment of the age of liability for military service, thus furnishing just grounds for the assumption that the motive of their action was to withdraw themselves from the performance of military duty. The same assumption was justified with respect to the persons treated of in the cases numbered 131, 136, and 137 in this report, who had emigrated after attainment of the age of liability to military service without discharge from Prussian nationality and without having complied with the duty of presenting themselves for such service. All of these persons of both categories had now been sojourning in their native country since September, 1885, and had, therefore, had sufficient time to visit relatives and attend to business matters. In granting their requests to be permitted to remain longer the Government would be lending assistance to an endeavor inconsistent with the interests of the State and the public welfare, and would thereby further an evasion of the performance of military duty, the performance of which the German Government regards as a vitally essential element of state policy. In answering note dated December 24, 1885, the legation asked a reconsideration of the adverse decisions before the persons concerned had actually left the country, citing in their behalf the terms of the treaties between the United States and Prussia of March 14, 1828, whereby liberty is granted reciprocally to all citizens of either country to reside in the territories of the other in order to attend to their affairs, and also the provisions of the treaty between the United States and the North German Confederation of February 22, 1868, according to which persons abandoning their native allegiance and acquiring another shall, upon their return, remain liable only for an action punishable by the laws of their original country and committed before emigration.

Much further correspondence relating to these cases and the principles involved ensued between the legation and the foreign office and between the Department of State and this legation. In the course of this correspondence the point was emphasized in communications by the legation to the foreign office that the German Government had by numerous rulings and decisions throughout a long period immediately after the conclusion of the so-called naturalization treaty of February 22, 1868, given just ground for the assumption that it interpreted that treaty as guarantying to orderly returned naturalized American citizens of German birth the right of sojourn in Germany for the period of two years. That Government in the correspondence referred to declines to accept such interpretation as correct, and while not questioning the right of such citizens to visit Germany, has held in a number of cases hereinafter reported that a sojourn of a few months or less is a sufficient compliance with treaty obligations, and also claims the right to expel any troublesome foreigner from the country when the welfare of the state shall require, intimating at the same time their desire and purpose of exercising such right with as little frequency as possible. In so far as the views thus enunciated seemed to conflict with the rights of naturalized American citizens, the Department of State and this legation strenuously controverted them. The principles involved and the arguments advanced on both sides in their discussion is stated with great fulness in the correspondence referred to, which is on file in the Department of State, to which the principal dispatches on this subject from the legation below enmerated will, with the references they contain to departmental instructions and notes from the foreign office, furnish a ready key. The dispatches referred to are the following: Nos. 130, of December 7, 1885; 133, of December 14, 1885; 142, of December 25, 1885; 150, of January 4, 1886; 151, of same date; 154, of January 8, 1886; 202, of February 22, 1886; 245, of April 16, 1886; 331, of October 21, 1886; 356, of October 21, 1886; 360, of January 3, 1887; 370, of January 13, 1887; 418, of April 7, 1887.

In connection with these cases of expulsion, threatened or executed, it is remarked that of the entire number (35) in which the legation intervened, 33 occurred in Schleswig-Holstein, or in the vicinity of the Island of Föhr, territory under the rule of

the King of Denmark until the Prusso-Austrian conquest and occupation in 1864. The names appear, almost without exception, to be Danish, and the legation has reason to believe that many of those who bore them had made themselves more or less obnoxious to the Prussian authorities by the manifestation of Danish proclivities and by participation in anti-German demonstrations and other objectionable behavior, though such grounds for the proceedings taken against them are not stated in the notes from the foreign office relating to their cases. The persons thus intervened for appeared to be much interrelated, the relation of brother, nephew, cousin, existing frequently among them. Evidence of concerted action in emigration and of the absence of a *bona fide* intention to make the United States their permanent home is not wanting in a number of these cases. An illustration of the concerted action and of the absence of *bona fide* intention referred to may be found in the cases of the three brothers Jappen, hereinafter reported, who emigrated shortly before reaching the age of liability to military service, and returned to their native place almost immediately after naturalization, the entire aggregate sojourn of the three in the United States after acquisition of American citizenship amounting to only fifty-six days. Although one and all were, under the pressure of threatened expulsion, ready to mention some date as the one of their intended return to the United States, the legation was in many instances strongly impressed with the belief that the persons concerned had no intention to return at any time, except under compulsion.

No. 131. HANS PETER JESSEN.—Born at Norburg, Schleswig-Holstein, February 19, 1855; emigrated to the United States May 13, 1873; naturalized September 6, 1875; returned to his native place October 2, 1878; on the 24th of October, 1885, ordered to leave Prussia within a fortnight. Having been informed on the 9th of November following of these facts, the legation addressed a note to the foreign office on the same day, presenting the statements in the case and asking for the withdrawal of the order issued against Jessen, which request was declined by the foreign office in an answering note, dated December 21 following, upon the general grounds stated in case of Boysen, No. 130 of this report. It is remarked that the legation had once before intervened in behalf of Jessen, on September 25, 1879, to procure the withdrawal of an order of expulsion at that time issued against him, and successfully (see case No. 45 of volume of Foreign Relations for 1880). He then remained at his old home for about two years, when he went to Denmark for a time. His stay in Europe after naturalization had exceeded the period of his residence in the United States, which barely sufficed for his naturalization. Jessen was at once notified of the decision, and the case fully reported to the Department of State with dispatches Nos. 142, of December 25, 1885, and 151, of January 4, 1886.

No. 132. PETER CORNELIUS ANDRESEN.—Born at Wrixum, Island of Föhr, Schleswig-Holstein, August 14, 1857; emigrated to the United States in August, 1874; naturalized August 18, 1880; returned to his native place in September, 1885; ordered, on November 1, 1885, to leave Prussia by the 15th of that month. On the 11th of November, 1885, Andresen furnished the facts of his case, and on the same day the legation intervened in his behalf, asking for the withdrawal of the order of expulsion, which request was declined in an answering note from the foreign office, dated December 21 following, upon the general grounds stated in the case of Boyson, No. 130 of this report. Andresen was at once notified by the legation of this decision, and a full report of the case was made to the Department of State with dispatches Nos. 142, of December 25, 1885, and 151, of January 4, 1886.

No. 133. MEINERT HEINRICH RIEWERTS.—Born at Oldsum, Island of Föhr, Schleswig-Holstein, May 6, 1862; emigrated May 28, 1879, to the United States; naturalized July 28, 1884. He returned to his native place in September, 1885, and was, under date of October 22 following, ordered to leave Prussia by the 15th of November next. The necessary information having been placed by Riewerts in the possession of the legation on the 11th of November, 1885, intervention was made in his behalf on the same day, and the withdrawal of the order expelling him was requested, but declined by the foreign office in a note dated December 21 following, upon the general grounds stated in case of Boyson, No. 130 of this report. Riewerts was duly notified of the result, and the case fully reported to the Department of State with dispatches Nos. 151 of January 24, 1886, and 142 of December 25, 1885.

No. 134. INGWER GEORGE JAPPEN.—Born on the Island of Nordstrand, Schleswig-Holstein, June 30, 1861; emigrated to the United States May 22, 1878; naturalized October 9, 1884; returned to his old home September 15, 1885, and was, under date of October 22, 1885, ordered to leave Prussia by the 15th of November following. Having been placed in possession of the facts in the case the legation addressed a note to the foreign office on the 11th of November, 1885, requesting the withdrawal of the order. In reply the foreign office informed the legation on the 21st of December following, that upon the general grounds stated in the case of Boyson, No. 130 of this report, its request could not be granted. Jappen was at once informed of this result, and the case reported to the Department of State with dispatches Nos. 142 of December 25, 1885, and 151 of January 4, 1886.

No. 135. OCKE EDWARD NICKELSEN.—Born on the Island of Föhr, Schleswig-Holstein, October 28, 1862; emigrated to the United States May 28, 1879; naturalized June 24, 1885; returned to his old home September 15, 1885. He was, under date of October 22, 1885, ordered to leave Prussia by the 15th of November following. The legation received the necessary information from Nickelsen on the 11th of November, 1885, and intervened in his behalf, asking the withdrawal of the order expelling him on the same day, the date on which it had addressed the foreign office in the four preceding cases, and with the same adverse result, based on the general grounds stated in the case of Boyson, No. 130 of this report. This decision was at once communicated to Nickelsen, and the case fully reported to the Department of State with dispatches Nos. 142 of December 25, 1885, and 151 of January 4, 1886.

No. 136. C. H. EDWARD ROHLFFS.—Born at Norgaardholz, Schleswig-Holstein, June 3, 1858; emigrated to the United States November 19, 1879; naturalized July 22, 1885; returned to his old home within six weeks from that date, arriving there September 2, 1885; ordered on October 30, 1885, to leave Prussia by November 15 following. The facts in his case having been obtained the legation intervened on November 13, 1885, requesting the withdrawal of the order, which was declined by the foreign office in a note dated December 21 following, upon the general grounds stated in the case of Boyson, No. 130 of this report. This decision was at once announced to Rohlffs, and the case fully reported to the Department of State with dispatches Nos. 142 of December 25, 1885, and 151 of January 5, 1886.

No. 137. FREDERICK H. N. ROHLFFS.—Born at Gintoftholm, Schleswig-Holstein, September 3, 1860, and emigrated; was naturalized; returned to his former home; was ordered to leave Prussia, and was intervened for on the same date and with the same adverse result, based on the same grounds as his brother, the subject of the next preceding case. The result was at once announced to him, and the case fully reported to the Department of State in the same dispatches as the foregoing case.

No. 138. PETER JEPSEN.—Born at Schottburg, Schleswig-Holstein, February 27, 1863; emigrated August 9, 1880; naturalized August 29, 1885; returned to his old home within four weeks; arriving there September 23, 1885; ordered to leave Prussia, on October 27, 1885, by the 1st of December following. Having been placed in possession of the necessary information in the case, the legation intervened for Jepsen on November 23, 1885, asking that the order of expulsion be rescinded, which was declined by the foreign office, under date of December 21 following, upon the general grounds stated in the case of Boyson, No. 130, of this report. The result was at once communicated to Jepsen, and the case fully reported with dispatches Nos. 142 of December 25, 1885, and 151 of January 4, 1886.

No. 139. HARK O. NICKELSEN.—Born at Tuftum, Island of Föhr, Schleswig-Holstein, February 11, 1863; emigrated May 14, 1879; naturalized September 3, 1884; returned to his old home September 29, 1885; ordered, under date of November 3 following, to leave Prussia by January 1, 1886. The necessary information having been received the legation intervened for Nickelsen on November 28, 1885, asking the withdrawal of the order expelling him, which request was declined by the foreign office, under date of December 23 following, upon the grounds stated in the case of Boyson, No. 130 of this report. This decision was communicated to Nickelsen, and the case fully reported to the Department of State with dispatches Nos. 142 of December 25, 1885, and 151 of January 4, 1886.

No. 140. CHRISTIAN E. HARTHER.—Born near Ehringen in Wurtemberg, September 20, 1862; emigrated in July, 1880; naturalized in October, 1885.

This case was referred by the Department of State to the legation for its action, by instruction No. 67 of November 17, 1885. The legation addressed a note to the foreign office on December 5, 1885, in behalf of Harther, who complained that his father's property had been attached in Germany to secure the payment of a fine imposed on the son for evasion of military duty after his emigration to the United States, where he still resided, and where his father had followed him. The legation requested the remission of the fine and the removal of the attachment, submitting at the same time the evidence of Harther's American citizenship. In reply to this note the foreign office informed the legation, under date of March 27, 1886, that the removal of the attachment which had been imposed on the property of the son and not on that of the father had taken place, and the fine, together with the costs, been remitted as requested. This favorable result was fully reported by the legation to the Department of State with dispatch No. 224, of April 5 following.

No. 141. JAN THEODORE JAPPEN.—Born at Tuftum, Island of Föhr, Schleswig-Holstein, May 1, 1851; emigrated April 7, 1878; naturalized September 15, 1884; returned in three weeks from that date to his native place, arriving there October 6, 1885; notified November 5, 1885, that he must leave Prussia by December 31 following. Having been furnished on December 7, 1885, with the necessary facts, the legation intervened in his behalf on the same day, requesting the foreign office to cause the order of expulsion to be withdrawn. This request was declined in an answering note from the foreign office, dated January 14 following, upon the general grounds stated in

the case of Boyson, No. 130 of this report. Jappen was at once notified of the result, and the case was fully reported to the Department of State with dispatch No. 169, of January 18, 1886.

No. 142. RIEWERT MEINHARD JAPPEN.—The brother of the subject of the next preceding case; was born at Tuftum, Island of Föhr, Schleswig-Holstein, February 17, 1864; emigrated May 12, 1880; naturalized September 18, 1885; returned in eighteen days from that date, arriving at his old home on October 6 following; ordered on November 5, 1885, to leave Prussia by December 31 following. Having on December 7, 1885, been placed in possession of the necessary facts the legation intervened in his behalf on the same day, asking that the order expelling him be withdrawn. In an answering note, dated January 14 following, the foreign office declined this request upon the general grounds stated in the case of Boyson, No. 130 of this report. Jappen was at once informed of this result, and the case was fully reported to the Department of State with dispatch No. 169, of January 18, 1886.

No. 143. HENRY RABIEN.—Born at New York March 21, 1864, as the son of a German subject; the father went to the United States in May, 1863, but returned after the birth of Henry, and before his (the father's) naturalization, to Germany with Henry and his other children who have uninterruptedly resided there with their mother ever since. The father held himself aloof from his family and made frequent voyages on American vessels to and from the United States, where he acquired naturalization in 1872, some eight years after the birth of Henry, returning, however, to Germany to his family in 1874, where he has since resided without interruption. It appeared in the further prosecution of this case that Henry Rabien had, on the 8th of January, 1884, made a solemn declaration before a Prussian official that neither he nor his parents intended to return to America. Had all the facts in this case been known to the legation it would not have intervened for Rabien. As it was, it did, on the 18th of December, 1885, address a note to the foreign office asking the withdrawal of an order served upon him to report for military service by the 1st of January following. In an answering note, dated January 15, 1886, the foreign office declined this request, showing with sufficient clearness from the facts ascertained by its investigation that Rabien was not a citizen of the United States. This decision was at once made known to Rabien, and the case fully reported to the Department with dispatch No. 182, of January 28, 1886. The Department by instruction No. 103, of March 10, 1886, expressed its concurrence in the conclusion reached by the foreign office.

No. 144. CARL SIMON PETERSEN.—Born at Nieblum, island of Föhr, Schleswig-Holstein, March 30, 1861; emigrated April 16, 1877; naturalized May 3, 1882; returned to his native country September 3, 1885; under date of October 22, following, he was ordered to leave Prussia by the 15th of November, 1885. Upon his request an extension of sojourn until January 1, 1886, had already been granted him. Having been placed in possession of the facts in the case on December 21, 1885, the legation on the same day addressed the foreign office in his behalf asking the withdrawal of the order complained of, which was declined in an answering note from the foreign office, dated February 3, 1886, upon the general grounds stated in the case of Boyson, No. 130 of this report. Petersen was at once notified of the result and the case fully reported to the Department of State with dispatch No. 191 of February 8, 1886.

No. 145. CHRISTAIN NIELSEN HANSEN.—Born at Harknag, Schleswig-Holstein, May 13, 1857; emigrated October 21, 1875; naturalized July 19, 1884; returned October 22, 1885, to his native place; ordered, under date of November 7, 1885, to leave Prussia by the 1st of January following. The legation having received the necessary information in his case on December 26, 1885, and intervened at the foreign office on the same day, asking the withdrawal of the order, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note, dated February 3, following. The legation at once notified Hansen of the result, and fully reported the case to the Department of State with dispatch No. 191 of February 8, 1886.

No. 146. LARS HOECK.—Born at Markernpheide, Schleswig-Holstein, April 19, 1856; emigrated August 21, 1876; naturalized September 27, 1884; returned within a month of that date to his native place, where he had since sojourned; ordered under date of December 12, 1885, to leave Prussia by the 20th of January following. The legation was furnished with the facts in the case on December 23, 1885, and on the 26th of that month intervened in behalf of Hoeck, asking the withdrawal of the order of expulsion, which was declined by the foreign office in an answering note dated February 3 following, upon the general grounds stated in the case of Boyson, No. 130 of this report. Hoeck was at once informed of the result and the case fully reported to the Department of State with dispatch No. 191 of February 8, 1886.

No. 147. HEINRICH LUTZEN.—Born at Hersum, Schleswig-Holstein, November 15, 1860; emigrated June 8, 1880; naturalized August 4, 1885; returned in November following to his native place; ordered December 16, 1885, to leave Prussia by February 1 following. On December 30, 1885, Lutzen furnished the necessary information in his case, and on the same day the legation intervened in his behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in

the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated February 9 following. Lutzen was at once informed of this decision and the case was fully reported with dispatch No. 197 of February 15, 1886.

No. 148. NICKOL BODENSCHATZ.—Born at Oberweissenbach, Bavaria, August 1, 1862; emigrated in April, 1879; date of naturalization unknown. Bodenschatz not remembering the same, and his certificate of naturalization being at the time of his application for intervention in the hands of the Bavarian authorities, returned to his native place to visit his parents in the latter part of November, 1885. A few days thereafter he was arrested and compelled to pay a fine of 150 marks with 31 marks costs, under penalty of imprisonment for alleged evasion of military duty. After a further period of a few days he was again arrested and transported to Hof for enrollment in the army, and only released on being pronounced by medical authority to be unfit for military service. Having on December 31, 1885, been placed in possession of the above information, the Legation on the same day submitted Bodenschatz's statements to the foreign office, requesting that if they were found to be correct his fine might be repaid and his certificate of naturalization speedily returned to him, as he desired to return to the United States on the 14th of the following month. In an answering note dated January 14, 1886, the foreign office informed the legation that Bodenschatz had for the first time exhibited his certificate of naturalization to the authorities when about to be mustered into the army, whereupon all proceedings against him were at once discontinued; that his certificate of naturalization had, contrary to his statement, been returned to him on the 13th of December preceding. A further communication respecting the return of his fine was promised and was received from the foreign office, under date of March 22, following. This communication stated that nothing was needed to procure the return to Bodenschatz of the amount of his fine but the production of the evidence of his American citizenship, that he had paid that fine without making any mention whatever of the fact of such citizenship, and that when he subsequently produced it before the mustering board for the first time it was at once handed back to him without scrutiny, he having been found unfit for military service, no copy of the same being retained. The father of Bodenschatz having in the mean time made some representations to the Department of State about his son's case, the Department by instruction No. 117, of March 31, 1886, directed the legation to furnish a report of the case, which it did with dispatch No. 246, of April 16 following, informing the Department that its efforts to find Bodenschatz and procure from him his certificate of naturalization, for the purpose of submitting it to the German Government in order to secure the return or the fine he had paid, had been in vain. This dispatch was acknowledged by the Department of State with instruction No. 127 of May 7, 1887. Nothing further has been heard from Bodenschatz. The repayment of his fine awaits the production of his certificate of naturalization until such time as his claim may become barred by limitation.

No. 149. NICOLAUS C. NISSEN.—Born at Morsum, island of Sylt, Schleswig-Holstein, January 29, 1861; emigrated March 16, 1876; naturalized October 21, 1885; returned to his native place within four weeks after naturalization, arriving there November 16 following; ordered on December 7, 1885, to leave Prussia by February 1 next. Having been furnished with the necessary facts on January 5, 1886, the legation on the following day intervened in Nissen's behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated February 15 following. Nissen was at once informed of this decision and the case fully reported to the Department of State with dispatch No. 199 of February 22, 1886.

No. 150. JENS JÜRGENSEN.—Born at Akersum, on the island of Föhr, Schleswig-Holstein, March 30, 1855; emigrated September 1, 1871; naturalized October 10, 1876; returned to his native place November 18, 1885; ordered under date of the 19th of that month to leave Prussia by the 1st of February following. On the 9th of January, 1886, immediately after being placed in possession of the necessary information in the case, the legation intervened in Jürgensen's behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated March 8 following, with the statement that Jürgensen had once before in 1877 returned to his native place, where he had at that time remained nearly two years and had left then with the undoubted purpose of preventing himself from being regarded as having renounced his American naturalization (under the treaty of February 22, 1868), and thereby exposing himself to the performance of military duty in Prussia. Jürgensen was at once informed of this decision, and the case fully reported to the Department of State with despatch No. 209 of March 15, 1886.

No. 151. MATHIAS GEIB (fine).—Born at Limbach, Prussia, November 28, 1860; emigrated April 3, 1880; returned to his native place on a visit October 16, 1885. On the 15th of December following he was compelled to pay a fine of 150 marks for alleged evasion of military duty. Having been placed in possession of the necessary information in the case on January 12, 1886, the legation on the same day intervened in

his behalf, asking the repayment of the fine. In an answering note, dated May 5 following, the foreign office informed the legation that its request had been complied with. This information was at once conveyed to Geib and the case fully reported to the Department of State with dispatch No. 257 of May 10, 1886. In instruction No. 133, of May 26 following, the Department of State expressed its gratification with this decision.

No. 152. MATHIAS GEIB (expulsion).—On the 23d of January, 1886, Geib, whose case of military fine has been discussed under case No. 151 next preceding, informed the legation that he had been ordered under date of the 16th of that month to leave Prussia at once. On the same day the legation intervened in his behalf, asking the withdrawal of the order, which was declined upon the general grounds stated in Boyson's case, No. 130 of this report, in an answering note from the foreign office dated March 8 following. Geib was at once informed of this decision and the case fully reported to the Department of State with dispatch No. 210 of March 15, 1886.

No. 153. SIMON HANSEN.—Born at Klintum, island of Föhr, Schleswig-Holstein, September 12, 1862; emigrated in August, 1879; naturalized October 14, 1884; returned in July, 1885, to his native place; ordered January 6, 1886, to leave Prussia by February 1 following. Having been placed in possession of the necessary information on January 25, 1886, the legation on the same day intervened in behalf of Hansen, asking the withdrawal of the order expelling him, which was declined in an answering note from the foreign office dated March 18 following, upon the general grounds stated in the case of Boyson, No. 130 of this report. Hansen was at once notified of this decision and the case fully reported to the Department of State in dispatch No. 215 of March 23, 1886.

No. 154. ANDREAS CHRISTENSEN.—Born at Abel, Schleswig-Holstein (date unknown); emigrated in 1879; naturalized October 21, 1885; returned to his native country December 23, 1885; ordered to leave Prussia by the 1st of February following. Having been placed in possession of the necessary facts on January 25, 1886, the legation on the same day intervened in Christensen's behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated March 18 following. Christensen was at once notified of this decision, and the case was fully reported to the Department of State with dispatch No. 215, of March 23, 1886.

No. 155. JOHN M. JAPPEN.—Born January 13, 1864, at Nordstrand, Schleswig-Holstein; emigrated June 12, 1880; naturalized July 6, 1885; was back at his old home in Prussia within nineteen days from the date of his naturalization, arriving there on the 25th of that month. (The two brothers Jappen, who figure in Nos. 141 and 142 of this report, are believed to be the brothers of the subject of this case, and had returned to Prussia, the first in twenty-one days, the second in eighteen days from the dates of their naturalization, giving an aggregate of fifty-eight days' sojourn in the United States after naturalization for the three brothers.) Jappen was ordered, under date of the 6th of January, 1886, to leave Prussia by the 1st of February following. Having been placed in possession of the necessary information in the case on January 26, 1887, the legation on the same day intervened in his behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated March 18, 1886. This decision was at once communicated to Jappen, and the case fully reported to the Department of State with dispatch No. 215, of March 23, 1886.

No. 156. HENRY P. HENRICHSEN.—Born at List, Schleswig-Holstein, September 25, 1856; emigrated in June, 1873; naturalized April 3, 1882; returned to his old home in May, 1885; ordered, under date of January 13, 1886, to leave Prussia by the 1st of February following. Having been placed in possession of the facts in the case on January 26, 1886, the legation on the same day intervened in Henrichsen's behalf, asking the withdrawal of the order expelling him, which was declined upon the general ground stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated March 18 following. Henrichsen was at once informed of this decision, and the case fully reported to the Department of State with dispatch No. 215, of March 23, 1886.

No. 157. ALFRED V. BRAREN.—Born at Suderende, Island of Föhr, Schleswig-Holstein, September 18, 1861; emigrated in April, 1877; naturalized September, 1884; returned in February, 1885, to his native place; ordered, on January 6, 1886, to leave Prussia by February 1 following. Having been placed in possession of the necessary information in the case on January 28, 1886, the legation on the same day intervened in Braren's behalf, asking the withdrawal of the order, which was declined in an answering note from the foreign office dated March 8, 1886, upon the general grounds stated in the case of Boyson, No. 130 of this report. The decision was promptly communicated to Braren, and the case fully reported to the Department, with dispatches No. 211, of March 15, 1886.

No. 158. O. H. E. TSCHERNISCH.—Born at Berlin, Prussia, November 15, 1859; emigrated with his father in 1870; the father was naturalized October 16, 1876, and never returned to Germany; the son returned to Berlin on a visit in August, 1884, and intended going back to the United States as soon as he could earn sufficient money for his passage there; ordered to pay a fine of 200 marks imposed on him for alleged violation of military duty by the 2d of February, 1886, or suffer imprisonment for the period of twenty days. Having received the foregoing information from Tschernisch on January 29, 1886, the legation intervened in his behalf on the same day, inclosing the evidence of his father's American citizenship and urging the immediate suspension of the proceedings contemplated against him and the remission of the fine. Under date of June 2 following the foreign office informed the legation in an answering note that the fine had been remitted. Tschernisch had in the mean time informed the legation that he had not been further molested. The Department of State had at an earlier period, by instruction No. 47, of November 10, 1884, directed the legation, at the instance of Tschernisch's father, who complained that his son was being detained in Germany for military service, to investigate the case. This was at once done, with the result that it was found that at that time lack of means to pay his passage back to America alone detained him here. The result of that investigation was reported to the Department in dispatch No. 89, of December 1, 1884.

No. 159. JOHN M. EPSEN (IPSEN).—Born at Oevenum, Island of Föhr, Schleswig-Holstein, November 20, 1853; emigrated July 2, 1870; naturalized April 2, 1877; returned to his native place December 3, 1885; ordered under date of January 12, 1886, to leave Prussia by the 1st of February following. Having been furnished with the necessary facts in the case on December 29, 1885, the legation on the same day intervened in Epsen's behalf, asking the withdrawal of the order of expulsion, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office, dated March 18 following. Epsen was at once informed of this decision, and the case fully reported to the Department of State with dispatch No. 215, of March 23, 1886.

No. 160. FRANZ KLOSE.—Born at Goldberg, Prussia, July 26, 1838; emigrated in May, 1868; naturalized October 30, 1882; returned in November, 1884, on a visit to his native place; on May 17 following he was imprisoned in default of payment of a fine of 150 marks for unallowed emigration, to which he had been judicially condemned, as it subsequently appeared, in 1874; he was kept in confinement for the period of fourteen days, and when released the sum of 2.45 marks in German and $9.57 in American money, as also a watch, being all the property in his possession, was taken from him. A further sum of 27 marks was demanded of him, but, having nothing more, he was allowed to go. The watch was sold by the authorities at auction, but bought in by his brother. Having been placed in possession of this information, the legation, on February 2, 1886, intervened in behalf of Klose, inclosing the evidence of his American citizenship, and asking, as requested by him, the return of the money taken from him, and of the amount paid by his brother for the watch. In an answering note, dated March 11 following, the foreign office informed the legation that its request had been complied with. The result was at once communicated to Klose, who replied, thanking the legation for its action.

No. 161. C. H. G. J. F. BURMEISTER.—Born at Heide, Schleswig-Holstein, June 12, 1861; emigrated in August, 1881; naturalized September 3, 1885; returned to Germany, and was back at his old home within twenty-nine days thereafter, arriving there on the 2d of October following; ordered under date of the 20th of January, 1886, to leave Prussia by the 1st of February following. Having on the 7th of February, 1886, been placed in possession of the necessary information in the case, the legation on the following day intervened in his behalf, asking the withdrawal of the order expelling him, which was declined upon the general grounds stated in the case of Boyson, No. 130 of this report, in an answering note from the foreign office dated April 14 following. Burmeister was at once notified of this decision, and the case fully reported to the Department of State in dispatch No. 214, of April 16, 1886.

No. 162. EDWARD EMMERICH.—Born at Abentener, Duchy of Oldenburg, June 15, 1850; emigrated in 1870; naturalized June 14, 1882; he returned to Prussia, and arrived at Berlin December 9, 1885, after having resided some twelve years in the United States before naturalization, and four years and three months thereafter, establishing a prosperous business there, returning for the purpose of seeking health and recreation in visiting his relations, and in traveling in Europe. He desired to sojourn in Prussia for the period of seven months. Under date of February 13, 1886, he was ordered to leave Prussia before March 1 following. Having been placed in possession of the necessary information in the case on the 16th of February, 1886, the legation on the same day intervened in his behalf, asking the withdrawal of the order, which was granted in an answering note from the foreign office dated May 31st following. Emmerich was at once informed of this favorable decision, and the case fully reported to the Department of State with dispatch No. 271, of June 7, 1886. Instruction No. 147, of July 22 following, communicated to the legation the satisfaction of the Department of State with this decision.

No. 163. KNUD NIELSEN KNUDSEN.—Born at Apterp, Schleswig-Holstein, August 3, 1859; emigrated July 23, 1878; naturalized October 18, 1884; returned in the latter part of December, 1885, to his native place; ordered to leave Prussia by the 28th of February following, but continued to remain there nevertheless. On March 8th following he informed the legation that the authorities insisted on his departure and appealed to it to intervene in his behalf. Being in possession of the necessary information, the legation on the same day applied for the withdrawal of the order expelling him, which was declined in an answering note from the foreign office dated April 4 following, upon the general grounds stated in the case of Boyson, No. 130 of this report. Knudsen was at once informed of this decision, and the case fully reported to the Department of State with dispatch No. 245, of April 16, 1886.

No. 164. AUGUST SCHLEGEL.—Born at Allmannsdorf, Baden, August 30, 1851; emigrated in September, 1873; naturalized January 2, 1879; returned on a visit to his native place May 26, 1886; on June 12 following he was compelled to deposit 322.13 marks in court at Constance, as security for the amount of a fine judicially imposed on him for alleged violation of military duty. Having been placed in possession of the necessary information in the case on June 21, 1886, the legation, on the same day, intervened in behalf of Schlegel, inclosing the evidence of his American citizenship and asking the remission of the fine and the repayment of the amount he had been compelled to deposit as security for the same. In an answering note, dated August 3 following, the foreign office informed the legation that its request had been complied with. Schlegel was at once informed of this decision, and the case fully reported to the Department of State with dispatch No. 301, of August 9, 1886. With instruction No. 157, of the 25th of that month, the Department informed the legation that the report of this decision had been received with satisfaction.

No. 165. JOHN WOLF.—Born at Wewelsflith, Schleswig-Holstein, January 16, 1855; emigrated in February, 1872; naturalized August 5, 1884; returned to his native place May 25, 1886; under date of the 7th of June he was ordered to leave Prussia by the 5th of July following. Having on the 29th of June, 1886, been placed in possession of the necessary information in the case, the legation, on the following day, intervened in Wolf's behalf, inviting attention in particular to the circumstance that he had been ordered to leave Prussia after his arrival at his native place, to visit which he had traveled some 6,000 miles from his home in the State of California, and asking the withdrawal of the order expelling him, which the foreign office granted, communicating the fact in an answering note dated July 21 following. Wolf was at once informed of this favorable decision and the case fully reported to the Department with dispatch No. 300, of August 9, 1886. The Department of State expressed its satisfaction with this result in instruction No. 158, of August 26 following.

No. 166. JASPER N. STUHR.—Born at Erteljerg, Schleswig-Holstein, November 5, 1854; emigrated February, 1871; naturalized March 1, 1876; returned to his native country August 31, 1886; ordered, on October 5, 1886, to leave country by the 20th of that month. Having been placed in possession of the necessary facts in the case on the 19th of October, 1886, the legation intervened in Stuhr's behalf, asking the withdrawal of the order complained of, which was granted, the foreign office communicating the fact in an answering note dated December 17th following. Stuhr was at once notified of this favorable decision, and the case was fully reported to the Department of State with dispatch No. 356, of December 20, 1886. The Department expressed its gratification with this decision in instruction No. 193, of March 4 following.

No. 167. JÖRGEN J. SCHMIDT.—Born at Mummark, Schleswig-Holstein, March 4, 1860; emigrated June 11, 1876; naturalized June 3, 1882; returned to his native place August 31, 1886; ordered on October 5, 1886, to leave Prussia by the 20th of that month. Having been placed in possession of the necessary facts in the case on the 19th of October, 1886, the legation intervened in Schmidt's behalf on the same day, asking the withdrawal of the order complained of, which was granted, the foreign office communicating the fact in an answering note dated December 17 following. Schmidt was at once informed of this favorable decision, and the case fully reported to the Department with dispatch No. 356, of December 20, 1886. The Department of State expressed its gratification with this result in instruction No. 193, of March 4, following.

No. 168. JOSEPH WIENER (formerly Joseph Otschuschki).—Born at Witkowo, Posen, Prussia, in February, 1853; emigrated about the year 1872; naturalized under the name of Joseph *Wernier* (date not remembered, his papers being in the hands of the authorities); returned to Germany on a visit in September, 1886; arrested at Witkowo, October 13, 1886, under judgment dated September 6, 1878, condemning him to four weeks imprisonment for alleged evasion of military duty. Having been placed in possession of the foregoing information on October 20, 1886, the legation, on the same day, intervened in Wiener's behalf, assuring the foreign office that it was satisfied that Joseph Otschuschki and Joseph Wiener were one and the same person, and requesting his release from prison and the remission of the fine. On October 23 the lega-

tion took the testimony of one Placzek, a friend of Wiener's, as to the identity of the latter with Otschuschki. Under date of October 22 the foreign office requested the legation to submit such evidence as it had of the identity of Wiener with the Otschuschki who had been fined and imprisoned. The evidence requested was submitted by the legation, with a note addressed to the foreign office, on October 25; and on the 2d of November following, the foreign office informed the legation that Wiener had been provisionally released, without the termination of the investigation which had been ordered being awaited, and that a further communication relating to his case would be made. Wiener was informed of this action of the foreign office and the case, as far as it had progressed, was reported to the Department of State with dispatch No. 341, of November 8, 1886. The legation having been informed by Wiener, on the 31st of December following, that he had been ordered by the authorties to leave the country at once, and that he desired to remain in Prussia until the 1st of March next, on the same day intervened again in his behalf, asking that his wish might be complied with. With dispatch No. 368, of January 10th following, the legation reported the threatened expulsion of Wiener to the Department of State. Under date of March 31, 1887, the foreign office informed the legation that Wiener's request had been granted, and that he would be permitted to remain until April 15 next. The legation informed Wiener of this decision and reported the success of this application to the Department with dispatch No. 412, of April 4, 1887. Under date of May 27 following, the foreign office addressed a further communication to the legation, informing it that Otschuschki had left the country and that the remainder of his punishment, from which he had withdrawn himself, could not be remitted for the reason that the authorities did not consider that it had been proven that Otschuschki was entitled to the same by a five years' residence and naturalization in the United States. It was true that he had stated and produced evidence to show that he had been called *Wiener* in America, but the document dated August 7, 1886, which he produced to prove his naturalization, bore the name of Joseph *Wernier*. His statement that this was due to an error in writing did not seem credible for the reason that the person naturalized had himself signed his name thereon *Wernier*, and his age was thereon stated to be twenty-seven years, whereas Otschuschki having been born on February 27, 1854, was thirty-two years of age at the time of the execution of the document. The legation reported the case to the Department fully with dispatch No. 444, of May 30, 1887.

No. 169. FLORENZ HARTMANN.—Born at Nordheim, Alsace, October 21, 1853; emigrated September 6, 1872; naturalized October 28, 1884, and had never returned to Germany. An attachment was laid on July 5, 1886, on his paternal inheritance to secure a judgment imposing a fine of 866.96 marks on him for alleged evasions of military service. Having, by means of a correspondence with his agent in the United States, been placed in possession of the necessary facts in Hartman's case on the 29th of October, 1886, the legation, on the same day, intervened in his behalf, asking the removal of the attachment and the remission of the fine. The foreign office, in an answering note dated December 23, following, informed the legation that its request had been complied with, the attachment removed, and the fine remitted. This decision was at once communicated to Hartmann through his agent in the United States, and the case fully reported to the Department of State with dispatch No. 358, of December 27, 1886.

No. 170. FREDRICK FREDERICKSON.—Born at Quenbüll, Schleswig-Holstein, January 31, 1854; emigrated July 2, 1871; naturalized November 1, 1878; returned to his native country early in September, 1886; ordered under date of October 9 following to leave Prussia by the 15th of November next, an extension of sojournment until December 15 following was, however, subsequently granted him by the authorities upon his personal application. Having on the 13th of November, 1886, been placed in possession of the necessary facts, the legation, on the same day, intervened in Fredrickson's behalf, asking the withdrawal of the order and that he be permitted to remain at his native place until the middle of May, 1887, the time he had fixed for his return to the United States. Under date of December 28 following, the foreign office in an answering note informed the legation that its request could not be granted upon the general grounds stated in the case of Boyson, No. 130, of this report, Frederickson was at once informed of this decision and the case fully reported to the Department of State with dispatch No. 361, of January 23, 1887.

No. 171. HENRY BISS.—Born at Albertsdorf, Schleswig-Holstein, September 7, 1865; emigrated March 24, 1881; naturalized September 13, 1886; left America five days thereafter on his return to his native place, which he reached on the 27th of that month; ordered, under date of October 30, 1886, to leave Prussia by the 20th of November following. Having, on the 15th of November, 1886, been placed in possession of the necessary facts, the legation, on the same day, intervened in behalf of Biss, asking the withdrawal of the order, and that he be permitted to prolong his sojourn until March 1 following, the date he had fixed for his departure. In an answering note, dated December 22, 1886, the foreign office declined his request upon the general grounds stated in the case of Boyson, No. 130, of this report. This decision was at

once communicated to Biss and the case fully reported to the Department of State with dispatch No. 357, of December 27, 1886.

No. 172. PETER SCHAACK.—Born at (place unknown), in Germany (date unknown); emigrated at the age of fifteen in 1880; naturalized September 28, 1886; returned on a visit of a few months, leaving his parents in the United States, to his native country in the latter part of October, 1886; arrested and imprisoned on November 22d following in default of payment of a fine of 160 marks and costs for alleged evasion of military duty, imposed on him by judgment of a court while he was in the United States. Having on the 25th of November, 1886, been placed in possession of the necessary facts, the legation on the same day intervened in behalf of Schaack, asking that the case be immediately investigated, and that he be released and the fine remitted, if the facts should be found to be as stated. In an answering note dated December 9, 1886, the foreign office informed the legation that Schaack had been released from prison as requested, and that a further communication would be made when the investigation was completed. This second communication ensued under date of January 26 following, and informed the legation that the remainder of Schaack's punishment had been remitted. Schaack was at once informed of the decision and the case fully reported to the Department of State with dispatch No. 384, of January 31, 1887.

No. 173. HENRY DRIEHAUS.—Born June 1, 1860, in Frederick Township, Pa., as the son of George Henry Driehaus, a native of Prussia, who was naturalized in the United States in 1855. On the occasion of a visit by both father and son to Germany in 1870, the father died, and an inheritance of $187 found to be due to the son was deposited in the Imperial Bank at Berlin, to await the attainment of his majority, the son returning thereafter in 1880 to the United States before its attainment. Arriving at his majority the son sought to obtain his inheritance, but found that he could not, owing to an attachment having been laid on the same to secure a judgment imposed on him for alleged evasion of military duty. Having by January 15, 1887, after much correspondence with Driehaus' agent in the United States and others, been placed in possession of the necessary facts, the legation, on the same day, intervened in his behalf, asking the remission of the fine and the removal of the attachment. Under date of July 10th following, the foreign office, in an answering note, informed the legation that its request had been complied with. The legation at once communicated this result to Driehaus and fully reported the case to the Department of State with dispatch No. 477 of July 15, 1887.

No. 174. HANS PETER PETERSEN.—Born at Tagkier, Schleswig-Holstein, September 23, 1854; emigrated in the latter part of May, 1873; naturalized October 7, 1879; returned to his native country December 20, 1886; ordered, under date of January 8, 1887, to leave Prussia by the 1st of February following. He desired to remain until May 1, 1887. This was his first visit to his native country, and he expressed it to be his last. Having on the 16th of January, 1887, been placed in possession of the necessary facts, the legation, on the same day, intervened in his behalf, asking that the order expelling him be withdrawn, and his request to remain until May 1 next be complied with. In an answering note, dated March 8 following, the foreign office informed the legation that proceedings against Petersen had, upon receipt of the note of intervention, been immediately suspended; that permission for a further sojourn than until May 1, 1887 (*the length of sojourn Petersen had asked*), could not be granted upon the general grounds stated in the case of Boyson, No. 130 of this report, and that the matter had been practically disposed of by Petersen having voluntarily already left the country. The case was fully reported to the Department of State with dispatch No. 400 of March 14, 1887.

No. 175. GABRIEL LEVY.—Born at Dettweiler, Alsace-Lorraine, July 15, 1854; emigrated in 1874, after reaching the age of liability to military service, to the United States, where he was naturalized in November, 1883. He was judicially condemned, on December 4, 1875, to a fine of 1,000 marks, with costs of procedure, under penalty of 100 days' imprisonment in lieu thereof. A paternal inheritance of 1,800 marks having accrued to him, which had been attached to secure the fine imposed, a brother of Levy remaining in Alsace-Lorraine had petitioned for the remission of the fine. The foregoing facts were communicated to the legation by Count Bismarck, the imperial secretary of state for foreign affairs, in a note dated the 22d of February, 1887, in which the legation was further informed that, in view of the good relations existing between Germany and the United States, the fine imposed had, with costs, been remitted, and Levy's family informed of the fact. This pleasantly-conveyed action of the foreign office in a case occurring in Alsace-Lorraine, territory not embraced, as has of late been contended by the foreign office, within the domain to which our naturalization treaties of 1868 extend, and taken without diplomatic intervention, was duly acknowledged by the legation in a note to the foreign office, dated February 25, 1887, and the correspondence in the case was fully reported to the Department of State with dispatch No. 394 of February 28 following. By instruction No. 196, of March 18, 1887, the Department expressed its appreciation of the action taken by the foreign office and the pleasant manner in which it was communicated, and its ap-

proval of the acknowledgment of its communication by the legation to the foreign office.

No. 176. ALBERT BERNHARD.—(Unfinished.)

No. 177. JACOB PHILLIPS (formerly Jacob Gallewski).—Born at Kempen, Prussia, September 21, 1858, emigrated in July, 1873; naturalized May 5, 1884; returned during the same month, after taking out a passport on the day following his naturalization, to his native country; compelled on January 25, 1887, to pay 163 marks, and on the 14th or 15th of February following, 45 marks, in all 208 marks, fine and costs, for alleged evasion of military duty; his certificate of naturalization and a document showing his identity with Jacob Gallewski, the name he bore before his naturalization, were in the hands of the local police. Having, on April 5, 1887, been placed in possession of the foregoing information, the legation on the same day intervened in behalf of Phillips, asking the remittance and return of the fine he had paid. In an answering note, dated July 20 following, the foreign office declined to grant the request of the legation upon the grounds that he was fined before he became an American citizen, that the fine had been collected from him after he had been back in Prussia for more than the term of two years provided for in the treaty of February 22, 1868, and might therefore be regarded as having renounced his American naturalization, and that he had in addition, on April 29, 1887, solemnly declared, in a written statement taken down before the appropriate authority at Liegnitz, that he intended to remain permanently in Prussia and renounce all his rights as an American citizen. Had the full facts in this case been known to the legation it would not have intervened for him. The legation at once communicated this decision, with the grounds given for the same, to Phillips, and fully reported the case to the Department of State with dispatch No. 482 of July 22, 1887.

No. 178. JOHN WAGNER.—Born at Wellendingen, Würtemberg, September 13, 1863; emigrated in March, 1880; naturalized March 12, 1887; he has never returned to Germany; subsequent to his emigration a judicial fine of 400 marks was imposed on him for evasion of military duty, and it was threatened to collect the amount of the fine from the property of his father, Conrad Wagner, still residing at Wellendingen. This case was referred to the legation by the Department of State with the direction to do what should be found necessary. On April 15, 1887, the legation addressed a note to the foreign office inclosing the evidence of Wagner's American citizenship and asking that such steps might be taken as will suspend the execution of the sentence and finally annul the judgment. In an answering note, dated June 18 following, the foreign office informed the legation that no such person as John Wagner or his father, Conrad Wagner, was known at Wellendingen in Würtemburg, or at a place of the same name in Baden, nor had there been any judgment or even prosecution against any such person for such offense; and there were no other places in Germany of that name. The result of the intervention in this case was fully reported to the Department of State with dispatch No. 457 of June 20, 1887.

No. 179. MARTIN C. H. HOMBURG.—Born at Brockstedt, Schleswig-Holstein, May 11, 1855; emigrated October 15, 1876; naturalized October 21, 1881; returned to Germany, arriving there December 23, 1886; ordered, on May 21, 1887, to leave Prussia by June 1 following. Having been placed in possession of the necessary information in the case on June 6, 1887, the legation on the same day intervened in Homburg's behalf, asking that the order be withdrawn and that he be permitted, in accordance with his request, to remain one month longer than the length of sojourn already conceded. In an answering note, dated July 16, 1887, the foreign office informed the legation that its request had been complied with, and that Homburg would be permitted to remain until August 1 following (two months longer). Homburg was at once informed of this decision and the case fully reported to the Department of State with dispatch No. 480 of July 18, 1887.

No. 180. EDWARD EMMERICH (second case).—Having on June 16, 1887, been requested by Emmerich to procure permission for him to return to Berlin from Austria, where he was then staying, for a further sojourn of one year, the legation intervened in his behalf on the same day, requesting that his wish might be granted, and referring to its former intervention in his behalf (see case No. 162 of this report) when threatened with expulsion, resulting in his being allowed to remain in Berlin until July 1, 1886. In an answering note, dated August 4 following, the foreign office informed the legation that this request was granted, and that Emmerich would be allowed to visit Berlin again for the period of a year. This decision was at once communicated to Emmerich and the case reported to the Department of State with dispatch No. 491 of August 5, 1887.

No. 181. CHARLES P. E. MONNERON.—Born in the United States August 8, 1845, subsequent to the naturalization there of his father. In January, 1875, he went to Pfasstadt in Alsace, where he found employment in a business house in which he was still engaged, intending to return to the United States as soon as he could do so without injuring his financial prospects. Monneron's father was a Swiss by birth and died in Switzerland, after having been naturalized in the United States where he re-

sided for over twenty years. The son was suspected of having some connection with the French "Ligue des Patriotes," but nothing connecting him in any way with that organization was found when his apartment was searched. He declared that he had conducted himself in a peaceful, orderly manner, and that he had nothing to do with the organization referred to. Under date of the 5th of July, 1887, he was ordered to leave the country by the 20th of that month. Having been placed in possession of the facts in the case on the 11th of July, 1887, the legation on the same day intervened in Monneron's behalf, asking the suspension of the order pending investigation and its ultimate revocation. In an answering note, dated October 8 following, the foreign office expressed regret at its inability to comply with this request. It was true, it was stated, that no evidence of his participation in the "Ligue des Patriotes" had been discovered in Monneron's house, and to this circumstance alone was due the fact that he had not been judicially called to account for his actions. Other evidence had, however, shown conclusively that he belonged to that organization and made regular contributions to the same. He was also a pronounced adherent of the view that Alsace-Lorraine should be reconquered by France. For the rest he had voluntarily left Germany on August 6. The case was fully reported to the Department of State with dispatch No. 517 of October 10, 1887.

CORRESPONDENCE WITH THE LEGATION OF GERMANY AT WASHINGTON.

No. 290.

Mr. von Alvensleben to Mr. Bayard.

[Translation.]

IMPERIAL GERMAN LEGATION,
Washington, July 8, 1886.

MR. SECRETARY OF STATE: The envoy of the United States of America at Berlin has addressed the foreign office in behalf of several former Prussian subjects, who, when they had attained the age when they were required to perform military duty, or shortly before attaining that age, emigrated to the United States, and after having become naturalized there, returned to their native country, and were expelled from Prussia by the competent authorities before the expiration of two years from the date of their return. It has, in the majority of cases, been impossible to grant Mr. Pendleton's applications for the revocation of these orders of expulsion. The aforesaid envoy addressed two notes, dated respectively April 10 and 16, 1886, to the foreign office, in which he requested that the last two cases that have arisen (those of Knudsen and Burmeister) might be reconsidered. He stated, moreover, that he had been instructed to protest against the action of the Prussian authorities in these cases, inasmuch as his Government regarded it as a violation of the rights guaranteed by treaty to American citizens in Germany.

The contents of those two notes and of the instructions of the State Department, a copy of which was sent by Mr. Pendleton as an inclosure to his note of April 10, 1886, have been carefully examined, and the undersigned, Imperial German envoy extraordinary and minister plenipotentiary, has been instructed to communicate, in reply to these communications, the following observations to the Hon. Thomas F. Bayard, Secretary of State of the United States.

The Government of His Majesty the Emperor observes that the United States Government does not dispute the right, which is recognized in international law, of every state to expel from its territory

foreigners whose stay in the country is, in the opinion of the Government, prejudicial to public welfare and order.

The Imperial Government is unable to reach the conviction that the treaty of friendship and navigation concluded in 1828 between Prussia and the United States, or the treaties relative to naturalization concluded in 1868, involve any restriction of this right as regards the parties to said treaties.

As to the first-named treaty, the Imperial Government thinks it can but refer to its previous declarations. With regard to the naturalization treaty concluded between the North German Union and the United States in the year 1868, the only stipulation contained in it that is now to be considered is that embraced in Article 4, paragraph 3. According to this a *renunciation* of the intent to return to the United States (and likewise a renunciation of naturalization as an American citizen) may be considered to exist when the naturalized person remains more than two years in the territory of the other party. So long as there has been no such renunciation, German-Americans who have returned to the country of their former nationality under the presumptions of the treaty are to be considered, according to Article 1, as citizens of the United States, and to be treated as such. This, however, is equivalent, for the period of two years only, to a renunciation of the right to treat them as native citizens, and to compel them as native citizens to perform their civil duties, especially the general duty of service. They are consequently liable to expulsion, as are all other foreigners sojourning in Germany.

It is, in the opinion of the Imperial Government, too broad an assumption, if the United States Government desires to infer from the said stipulation that Germany has renounced in general its right to expel foreigners who, like these Americans, have been in Germany less than two years. Even if it be supposed that everything is legal, the mere stay of a foreigner in the territory may, under certain circumstances, become detrimental to the public interest. In such cases, the Imperial Government must reserve to the authorities of the states of the federation the right to expel at any time even an American who is protected by the treaty, and that too before the expiration of the aforesaid term of two years.

Mr. Pendleton's statement, in his note of April 10, 1886, that both parties have hitherto been agreed concerning an interpretation of the treaty that recognizes the right of undisturbed sojourn for two years, is based upon a misapprehension. The Imperial Government has, on the contrary, always maintained the opposite view, as above stated, and has expressly maintained this position on several occasions; for instance, in the note of July 18, 1878, of the foreign office to the American legation at Berlin relative to the case of Bäumer.

Mr. Pendleton's reference in support of that statement to the executive orders issued in July, 1868, by the Prussian minister of the interior and the minister of justice also appears to lack sufficient ground. According to those orders, it is true there is to be no prosecution of persons showing that they have become naturalized in America, on account of the punishable act committed by them in emigrating. The reference to Article 2 of the treaty shows, however, and the context leaves no doubt on this point, that a judicial prosecution only is not admissible. Expulsion, however, resorted to in pursuance of a decision of the police authorities of the state, does not come within the purview of such prosecution, for expulsion is not a punishment in a judicial sense, but an administrative

measure adopted by the state out of regard to its own safety and domestic policy.

It is true that the Imperial Government formerly contented itself with merely reserving in principle to the German authorities the right to expel naturalized Americans before the expiration of the period of two years, while this right was not actually exercised. This was done as long as circumstances permitted, in order to avoid differences of opinion with a friendly Government. As, however, a disposition has become more and more manifest, especially among the population of certain portions of the country, to evade the performance of military duty by emigrating to the United States, and by appealing to the treaties of the year 1868, and to enjoy, in spite thereof, by returning home, the rights and privileges of native citizens, a stricter course has recently been deemed necessary, and this has led to the expulsions in question.

The perfect right of the Imperial Government to adopt these measures can, after the foregoing statements, hardly appear doubtful.

The positive necessity and appropriateness of such a course can, on the other hand, naturally be appreciated only from the stand-point of the internal policy of the Empire. In this connection, it is only possible once more to refer to the fact that the Imperial Government deems it irreconcilable with the defense of the interests intrusted to its care for persons who have evaded the performance of military duty by emigration to exercise, on returning after a short absence, all the rights of native citizens, after having eluded the fulfillment of the duties incumbent upon such citizens.

Although this course is not in actual violation of any law of the state, still the Imperial Government has good reasons to desire that the example set by these persons of a systematic evasion of the performance of military duty should not be followed. It has, consequently, not felt called upon to disapprove the measures of the Prussian authorities now under discussion, or to take any steps designed to bring about a revocation of the orders issued for the expulsion of Knudsen and Burmeister.

The political interest of the Empire in repressing abuses of the treaty, resorted to with the view of evading military duty, is so vital that, after past experience, the denunciation of the treaties of 1868 would become necessary to German interests, if the interpretation of the treaties, as set forth in Mr. Pendleton's note, should be accepted as final. The Imperial Government has, thus far, not abandoned the hope of being able, by a judicious exercise of the right of expulsion, to avert the evil consequences which, from the German standpoint, are naturally connected with the continued existence of the treaties.

The Department of State takes the view that, if the principles recently asserted are to be enforced, any German who has emigrated to the United States will, in case of his speedy return, have cause to fear immediate expulsion, and thinks that this state of affairs would be equivalent to a *de facto* restoration of the condition of things which existed before the treaties were concluded. Neither of these assumptions, however, seems well founded. In the case of persons who have emigrated to the United States in good faith, that is to say, who can show that they have done so from motives not connected with the general military service, there will be no occasion for expulsion. Yet even persons liable to military duty, who have emigrated notoriously for the purpose of evading the performance of military duty, are better off now than they were before the conclusion of the treaties, or than they would be after their denunciation, since now, provided that they do not expressly

or tacitly renounce their American naturalization, they suffer expulsion only, and can not be punished or compelled to serve in the standing army or the navy.

The undersigned, hoping that the United States Government, in view of the foregoing statements, will not maintain its protest against the measures adopted by the German authorities, avails himself, etc.

H. VON ALVENSLEBEN.

No. 291.

Mr. von Alvensleben to Mr. Bayard.

[Translation.]

IMPERIAL GERMAN LEGATION,
Washington, February 15, 1887. (Received February 18.)

MR. SECRETARY OF STATE: Referring to the note of this legation of July 12, 1886, I have the honor, in obedience to instructions received, most respectfully to inform you that according to Imperial order of the 11th ultimo (No. 1694) the legal status of the Solomon Islands, which belong to the protectorate of the New Guinea Company, has now also been regulated.

All decrees, enactments, and proclamations that have been issued by the chancellor of the Empire, or by the board of directors of the New Guinea Company with the approval of that officer, for the territory hitherto under the control of that company are, so far as may be necessary, henceforth to be extended to the Solomon Islands, and as soon as these decrees, etc., shall have appeared in the publication in which the enactments of the New Guinea Company are issued, I shall have the honor to bring them to your notice.

Accept, etc.,

H. V. ALVENSLEBEN.

No. 292.

Mr. Bayard to Mr. von Alvensleben.

DEPARTMENT OF STATE,
Washington, March 4, 1887.

The undersigned, Secretary of State of the United States, had the honor to receive some time ago the note of Mr. von Alvensleben, envoy extraordinary and minister plenipotentiary of His Majesty the Emperor of Germany, of the 8th July last, relative to the cases of several naturalized citizens of the United States of German origin who were expelled from Prussia not long after their return on a visit to that country. The note in question, however, while referring to certain cases specifically, contains a general discussion of the rights of sojourn of naturalized citizens of the United States of German origin in their native country, in the form of a reply to the views expressed in two notes of Mr. Pendleton, envoy extraordinary and minister plenipotentiary of the United States, to the Imperial foreign office, bearing date, respectively, the 10th and 16th of April last.

The views of this Department have already been so fully stated in previous communications to the Imperial Government, and especially in the note of Mr. Pendleton and its inclosures of the 10th of April last,

that their further statement or amplification would seem unnecessary, if it were not for the apparent misapprehension, betrayed in the note of Mr. von Alvensleben, of the Imperial Government as to the views of this Department on the subject of the right of expulsion. The esteemed note of Mr. von Alvensleben correctly observes that the United States Government does not dispute the right, which is recognized in international law, of every state to expel from its territory foreigners whose stay in the country is prejudicial to public welfare and order; but at the same time it apparently assumes that the exercise of that right is denied by this Government to Germany in respect to naturalized citizens of the United States of German origin during a period of two years immediately ensuing their return to their native country.

But for this apparent misapprehension of the views of this Department the undersigned would have read with not a little surprise the declaration contained in Mr. von Alvensleben's note, that the denunciation of the treaty of 1868 would become necessary if the interpretation set forth in Mr. Pendleton's notes should be accepted as final.

It has not been the purpose of this Department to deny to Germany the right at any time to expel foreigners whose presence may be found to be dangerous to the public safety, but while thus freely admitting the right of expulsion this Department holds that its arbitrary exercise can not be regarded as consistent with existing relations.

It is not understood ever to have been claimed by this Government, and is not claimed by it now, that the clause in the treaty of 1868 in respect to a two years' residence of naturalized citizens in the country of origin was under all circumstances to be held to be a guaranty of such residence, and that the intention not to return to the country of adoption could not be formed or held to exist at any time before the expiration of that period. It is clearly stated in the fourth article of that treaty that the thing which is to operate as a renunciation of adoptive allegiance is a renewal of residence in the country of origin without an intent to return to the country of adoption. Such intention not to return, it is provided, may be inferred from a two years' residence. But this is merely a rule of evidence, establishing a prima facie presumption, and the intention not to return may be held to exist independently of the consideration whether that presumption has been created in the manner defined by the clause of the treaty in question.

Any other interpretation of the treaty would lead to the manifestly untenable conclusion, for which the undersigned is unable to find any warrant, that the country of origin can not accept, at any time during the two years immediately succeeding his return thereto, the express declarations and unequivocal acts of a citizen or subject who has been naturalized abroad, as any evidence of his intention with respect to the duration of his stay.

The position, however, of this Department is that there must be such declarations or such acts, in addition to the mere fact of return to the country of origin, in order to create or justify the conclusion that naturalization has been renounced; and that this question, which arises under a mutual convention and is of equal concern to both parties, is one for mutual consideration and discussion and concurrent decision.

In respect to the question of expulsion, it is maintained that, although it is not a question arising under the treaty, it is due to comity, as well as to the existence of the treaty, that reasonable grounds for expulsion should exist and be made known. The undersigned is unable to perceive the force of the observations contained in Mr. von Alvensleben's note, that the necessity and appropriateness of the course of the Impe-

rial Government can be appreciated only from the standpoint of the internal policy of the Empire, if, as seems to be the case, it is intended to infer that the course of the Imperial Government in regard to expelling foreigners can not be made a ground for inquiry or complaint by the Government of such foreigners.

The undersigned is unable to assent to this proposition; especially in view of the fact that, as the note of Mr. von Alvensleben is understood, it admits that the Imperial Government regards as a sufficient cause for expulsion the fact that exemption from military service has been acquired by emigration and naturalization in the United States. The basis of the treaty of 1868 is understood to have been the mutual acknowledgment by the contracting parties of the right of self-expatriation, upon compliance with the conditions therein agreed upon and defined. Expatriation thus accomplished was to be mutually and equally acknowledged by both contracting parties, who covenanted to treat the naturalized citizens of each other on the same footing as native-born citizens. There was no limitation as to the age at which persons might emigrate from either country and be naturalized in the other. It is, however, clear that to apply the fact that exemption from military service has resulted from emigration and naturalization abroad as a sufficient ground for expulsion, would be to destroy as to persons of a certain age the right of orderly return to and law-abiding sojourn in the country of origin, which is stipulated in the treaty of 1868 and may, within its plain meaning, be continued for more than two years; and in addition to creating a discrimination not contemplated by the treaty, would subject its construction wholly to the changing views and regulations of one of the contracting parties.

There is no disposition on the part of this Government to question the right of the Imperial Government to expel any foreigner who violates the laws or the policy of the Empire, or whose misconduct may cause his presence to be productive of disorder.

In this respect all citizens of the United States, whether native or naturalized, are held to the same accountability and stand on the same footing. But to concede that the fact of being a naturalized citizen of the United States, with the rights and exemptions incident to such citizenship, may, irrespective of offense by word or deed or general course of misconduct, be held of itself as to a certain class of citizens of the United States a sole and sufficient ground for expulsion, would be equivalent to a deprivation of all right of sojourn and peaceable residence in the German Empire except under the most precarious and arbitrary limitations.

The undersigned avails himself of this occasion, etc.,

T. F. BAYARD.

No. 293.

Mr. Bayard to Mr. von Alvensleben.

DEPARTMENT OF STATE,
Washington, March 25, 1887.

SIR: I have the honor to acknowledge, with thanks, the receipt of the copy of the Imperial order of the 11th of January last, respecting the Solomon Islands, which accompanied your note of the 15th ultimo.

Accept, etc.,

T. F. BAYARD.

No. 294.

Mr. von Alvensleben to Mr. Bayard.

IMPERIAL GERMAN LEGATION,
Washington, April 29, 1887. (Received April 29.)

MR. SECRETARY OF STATE: I have the honor, in obedience to instructions received, herewith to send you the reply of His Majesty the Emperor and King to the congratulatory letter addressed to His Majesty by the President of the United States on the occasion of the anniversary of His Majesty's birth. I also inclose a copy of this communication, which I most respectfully beg you to transmit to its destination.

Accept, Mr. Secretary of State, a renewed assurance of my most distinguished consideration.

H. V. ALVENSLEBEN.

[Inclosure.]

Emperor William to the President.

We, William, by the grace of God German Emperor, King of Prussia, etc., to the President of the United States of America.

GREAT AND GOOD FRIEND: I have received, with the deepest gratification, the congratulations, on attaining my ninetieth birthday, which you sent me under date of the 11th ultimo. In returning to you, Mr. President, my warmest thanks for your words of kindness and cordiality on this occasion, I express my sincere satisfaction on account of the amicable relations which exist between Germany and the United States, and beg you to rest assured that I entertain the best wishes for the happiness and prosperity of your country.

I gladly avail myself, at the same time, of this occasion to reiterate to you the assurance of my distinguished consideration.

WILLIAM.

BERLIN, *4th April*, 1887.

No. 295.

Mr. von Alvensleben to Mr. Bayard.

[Translation.]

IMPERIAL GERMAN LEGATION,
Washington, July 2, 1887. (Recived July 5.)

MR. SECRETARY OF STATE: The German ship *Elisabeth* was wrecked on the 8th of January last, on the coast of Virginia, about 14 miles from Cape Henry, on which occasion the entire crew, consisting of twenty-one officers and men, including the captain, lost their lives.

This calamity has aroused very general sympathy, both in the United States and Germany, especially since, in consequence thereof, of the seven men who formed the life-saving crew that came to the assistance of the distressed vessel, thereby faithfully performing their duty, five were drowned.

As soon as the desperate situation of the *Elisabeth* was observed from the coast, Captain Belanga, of life-saving station No. 4, at Dam Neck Mills, started in a boat, at about day-break, with six men from stations 3 and 4, for the purpose of rescuing the imperiled crew. Captain Belanga had succeeded in getting seven of the crew of the *Elisabeth* on board of the life-saving boat, while the rest were provided with life-

preservers, when a heavy sea capsized the boat and but two men of the life-saving crew, viz, Frank Tedford and Joseph E. Etheridge, escaped drowning; the others, together with the crew of the *Elisabeth*, perished. Captain Belanga and one of the men belonging to the crew of the wrecked vessel were got ashore alive, but expired immediately afterwards.

I deemed it my duty to transmit to His Majesty the Emperor and King a report concerning the heroic conduct of the life-saving crew in the performance of their arduous duty, and also concerning the sad fate of the majority of the said crew, in consequence of which their families were left destitute.

His Majesty the Emperor and King has been pleased to order that a gift of $1,000 in money be equally divided among the families of the five men who perished in the attempt to save the German crew, and whose names are given in the accompanying list. Each family is therefore entitled to receive $200. His Majesty has also ordered that Frank Tedford and Joseph E. Etheridge, the surviving members of the life-saving crew, shall each be presented with a gold watch, together with his likeness and monogram.

In obedience to instructions received, I have the honor, Mr. Secretary of State, to ask your kind mediation for the transmission of these gifts of His Majesty to the parties for whom they are intended.

I consequently have the honor to inclose a check for $1,000, together with the two watches, and I respectfully request that the receipts of the proper parties may in due time be transmitted to me.

Accept, etc.,

H. v. ALVENSLEBEN.

List of the members of the life-saving crew who perished while attempting to save the crew of the Elisabeth.

(1) Capt. Abel Belanga; leaves a wife.
(2) John Land; leaves a wife and children.
(3) Joseph Stone; leaves a wife and child.
(4) Joseph Spratley; leaves a wife and children.
(5) Joseph E. Belanga, brother of the captain of the same name; leaves a wife and child.

No. 296.

Mr. Bayard to Mr. von Alvensleben.

DEPARTMENT OF STATE,
Washington, July 18, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 2d instant, transmitting a check for $1,000, to be divided among the families of the five men of the American life-saving service who lost their lives in attempting to save the crew of the German ship *Elisabeth*, and gold watches for each of the survivors of the life-saving crew.

It has afforded me very great pleasure to forward the above-described generous gifts of His Imperial Majesty to my colleague, the Secretary of the Treasury, to be distributed in the manner pointed out in your note.

Accept, etc.,

T. F. BAYARD.

GREAT BRITAIN.

No. 297.

Mr. Bayard to Mr. Phelps.

No. 458.] DEPARTMENT OF STATE,
Washington, November 12, 1886.

SIR: * * * I have already written you asking whether from the British foreign office you could obtain a copy of the report first made by the officer in command of the Canadian vessel by whom the schooner *David J. Adams* was seized, and you will perceive from the reply of Mr. Graham, who represents the Canadian Government in the suit in the vice-admiralty court at Halifax, that he declines to promise to produce the reports made by these officers at the time of the seizure, in which the causes for such action would naturally be set forth.

In the course of your correspondence or conversation with Lord Iddlesleigh it might be well to draw his attention to the difficulties thrown in the way of the American fisherman in not being permitted to learn the nature and extent of the offense with which they were charged, and so be compelled to go to trial without those certainties of allegation which are held in courts of justice to be incumbent upon the claimant before he is entitled to recover in any suit.

It really appears that this method of Canadian procedure is belittling the important principles involved in the international question now under consideration between the United States and Great Britain.

I am, etc.,

T. F. BAYARD.

No. 298.

Mr. Bayard to Mr. Phelps.

No. 459.] DEPARTMENT OF STATE,
Washington, November 15, 1886.

SIR: The season for taking mackerel has now closed, and I understand the marine police force of the territorial waters in British North America has been withdrawn, so that no further occasion for the administration of a strained and vexatious construction of the convention of 1818, between the United States and Great Britain, is likely for several months at least.

During this period of comparative serenity, I earnestly hope that such measures will be adopted by those charged with the administration of the respective Governments as will prevent the renewal of the proceedings witnessed during the past fishing season in the ports and harbors of Nova Scotia, and at other points in the maritime provinces of the Dominion, by which citizens of the United States engaged in

open-sea fishing were subjected to much unjust and unfriendly treatment by the local authorities in those regions, and thereby not only suffered serious loss in their legitimate pursuit, but, by the fear of annoyance, which was conveyed to others likewise employed, the general business of open-sea fishing by citizens of the United States was importantly injured.

My instructions to you during the period of these occurrences have from time to time set forth their regrettable character, and they have also been brought promptly to the notice of the representative of Her Majesty's Government at this capital.

These representations, candidly and fully made, have not produced those results of checking the unwarranted interference (frequently accompanied by rudeness and an unnecessary demonstration of force) with the rights of our fishermen guarantied by express treaty stipulations, and secured to them—as I confidently believe—by the public commercial laws and regulations of the two countries, and which are demanded by the laws of hospitality to which all friendly civilized nations owe allegiance. Again I beg that you will invite Her Majesty's counselors gravely to consider the necessity of preventing the repetition of conduct on the part of the Canadian officials which may endanger the peace of two kindred and friendly nations.

To this end, and to insure to the inhabitants of the Dominion the efficient protection of the exclusive rights to their inshore fisheries, as provided by the convention of 1818, as well as to prevent any abuse of the privileges reserved and guarantied by that instrument forever to the citizens of the United States engaged in fishing, and responding to the suggestion made to you by the Earl of Iddesleigh, in the month of September last, that a *modus vivendi* should be agreed upon between the two countries to prevent encroachment by American fishermen upon the Canadian inshore fisheries, and equally to secure them from all molestation when exercising only their just and ancient rights, I now inclose the draft of a memorandum which you may propose to Lord Iddesleigh, and which, I trust, will be found to contain a satisfactory basis for the solution of existing difficulties, and assist in securing an assured, just, honorable, and, therefore, mutually satisfactory settlement of the long-vexed question of the North Atlantic fisheries.

I am encouraged in the expectation that the propositions embodied in the memorandum referred to will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States minister in London, the draft of a protocol which in substance coincides with the first article of the proposal now sent to you, as you will see by reference to Vol. 1 of the U. S. Diplomatic Correspondence for 1866, p. 98 *et seq.*

I find that, in a published instruction to Sir F. Bruce, then Her Majesty's minister in the United States, under date of May 11, 1866, the Earl of Clarendon, at that time Her Majesty's secretary of state for foreign affairs, approved them, but declined to accept the final proposition of Mr. Seward's protocol, which is not contained in the memorandum now forwarded.

Your attention is drawn to the great value of these three propositions, as containing a well-defined and practical interpretation of Article 1 of the convention of 1818, the enforcement of which co-operatively by the two Governments, it may reasonably be hoped, will efficiently remove those causes of irritation of which variant constructions hitherto have been so unhappily fruitful.

In proposing the adoption of a width of ten miles at the month as a proper definition of the bays in which, except on certain specified coasts, the fishermen of the United States are not to take fish, I have followed the example furnished by France and Great Britain in their convention signed at Paris, on the 2d of August, 1839. This definition was referred to and approved by Mr. Bates, the umpire of the commission under the treaty of 1853, in the case of the United States fishing schooner *Washington*, and has since been notably approved and adopted in the convention signed at The Hague, in 1882, and subsequently ratified, in relation to fishing in the North Sea, between Germany, Belgium, Denmark, France, Great Britain, and the Netherlands.

The present memorandum also contains provisions for the usual commercial facilities allowed everywhere for the promotion of legitimate trade, and nowhere more fully than in British ports and under the commercial policies of that nation. Such facilities can not with any show of reason be denied to American fishing-vessels when plying their vocations in deep-sea fishing grounds in the localities open to them equally with other nationalities. The convention of 1818 inhibits the "taking, drying, or curing fish" by American fishermen in certain waters and on certain coasts, and when these objects are effected, the inhibitory features are exhausted. Everything that may presumably guard against an infraction of these provisions will be recognized and obeyed by the Government of the United States, but should not be pressed beyond its natural force.

By its very terms and necessary intendment, the same treaty recognizes the continuance permanently of the accustomed rights of American fishermen, in those places not embraced in the renunciation of the treaty, to prosecute the business as freely as did their forefathers.

No construction of the convention of 1818 that strikes at or impedes the open-sea fishing by citizens of the United States can be accepted, nor should a treaty of friendship be tortured into a means of such offense, nor should such an end be accomplished by indirection. Therefore, by causing the same port regulations and commercial rights to be applied to vessels engaged therein as are enforced relative to other trading craft, we propose to prevent a ban from being put upon the lawful and regular business of open-sea fishing.

Arrangements now exist between the Governments of Great Britain and France, and Great Britain and Germany, for the submission in the first instance of all cases of seizure to the joint examination and decision of two discreet and able commanding officers of the navy of the respective countries, whose vessels are to be sent on duty to cruise in the waters to be guarded against encroachment. Copies of these agreements are herewith inclosed for reference. The additional feature of an umpire in case of a difference of opinion is borrowed from the terms of Article 1 of the treaty of June 5, 1854, between the United States and Great Britain.

This same treaty of 1854 contains in its first article provision for a joint commission for marking the fishing limits, and is therefore a precedent for the present proposition.

The season of 1886 for inshore fishing on the Canadian coasts has come to an end, and assuredly no lack of vigilance or promptitude in making seizures can be ascribed to the vessels or the marine police of the Dominion. The record of their operations discloses but a single American vessel found violating the inhibitions of the convention of 1818, by fishing within three marine miles of the coast. The numerous seizures made have been of vessels quietly at anchor in established

ports of entry, under charges which, up to this day, have not been particularized sufficiently to allow of an intelligent defense. Not one has been condemned after trial and hearing, but many have been fined without hearing or judgment, for technical violations of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them. In no instance has any resistance been offered to Canadian authority, even when exercised with useless and irritating provocation.

It is trusted that the agreement now proposed may be readily accepted by Her Majesty's ministry.

Should the Earl of Iddesleigh express a desire to possess the text of this dispatch, in view of its intimate relation to the subject-matter of the memorandum and as evidencing the sincere and cordial disposition which prompts this proposal, you will give his lordship a copy.

I am, sir, your obedient servant,

T. F. BAYARD.

[Inclosure 1 in No. 459.]

Proposals for settlement of all questions in dispute in relation to the fisheries on the north-eastern coasts of British North America.

Whereas in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was agreed between the high contracting parties "that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador to and through the Straits of Belleisle; and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restriction as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a mixed commission for the following purposes, namely:

(1) To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coasts and in the adjacent waters of the British North American colonies, in conformity with the first article of the convention of 1818, except that the bays and harbors from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said article, are hereby agreed to be taken to be such bays and harbors as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbors shall be measured from a straight line drawn across the bay or harbor, in the part nearest the entrance, at the first point where the width does not exceed 10 miles; the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged.

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within three marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing, or preparing to fish within those limits, not included within the limits within which, under the treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

ARTICLE III.

For the purpose of executing Article I of the convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing vessel of the United States shall be seized for violating the provisions of the aforesaid convention by fishing or preparing to fish within three marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of the different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the vice-admiralty court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the umpire.

ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same rules and regulations and payment of the same port charges as are prescribed for other vessels of the United States.

ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the high contracting parties agree to appoint a joint commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the treaty of 1818, said commission to make awards therefor to the parties injured.

ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian customs regulations, and the United States agrees to admonish its fishermen to comply with them, and cooperate in securing their enforcement.

[Inclosure 2 in No. 459.—Translation.]

Arrangement between France and Great Britain concerning the Newfoundland fisheries, November 14, 1885.

ARRANGEMENT.

The undersigned commissioners delegated by the Governments of France and Great Britain, to the end of seeking—apart from the treaties now in force which they are not authorized either to modify or to interpret—the means of preventing and settling differences relative to the use of the fisheries on the coasts of Newfoundland, have drawn up by common accord, under reserve of the approbation of their respective Governments, the following engagements [*dispositions*

ARTICLE I.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland engage to conform to the hereinafter expressed provisions for assuring to French fishermen, in the execution of existing treaties and particularly the declaration of 1783, the free exercise of their industry upon the coasts of Newfoundland without hinderance or obstacle of any kind on the part of British subjects

ARTICLE II.

The Government of the French Republic engages for its part, in exchange for the assurance granted to the French fishermen by the application of the provisions set forth in the present arrangement, not to make any remonstrance against the creation of the establishments necessary to the development of any industry other than that of the fisheries, upon the parts of the coast of Newfoundland comprised between Cape St. John and Cape Ray, marked in red upon the map hereto annexed and which also are not mentioned in the schedule, hereto annexed, comprising the portions of territory to which the present paragraph does not apply.

It likewise engages not to disturb the resident British subjects in respect of establishments actually set up on the coast comprised between Cape St. John and Cape Ray to the northward of each cape. But new establishments shall not be set up on the parts of the coast comprised in the schedule mentioned in the foregoing paragraph.

ARTICLE III.

Notwithstanding the interdiction stipulated in the closing part of the second paragraph of the foregoing article, in case a mine be found in the neighborhood of any part of the coast comprised in the schedule annexed to the present arrangement, the Government of the French Republic engages not to oppose the enjoyment by the interested parties, in order to work the said mine, of all facilities compatible with the free exercise of the French fisheries.

To this end a wharf may be established on a point of the coast designated by common accord by the commanders of the cruisers of the two countries.

The buildings necessary to the working of the mine, such as dwelling-houses, workshops, storehouses, etc., shall be erected on the part of the territory situated outside the limits fixed in the annexed schedule for the exercise of the French fishery. They shall be connected with the wharf by a single line of railway, of one or two tracks.

To the end of facilitating the operations of lading and unlading, sheds and storehouses may, nevertheless, be constructed on both sides of the railway for the temporary storage of ore and materials necessary for the mine, within a space not to exceed 15 meters on each side of the track, such space to be surrounded by a fence or inclosure of some kind.

No establishment other than the wharf, the railway, and the sheds and store-houses above mentioned, can, under the final provision of the second paragraph of the foregoing article, be set up on the part of the coast reserved for fishing, within the limits fixed in the schedule hereto annexed.

The provisions of the present article shall be likewise applied to the working of a mine outside of these limits, on condition that it shall have been previously ascertained, by common accord, by the commanders of the cruisers of the two countries, that the working of such mine shall not be of a nature to hinder the free exercise of the French fishery.

ARTICLE IV.

It is agreed that the French shall retain, to the fullest extent, upon all that part of the coast comprised between Cape St. John and Cape Ray, and as it is defined by the

treaties, the right to take, dry, and cure fish [*le droit de pêcher, sécher, préparer le poisson*] as well as the right to cut, anywhere save in inclosed properties, the wood necessary for their drying-stages, cabins, and fishing-vessels.

ARTICLE V.

The surveillance and police of the fisheries shall be exercised by vessels of the military marine of the two countries, under the conditions hereinafter laid down—the commanders of the cruisers having, under these conditions, sole authority and competence in all matters concerning the fisheries and the operations pertaining thereto.

ARTICLE VI.

The French and English fishing vessels or boats shall be registered according to the administrative regulations of the country to which they belong, and shall plainly carry distinctive marks permitting their identity to be ascertained from a distance.

The captains, masters, or skippers [*patrons*] shall carry papers to prove the nationality of their vessels or boats.

ARTICLE VII.

The commanders of the cruisers of each nation shall mutually give information of infractions of the rules established by the foregoing article, which may be committed by the vessels or boats of the other nation.

ARTICLE VIII.

The cruising vessels of the two countries shall be competent to ascertain an infractions of existing treaties, particularly of the declaration of 1783, by the terms whereof the British subjects shall not "interrupt in any manner, by their competition, the fishery of the French during the temporary exercise of it which is granted to them, upon the coasts of the island of Newfoundland."

ARTICLE IX.

Upon the complaint of the French fishermen, or upon their application for the enjoyment of their fishing right, the commanders of the English cruising vessels will oppose—and if there be no English cruiser in sight the commanders of the French cruisers may oppose—all operations of fishing by British subjects which may interfere with the industry of said French fishermen; they will remove the boats or vessels which may be an obstacle to such industry.

To this end the commanders of the French cruising vessels may serve the necessary injunctions upon the parties in interest, and, in case of resistance, seize their fishing-*tackle* implements (*engins de pêche*) and set the same on shore or deliver them up to the commanders of the cruisers of Her Britannic Majesty.

In case no inconvenience shall be found to result for the French fishermen and when no complaint or demand shall have been made on their part looking to the unimpeded use of their right of fishing, the commanders of the French cruisers will not oppose the exercise of the fisheries by British subjects.

ARTICLE X.

In the event of the natives hindering or molesting on land, by their acts, the drying and curing of fish and in general the diverse operations which depend upon the exercise of the French fisheries on the coast of Newfoundland, a statement of proof of the damage caused shall be drawn up by the commanders of Her Britannic Majesty's cruising vessels, and in their absence by the commanders of the French cruisers.

In this latter case, the statement shall be admissible as evidence before the commanders of Her Britannic Majesty's cruisers, in their capacity as magistrates in administering justice.

ARTICLE XI.

If an offense is committed, or an injury caused, the commanders of the cruising vessels of the delinquent's nationality, and in their absence the commanders of the cruising vessels of the plaintiff's nationality, shall estimate the gravity of the facts brought to their cognizance and assess the damage suffered by the party aggrieved.

They shall draw up, in the due case, and according to the forms usual in their country, statements in evidence of the facts such as they shall appear, whether from the declarations of the interested parties or from the testimony collected.

The statement shall be admissible as evidence before the commanders of the cruisers of the delinquent's nationality, within the limits of their competence.

If the case seem to him sufficiently grave to justify such a step, the commander of the cruising vessel of the plaintiff's nationality shall have the right—if there be not in sight any cruiser of the delinquent's nationality—to take into custody (*s'assurer de*) either the delinquent in person or his boat, in order to deliver them up to the commanders of the cruising vessels of their nationality.

ARTICLE XII.

The commanders of the English and French cruising vessels shall, within the limit of their competence, administer justice summarily [*faire droit d'urgence*] upon the complaints brought before them, whether preferred directly by the interested party or through the medium of the commanders of the cruisers of the other nation.

ARTICLE XIII.

Resistance to the orders or injunctions of the commanders of the cruising vessels charged with the police of the fisheries, or of persons acting under their orders, shall, without reference to the nationality of the cruiser, be deemed resistance to the competent authority to the end of repressing the act charged.

ARTICLE XIV.

When the act charged is not grave, but, nevertheless, shall have occasioned damage, the commanders of the cruising vessels may adjust the dispute [*concilier*] between the interested parties, and fix the indemnity to be paid, with the consent of the parties.

ARTICLE XV.

The French Government renounces, for its citizens, the salmon fishery in running waters, and does not reserve the fishery for this fish, save at sea and in the mouths of rivers as far as salt-water extends; but it is forbidden to set fixed barriers which may impede internal navigation or the free passage of fish.

ARTICLE XVI.

French fishermen shall be exempt from any tax upon the introduction into that part of the island of Newfoundland comprised between Cape St. John and Cape Ray and to the northward of those capes, of all objects, materials, provisions, etc., necessary to their industry, their subsistence, and their temporary establishment upon the coast of that Britannic possession.

They shall, likewise, be exempt in that same part of the island, from all light-house, port, or other navigation dues.

ARTICLE XVII.

The French fishermen shall have the right to buy bait, herring and caplin, on land or at sea, in the harbors of Newfoundland, without tax or impediment of any kind, after the 5th day of April of each year, and until the end of the fishing season.

ARTICLE XVIII.

The employment of French subjects, at the rate of one guardian, with his family, for each harbor, is authorized in order to guard the French establishments during the cessation of the fishing season.

In the harbors of large extent where the temporary establishments of French citizens are too far apart to permit of one guardian watching over the establishments the presence of a second guardian with his family will be authorized.

ARTICLE XIX.

Every fishing vessel, every article of equipment or rigging of a fishing vessel, and every net, line, buoy, or implement, whatever, which may have been found or picked up, shall be as soon as possible delivered to the competent authorities of the nation of the salvor.

The articles found shall be restored to the owners or their representatives through the care of the said competent authorities and under reserve of the prior guarantee of the salvors' rights.

The indemnity to be paid to the salvors shall be fixed in conformity with the legislation of their country.

ARTICLE XX.

The provisions of the present arrangement, with the exception of those of Articles 1, 2, and 18, shall only be applicable within the season during which the treaties grant to Frenchmen the right of taking and curing fish.

In witness whereof the undersigned commissioners have drawn up the present arrangement, subject to the approval of their respective Governments, and hereunto set their names.

Done at Paris, in duplicate, the 14th November, 1885.

CH. JAGERSCHMIDT.
BIGREL.
FRANCIS CLARE FORD.
EDMUND BURKE PENNELL.

[Inclosure 3 in No. 459.]

TREATIES BETWEEN GREAT BRITAIN AND FRANCE RELATIVE TO THE NEWFOUNDLAND FISHERY; RENEWED BY ARTICLE 13 OF THE TREATY OF PEACE OF 30TH MAY, 1841. (PAGE 162.)

(1) *Treaty of peace and friendship between Great Britain and France, the 11th April*, 1713.

[Extract.—Translation.]

13. The island called Newfoundland, with the adjacent islands, shall from this time forward belong of right wholly to Britain; and to that end the town and fortress of Placentia, and whatever other places in the said island are in the possession of the French, shall be yielded and given up within seven months from the exchange of the ratifications of this treaty, or sooner if possible, by the Most Christian King, to those who have a commission from the Queen of Great Britain for that purpose. Nor shall the most Christian King, his heirs and successors, or any of their subjects, at any time hereafter lay claim to any right to the said island or islands, or to any part of it or them. Moreover it shall not be lawful for the subjects of France to fortify any place in the said island of Newfoundland, or to erect any buildings there, besides stages made of boards and huts necessary and usual for drying of fish, or to resort to the said island beyond the time necessary for fishing and drying of fish.

But it shall be allowed to the subjects of France to catch fish and to dry them on land, in that part only, and in no other besides that, of the said island of Newfoundland, which stretches from the place called Cape Bonavista to the northern point of the said island, and from thence running down by the western side, reaches as far as the place called Point Riche. But the island called Cape Breton as also all others, both in the mouth of the river of St. Lawrence and in the Guelph of the same name, shall hereafter belong of right to the French; and the most Christian King shall have all manner of liberty to fortify any place or places there.

Done at Utrecht, 31st March (11th April), 1713.

[L. S.] JOHN BRISTOL, *C. P. S.*
[L. S.] STRAFFORD.
[L. S.] HUXELLES.
[L. S.] MESNAGER.

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(2) *Definitive treaty of peace between Great Britain and France. Signed at Paris, 10th February*, 1763.

[Extract.—Translation.]

V. The subjects of France shall have the liberty of fishing and drying, on a part of the coasts of the island of Newfoundland, such as it is specified in Article 13 of the treaty of Utrecht; which article is renewed and confirmed by the present treaty (except what relates to the island of Cape Breton, as well as the other islands and coasts in the mouth and in the Gulph of St. Lawrence). And his Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulph St. Lawrence on condition that the subjects of France do not exercise the said fishery, but at the distance of 3 leagues from all the coasts belonging to Great Britain, as well those of the Continent as those of the islands situated in the said Gulph St. Lawrence. And as to what relates to the fishery on the coasts of the island

of Cape Breton out of the said Gulph, the subjects of the most Christian King shall not be permitted to exercise the said fishery but at the distance of 15 leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia or Acadia, and everywhere else out of the said Gulph, shall remain on the foot of former treaties.*

VI. The King of Great Britain cedes the islands of St. Pierre and Miquelon, in full right, to his Most Christian Majesty, to serve as a shelter to the French fishermen; and His said Most Christian Majesty engages not to fortify the said buildings upon them but merely for the convenience of the fishery, and to keep upon them a guard of fifty men only for the police.

Done at Paris, the 10th of February, 1763.

[L. S.] BEDFORD, *C. P. S.*
[L. S.] CHOISEUL, *Duc de Praslin.*
[L. S.] EL MARQ. DE GRIMALDI.

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(3) *Definitive treaty of peace between Great Britain and France. Signed at Versailles, 3d September,* 1783.

[Extract.—Translation.]

IV. His Majesty the King of Great Britain is maintained in his right to the island of Newfoundland and to the adjacent islands, as the whole were assured to him by the 13th article of the treaty of Utrecht, excepting the island of St. Pierre and Miquelon, which were ceded in full right by the present treaty to His Most Christian Majesty.

V. His Majesty the Most Christian King, in order to prevent the quarrels which have hitherto arisen between the two nations of England and France, consents to renounce the right of fishing, which belongs to him in virtue of the aforesaid article of the treaty of Utrecht, from Cape Bonavista to Cape St. John, situated on the eastern coast of Newfoundland, in 50° north latitude; and His Majesty the King of Great Britain consents on his part that the fishery assigned to the subjects of His Most Christian Majesty, beginning at the said Cape St. John, passing to the north and descending by the western coast of the island of Newfoundland, shall extend to the place called Cape Raye, situated in 47° 50′ latitude. The French fishermen shall enjoy the fishery which is assigned to them by the present article as they had the right to enjoy that which was assigned to them by the treaty of Utrecht.

VI. With regard to the fishery in the Gulph of St. Lawrence, the French shall continue to exercise it conformably to the Vth article of the treaty of Versailles.

Done at Versailles, the 3d of September, 1783.

[L. S.] MANCHESTER.
[L. S.] GRAVIER DE VERGENNES.

(*Annex* 1.) *British declaration. Signed at Versailles 3d September,* 1783.

[Extract.]

The King having entirely agreed with His Most Christian Majesty upon the articles of the definitive treaty, will seek every means which shall not only insure the

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* Extract from the treaty of peace between Great Britain and France. Signed at Whitehall, 16th November, 1686:

V. The subjects, inhabitants, merchants, commanders of ships, masters and mariners of the kingdoms, provinces, and dominions of each King, respectively, shall abstain and forbear to trade and fish in all the places possessed or which shall be possessed by one or the other party in America, viz, the King of Great Britain's subjects shall not drive their commerce and trade, nor fish in the havens, bays, creeks, roads, shoals, or places which the Most Christian King holds or shall hereafter hold in America; and in like manner the Most Christian King's subjects shall not drive their commerce and trade, nor fish in the havens, bays, creeks, roads, shoals, or places which the King of Great Britain possesses or shall hereafter possess in America. And if any ship or vessel shall be found trading or fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading proof being made thereof, shall be confiscated; nevertheless, the party who shall find himself aggrieved by such sentence or confiscation shall have liberty to apply himself to the privy council of that king by whose governors or judges the sentence has been given against him; but it is always to be understood that the liberty of navigation ought in no manner to be disturbed where nothing is committed against the genuine sense of this treaty.

execution thereof with his accustomed good faith and punctuality, but will besides give on his part all possible efficacy to the principles which shall prevent even the least foundation of dispute for the future.

To this end, and in order that the fisherman of the two nations may not give cause for daily quarrels, His Britannic Majesty will take the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be found there to be removed. His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing vessels.

The thirteenth article of the treaty of Utrecht, and the method of carrying on the fishery, which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there; it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting, in any manner, the French fishermen during their fishing, nor injuring their scaffolds during their absence.

The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations; and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel.

Given at Versailles the 3d of September, 1783.

[L. S.] MANCHESTER.

(*Annex* 2.) *French counter-declaration. Signed at Versailles* 3*d September*, 1783.

[Extract.]

The principles which have guided the King, in the whole course of the negotiations which preceded the re-establishment of peace, must have convinced the King of Great Britain that His Majesty has had no other design than to render it solid and lasting, by preventing as much as possible, in the four quarters of the world, every subject of discussion and quarrel. The King of Great Britain undoubtedly places too much confidence in the uprightness of His Majesty's intentions not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations.

As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns upon this matter, it is sufficiently ascertained by the fifth article of the treaty of peace signed this day and by the declaration likewise delivered to-day by His Britannic Majesty's ambassador extraordinary and plenipotentiary; and His Majesty declares that he is fully satisfied on this head.

In regard to the fishery between the island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on by either party but to the middle of the channel. His Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen.

Given at Versailles the 3d of September, 1783.

[L. S.] GRAVIER DE VERGENNES.

[Inclosure 4 in No. 459.]

Mr. Seward to Mr. Adams.

No. 1737.] DEPARTMENT OF STATE,
Washington, April 10, 1866.

SIR: I send you a copy of a very suggestive letter from Mr. Richard D. Cutts, who, perhaps, you are aware, was employed as surveyor for marking, on the part of the United States, the fishery limits under the reciprocity treaty. Mr. Cutts's long familiarity with that subject practically and theoretically entitles his suggestions to respect.

It is desirable to avoid any collision or misunderstanding with Great Britain on the subject growing out of the termination of the reciprocity treaty. With this view I inclose a draught of a protocol, which you may propose to Lord Clarendon for a temporary regulation of the matter. If he should agree to it, it may be signed. When

signed it is desirable that the instructions referred to in the concluding paragraph should at once be dispatched by the British Government.

As the fishing season is at hand, the collisions which might be apprehended may occur when that season advances.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

Mr. Cutts to Mr. Seward..

WASHINGTON, *April* 7, 1865.

SIR: For a full understanding of the differences which now exist in regard to the rights which belong to American fishermen in the seas bordering the British North American colonies it is necessary to refer to the treaties and negotiations which preceded the convention of 1818, so far as they relate to the fisheries.

DEFINITIVE TREATY OF PEACE, 1783.

ARTICLE 3. "It is agreed that the people of the United States shall continue to enjoy, unmolested, the right to take fish of any kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and, also, that they shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, but not to dry or cure the same on that island; and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America."

In the treaty of Ghent, terminating the last war with Great Britain, no allusion was made to the subject of the fisheries.

In July, 1815, complaint was made that American fishing vessels, engaged in the cod-fishery off the coast of Nova Scotia, had been ordered away by a British sloop-of-war, and this act, while it was declared to be totally unauthorized by His Majesty's Government, led to a correspondence between our minister at London (John Quincy Adams) and Lord Bathurst, in which the United States adhered to the right and liberty of fishing as secured by the treaty of 1783, on the ground that those rights and liberties were not grants from the King, but the permanent results of a partition of rights at the time of the separation of the two countries, and contended, therefore, that they could not be impaired by a state of war. On the other side it was asserted that while the right described in the treaty may not have been impaired, the "liberties" were a concession dependent on the treaty, and as the treaty was abrogated by the war, so also were the "liberties."

CONVENTION OF 1818.

At the third conference held between the American and British plenipotentiaries—Messrs. Gallatin and Rush on the part of the United States, and Messrs. Robinson and Goldburn on the part of Great Britain—the former presented a proposition in regard to the fisheries in almost the identical language of the first article of the convention afterwards adopted, with the understanding that the liberty of fishing therein described should be considered as a *permanent right, and not to be abrogated by the mere fact of a war between the two parties.*

At the fifth conference a counter project was submitted by the British plenipotentiaries not materially differing from the above, except that the renunciatory clause was omitted, and the following paragraph added:

"And in order the more effectually to guard against smuggling, it shall not be lawful for vessels of the United States engaged in the said fishery to have on board any goods, wares, or merchandise whatever, except such as may be necessary for the prosecution of the fishery, a support of the fisherman while engaged therein or in the prosecution of their voyages to and from the said fishing grounds. And any vessel of the United States which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo."

In regard to this paragraph, and to another referring to fishing at the mouths of rivers, Messrs. Gallatin and Rush presented the following remarks:

"Whatever extent of fishing ground may be secured to American fishermen, the American plenipotentiaries are not prepared to accept it on a tenure, or on conditions different from those on which the whole has been heretofore held. Their instructions did not anticipate that any new terms or restrictions should be annexed, as none were suggested in the proposals made by Mr. Bagot to the American Government. The clauses forbidding the spreading of nets, and making vessels liable to confiscation, in

case any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the fishermen to endless vexations."

At the seventh conference, held on the 13th October, 1818, the British plenipotentiaries submitted a second counter project, conforming with the views and free from the obligations presented by Messrs. Gallatin and Rush, and this project, being agreed to, constituted the first article of the convention, as follows:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of said United States shall have forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Ramea Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Goly, on the southern coast of Labrador, and through the Straits of Belle Isle, and thence northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador. But, so soon as the same or any portion thereof shall be settled it shall not be lawful for the said fishermen to dry or cure fish at any such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground; and the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish, or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them."

The differences which have heretofore arisen between the United States and Great Britain, touching the exercise of the rights and liberties secured to American fishermen, may be classed under two principal heads:

1. As to the construction of the renunciatory clause of the convention.

Under this clause Great Britain has contended that no American fisherman has the right to fish within 3 marine miles of the entrance to any "bay," which "from its geographical position may be properly considered as included within the British possessions," and that the entrance to such bay must be designated by a line drawn from headland to headland. In support of this construction it has been urged that "if the convention was intended to stipulate simply that American fishermen should not take fish within 3 miles of the coast, there was no occasion for using the word *bay* at all, but the proviso at the end of the article shows that the word 'bay' was used designedly, for it is expressly stated in that proviso that, under certain circumstances, the American fishermen can enter *bays*, by which is evidently meant that they may, under these circumstances, pass the sea line which forms the entrance to the bay."

According to this construction, so undefined and indefinite, the bays of Fundy and Chaleur, or any extent of the sea lying between distant headlands, may be reserved under the name of bay, for the exclusive use of British fishermen.

The United States are firmly opposed to such a construction, believing it to be totally unauthorized by the language or intention of the convention, or by the right acquired by usage. In the opinion of this Government, repeatedly announced at different periods, the American fishermen have a clear right to the use of the fishing grounds lying off the provincial coasts, whether in the main ocean or in the inland seas, provided they do not approach within 3 marine miles of such coasts or of the entrance to any bay, creek, or harbor not more than 6 miles in width; and to such bays only does the renunciatory clause in the first article apply. They object to the British construction on the ground that, if such arms of the sea as the bays of Fundy and Chaleur, or such curves in the coast as the bay of Miramichi, or such part of the sea included between headlands as the wide indentation on the coast of Cape Breton, lying between Cape North and Cape Percy, were the "bays" renounced, there would be an inconsistency, if not a clear contradiction, in the very next sentence of the article, which authorizes American fishermen "to enter *such bays* for the purpose of shelter and of repairing damages." It can hardly be contended that "shelter" can be obtained in the bay of Fundy, an arm of the sea 40 miles wide and 100 in length, or that either shelter, wood, or water can be obtained, or damages repaired, in the

curve of the coast between the headlands of St. Escumenac and Blackland Point, designated on the chart as the bay of Miramichi. It is objected to, also, for the reason that it would permit the drawing of lines anywhere in the gulf or on the coast from headland to headland, any one of which could be made to embrace, at one sweep, many bays, creeks, and harbors, besides a portion of the high seas, and from which the American fishermen could be kept an indefinite distance, and be thereby driven from the fishing grounds.

Moreover, it is believed that while the British construction is not necessary to secure to the people of the provinces the inshore fisheries, or to protect their rights of property, or their territorial jurisdiction, all of which are amply secured by the 3 marine miles restriction, it would materially restrict the full enjoyment of the right which we possessed before the Revolution, which was acknowledged in the definitive treaty of peace, which was not affected by the treaty of Ghent, and which, according to the decision of Great Britain, expressed in the correspondence which preceded the convention, was not abrogated by the war of 1812. That *right* is "to take fish" of any kind "in the gulf of St. Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish." No construction liable to such indefinite extension or application can be correct or be allowed.

In 1845 Her Majesty's Government receded from the above position, so far as the bay of Fundy is concerned, and from that date our right of fishery in that bay has not been a matter of dispute. It is now open to American fishermen, to be used in the same manner as the more open sea; provided, however, that they do not take fish within 3 marine miles of the coasts or of the entrance to any bay, creek, or harbor of Nova Scotia or New Brunswick, between which two provinces that arm of the sea extends.

2. As to the restrictions imposed by the colonies to prevent the privileges of shelter, etc., from being abused by American fishermen.

The fishermen of the United States are frequently compelled by rough weather, or by injuries to their vessels received in a gale, or in consequence of collision or other accident, to seek the nearest port for shelter and repairs. And it is also necessary at stated intervals, while they are engaged during the summer and fall in following their avocation, that they should take on board a resupply of wood and water; and for either of these purposes they have the right, so long as the convention continues in force, to resort to the bays and harbors of the different provinces.

Some of the colonial laws, especially those of Nova Scotia, enacted to prevent the abuse of these privileges, are of such a stringent character as to almost annul the right, or make it at least hazardous for American fishermen to attempt to enjoy it. Seizures are made on the slightest suspicion, or on false pretenses or charges; heavy bonds are required before suit can be instituted to recover; the owner of the vessel must bring the charges, and if unsuccessful, he is mulcted in treble costs, besides the loss of vessel and cargo.

In this connection it must be borne in mind that a proposition was made to introduce into the convention a stipulation that "it shall not be lawful for the vessels of the United States, engaged in the said fishery, to have on board any goods, wares, or merchandise whatever, except such as may be necessary for the prosecution of the fishery or support of the fishermen," etc., and that this proposed stipulation having been objected to by Messrs. Gallatin and Rush, on the ground that it "would expose our fishermen to endless vexations," it was withdrawn by the British plenipotentiaries.

Such was the condition of the controversy between the United States and Great Britain as to the limits of our right of fishery on the provincial coasts, and such the severe restrictions, amounting almost to probibition, on the privilege of entering bays and harbors for shelter, wood, or water, previous to 1854, the date of the late reciprocity treaty with Great Britain. That treaty having expired on the 17th of March last, the American fishermen must fall back on their rights, as thus explained and as heretofore enjoyed.

I have the honor to be, very respectfully, your obedient servant,

RICHARD D. CUTTS.

[PROTOCOL.]

Whereas in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was declared that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within certain limits heretofore mentioned;" and whereas differences have arisen in regard to the extent of the above-mentioned re-

nunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to appoint, and do hereby authorize the appointment of a mixed commission for the following purposes, namely:

1. To agree upon and define by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coasts and in the seas adjacent of the British North American colonies, in conformity with the first article of the convention of 1818; the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

2. To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted.

Provided, however, That the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws, mutually acknowledged and accepted by the President of the United States, by and with the consent of the Senate, and by Her Majesty the Queen of Great Britain.

Pending a definitive arrangement on the subject, the United States Government engages to give all proper orders to officers in its employment, and Her Britannic Majesty's Government engages to instruct the proper colonial or other British officers to abstain from hostile acts against British and United States fishermen respectively.

(Foreign Relations, 1866, vol. 1, p. 98.)

[Inclosure 5 in No. 459.—Translation.]

Convention between Her Britannic Majesty, the German Emperor, King of Prussia, the King of the Belgians, the King of Denmark, the President of the French Republic, and the King of the Netherlands, for regulating the police of the North Sea fisheries.

(Signed at The Hague, May 6, 1882.)

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; His Majesty the King of Denmark; the President of the French Republic; and His Majesty the King of the Netherlands, having recognized the necessity of regulating the police of the fisheries in the North Sea, outside territorial waters, have resolved to conclude for this purpose a convention, and have named their plenipotentiaries as follows:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the honorable William Stuart, companion of the Most Honorable Order of the Bath, etc., her envoy extraordinary and minister plenipotentiary at The Hague; Charles Malcolm Kennedy, esq., companion of the Most Honorable Order of the Bath, etc., head of the commercial department of the foreign office; and Charles Cecil Trevor, esquire, barrister at law, assistant secretary to the Board of Trade, etc.;

His Majesty the German Emperor, King of Prussia, Veit Richard von Schmidthals, knight of the Order of the Red Eagle of the third class, and of the Order of St. John, etc., councilor of legation, his chargé d'affaires at The Hague; and Peter Christian Kinch Donner, knight of the Order of the Red Eagle of the fourth class with the sword, and of the crown of the fourth class, etc., his councilor of state, captain in the navy, on the reserve;

His Majesty the King of the Belgians, the Baron d'Anethan, commander of the Order of Leopold, etc., his envoy extraordinary and minister plenipotentiary at The Hague; and M. Léopold Orban, commander of the Order of Leopold, etc., his envoy extraordinary and minister plenipotentiary, director-general of the political department in the ministry of foreign affairs;

His Majesty the King of Denmark, Carl Adolph Bruun, knight of the Order of the Danebrog, etc., captain in the navy;

The President of the French Republic, the Count Lefèbvre de Béhaine, commander of the national order of the Legion of Honor, etc., envoy extraordinary and minister

plenipotentiary of the French Republic at The Hague; and M. Gustave Émile Mancel, officer of the national order of the Legion of Honor, etc., commissary of marine;

His Majesty the King of the Netherlands, the Jonkheer Willem Frederik Rochussen, commander of the Order of the Lion of the Netherlands, etc., his minister of foreign affairs, and Eduard Nicolaas Rahusen, knight of the Order of the Lion of the Netherlands, etc., president of the committee for sea fisheries:

Who, after having communicated the one to the other their full powers, found in good and due form, have agreed upon the following articles:

ARTICLE I.

The provisions of the present convention, the object of which is to regulate the police of the fisheries in the North Sea, outside territorial waters, shall apply to the subjects of the high contracting parties.

ARTICLE II.

The fishermen of each country shall enjoy the exclusive right of fishery within the distance of 3 miles from low-water mark along the whole extent of the coasts of their respective countries, as well as of the dependent islands and banks.

As regards bays, the distance of 3 miles shall be measured from a straight line drawn across the bay in the part nearest the entrance, at the first point where the width does not exceed 10 miles.

The present article shall not in any way prejudice the freedom of navigation and anchorage in territorial waters accorded to fishing boats, provided they conform to the special police regulations enacted by the powers to whom the shore belongs.

ARTICLE III.

The miles mentioned in the preceding article are geographical miles, whereof 60 make a degree of latitude.

ARTICLE IV.

For the purpose of applying the provisions of the present convention, the limits of the North Sea shall be fixed as follows:

1. On the north by the parallel of the 61st degree of latitude.

2. On the east and south:

(1) By the coasts of Norway, between the parallel of the 61st degree of latitude and Lindesnaes light-house (Norway);

(2) By a straight line drawn from Lindesnaes light-house (Norway) to Hanstholm light-house (Denmark);

(3) By the coasts of Denmark, Germany, the Netherlands, Belgium, and France, as far as Griz Nez light-house.

3. On the west:

(1) By a straight line drawn from Griz Nez light-house (France) to the eastern-most light-house at South Foreland (England);

(2) By the eastern coasts of England and Scotland;

(3) By a straight line joining Duncansby Head (Scotland) and the southern point of South Ronaldshay (Orkney Islands);

(4) By the eastern coasts of the Orkney Islands;

(5) By a straight line joining North Ronaldshay light-house (Orkney Islands) and Sumburgh Head light-house (Shetland Islands);

(6) By the eastern coasts of the Shetland Islands;

(7) By the meridian of North Unst light-house (Shetland Islands) as far as the parallel of the 61st degree of latitude.

ARTICLE V.

The fishing boats of the high contracting parties shall be registered in accordance with the administrative regulations of each country. For each port there shall be a consecutive series of numbers, preceded by one or more initial letters, which shall be specified by the superior competent authority.

Each Government shall draw up a list showing these initial letters.

This list, together with all modifications which may subsequently be made in it, shall be notified to the other contracting powers.

ARTICLE VI.

Fishing boats shall bear the initial letter or letters of the port to which they belong, and the registry number in the series of numbers for that port.

ARTICLE VII.

The name of each fishing boat, and that of the port to which she belongs, shall be painted in white oil color on a black ground on the stern of the boat, in letters which shall be at least 8 centimeters in height and 12 millimeters in breadth.

ARTICLE VIII.

The letter or letters and numbers shall be placed on each bow of the boat, 8 or 10 centimeters below the gunwale, and so as to be clearly visible. They shall be painted in white oil color on a black ground.

The distance above mentioned shall not, however, be obligatory for boats of small burden, which may not have sufficient space below the gunwale.

For boats of 15 tons burden and upwards the dimensions of the letters and numbers shall be 45 centimeters in height and 6 centimeters in breadth.

For boats of less than 15 tons burden the dimensions shall be 25 centimeters in height and 4 centimeters in breadth.

The same letter or letters and numbers shall also be painted on each side of the mainsail of the boat, immediately above the close reef, in black color on white or tanned sails, and in white oil color on black sails.

The letter or letters and numbers on the sails shall be one-third larger in every way than those placed on the bows of the boat.

ARTICLE IX.

Fishing boats may not have, either on their outside or on their sails, any names, letters, or numbers other than those prescribed by Articles VI, VII, and VIII of the present convention.

ARTICLE X.

The names, letters, and numbers placed on the boats and on their sails shall not be effaced, altered, made illegible, covered, or concealed in any manner whatsoever.

ARTICLE XI.

All the small boats, buoys, principal floats, trawls, grapnels, anchors, and generally all fishing implements, shall be marked with the letter or letters and numbers of the boats to which they belong.

These letters and numbers shall be large enough to be easily distinguished. The owner of the nets or other fishing implements may further distinguish them by any private marks they think proper.

ARTICLE XII.

The master of each boat must have with him an official document, issued by the proper authority in his own country, for the purpose of enabling him to establish the nationality of the boat.

This document must always give the letter or letters and number of the boat, as well as her description and the name or names of the owner or the name of the firm or association to which she belongs.

ARTICLE XIII.

The nationality of a boat must not be concealed in any manner whatsoever.

ARTICLE XIV

No fishing boat shall anchor, between sunset and sunrise, on grounds where drift-net fishing is actually going on.

This prohibition shall not, however, apply to anchorings which may take place in consequence of accidents or any other compulsory circumstances.

ARTICLE XV.

Boats arrived on the fishing grounds shall not either place themselves or shoot their nets in such a way as to injure each other, or as to interfere with fishermen who have already commenced their operations.

ARTICLE XVI.

Whenever, with a view of drift-net fishing, decked boats and undecked boats commence shooting their nets at the same time, the undecked boats shall shoot their nets to windward of the decked boats.

The decked boats, on their part, shall shoot their nets to leeward of the undecked boats.

As a rule, if decked boats shoot their nets to windward of undecked boats which have begun fishing, or if undecked boats shoot their nets to leeward of decked boats which have begun fishing, the responsibility as regards any damages to nets which may result shall rest with the boats which last began fishing, unless they can prove that they were under stress of compulsory circumstances, or that the damage was not caused by their fault.

ARTICLE XVII.

No net or any other fishing engine shall be set or anchored on grounds where drift-net fishing is actually going on.

ARTICLE XVIII.

No fisherman shall make fast or hold on his boat to the nets, buoys, floats, or any other part of the fishing tackle of another fisherman.

ARTICLE XIX.

When trawl fishermen are in sight of drift-net or of long-line fishermen, they shall take all necessary steps in order to avoid doing injury to the latter. Where damage is caused, the responsibility shall lie on the trawlers, unless they can prove that they were under stress of compulsory circumstances, or that the loss sustained did not result from their fault.

ARTICLE XX.

When nets, belonging to different fishermen get foul of each other, they shall not be cut without the consent of both parties.

All responsibility shall cease, if the impossibility of disengaging the nets by any other means is proved.

ARTICLE XXI.

When a boat fishing with long lines entangles her lines in those of another boat the person who hauls up the lines shall not cut them, except under stress of compulsory circumstances, in which case any line which may be cut shall be immediately joined together again.

ARTICLE XXII.

Except in cases of salvage, and the cases to which the two preceding articles relate, no fisherman shall, under any pretext whatever, cut, hook, or lift up nets, lines, or other gear not belonging to him.

ARTICLE XXIII.

The use of any instrument or engine which serves only to cut or destroy nets is forbidden.

The presence of any such engine on board a boat is also forbidden.

The high contracting parties engage to take the necessary measures for preventing the embarkation of such engines on board fishing boats.

ARTICLE XXIV.

Fishing boats shall conform to the general rules respecting lights which have been, or may be, adopted by mutual arrangement between the high contracting parties with the view of preventing collisions at sea.

ARTICLE XXV.

All fishing boats, all their small boats, all rigging gear or other appurtenances of fishing boats, all nets, lines, buoys, floats, or other fishing implements whatsoever

found or picked up at sea, whether marked or unmarked, shall, as soon as possible, be delivered to the competent authority of the first port to which the salving boat returns or puts in.

Such authority shall inform the consul or consular agent of the country to which the boat of the salvor belongs, and of the nation of the owners of the articles found. They [the same authority] shall restore the articles to the owners thereof or to their representatives, as soon as such articles are claimed and the interests of the salvors have been properly guarantied.

The administrative or judicial authorities, according as the laws of the different countries may provide, shall fix the amount which the owners shall pay to the salvors.

It is, however, agreed that this provision shall not in any way prejudice such conventions respecting this matter as are already in force, and that the high contracting parties reserve the right of regulating, by special arrangements between themselves, the amount of salvage at a fixed rate per net salved.

Fishing implements of any kind found unmarked shall be treated as wreck.

ARTICLE XXVI.

The superintendence of the fisheries shall be exercised by vessels belonging to the national navies of the high contracting parties. In the case of Belgium, such vessels may be vessels belonging to the State, commanded by captains who hold commissions.

ARTICLE XXVII.

The execution of the regulations respecting the document establishing nationality, the marking and numbering of boats, etc., and of fishing implements, as well as the presence on board of instruments which are forbidden (Articles VI, VII, VIII, IX, X, XI, XII, XIII, and XXIII, section 2), is placed under the exclusive superintendence of cruisers of the nation of each fishing boat.

Nevertheless the commanders of cruisers shall acquaint each other with any infractions of the above-mentioned regulations committed by the fishermen of another nation.

ARTICLE XXVIII.

The cruisers of all the high contracting parties shall be competent to authenticate all infractions of the regulations prescribed by the present convention, other than those referred to in Article XXVII, and all offenses relating to fishing operations, whichever may be the nation to which the fishermen guilty of such infractions may belong.

ARTICLE XXIX.

When the commanders of cruisers have reason to believe that an infraction of the provisions of the present convention has been committed, they may require the master of the boat inculpated to exhibit the official document establishing her nationality. The fact of such document having been exhibited shall then be indorsed upon it immediately.

The commanders of cruisers shall not pursue further their visit or search on board a fishing boat which is not of their own nationality, unless it should be necessary for the purpose of obtaining proof of an offense or of a contravention of regulations respecting the police of the fisheries.

ARTICLE XXX.

The commanders of the cruisers of the signatory powers shall exercise their judgment as to the gravity of facts brought to their knowledge, and of which they are empowered to take cognizance, and shall verify the damage, from whatever cause arising, which may be sustained by fishing boats of the nationalities of the high contracting parties.

They shall draw up, if there is occasion for it, a formal statement of the verification of the facts as elicited both from the declarations of the parties interested and from the testimony of those present.

The commander of the cruiser may, if the case appears to him sufficiently serious to justify the step, take the offending boat into a port of the nation to which the fisherman belongs. He may even take on board the cruiser a part of the crew of the fishing boat in order to hand them over to the authorities of her nation.

ARTICLE XXXI.

The formal statement referred to in the preceding article shall be drawn up in the language of the commander of the cruiser, and according to the forms in use in his country.

The accused and the witnesses shall be entitled to add, or to have added, to such statement, in their own language, any observations or evidence which they may think suitable. Such declarations must be duly signed.

ARTICLE XXXII.

Resistance to the directions of commanders of cruisers charged with the police of the fisheries, or of those who act under their orders, shall, without taking into account the nationality of the cruiser, be considered as resistance to the authority of the nation of the fishing boat.

ARTICLE XXXIII.

When the act alleged is not of a serious character, but has nevertheless caused damage to any fisherman, the commanders of cruisers shall be at liberty, should the parties concerned agree to it, to arbitrate at sea between them, and to fix the compensation to be paid.

Where one of the parties is not in a position to settle the matter at once, the commanders shall cause the parties concerned to sign in duplicate a formal document specifying the compensation to be paid.

One copy of this document shall remain on board the cruiser, and the other shall be handed to the master of the boat to which the compensation is due, in order that he may, if necessary, be able to make use of it before the courts of the country to which the debtor belongs.

Where, on the contrary, the parties do not consent to arbitration, the commanders shall act in accordance with the provisions of Article XXX.

ARTICLE XXXIV.

The prosecutions for offenses against, or contraventions of, the present convention shall be instituted by, or in the name of, the state.

ARTICLE XXXV.

The high contracting parties engage to propose to their respective legislatures the necessary measures for insuring the execution of the present convention, and particularly for the punishment, by either fine or imprisonment, or by both, of persons who may contravene the provisions of Articles VI to XXIII inclusive.

ARTICLE XXXVI.

In all cases of assault committed, or of willful damage or loss inflicted, by fishermen of one of the contracting countries upon fishermen of another nationality, the courts of the country to which the boats of the offenders belong shall be empowered to try them.

The same rule shall apply with regard to offenses against, and contraventions of, the present convention.

ARTICLE XXXVII.

The proceedings and trial in cases of infraction of the provisions of the present convention shall take place as summarily as the laws and regulations in force will permit.

ARTICLE XXXVIII.

The present convention shall be ratified. The ratifications shall be exchanged at the Hague as soon as possible.

ARTICLE XXXIX.

The present convention shall be brought into force from and after a day to be agreed upon by the high contracting parties.

The convention shall continue in operation for five years from the above day; and, unless one of the high contracting parties shall, twelve months before the expiration of the said period of five years, give notice of intention to terminate its operation, shall continue in force one year longer, and so on from year to year. If, however, one of the signatory powers should give notice to terminate the convention, the same shall be maintained between the other contracting parties, unless they give a similar notice.

ADDITIONAL ARTICLE.

The Government of His Majesty the King of Sweden and Norway may adhere to the present convention, for Sweden and for Norway, either jointly or separately.

This adhesion shall be notified to the Netherlands Government, and by it to the other signatory powers.

In witness whereof the plenipotentiaries have signed the present convention, and have affixed thereto their seals.

Done at the Hague, in six copies, the 6th May, 1882.

[L. S.]	W. STUART.
[L. S.]	C. M. KENNEDY.
[L. S.]	C. CECIL TREVOR.
[L. S.]	V. SCHMIDTHALS.
[L. S.]	CHR. DONNER.
[L. S.]	Bon. A. D'ANETHAN.
[L. S.]	LEOPOLD ORBAN.
[L. S.]	C. BRUUN.
[L. S.]	Cte. LEFÉBVRE DE BÉHAINE.
[L. S.]	EM. MANCEL.
[L. S.]	ROCHUSSEN.
[L. S.]	E. N. RAHUSEN.

[Translation.]

In conformity with the agreement arrived at between their repective Governments, the undersigned envoys extraordinary and ministers plenipotentiary of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, and the French Republic, met together this day at the office of the minister for foreign affairs at the Hague, in order to proceed with the undersigned minister for foreign affairs of His Majesty the King of the Netherlands, to the examination and deposit of the instruments of ratification of the convention signed at the Hague the 6th May, 1882, having for its object the regulation of the police of the fisheries in the North Sea, outside territorial waters.

The instruments of ratification having been produced, and the minister for foreign affairs of His Majesty the King of the Netherlands having produced the instrument of ratification of His Majesty the King of Denmark, which the minister for foreign affairs at Copenhagen had forwarded to him in a note dated the 11th June, 1883, as well as the instrument of ratification signed by His Majesty the King of the Netherlands, and the said instruments having been examined and found in good and due form, the documents were delivered to the minister for foreign affairs of His Majesty the King of the Netherlands, in order that they might remain deposited in the archives of the department for foreign affairs at the Hague, such deposit being in place of an exchange of the said instruments.

The undersigned, envoys extraordinary and ministers plenipotentiary, duly authorized by their respective Governments, and the undersigned, minister for foreign affairs of His Majesty the King of the Netherlands, equally authorized by His Majesty the King of the Netherlands, and by the Government of His Majesty the King of Denmark, have, moreover, mutually agreed that the convention shall be put into operation two months after the date of the present protocol.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at the Hague, the 15th day of March, in the year of grace 1884, in six copies, of which one shall be delivered to each of the six Governments.

[L. S.]	W. STUART.
[L. S.]	VON ALVENSLEBEN.
[L. S.]	Bon A. D'ANETHAN.
[L. S.]	VAN DER DOES DE WILLEBOIS.
[L. S.]	LOUIS LEGRAND.
[L. S.]	VAN DER DOES DE WILLEBOIS.

[Translation.]

The undersigned, envoys extraordinary and ministers plenipotentiary of His Majesty the German Emperor, King of Prussia, His Majesty the King of the Belgians, the French Republic, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the undersigned, minister for foreign affairs of

His Majesty the King of the Netherlands, who is also authorized to represent the Government of the King of Denmark on this occasion, having met together at the office of the minister for foreign affairs at the Hague on the 15th March, 1884, for the purpose of depositing the instruments of ratification of the convention signed at the Hague the 6th May, 1882, having for its object the regulation of the police of the fisheries in the North Sea outside territorial waters, and in order to sign the protocol relative to said deposition, the envoy of France stated that, while adhering to the time agreed upon for putting the convention into operation, the Government of the Republic maintained the reserve contained in article 24 of the law of the 15th January, 1884, thus worded:

"The carrying into effect of the present law shall be provisionally suspended up to the time on which the other signatory powers of the convention of the 6th May, 1882, shall have promulgated the penalties stipulated in Article XXXV of the convention."

The other undersigned have stated to him that they take note of this declaration.

VON ALVENSLEBEN.
BARON D'ANETHAN.
(For the Government of Denmark.)
VAN DER DOES DE WILLEBOIS.
LOUIS LEGRAND.
W. STUART.
VAN DER DOES DE WILLEBOIS.

No. 299.

Mr. Phelps to Mr. Bayard.

No. 393.] LEGATION OF THE UNITED STATES,
London, December 3, 1886. (Received December 14.)

SIR: Referring to your several instructions on the subject of the Canadian fisheries, numbered, respectively, 452, 458, and 459, I have the honor to inform you that on the 27th November I addressed a note to Lord Iddesleigh, Her Majesty's secretary of state for foreign affairs, inclosing a copy of your instructions, No. 452, relative to the case of the *Marion Grimes*.

On the 30th November I had an interview with his lordship, in which the subject of the instruction above mentioned was discussed.

On the 2d December I addressed to him another note in pursuance of instruction No. 458, asking that the solicitors for the owners of the fishing vessel *David J. Adams* may be furnished, for use in the suit concerning that vessel now pending at Halifax, with copies of the original reports mentioned in that instruction, showing the charges upon which the seizure was originally made.

I have this day received from Lord Iddesleigh a note, dated November 30, in reply to mine addressed to him on the 11th of September last, on the subject of the same fisheries, a copy of which has heretofore been transmited to you.

And I have now sent a note to Lord Iddesleigh acknowledging the receipt of his communication, and saying that I should at an early date submit to him some considerations in reply, and meanwhile inclosing to him, in pursuance of his request made at the interview of November 30, a copy of the "Proposal for settlement" transmitted to me in your No. 459, together with a copy of that instruction.

I have the honor to inclose herewith copies of my three notes above referred to, dated November 27, December 2, and December 3, and of Lord Iddesleigh's note of November 30.

I have, etc.,

E. J. PHELPS.

[Inclosure 1 in No. 393.]

Mr. Phelps to Lord Iddesleigh.

LEGATION OF THE UNITED STATES,
London, November 27, 1886.

MY LORD: I have the honor to transmit herewith a copy of an instruction, under date of November 6, 1886, received by me from the Secretary of State of the United States, relative to the case of the United States fishing vessel the *Marion Grimes*.

The subject is so fully presented in this document, a copy of which I am authorized by the Secretary to place in the hands of your lordship, that I can add nothing to what is therein set forth, except to request your lordship's early attention to the case, which appears to be a very flagrant violation of the rights secured to American fishermen under the treaty of 1818.

I have, etc.,

E. J. PHELPS.

[Inclosure 2 in No. 393.]

Mr. Phelps to Lord Iddesleigh.

LEGATION OF THE UNITED STATES,
London, December 2, 1886.

MY LORD: Referring to the conversation I had the honor to hold with your lordship on the 30th November, relative to the request of my Government that the owners of the *David J. Adams* may be furnished with a copy of the original reports, stating the charges on which that vessel was seized by the Canadian authorities, I desire now to place before you in writing the grounds upon which this request is preferred.

It will be in the recollection of your lordship, from the previous correspondence relative to the case of the *Adams*, that the vessel was first taken possession of for the alleged offense of having purchased a small quantity of bait within the port of Digby, in Nova Scotia, to be used in lawful fishing. That later on a further charge was made against the vessel of a violation of some custom-house regulation, which it is not claimed, so far as I can learn, was ever before insisted on in a similar case. I think I have made it clear in my note of the 2d of June last, addressed to Lord Rosebery, then foreign secretary, that no act of the English or of the Canadian Parliament existed at the time of this seizure which legally justified it on the ground of the purchase of bait, even if such an act would have been authorized by the treaty of 1818. And it is a natural and strong inference, as I have in that communication pointed out, that the charge of violation of custom-house regulations was an afterthought, brought forward in order to sustain proceedings commenced on a different charge and found untenable.

In the suit that is now going on in the admiralty court at Halifax, for the purpose of condemning the vessel, still further charges have been added. And the Government of Canada seek to avail themselves of a clause in the act of the Canadian Parliament of May 22, 1868, which is in these words: "In case a dispute arises as to whether any seizure has or has not been legally made or as to whether the person seizing was or was not authorized to seize under this act * * * the burden of proving the illegality of the seizure shall be on the owner or claimant."

I can not quote this provision without saying that it is, in my judgment, in violation of the principles of natural justice, as well as of those of the common law. That a man should be charged by police or executive officers with the commission of an offense and then be condemned upon trial unless he can prove himself to be innocent is a proposition that is incompatible with the fundamental ideas upon which the administration of justice proceeds. But it is sought in the present case to carry the proposition much further, and to hold that the party inculpated must not only prove himself innocent of the offense on which his vessel was seized, but also of all other charges upon which it might have been seized that may be afterward brought forward and set up at the trial.

Conceiving that if the clause I have quoted from the act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offense can not be regarded as *prima facie* evidence of guilt of another, the counsel for the owners of the vessel have applied to the prosecuting officers to be furnished with a copy of the reports made to the Government of Canada in connection with the seizure of the vessel, either by Captain Scott, the seizing officer, or by the collector of customs at Digby, in order that it might be known to the defendant and be shown on trial what the charges are on which the

seizure was grounded, and which the defendant is required to disprove. This most reasonable request has been refused by the prosecuting officers.

Under these circumstances I am instructed by my Government to request of Her Majesty's Government that the solicitors for the owners of the *David J. Adams* in the suit pending in Halifax may be furnished, for the purposes of the trial thereof, with copies of the reports above mentioned. And I beg to remind your lordship that there is no time to be lost in giving the proper direction if it is to be in season for the trial, which, as I am informed, is being pressed.

I have, etc.,

E. J. PHELPS.

[Inclosure 3 in No. 393.]

The Earl of Iddesleigh to Mr. Phelps.

FOREIGN OFFICE, *November* 30, 1886.

SIR: I have given my careful consideration to the contents of the note of the 11th September last, which you were good enough to address to me in reply to mine of the 1st of the same month, on the subject of the North American fisheries.

The question, as you are aware, has for some time past engaged the serious attention of Her Majesty's Government and the notes which have been addressed to you in relation to it, both by my predecessor and by myself, have amply evinced the earnest desire of Her Majesty's Government to arrive at some equitable settlement of the controversy. It is, therefore, with feelings of disappointment that they do not find in your note under reply any indication of a wish on the part of your Government to enter upon negotiations based on the principle of mutual concessions, but rather a suggestion that some *ad interim* construction of the terms of the existing treaty should, if possible, be reached, which might for the present remove the chance of disputes; in fact, that Her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the treaty rights which they claim and which they conceive to be indisputable. For Her Majesty's Government are unable to perceive any ambiguity in the terms of Article 1 of the convention of 1818, nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from ther own. They would, therefore, be glad to learn in the first place whether the Government of the United States contest that by Article 1 of the convention United States fishermen are prohibited from entering British North American bays or harbors on those parts of the coast referred to in the second part of the article in question for any purposes save those of *shelter, repairing damages, purchasing wood, and obtaining water.*

Before proceeding to make some observations upon the other points dealt with in your note, I have the honor to state that I do not propose in the present communication to refer to the cases of the schooners *Thomas F. Bayard* and *Mascot*, to which you allude.

The privileges manifestly secured to United States fishermen by the convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by Her Majesty's Government, who, whilst determined to uphold the rights of Her Majesty's North American subjects, as defined in the convention, are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners, which I have requested Her Majesty's minister at Washington to address to Mr. Bayard, can not, I think, have failed to afford to your Government satisfactory assurances in this respect.

Reverting now to your note under reply, I beg to offer the following observations on its contents:

In the first place, you take exception to my predecessor having declined to discuss the case of the *David J. Adams*, on the ground that it was still *sub judice*, and you state that your Government are unable to accede to the proposition contained in my note of the 1st of September last, to the effect that "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

In regard to this point, it is to be remembered that there are three questions calling for investigation in the case of the *David J. Adams:*

(1) What were the acts committed which led to the seizure of the vessel?

(2) Was her seizure for such acts warranted by any existing laws?

(3) If so, are those laws in derogation of the treaty rights of the United States?

It is evident that the first two questions must be the subject of inquiry before the third can be profitably discussed, and that those two questions can only be satisfac-

torily disposed of by a judicial inquiry. Far from claiming that the United States Government would be bound by the construction which British tribunals might place on the treaty, I stated in my note of the 1st September that if that decision should be adverse to the views of your Government it would not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action.

I may further remark that the very proposition advanced in my note of the 1st of September last, and to which exception is taken in your reply, has on a previous occasion been distinctly asserted by the Government of the United States under precisely similar circumstances, that is to say, in 1870, in relation to the seizure of American fishing vessels in Canadian waters for alleged violation of the convention of 1818.

In a dispatch of the 29th of October, 1870, to Mr. W. A. Dart, United States consul-general at Montreal (which is printed at page 431 of the volume for that year of the Foreign Relations of the United States, and which formed part of the correspondence referred to by Mr. Bayard in his note to Sir L. West of the 20th of May last), Mr. Fish expressed himself as follows:

"It is the duty of the owners of the vessels to defend their interests before the courts at their own expense, and without special assistance from the Government at this stage of affairs. It is for those tribunals to construe the statutes under which they act. If the construction they adopt shall appear to be in contravention of our treaties with Great Britain, or to be (which can not be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress."

Her Majesty's Government, therefore, still adhere to their view that any diplomatic discussion as to the legality of the seizure of the *David J. Adams* would be premature until the case has been judicially decided.

It is further stated in your note that "the absence of any statute authorizing proceedings or providing a penalty against American fishing vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing" affords "the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the treaty by the British or by the colonial parliament as is now sought to be maintained."

Her Majesty's Government are quite unable to accede to this view, and I must express my regret that no reply has yet been received from your Government to the arguments on this and all the other points in controversy, which are contained in the able and elaborate report (as you courteously describe it) of the Canadian minister of marine and fisheries, of which my predecessor communicated to you a copy.

In that report reference is made to the argument of Mr. Bayard, drawn from the fact that the proposal of the British negotiators of the convention of 1818, to the effect that American fishing vessels should carry no merchandise, was rejected by the American negotiators; and it is shown that the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador.

The report, on the other hand, shows that the United States negotiators proposed that the right of "procuring bait" should be added to the enumeration of the four objects for which the United States fishing vessels might be allowed to enter Canadian waters; and that such proposal was rejected by the British negotiators, thus showing that there could be no doubt in the minds of either party at the time that the "procuring of bait" was prohibited by the terms of the article. The report, moreover, recalls the important fact that the United States Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the convention of 1818 nor the treaty of Washington conferred any right or privilege of trading on American fishermen; that the "various incidental and reciprocal advantages of the treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them."

This view was confirmed by the ruling of the commissioners. Whilst I have felt myself bound to place the preceding observations before you in reply to the arguments contained in your note, I beg leave to say that Her Majesty's Government would willingly have left such points of technical detail and construction for the consideration of a commission properly constituted to examine them, as well as to suggest a means for either modifying their application or substituting for them some new arrangement of a mutually satisfactory nature.

I gather, however, from your note that, in the opinion of your Government, although a revision of treaty stipulations on the basis of mutual concessions was desired by the United States before the present disputes arose, yet the present time is inopportune

for various reasons, among which you mention the irritation created in the United States by the belief that the action of the Canadian Government has had for its object to force a new treaty on your Government.

Her Majesty's Government learn with much regret that such an impression should prevail, for every effort has been made by the Canadian Government to promote a friendly negotiation and to obviate the differences which have now arisen. Indeed, it is hardly necessary to remind you that, for six months following the denunciation by your Government of the fishery articles of the treaty of Washington, the North American fisheries were thrown open to citizens of the United States without any equivalent, in the expectation that the American Government would show their willingness to treat the question in a similar spirit of amity and good will.

Her Majesty's Government can not but express a hope that the whole correspondence may be laid immediately before Congress, as they believe that its perusal would influence public opinion in the United States in favor of negotiating, before the commencement of the next fishing season, an arrangement based on mutual concessions, and which would therefore (to use the language of your note) "consist with the dignity, the interests, and the friendly relations of the two countries."

Her Majesty's Government can not conceive that negotiations commenced with such an object and in such a spirit could fail to be successful; and they trust, therefore, that your Government will endeavor to obtain from Congress, which is about to assemble, the necessary powers to enable them to make to Her Majesty's Government some definite proposals for the negotiation of a mutually advantageous arrangement.

I have, etc.,

IDDESLEIGH.

[Inclosure 4 in No. 393.]

Mr. Phelps to Lord Iddesleigh.

LEGATION OF THE UNITED STATES,
London, December 3, 1886.

MY LORD: I have the honor to acknowledge the receipt of your note of the 30th November, on the subject of the Canadian fisheries, and to say that I shall at an early day submit to your lordship some considerations in reply.

Meanwhile, I have the honor to transmit, in pursuance of the desire expressed by your lordship in conversation on November 30, a copy of an outline for a proposed *ad interim* arrangement between the two governments on this subject which has been proposed by the Secretary of State of the United States.*

And I likewise transmit, in connection with it, a copy of the instruction from the Secretary of State which accompanied it,† and which I am authorized to submit to your lordship.

I have, etc.,

E. J. PHELPS.

No. 300.

Mr. Bayard to Mr. Phelps.

No. 466.] DEPARTMENT OF STATE,
Washington, December 7, 1886.

SIR: I inclose herewith, for your information, a copy of my note‡ of the 1st instant to Sir Lionel West, Her Britannic Majesty's minister at this capital, concerning the treatment by the Canadian authorities of the American fishing schooner *Molly Adams*, of Gloucester, Mass.

I am, etc.,

T. F. BAYARD.

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* Printed *ante.*, p. 427.)
† Printed *ante.*, p. 424.)
‡ Printed page 428, Foreign Relations, 1886.

No. 301.

Mr. Bayard to Mr. Phelps.

No. 470.] DEPARTMENT OF STATE,
Washington, December 8, 1886.

SIR: With reference to instruction No. 466, of the 7th instant, concerning the case of the American fishing schooner *Molly Adams*, I now transmit to you herewith, for your further information, a copy of the letter* of Mr. Solomon Jacobs, of the 12th ultimo, in which the matter was brought to the attention of the Department.

I am, etc.,

T. F. BAYARD.

No. 302.

Mr. Bayard to Mr. Phelps.

No. 472.] DEPARTMENT OF STATE,
Washington, December 8, 1886.

SIR: My attention has just been drawn to a notice published by the British Government in London in relation to the exercise of fishing rights in common with France.

It occurs to me that it may be pertinent to the consideration of the questions discussed in the *modus vivendi*, in relation to the British North American fisheries, lately forwarded to you by this Department.

The publication no doubt can readily be procured in London. It is issued in pamphlet form.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 472.]

Further notice to British fishermen with respect to the exclusive fishery limits of France.

The French Government have intimated to Her Majesty's Government that the recent detention of English oyster smacks which entered Havre to pass Sunday there in fine weather, was effected by the maritime authority at that port for an infraction of Articles LXXXV and LXXXVI of the International Fishery Regulations of May 24, 1843, and that the minister of marine in Paris, on learning the circumstances, directed that the smacks should be immediately released, in consequence of the toleration which has for a long time existed in the United Kingdom and France as regards not enforcing the strict observance of these articles.

The French Government have given special instructions for preventing a recurrence of like circumstances, without a preliminary reference on the part of the authority at the port to the ministry of marine.

The French Government have further intimitated that, in the event of their finding that the maintenance of the existing toleration gives rise to inconvenience, notice will be given to Her Majesty's Government, so as to allow of the latter issuing timely warning to British fishermen. (The Board of Trade Journal, vol. 1, No. 4, p. 146, 1886, London.)

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*Printed pages 429, 430, Foreign Relations, 1886.

No. 303.

Mr. Bayard to Mr. Phelps.

No. 474.] DEPARTMENT OF STATE,
Washington, December 13, 1886.

SIR: On the 8th instant I received from the British minister at this capital a communication dated the 7th of this month, accompanied by a copy of the minutes of the honorable privy council of Canada, in relation to the action of Captain Quigley, of the Canadian cutter *Terror*, in lowering the flag of the United States fishing schooner *Marion Grimes* whilst under detention by the customs authorities in Shelburne Harbor, on the 11th of October last.

As this occurrence had been made the subject of an instruction to you by me, on the 6th ultimo, whereby you were requested to bring the incident to the attention of Her Majesty's Government, I hasten to inform you of the voluntary action of the Canadian Government and of their expression of regret for the action of the officer referred to.

The copy of the correspondence and proceedings of the Canadian authorities discloses the dates of their action in the premises, of which, however, my earliest information was on the 8th instant, in the note* of Sir Lionel West, a copy of which is herewith sent to you.

I am, etc.,

T. F. BAYARD.

No. 304.

Mr. Phelps to Mr. Bayard.

No. 416.] LEGATION OF THE UNITED STATES,
London, January 13, 1887. (Received January 24.)

SIR: Referring to your instructions numbered 458 of November 12, and also to my dispatch numbered 393 of December 3, I have the honor to inclose herewith the copy of a note which I have just received from the Earl of Iddesleigh in reply to mine of December 2 to his lordship, asking that the owners of the *David J. Adams* be furnished with copies of the original reports stating the charges on which that yessel was seized by the Canadian authorities. A copy of the latter note formed inclosure to my dispatch No. 393 aforesaid.

You will observe that Her Majesty's Government have not seen fit to interfere in the matter.

I have, etc.,

E. J. PHELPS.

[Inclosure in No. 416.]

Lord Iddesleigh to Mr. Phelps.

FOREIGN OFFICE, *January* 11, 1887.

SIR: Her Majesty's Government have considered the request contained in your note of the 2d ultimo, to the effect that the owners of the *David J. Adams* may be furnished with copies of the original reports stating the charges on which that vessel was seized by the Canadian authorities; and I have now the honor to state to you

* Printed page 491, Foreign Relations, 1886.

that if the owners of this vessel are legally entitled to be furnished with those reports they can obtain them by the process of the courts; and there seems no ground for the interference of Her Majesty's Government with the ordinary course of justice.

As regards the means of obtaining information for the purposes of the defense, I would point out that in the report of the Canadian minister of marine and fishery, of which a copy was communicated to you on the 23d July last, it is stated that from a date immediately after the seizure "there was not the slightest difficulty in the United States consul-general, and those interested in the vessel, obtaining the fullest information," and that "apart from the general knowledge of the offenses which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the registry of the court, and from the solicitors of the Crown."

With respect to the statement in your note that a clause in the Canadian act of May 22, 1868, to the effect that, "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seizing was or was not authorized to seize under this act, the burden of proving the illegality of the seizure shall be on the owner or claimant," is in violation of the principles of national justice, as well as of those of the common law, I have to observe that the statute referred to is cap. 61 of 1868, which provides for the issue of licenses to foreign fishing vessels, and for the forfeiture of such vessels fishing without a license; and that the provisions of Article 10, to which you take exception, are commonly found in laws against smuggling, and are based on the rule of law that a man who pleads that he holds a license or other similar document shall be put to the proof of his plea and required to produce the document.

I beg leave to add that the provisions of that statute, so far as they relate to the issue of licenses, has been in operation since the year 1870.

I have, etc.,

IDDESLEIGH.

No. 305.

Mr. Bayard to Mr. Phelps.

[Extract.]

No. 520.] DEPARTMENT OF STATE,
Washington, January 27, 1887.

SIR: Your dispatch No. 416, of the 12th instant, transmitting a copy of the note, dated the 11th, received by you from the late Lord Iddesleigh, in response to your note of December 2, 1886, requesting copies of the papers in the case of the *David J. Adams*, has been received.

The concluding part of Lord Iddesleigh's note seems to demand attention, inasmuch as the argument employed to justify the provisions of Article 10 of the Canadian Statutes, cap. 61 of 1868, which throw on the claimant the burden of proving the illegality of a seizure, appears to rest upon the continued operation of Article 1 of that statute, relative to the issue of licenses to foreign fishing vessels. The note in question states "that the provisions of that statute, so far as they relate to the issue of licenses, has [have?] been in operation since the year 1870."

It appears from the correspondence exchanged in 1870 between this Department and Her Majesty's minister in Washington (see the volume of Foreign Relations, 1870, pp. 407–411) that on the 8th of January, 1870, an order in council of the Canadian Government decreed "that the system of granting fishing license to foreign vessels under the act 31 Vic., cap. 61, be discontinued, and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada."

During the continuance of the fishery articles of the treaty of Washington Canadian fishing licenses were not required for fishermen of the United States, and since the termination of those articles, July 1, 1885,

this Department has not been advised of the resumption of the licensing system under the statute aforesaid.

The faulty construction of the last paragraph of Lord Iddesleigh's note, as transmitted with your No. 416, suggests the possibility of a clerical error in the preparation or transcription of that note, and that it may have been intended to state that the licensing provisions of the statute, cap. 61, 1868, "have *not* been in operation since 1870," but in that case it is not easy to apply the argument advanced.

I am, etc.,

T. F. BAYARD.

No. 306.

Mr. Phelps to Mr. Bayard.

[Extract.]

No. 423.] LEGATION OF THE UNITED STATES,
London, January 27, 1887. (Received February 7.)

SIR: I have the honor to transmit herewith a copy of a note addressed to me by Lord Iddesleigh, secretary of state for foreign affairs, dated December 16, 1886.

Also a copy of a note addressed to me by Sir Julian Pauncefote, acting secretary of foreign affairs during a vacancy in that office, dated January 14, 1887.

Also a copy of a note addressed by me to Lord Salisbury, secretary of state for foreign affairs, dated January 26, 1887.

All on the subject of the Canadian fisheries.

I am to have an interview with Lord Salisbury by appointment tomorrow in reference to the same subject.

I have, etc., E. J. PHELPS.

[Inclosure 1 in No. 423.]

Lord Iddesleigh to Mr. Phelps.

FOREIGN OFFICE, *December* 16, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 27th ultimo relative to the case of the *Marion Grimes*, stated to have been fined and detained at Shelburne, Nova Scotia, in October last.

As other cases besides that of the *Marion Grimes* are alluded to in the documents forwarded in your note, it will be desirable to take each case separately, and inform you shortly of the steps which Her Majesty's Government have taken in regard to them.

In respect to the case of the *Marion Grimes*, I have already received, through Her Majesty's secretary of state for the colonies, a copy of a dispatch from the Dominion Government, in which they express their regret at the action taken by Captain Quigley in hauling down the United States flag. I have transmitted a copy of this dispatch to Her Majesty's minister at Washington, with instructions to communicate it to Mr. Bayard, and I beg leave to now inclose a copy of it for your information.

Her Majesty's Government cannot doubt that, as respects the incident of the flag, the apology thus spontaneously tendered by the Canadian Government will be accepted by the United States Government in the friendly and conciliatory disposition in which it is offered, whilst as regards the other statements concerning Captain Quigley's conduct, Her Majesty's Government do not at present feel themselves in a position to express any opinion.

The Dominion Government have been requested to furnish a full report on the various circumstances alleged, and when this is received I shall have the honor to address a further communication to you upon the subject.

As concerns the case of the *Julia Ellen* and *Shiloh*, it will probably suffice to communicate to you the inclosed copies of reports from the Canadian Government relative to these two vessels. These reports have already been sent to Her Majesty's minister at Washington for communication to Mr. Bayard.

The protest made by the United States Government in the case of the *Everett Steele* was not received in this country until the 1st ultimo; and although the Canadian Government have been requested by telegraph to furnish a report upon the circumstances alleged, sufficient time has not yet elapsed to enable Her Majesty's Government to be in possession of the facts as reported by the Dominion Government.

Her Majesty's Government greatly regret that incidents of the description alluded to should occur, and they can only renew the assurance conveyed to you in my note of the 30th ultimo, that whilst firmly resolved to uphold the undoubted treaty rights of Her Majesty's North American subjects in regard to the fisheries, they will also equally maintain the undoubted rights of United States fishermen to obtain shelter in Canadian ports, under such restrictions as may be necessary to prevent their abusing the privileges reserved to them by treaty.

I notice that in Mr. Bayard's note to you of the 6th ultimo, concerning the case of the *Marion Grimes*, and also in his note to Sir L. West of the 19th October last, relative to the case of the *Everett Steele*, an old discussion is revived which Her Majesty's Government had hoped was finally disposed of by the correspondence which took place on the subject in 1815 and 1816.

I allude to the argument that a right to the common enjoyment of the fisheries by Great Britain and the United States, after the separation of the latter from the mother country, was recognized by the treaty of 1783, although the exercise of that right was made subject to certain restrictions. I refer to this point merely to observe that the views of Her Majesty's Government in relation to it have not been modified in any way since the date of Lord Bathurst's note of the 30th of October, 1815, to Mr. John Quincy Adams.

I have, etc.

IDDESLEIGH.

[Inclosure 2 in No. 423.]

Sir J. Pauncefote to Mr. Phelps.

FOREIGN OFFICE, *January* 14, 1887.

SIR: With reference to my predecessor's note of the 30th of November last, I have the honor to transmit to you a copy of a report from the Canadian minister of justice upon the seizure of the American fishing vessel *David J. Adams*.

I have forwarded a copy of this report to Her Majesty's minister at Washington for communication to the United States Government.

I have the honor, etc.,

J. PAUNCEFOTE,
(For the Secretary of State.)

[Inclosure 3 in No. 423.]

Mr. Phelps to the Marquis of Salisbury.

LEGATION OF THE UNITED STATES,
London, January 26, 1887.

MY LORD: Various circumstances have rendered inconvenient an earlier reply to Lord Iddesleigh's note of November 12, on the subject of the North American fisheries, and the termination of the fishing season has postponed the more immediate necessity of the discussion; but it seems now very important that before the commencement of another season a distinct understanding should be reached between the United States Government and that of Her Majesty relative to the course to be pursued by the Canadian authorities towards American vessels.

It is not without surprise that I have read Lord Iddesleigh's remark, in the note above mentioned, referring to the treaty of 1818, that Her Majesty's Government "have not as yet been informed in what respect the construction placed upon that instrument by the Government of the United States differs from their own."

Had his lordship perused more attentively my note to his predecessor in office, Lord Rosebery, under date of June 2, 1886, to which reference was made in my note to Lord Iddesleigh of September 11, 1886, I think he could not have failed to apprehend distinctly the construction of that treaty for which the United States Government contends and the reasons and arguments upon which it is founded.

I have again respectfully to refer your lordship to my note to Lord Rosebery of June 2, 1886, for a very full and, I hope, clear exposition of the ground taken by the United States Government on that point. It is unnecessary to repeat it, and I am unable to add to it.

In reply to the observations in my note to Lord Iddesleigh of September 11, 1886, on the point whether such discussion should be suspended in these cases until the result of the judicial proceedings in respect to them should be made known, a proposition to which, as I stated in that note, the United States Government is unable to accede, his lordship cites in support of it some language of Mr. Fish, when Secretary of State of the United States, addressed to the United States consul-general at Montreal in May, 1870. From the view then expressed by Mr. Fish the United States Government has neither disposition nor occasion to dissent. But it can not regard it as in any way applicable to the present case.

It is true beyond question that when a private vessel is seized for an alleged infraction of the laws of the country in which the seizure takes place, and the fact of the infraction, or the exact legal construction of the local statute claimed to be transgressed, is in dispute, and is in process of determination by the proper tribunal, the Government to which the vessel belongs will not usually interfere in advance of such determination and before acquiring the information on which it depends. And especially when it is not yet informed whether the conduct of the officer making the seizure will not be repudiated by the Government under which he acts, so that interference will be unnecessary. This is all, in effect, that was said by Mr. Fish on that occasion. In language immediately following that quoted by Lord Iddesleigh he remarks as follows (italics being mine):

"The present embarrassment is that while we have *reports* of several seizures upon grounds *as stated by the interested parties,* which *seem to be* in contravention of international law and special treaties relating to the fisheries, these *alleged* causes of seizure are regarded as pretensions of over zealous officers of the British navy and the colonial vessels which will, as we hope and are bound in courtesy to expect, be repudiated by the courts, before which our vessels are to be brought for adjudication.

But in the present case the facts constituting the alleged infraction by the vessel seized are not in dispute, except some circumstances of alleged aggravation not material to the validity of the seizure. The original ground of the seizure was the purchase by the master of the vessel of a small quantity of bait from an inhabitant of Nova Scotia, to be used in lawful fishing. This purchase is not denied by the owners of the vessel, and the United States Government insists, *first,* that such an act is not in violation of the treaty of 1818, and *second,* that no then existing statute in great Britain or Canada authorized any proceedings against the vessel for such an act, even if it could be regarded as in violation of the terms of the treaty, and no such statute has been as yet produced.

In respect to the charge subsequently brought against the *Adams,* and upon which many other vessels have been seized, that of a technical violation of the customs act, in omitting to report at the custom-house, though having no business at the port (and in some instances where the vessel seized was not within several miles of the landing), the United States Government claim, while not admitting that the omission to report was even a technical transgression of the act, that even if it were, no harm having been done or intended, the proceedings against the vessels for an inadvertence of that sort were in a high degree harsh, unreasonable, and unfriendly, especially as for many years no such effect has been given to the act in respect to the fishing vessels, and no previous notice of a change in its construction has been promulgated.

It seems apparent, therefore, that the cases in question, as they are to be considered between the two Governments, present no points upon which the decision of the courts of Nova Scotia need be awaited or would be material.

Nor is it any longer open to the United States Government to anticipate that the acts complained of will (as said by Mr. Fish in the dispatch above quoted) be repudiated as the "pretensions of over-zealous officers of the * * * colonial vessels," because they have been so many times repeated as to constitute a regular system of procedure, have been directed and approved by the Canadian Government, and have been in no wise disapproved or restrained by Her Majesty's Government, though repeatedly and earnestly protested against on the part of the United States.

It is therefore to Her Majesty's Government alone that the United States Government can look for consideration and redress. It can not consent to become, directly or indirectly, a party to the proceedings complained of, nor to await their termination before the questions involved between the two Governments shall be dealt with. Those questions appear to the United States Government to stand upon higher grounds, and to be determined, in large part, at least, upon very different considerations from those upon which the courts of Nova Scotia must proceed in the pending litigation.

Lord Iddesleigh, in the note above referred to, proceeds to express regret that no reply has yet been received from the United States Government to the arguments on

all the points in controversy contained in the report of the Canadian minister of marine and fisheries, of which Lord Rosebery had sent me a copy.

Inasmuch as Lord Iddesleigh and his predecessor, Lord Rosebery, have declined altogether, on the part of Her Majesty's Government, to discuss these questions until the cases in which they arise shall have been judicially decided, and as the very elaborate arguments on the subject previously submitted by the United States Government, remain, therefore without reply, it is not easy to perceive why further discussion of it on the part of the United States should be expected. So soon as Her Majesty's Government consent to enter upon the consideration of the points involved, any suggestions it may advance will receive immediate and respectful attention on the part of the United States. Till then further argument on that side would seem to be neither consistent nor proper.

Still less can the United States Government consent to be drawn, at any time, into a discussion of the subject with the colonial Government of Canada. The treaty in question, and all the international relations arising out of it, exist only between the Governments of the United States and of Great Britain, and between those Governments only can they be dealt with. If, in entering upon that consideration of the subject which the United States have insisted upon, the arguments contained in the report of the Canadian minister should be advanced by Her Majesty's Government, I do not conceive that they will be found difficult to answer.

Two suggestions contained in that report are, however, specially noticed by Lord Iddesleigh, as being "in reply" to the arguments contained in my note. In quoting the substance of the contentions of the Canadian minister on the particular points referred to, I do not understand his lordship to depart from the conclusion of Her Majesty's Government he had previously announced, declining to enter upon the discussion of the cases in which the questions arise. He presents the observations of the report only as those of the Canadian minister made in the argument of points upon which Her Majesty's Government decline at present to enter.

I do not, therefore, feel called upon to make any answer to these suggestions; and more especially as it seems obvious that the subject can not usefully be discussed upon one or two suggestions appertaining to it, and considered by themselves alone. While those mentioned by Lord Iddesleigh have undoubtedly their place in the general argument, it will be seen that they leave quite untouched most of the propositions and reasoning set forth in my note to Lord Rosebery above mentioned. It appears to me that the question can not be satisfactorily treated aside from the cases in which they arise, and that when discussed the whole subject must be gone into in its entirety.

The United States Government is not able to concur in the favorable view taken by Lord Iddesleigh of the efforts of the Canadian Government "to promote a friendly negotiation." That the conduct of that Government has been directed to obtaining a revision of the existing treaty is not to be doubted; but its efforts have been of such a character as to preclude the prospect of a successful negotiation so long as they continue, and seriously to endanger the friendly relations between the United States and Great Britain.

Aside from the question as to the right of American vessels to purchase bait in Canadian ports, such a construction has been given to the treaty between the United States and Great Britain as amounts virtually to a declaration of almost complete non-intercourse with American vessels. The usual comity between friendly nations has been refused in their case, and in one instance, at least, the ordinary offices of humanity. The treaty of friendship and amity which, in return for very important concessions by the United States to Great Britain, reserved to the American vessels certain specified privileges has been construed to exclude them from all other intercourse common to civilized life and to universal maritime usage among nations not at war, as well as from the right to touch and trade accorded to all other vessels.

And quite aside from any question arising upon construction of the treaty, the provisions of the custom-house acts and regulations have been systematically enforced against American ships for alleged petty and technical violations of legal requirements in a manner so unreasonable, unfriendly, and unjust as to render the privileges accorded by the treaty practically nugatory.

It is not for a moment contended by the United States Government that American vessels should be exempt from those reasonable port and custom-house regulations which are in force in countries which such vessels have occasion to visit. If they choose to violate such requirements, their Government will not attempt to screen them from the just legal consequences.

But what the United States Government complain of in these cases is that existing regulations have been construed with a technical strictness, and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both unusual and unnecessary, whereby the voyages of vessels have been broken up and heavy penalties incurred. That the liberal and reasonable construction of these laws that had prevailed for many years, and to which the fishermen had

become accustomed, was changed without any notice given. And that every opportunity of unnecessary interference with the American fishing vessels, to the prejudice and destruction of their business, has been availed of. Whether in any of these cases, a technical violation of some requirement of law had, upon close and severe construction, taken place, it is not easy to determine. But if such rules were generally enforced in such a manner in the ports of the world, no vessel could sail in safety without carrying a solicitor versed in the intricacies of revenue and port regulations.

It is unnecessary to specify the various cases referred to, as the facts in many of them have been already laid before Her Majesty's Government.

Since the receipt of Lord Iddesleigh's note the United States Government has learned with grave regret that Her Majesty's assent has been given to the act of the Parliament of Canada, passed at its late session, entitled "An act further to amend the act respecting fishing by foreign vessels," which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain.

By the provisions of this act any foreign ship, vessel, or boat (whether engaged in fishing or not) found within any harbor in Canada, or within 3 marine miles of "any of the coasts, bays, or creeks of Canada," may be brought into port by any of the officers or persons mentioned in the act, her cargo searched, and her master examined upon oath touching the cargo and voyage under a heavy penalty if the questions asked are not truly answered; and if such ship has entered such waters "*for any purpose* not permitted by treaty or convention or by law of the United Kingdom or of Canada, for the time being in force, such ship, vessel, or boat and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited."

It has been pointed out in my note to Lord Iddesleigh, above mentioned, that the 3-mile limit referred to in this act is claimed by the Canadian Government to include considerable portions of the high seas, such as the Bay of Fundy, the Bay of Chaleur, and similar waters, by drawing the line from headland to headland, and that American fishermen had been excluded from those waters accordingly.

It has been seen also that the term "any purpose not permitted by treaty" is held by that Government to comprehend every possible act of human intercourse, except only the four purposes named in the treaty—shelter, repairs, wood, and water.

Under the provisions of the recent act, therefore, and the Canadian interpretation of the treaty, any American fishing vessel that may venture into a Canadian harbor, or may have occasion to pass through the very extensive waters thus comprehended, may be seized at the discretion of any one of numerous subordinate officers, carried into port, subjected to search and the examination of her master upon oath, her voyage broken up, and the vessel and cargo confiscated, if it shall be determined by the local authorities that she has ever even posted or received a letter or landed a passenger in any part of Her Majesty's dominions in America.

And it is publicly announced in Canada that a larger fleet of cruisers is being prepared by the authorities, and that greater vigilance will be exerted on their part in the next fishing season than in the last.

It is in the act to which the one above referred to is an amendment that is found the provision to which I drew attention in a note to Lord Iddesleigh of December 2, 1886, by which it is enacted that in case a dispute arises as to whether any seizure has or has not been legally made, the burden of proving the illegality of the seizure shall be upon the owner or claimant.

In his reply to that note of January 11, 1887, his lordship intimates that this provision is intended only to impose upon a person claiming a license the burden of proving it. But a reference to the act shows that such is by no means the restriction of the enactment. It refers in the broadest and clearest terms to *any* seizure that is made under the provisions of the act, which covers the whole subject of protection against illegal fishing; and it applies not only to the proof of a license to fish, but to all questions of fact whatever, necessary to a determination as to the legality of a seizure or the authority of the person making it.

It is quite unnecessary to point out what grave embarrassments may arise in the relations between the United States and Great Britain under such administration as is reasonably to be expected of the extraordinary provisions of this act and its amendment, upon which it is not important at this time further to comment.

It will be for Her Majesty's Government to determine how far its sanction and support will be given to further proceedings, such as the United States Government have now repeatedly complained of and have just ground to apprehend may be continued by the Canadian authorities.

It was with the earnest desire of obviating the impending difficulty, and of preventing collisions and dispute until such time as a permanent understanding between the two Governments could be reached, that I suggested, on the part of the United States, in my note to Lord Iddesleigh of September 11, 1886, that an *ad interim* construction of the terms of the treaty might be agreed on, to be carried out by instruc-

tions to be given on both sides without prejudice to the ultimate claims of either, and terminable at the pleasure of either. In an interview I had the honor to have with his lordship, in which this suggestion was discussed, I derived the impression that he regarded it with favor. An outline of such an arrangement was therefore subsequently prepared by the United States Government, which, at the request of Lord Iddesleigh, was submitted to him.

But I observe, with some surprise, that in his note of November 30, last, his lordship refers to that proposal made in my note of 11th September, as a proposition that Her Majesty's Government "should temporarily abandon the exercise of the treaty rights which they claim and which they conceive to be indisputable."

In view of the very grave questions that exist as to the extent of those rights, in respect to which the views of the United States Government differ so widely from those insisted upon by Her Majesty's Government, it does not seem to me an unreasonable proposal that the two Governments, by a temporary and mutual concession, without prejudice, should endeavor to reach some middle ground of *ad interim* construction, by which existing friendly relations might be preserved, until some permanent treaty arrangements could be made.

The reasons why a revision of the treaty of 1818 can not now, in the opinion of the United States Government, be hopefully undertaken, and which are set forth in my note to Lord Iddesleigh of September 11, have increased in force since that note was written.

I again respectfully commend the proposal above mentioned to the consideration of Her Majesty's Government.

I have, etc.,

E. J. PHELPS.

No. 307.

Mr. Bayard to Mr. Phelps.

No. 527.] DEPARTMENT OF STATE,
Washington, February 1, 1887.

SIR: I transmit to you herewith, for the use of your legation, copies of Senate Executive Document No. 55, Forty-ninth Congress, second session, which contains a revised list of vessels involved in the controversy with the Canadian authorities.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 527.]

[Senate Ex. Doc. No. 55, Forty-ninth Congress, second session.]

Letter from the Secretary of State, transmitting revised lists of vessels involved in the controversy with the Canadian authorities.

JANUARY 27, 1887.—Ordered to be printed, and also to be bound with Senate Report No. 1683.

DEPARTMENT OF STATE,
Washington, January 26, 1887.

SIR: Responding to your request, dated the 17th and received at this Department on the 18th instant, on behalf of the Committee on Foreign Relations, for a revision of the list, heretofore furnished by this Department to the committee, of all American vessels seized, warned, fined, or detained by the Canadian authorities during the year 1886, I now inclose the same.

Every such instance is therein chronologically enumerated, with a statement of the general facts attendant.

Very respectfully, yours,

T. F. BAYARD.

Hon. GEORGE F. EDMUNDS,
United States Senate.

List of American vessels seized, detained, or warned off from Canadian ports during the last year.

Sarah B. Putnam.—Beverly, Mass.; Charles Randolph, master. Driven from harbor of Pubnico in storm March 22, 1886.

Joseph Story.—Gloucester, Mass. Detained by customs officers at Baddeck, Nova Scotia, in April, 1886, for alleged violation of the customs laws. Released after twenty-four hours' detention.

Seth Stockbridge.—Gloucester, Mass.; Antone Olson, master. Warned off from St. Andrews, New Brunswick, about April 30, 1886.

Annie M. Jordan.—Gloucester, Mass.; Alexander Haine, master. Warned off at St. Andrews, New Brunswick, about May 4, 1886.

David J. Adams.—Gloucester, Mass.; Alden Kinney, master. Seized at Digby, Nova Scotia, May 7, 1886, for alleged violation of treaty of 1818, act of 59 George III and act of 1883. Two suits brought in vice-admiralty court at Halifax for penalties. Protest filed May 12. Suits pending still, and vessel not yet released apparently.

Susie Cooper.—(Hooper ?) Gloucester (?), Mass. Boarded and searched, and crew rudely treated by Canadian officials in Canso Bay, Nova Scotia, May, 1886.

Ella M. Doughty.—Portland, Me.; Warren A. Doughty, master. Seized at St. Ann's, Cape Breton, May 17, 1886, for alleged violation of the customs laws. Suit was instituted in vice-admiralty court at Halifax, Nova Scotia, but was subsequently abandoned, and vessel was released June 29, 1886.

Jennie and Julia.—Eastport, Me.; W. H. Travis, master. Warned off at Digby, Nova Scotia, by customs officers, May 18, 1886.

Lucy Ann.—Gloucester, Mass,; Joseph H. Smith, master. Warned off at Yarmouth, Nova Scotia, May 29, 1886.

Matthew Keany.—Gloucester, Mass. Detained at Souris, Prince Edward Island, one day for alleged violation of customs laws, about May 31, 1886.

James A. Garfield.—Gloucester, Mass. Threatened, about June 1, 1886, with seizure for having purchased bait in a Canadian harbor.

Martha W. Bradley.—Gloucester, Mass.; J. F. Ventier, master. Warned off at Canso, Nova Scotia, between June 1 and 8, 1886.

Eliza Boynton.—Gloucester, Mass.; George E. Martin, master. Warned off at Canso, Nova Scotia, between June 1 and 9, 1886. Then afterwards detained in manner not reported, and released October 25, 1886.

Mascot.—Gloucester, Mass.; Alexander McEachern, master. Warned off at Port Amherst, Magdalen Islands, June 10, 1886.

Thomas F. Bayard.—Gloucester, Mass.; James McDonald, master. Warned off at Bonne Bay, Newfoundland, June 12, 1886.

James G. Craig.—Portland, Me.; Webber, master. Crew refused privilege of landing for necessaries at Brooklyn, Nova Scotia, June 15 or 16, 1886.

City Point.—Portland, Me.; Keene, master. Detained at Shelburne, Nova Scotia, July 2, 1886, for alleged violation of customs laws. Penalty of $400 demanded. Money deposited, under protest, July 12, and in addition $120 costs deposited July 14. Fine and costs refunded July 21, and vessel released August 26. Harbor dues exacted August 26, notwithstanding vessel had been refused all the privileges of entry.

C. P. Harrington.—Portland, Me.; Frellick, master. Detained at Shelburne, Nova Scotia, July 3, 1886, for alleged violation of customs laws; fined $400 July 5; fine deposited, under protest, July 12; $120 costs deposited July 14; refunded July 21, and vessel released.

Hereward.—Gloucester, Mass.; McDonald, master. Detained two days at Canso, Nova Scotia, about July 3, 1886, for shipping seamen contrary to port laws.

G. W. Cushing.—Portland, Me.; Jewett, master. Detained July (by another report June) 3, 1886, at Shelburne, Nova Scotia, for alleged violation of the customs laws; fined $400; money deposited with collector at Halifax about July 12 or 14, and $120 for costs deposited 14th; costs refunded July 21, and vessel released.

Golden Hind.—Gloucester, Mass.; Reuben Cameron, master. Warned off at Bay of Chaleurs, Nova Scotia, on or about July 23, 1886.

Novelty.—Portland, Me.; H. A. Joyce, master. Warned off at Pictou, Nova Scotia, June 29, 1886, where vessel had entered for coal and water; also refused entrance at Amherst, Nova Scotia, July 24.

N. J. Miller.—Booth Bay, Me.; Dickson, master. Detained at Hopewell Cape, New Brunswick, for alleged violation of customs laws, on July 24, 1886. Fined $400.

Rattler.—Gloucester, Mass.; A. F. Cunningham, master. Warned off at Canso, Nova Scotia, June, 1886. Detained in port of Shelburne, Nova Scotia, where vessel entered seeking shelter August 3, 1886. Kept under guard all night and released on the 4th.

Caroline Vought.—Booth Bay, Me.; Charles S. Reed, master. Warned off at Baspebiac, New Brunswick, and refused water, August 4, 1886.

Shiloh.—Gloucester, Mass.; Charles Nevit, master. Boarded at Liverpool, Nova Scotia, August 9, and subjected to rude surveillance.

Julia Ellen.—Booth Bay, Me.; Burnes, master. Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

Freddie W. Allton.—Provincetown, Mass.; Alton, master. Boarded at Liverpool, Nova Scotia, August 9, 1886, and subjected to rude surveillance.

Howard Holbrook.—Gloucester, Mass. Detained at Hawkesbury, Cape Breton, August 17, 1886, for alleged violation of the customs laws. Released August 20 on deposit of $400. Question of remission of fine still pending.

A. R. Crittenden.—Gloucester, Mass.; Bain, master. Detained at Hawkesbury, Nova Scotia, August 27, 1886, for alleged violation of customs laws. Four hundred dollars penalty deposited August 28 without protest, and vessel released. Three hundred and seventy-five dollars remitted, and a nominal fine of $25 imposed.

Mollie Adams.—Gloucester, Mass.; Solomon Jacobs, master. Warned off into storm from Straits of Canso, Nova Scotia, August 31, 1886.

Highland Light.—Wellfleet, Mass.; J. H. Ryder, master. Seized off East Point, Prince Edward Island, September 1, 1886, while fishing within prohibited line. Suit for forfeiture begun in vice-admiralty court at Charlottetown. Hearing set for September 20, but postponed to September 30. Master admitted the charge and confessed judgment. Vessel condemned and sold December 14. Purchased by Canadian Government.

Pearl Nelson.—Provincetown, Mass.; Kemp, master. Detained at Arichat, Cape Breton, September 8, 1886, for alleged violation of customs laws. Released September 9, on deposit of $200. Deposit refunded October 26, 1886.

Pioneer.—Gloucester, Mass.; F. F. Cruched, master. Warned off at Canso, Nova Scotia, September 9, 1886.

Everett Steel.—Gloucester, Mass.; Charles H. Forbes, master. Detained at Shelburne, Nova Scotia, September 10, 1886, for alleged violation of customs laws. Released by order from Ottawa, September 11, 1886.

Moro Castle—Gloucester, Mass.; Edwin M. Joyce, master. Detained at Hawkesbury, Nova Scotia, September 11, 1886, on charge of having smuggled goods into Chester, Nova Scotia, in 1884, and also of violating customs laws. A deposit of $1,000 demanded. Vessel discharged November 29, 1886, on payment, by agreement, of $1,000 to Canadian Government.

William D. Daisley.—Gloucester, Mass.; J. E. Gorman master. Detained at Souris, Prince Edward Island, October 4, 1886, for alleged violation of customs law. Fined $400, and released on payment; $375 of the fine remitted.

Laura Sayward.—Gloucester, Mass.; Medeo Rose, master. Refused privilege of landing to buy provisions at Shelburne, Nova Scotia, October 5, 1886.

Marion Grimes.—Gloucester, Mass. Detained at Shelburne, Nova Scotia, October 9, for violation of port laws in failing to report at custom-house on entering. Fined $400. Money paid under protest and vessel released. Fine remitted December 4, 1886.

Jennie Seaverns.—Gloucester, Mass.; Joseph Tupper, master. Refused privilege of landing, and vessel placed under guard at Liverpool, Nova Scotia, October 20, 1886.

Flying Scud.—Gloucester, Mass. Detained for alleged violation of customs laws at Halifax, November 1, or about that time. Released November 16, 1886.

Sarah H. Prior.—Boston, Mass. Refused the restoration of a lost seine, which was found by a Canadian schooner, December, 1886.

Boat (name unknown).—Stephen R. Balcom, master; Eastport, Me. Warned off at St. Andrews, New Brunswick, July 9, 1886, with others.

Two small boats (unnamed).—Charles Smith, Pembroke, Me., master. Seized at East Quaddy, New Brunswick, September 1, 1886, for alleged violation of customs laws.

Druid (foreign built).—Gloucester, Mass. Seized, warned off, or molested otherwise at some time prior to September 6, 1886.

Abbey A. Snow.—Injury to this vessel has not been reported to the Department of State.

Eliza A. Thomas.—Injury to this vessel has not been reported to the Department of State.

Wide-Awake.—Eastport, Me.; William Foley, master. Fined at L'Etang, New Brunswick, $75 for taking away fish without getting a clearance; again November 13, 1886, at St. George, New Brunswick, fined $20 for similar offense. In both cases he was proceeding to obtain clearances.

No. 308.

Mr. Bayard to Mr. Phelps.

No. 528.] DEPARTMENT OF STATE,
Washington, February 1, 1887.

SIR: I received on the 29th ultimo a reply* from the British minister at this capital to my notes to him on the 19th and 20th of October last, relative to the cases of the American fishing vessels *Pearl Nelson* and *Everett Steele.*

The note of Sir Lionel West serves only to inclose the communication of the Marquis of Lansdowne to Mr. Stanhope. Whilst the letter of Lord Lansdowne proceeds upon the assumption of grounds never accepted by this Government as the basis of discussion of the rights of our fishermen, and fails to admit the obvious and essential right of American fishermen to resort for purposes not abusive of the ancient privileges guaranteed by the treaty of 1818, in the Canadian bays and harbors, yet I am glad to see that the tone of his discussion indicates the growth of a disposition to consider the case of the American fishermen in a more friendly light than heretofore in the discussions of the past season.

The letters will be communicated to Congress as supplementary to the information heretofore laid before them by the President.

I am, etc.,

T. F. BAYARD.

No. 309.

Mr. Bayard to Mr. Phelps.

No. 536.] DEPARTMENT OF STATE,
Washington, February 8, 1887.

SIR: I have to acknowledge your dispatch of the 27th ultimo, No. 423, which was accompanied by a copy of the note to you of the late Lord Iddesleigh, under date of December 16, 1886, and also one from Sir Julian Pauncefote, dated January 14, 1887, and also a copy of your note to the Marquis of Salisbury under date of January 26 ultimo.

I desire to express my entire satisfaction with the position correctly assumed and admirably and logically sustained by you in this relation.

Your telegrams of the 5th instant and of yesterday, with reference to the same question, have been received.

As part of the general case, and as bearing with unusual clearness upon the Canadian claims of construction of the convention of 1818, I transmit herewith copies of a note† from Sir Lionel West, dated the 28th ultimo, inclosing a dispatch from Lord Lansdowne, governor-general of Canada, to Mr. Stanhope, dated November 9, 1886, which is accompanied by reports of the committee of the privy council for Canada, and of Mr. Thompson, the minister of justice at Ottawa.

It may be noted that this reply of the British minister at this capital to my note to him of May 20, 1886, is dated on the 28th ultimo, giving some eight months for the completion of the circuit of correspondence.

At page 15 of the printed inclosure and in the last paragraph will be found the explicit avowal of claim by the Canadian Government to

*Printed p. 516 *infra.* †Printed p. 502 *infra.*

employ the convention of 1818 as an instrument of interference with the exercise of open-sea fishing by citizens of the United States, and to give it such a construction as will enable the fishermen of the provinces better to compete at less "disadvantage in the markets of the United States" in the pursuit of the deep-sea fisheries.

At the outset of this discussion, in my note to Sir Lionel West, of May 10, 1886, I said:

> The question, therefore, arises whether such a construction is admissible as would convert the treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coasts into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that since the treaty of 1818, and independent of any treaty whatever, has grown up and now exists under the concurrent and friendly laws and mercantile regulations of the respective countries.

When I wrote this I hardly expected that the motives I suggested, rather than imputed, would be admitted by the authorities of the provinces, and was entirely unprepared for a distinct avowal thereof, not only as regards the obstruction of deep-sea fishing operations by our fishermen, but also in respect of their independent commercial intercourse, yet it will be seen that the Canadian minister of justice avers that it is "most prejudicial" to the interests of the provinces "that United States fishermen should be permitted to come into their harbors on any pretext."

The correspondence now sent to you, together with others relating to the same subject that has taken place since the President's message of December 8, communicating the same to Congress, will be laid before Congress without delay, and will assist the two houses materially in the legislation proposed for the security of the rights of American fishing vessels under treaty and international law and comity.

I am, etc.,

T. F. BAYARD.

No. 310.

Mr. White to Mr. Bayard.

No. 456.] LEGATION OF THE UNITED STATES,
London, March 2, 1887. (Received March 14.)

SIR: I have the honor to inclose herewith, for your information, an extract from the report contained in yesterday's Times of the proceedings in Parliament on the 28th February, embodying the answer made by Sir James Ferguson, under secretary of state for foreign affairs, to a question put to him by Dr. Tanner in reference to the proposed retaliatory measures against Canada.

I deem it proper to add that Mr. George W. Smalley, the well-known correspondent of the New York Tribune, has informed me of a conversation which he had recently with the same functionary, and in the course of which Sir James Ferguson assured him that the Government's late dispatches from Canada on the subject of the fisheries had been of a very conciliatory nature, and that a *modus vivendi* would very shortly be proposed to you by the British minister at Washington, which Her Majesty's Government had reason to hope would be satisfactory to the United States.

I have, etc., HENRY WHITE.

[Inclosure in No. 456.—Extract from the Report of Parliamentary Proceedings of February 28, 1887.]

NORTH AMERICAN FISHERIES.

Dr. TANNER asked the under secretary for foreign affairs whether his attention had been drawn to the following cablegram—"NEW YORK, *February* 24. A convention of smack-owners and others connected with the fishing interest has met at Gloucester, Mass., and adopted resolutions in favor of retaliatory measures against Canada." (REUTER)—and whether any measures were being taken by the Government to reconcile the differences existing between the United States of America and Great Britain on this fishery question.

Sir J. FERGUSON. I am aware of the paragraph quoted by the honorable member, and of other news showing the strong feeling entertained in the United States in regard to the Canadian fishery question. Her Majesty's Government are giving the subject the earnest attention which the importance of the matter requires. (From The Times, March 1, 1887.)

No. 311.

Mr. White to Mr. Bayard.

No. 459.] LEGATION OF THE UNITED STATES,
London, March 5, 1887. (Received March 14.)

SIR: I have the honor to report to you briefly the trial yesterday, at the central criminal court, of George F. Anderson, a citizen of the United States, who was found guilty of obtaining money under false pretenses from Charles Deakin and others, also American citizens, and sentenced to five years' penal servitude.

I attended the trial, which, I need scarcely say, was perfectly fair, every opportunity being afforded the prisoner, including several postponements, at his request, for one frivolous cause or another, to clear himself of the charges brought against him; but no evidence was he able to produce to prove that he had not falsely represented to the Deakins and others that they were about to obtain a large property here, the actual occupiers of which, knowing that they were shortly to be turned out, had declined to pay the taxes due thereupon, and that the property would be sold to pay the same unless money were forthcoming for the purpose; or that he had not strongly urged that this should be sent by the Deakins, who cabled him about $3,000, having previously advanced other sums for the prosecution of this fictitious "claim."

The owner and occupier of the property, who had been in undisturbed possession for twenty-seven years, proved that no legal proceedings had been taken against him, with a view to his ejectment; the tax-collector of the district swore that the taxes on the property in question had never been in arrear, and that no such claim as that reported by Anderson had been made, nor was the prisoner able to show that he had devoted the money received from the Deakins for any such purpose. It was, on the contrary, very clearly proved that he made quite another use of it.

My reason for reporting this trial to you is that it happens to be the first occasion that I know of in which a perpetrator of the extensive and outrageous "estate" frauds from which our countrymen are such sufferers, and which Mr. Phelps has already reported to you, has been brought to justice; and I venture to hope that if full publicity be given to this case, it may be the means of saving many thousands of dollars, of which American citizens are annually robbed by gangs of thieves, who, under the pretense of prosecuting claims to estates in this country, which either have no existence at all or are safely vested in the hands

of those who own them, obtain large sums of money, which they spend here in riotous living.

It is to be hoped that the rascals who have hitherto practiced this nefarious trade with impunity will scarcely think it worth the risk of five years' penal servitude. Possibly the knowledge that this will be their fate if caught may deter them from embarking in the fictitious "estate" business, and may also induce their victims to come to England and prosecute them as Deakin did. I am happy to say that the latter has been rewarded for his perseverance by the recovery of a considerable portion of his money.

I have the honor to inclose for your information copies of the correspondence which passed between this legation and Anderson while his case was before the police court.

I have, etc.,

HENRY WHITE.

[Inclosure 1 in No. 459.]

Mr. Anderson to Mr. Phelps.

JANUARY 31, 1887.

MY DEAR SIR: It is not long since I addressed you, and as yet have not received any reply or in any way or any kind suggestion. In the autumn of 1864, September 12, a boy shouldered a gun (from no mercenary motive), traveled through the enemy's country with Thomas, Sherman, and Schofield, one of the defenders of our national emblem, "The Stars and Stripes," which you, my representative, represent here in Great Britain. That boy was G. F. Anderson, Company B, Twenty-eighth Michigan Volunteer Infantry. I am a humble citizen of the United States of America, and only request as such the kind or unkind consideration that the humblest can expect. I am in a foreign country in trouble, yet I dare not despair. Surely the country I was willing to pledge my life for in the days of her direst distress will not altogether desert her boy without first hearing his side of the question. I ask only that I may be heard. I have been incarcerated in Holloway prison for two weeks, while my enemies betide me, and I have not been able to utter one word. I ask you, my dear sir, to advise me. I claim that I have but one motive in the certain case, and have had but one, that is to simply protect John Deakin, my client, as between Mr. W. C. Deakin and myself and Mr. Stanford. I have had the fullest understanding in regard to what was due Father Deakin, and when it was to be paid by me to him, and it was understood fully what was not used in his interest should be returned to him; and I have been at all times ready and willing to pay him or any one he wished me to pay, and should have paid either Mr. W. C. Deakin or Mr. Stanford if a disagreement had not risen between them, and each vieing with the other to command me, and at last I agreed to meet Mr. Stanford in New York, to pay Mr. John Deakin, February 15, 1887; hence my present trouble. I humbly ask you to advise me what *am I to do.* I am prepared, and have always been, to live up to my agreement with my client John Deakin.

Ever yours, faithfully

G. F. ANDERSON.

[Inclosure 2 in No. 459.]

Mr. White to Mr. Anderson.

LEGATION OF THE UNITED STATES,
London, February 2, 1887.

SIR: I am desired by the United States minister to reply to your letter of the 31st January. It refers to a previous note which you state has been addressed to him, but which was never received.

The minister very much regrets to learn that grave charges of a criminal nature for frauds alleged to have been perpetrated upon American citizens, have been preferred against you, which the law officers of the British Government have thought it necessary to prosecute.

As to the truth of these charges the minister has of course no knowledge, and would be glad to learn that they are unfounded.

Of a fair trial and full hearing in respect to them you may rest assured. If they should fail to be established by legal and satisfactory evidence, no interposition on the part of the United States will be necessary. But if proved to be true such interposition would neither be proper nor effectual.

The protection afforded by the United States Government to its citizens in other countries does not involve any attempt to shield them from the legal consequences of offenses committed against the laws of those countries; the Government will only interfere in such cases where there is an attempt to deprive the accused of a fair trial and equal justice, which certainly will not occur in your case.

I am, etc.,

HENRY WHITE,
Secretary of Legation.

[Inclosure 3 in No. 459.]

Mr. Anderson to Mr. Phelps.

FEBRUARY 4, 1887.

MY DEAR SIR: Yours of the 2d instant at hand, for which accept my sincere thanks.

I have had every reason to believe that our Government—the United States of America—did interfere and had a right to do so when there is an attempt to deprive the accused of a fair trial, that the accused may at all times have an equal chance and equal justice.

I find I have been confined here in Holloway nearly three weeks, being refused the right of bail, and in consequence of the refusal of bail (to which I am surely entitled) jeopardizing my case, as I certainly have a just and honorable defense. I *am prevented* in every way from getting my evidence properly presented and my witnesses here on time, simply because I am restricted on all sides, while my accusers have every facility and great freedom of action accorded them to conduct the prosecution of this very grave charge.

If this action is a fair interpretation of a fair trial and equal justice before the law, as awarded the citizens of our country when in foreign countries, there must be a very serious misunderstanding somewhere.

I thoroughly understand, and it is quite distinguishable in nearly all cases where misfortunes overtake mankind, that a little leaven leaveneth a whole lump. I sincerely will thank you most heartily if you will assist me in this my suggestion and request for bail, as you say in your letter of 2d I will not be denied a fair trial and equal justice.

I am, etc.,

G. F. ANDERSON.

I am greatly obliged to you for the very kind treatment and the courtesies extended to my wife when she called. She has just spoken of it. I little thought when I called on you with Senator Palmer (in November), of Michigan, that I would be humbly asking your favor in so serious a matter.

Sincerely

ANDERSON.

[Inclosure 4 in No. 459.]

Mr. White to Mr. Anderson.

LEGATION OF THE UNITED STATES,
London, February 7, 1887.

SIR: I am directed by the minister to acknowledge the receipt of your letter dated 4th instant, and to state in reply that it would be neither possible nor proper for him to address any communication to the law officers of the Crown with reference to your being admitted to bail.

We are informed, on inquiry, that, according to the custom usual in cases similar to yours, you are not entitled at this stage to be admitted to bail; but that, in the event of your being committed for trial by the magistrate, you might then be admitted to bail.

I am, etc.,

HENRY WHITE,
Secretary of Legation.

No. 312.

Mr. Bayard to Mr. Phelps.

No. 563.] DEPARTMENT OF STATE,
Washington, March 11, 1887.

SIR: I inclose herewith, for the use of your legation, copies of the act of Congress (Public, No. 125), entitled "An act to authorize the President of the United States to protect and defend the rights of American fishing vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes," approved March 3, 1887.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 563.]

[Public—No. 125.]

AN ACT to authorize the President of the United States to protect and defend the rights of American fishing vessels, American fishermen, American trading and other vessels, in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States shall be satisfied that American fishing vessels or American fishermen, visiting or being in the waters or at any ports or places of the British dominions of North America, are or then lately have been denied or abridged in the enjoyment of any rights secured to them by treaty or law, or are or then lately have [been] unjustly vexed or harassed in the enjoyment of such rights, or subjected to unreasonable restrictions, regulations, or requirements in respect of such rights; or otherwise unjustly vexed or harassed in said waters, ports, or places; or whenever the President of the United States shall be satisfied that any such fishing vessels or fishermen, having a permit under the laws of the United States to touch and trade at any port or ports, place or places, in the British dominions of North America, are or then lately have been denied the privilege of entering such port or ports, place or places in the same manner and under the same regulations as may exist therein applicable to trading vessels of the most favored nation, or shall be unjustly vexed or harassed in respect thereof, or otherwise be unjustly vexed or harassed therein, or shall be prevented from purchasing such supplies as may there be lawfully sold to trading vessels of the most favored nation; or whenever the President of the United States shall be satisfied that any other vessels of the United States, their masters or crews, so arriving at or being in such British waters or ports or places of the British dominions of North America, are or then lately have been denied any of the privileges therein accorded to the vessels, their masters or crews, of the most favored nation, or unjustly vexed or harassed in respect of the same, or unjustly vexed or harassed therein by the authorities thereof, then, and in either or all of such cases, it shall be lawful, and it shall be the duty of the President of the United States, in his discretion, by proclamation to that effect, to deny vessels, their masters and crews, of the British dominions of North America, any entrance into the waters, ports, or places of, or within the United States (with such exceptions in regard to vessels in distress, stress of weather, or needing supplies as to the President shall seem proper), whether such vessels shall have come directly from said dominions on such destined voyage or by way of some port or place in such destined voyage elsewhere; and also, to deny entry into any port or place of the United States of fresh fish or salt fish or any other product of said dominions, or other goods coming from said dominions to the United States. The President may, in his discretion, apply such proclamation to any part or to all of the foregoing-named subjects, and may revoke, qualify, limit, and renew such proclamation from time to time as he may deem necessary to the full and just execution of the purposes of this act. Every violation of any such proclamation, or any part thereof, is hereby declared illegal, and all vessels and goods so coming or being within the waters, ports, or places of the United States contrary to such proclamation shall be forfeited to the United States; and such forfeiture shall be enforced and proceeded upon in the same manner and with the same effect as in the case of vessels or goods whose importation or coming to or being in the waters or ports of the United States contrary to law

may now be enforced and proceeded upon. Every person who shall violate any of the provisions of this act, or such proclamation of the President made in pursuance hereof, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or by both said punishments, in the discretion of the court.

Approved, March 3, 1887.

No. 313.

Mr. Bayard to Mr. White.

No. 570.] DEPARTMENT OF STATE,
Washington, March 18, 1887.

SIR: Your dispatch No. 459, of the 5th instant, communicating to the Department the intelligence that one George F. Anderson, lately engaged in the fictitious estates business, was found guilty on trial of obtaining money under false pretenses and sentenced to five years' penal servitude, has been received and read with satisfaction. The contents of your dispatch will be given to the press for the information of the public.

I am, etc.,

T. F. BAYARD.

No. 314.

Mr. White to Mr. Bayard.

No. 472.] LEGATION OF THE UNITED STATES,
London, March 23, 1887. (Received April 4.)

SIR: I have the honor to inclose herewith for your information copies of questions asked in the House of Commons yesterday and the day before with regard to our difficulty with Canada respecting the fisheries, together with the answers made to the same by the under secretary of state for foreign affairs.

According to one of these answers it would seem that the British Government's reply on the subject of a *modus vivendi* must soon be in our hands.

I have, etc.,

HENRY WHITE.

[Inclosure 1 in No. 472.]

Parliamentary proceedings, March 21, 1887.

NORTH AMERICAN FISHERIES.

Mr. GOURLEY asked the under secretary for foreign affairs whether he could inform the House of the nature of the dispatch received from the Dominion Government suggesting a *modus vivendi* for a settlement of the Anglo-American fisheries dispute, and when he anticipated that further promised correspondence would be in the hands of members; and whether the prohibition of the sale of bait to United States fishermen in Newfoundland (while permitted to French fishermen) was in harmony with "the most favored nation" clause of foreign treaties.

Sir J. FERGUSSON, Her Majesty's Government will be desirous of informing the House of the course of negotiations with the Government of the United States upon the fisheries dispute as soon as possible. I hope to lay on the table the dispatch now being addressed to the United States Government before the Easter recess. I hope

the House will excuse me from entering upon the questions affecting the Newfoundland fisheries in a fragmentary manner. Her Majesty's Government will be careful to observe their international obligations, while having due regard to the interests of her Majesty's subjects. (From the Times, March 22, 1887.)

[Inclosure 2 in No. 472.]

[Parliamentary Proceedings, March 22, 1887.]

THE CANADIAN FISHERIES DISPUTE.

Mr. GOURLEY asked the under secretary of state of foreign affairs whether there was any truth in the statement that the Canadian Government is negotiating for the purchase of armed cruisers for the purpose of enforcing the Anglo-American Fisheries Convention of 1818, as interpreted by the Dominion Government; and, if so, whether the proposed proceedings have the sanction of Her Majesty's Government.

Sir J. FERGUSSON. I only saw the question on entering the House, and I beg to submit to the House that a somewhat longer notice of such questions should be given than even one night. [Hear!] No information on the subject has reached the foreign office, and the secretary of state for the colonies informs me that he has not heard of it. I may add that the purchase of cruisers is a matter within the discretion of the Canadian Government. (From the Times, March 23, 1887.)

No. 315.

Mr. White to Mr. Bayard.

No. 475.] LEGATION OF THE UNITED STATES,
London, March 26, 1887. (Received April 5.)

SIR: I have the honor to inclose herewith two printed copies of a note* which I have received from the Marquis of Salisbury, in reply to the proposals for a *modus vivendi*, contained in your instruction numbered 459, of November 12 last, to Mr. Phelps.

I have, etc.,

HENRY WHITE.

No. 316.

Mr. White to Mr. Bayard.

No. 478.] LEGATION OF THE UNITED STATES,
London, March 30, 1887. (Received April 11.)

SIR: Referring to my dispatch numbered 475, of March 26, I have the honor to inclose herewith the copy of a note which I received yesterday from the Marquis of Salisbury, adding a clause to the observations on Article III of your proposal for a *modus vivendi*, which formed a part of inclosure No. 2 to his lordship's note of the 24th instant, in reference to the Canadian fisheries.

I have the honor also to inclose herewith four copies of the note in question, corrected as above, and I beg to add that I have marked the newly inserted clause at page No. 10 of the same.

I have, etc.,

HENRY WHITE.

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* Printed as amended by Mr. White's, No. 478, p. 469, *infra*.

[Inclosure 1 in No. 478.]

The Marquis of Salisbury to Mr. White.

FOREIGN OFFICE, *March* 2[illegible] 1887.

SIR: In a note of the 3d December last, addressed to my predecessor, Mr. Phelps was good enough to transmit a copy of a dispatch from Mr. Bayard, dated the 15th of the preceding month, together with an outline of a proposed *ad interim* arrangement "for the settlement of all questions in dispute in relation to the fisheries on the northeastern coasts of British North America."

Her Majesty's Government have given their most careful consideration to that communication, and it has also received the fullest examination at the hands of the Canadian Government, who entirely share the satisfaction felt by Her Majesty's Government at any indication on the part of that of the United States of a disposition to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than unfortunately exists at present. The Canadian Government, however, deprecate several passages in Mr. Bayard's dispatch which attribute unfriendly motives to their proceedings, and in which the character and scope of the measures they have taken to enforce the terms of the convention of 1818 are, as they believe, entirely misapprehended.

They insist that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the convention of 1818, and of enforcing the statutes of Great Britain and of Canada in relation to the fisheries. They maintain that such statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the convention of 1818, especially in view of the passage of the convention which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

There is a passage in Mr. Bayard's dispatch to which they have particularly called the attention of Her Majesty's Government. It is the following:

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which up to this day have not been particularized sufficiently to allow of intelligent defense; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them."

In relation to this paragraph the Canadian Government observe that the seizures of which Mr. Bayard complains have been made upon grounds which have been distinctly and unequivocally stated in every case; that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that ample opportunity has in every case been afforded for a defense to be submitted to the executive authorities, but that no defense has been offered beyond the mere denial of the right of the Canadian Government; that the courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those courts for redress. To this it is added that the illegal acts which are characterized by Mr. Bayard as "technical violations of alleged commercial regulations," involved breaches, in most of the cases not denied by the persons who had committed them, of established commercial regulations which, far from being specially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbors of the British North American coast.

I have thought it right, in justice to the Canadian Government, to embody in this note almost in their own terms their refutation of the charges brought against them by Mr. Bayard; but I would prefer not to dwell on this part of the controversy, but to proceed at once to the consideration of the six articles of Mr. Bayard's memorandum in which the proposals of your Government are embodied.

Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the memorandum will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States minister in London, the draft of a protocol which, in substance, coincides with the first article of the proposal now submitted."

Article 1 of the memorandum no doubt to some extent resembles the draft protocol submitted in 1866 by Mr. Adams to Lord Clarendon, of which I inclose a copy for convenience of reference), but it contains some important departures from its terms.

Nevertheless, the article comprises the elements of a possible accord, and if it stood alone I have little doubt that it might be so modeled, with the concurrence of your Government, as to present an acceptable basis of negotiation to both parties. But,

unfortunately, it is followed by other articles which, in the view of Her Majesty's Government and that of Canada, would give rise to endless and unprofitable discussion, and which, if retained, would be fatal to the prospect of any satisfactory arrangement, inasmuch as they appear as a whole to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded.

I should extend the present note to an undue length were I to attempt to discuss in it each of the articles of Mr. Bayard's memorandum, and to explain the grounds on which Her Majesty's Government feel compelled to take exception to them. I have therefore thought it more convenient to do so in the form of a counter-memorandum, which I have the honor to inclose, and in which will be found, in parallel columns, the articles of Mr. Bayard's memorandum, and the observations of Her Majesty's Government thereon.

Although, as you will perceive on a perusal of those observations, the proposal of your Government as it now stands is not one which could be accepted by Her Majesty's Government, still Her Majesty's Government are glad to think that the fact of such a proposal having been made affords an opportunity which, up to the present time, had not been offered for an amicable comparison of the views entertained by the respective Governments.

The main principle of that proposal is that a mixed commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the convention of 1818, the exclusive right of fishing belongs to Great Britain.

Her Majesty's Government cordially agree with your Government in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and they will be found ready to co-operate with your Government in effecting such a settlement.

They are of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the reciprocity treaty of 1854, and they concur with him in believing that the draft protocol communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the first article of the memorandum now forwarded by him; but he appears to have lost sight of the fact that the remaining articles of that memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

There can be no objection on the part of Her Majesty's Government to the appointment of a mixed commission, whose duty it would be to consider and report upon the matters referred to in the three first articles of the draft protocol communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a commission instructed to deal with these subjects be appointed at an early date, the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss, it would be indispensable that United States fishing vessels entering Canadian bays and harbors should govern themselves not only according to the terms of the convention of 1818, but by the regulations to which they, in common with other vessels, are subject while within such waters.

Her Majesty's Government, however, have no doubt that every effort will be made to enforce those regulations in such a manner as to cause the smallest amount of inconvenience to fishing vessels entering Canadian ports under stress of weather, or for any other legitimate purpose.

But there is another course which Her Majesty's Government are inclined to propose, and which, in their opinion, would afford a temporary solution of the controversy equally creditable to both parties.

Her Majesty's Government have never been informed of the reasons which induced the Government of the United States to denounce the fishery articles of the treaty of Washington, but they have understood that the adoption of that course was in a great degree the result of a feeling of disappointment at the Halifax award, under which the United States were called upon to pay the sum of 1,100,000*l*., being the estimated value of the benefits which would accrue to them, in excess of those which would be derived by Canada and Newfoundland from the operation of the fishery articles of the treaty.

Her Majesty's Government and the Government of Canada, in proof of their earnest desire to treat the question in a spirit of liberality and friendship, are now willing to

revert for the coming fishing season, and, if necessary, for a further term, to the condition of things existing under the treaty of Washington, without any suggestion of pecuniary indemnity.

This is a proposal which, I trust, will commend itself to your Government as being based on that spirit of generosity and good will which should animate two great and kindred nations, whose common origin, language, and institutions constitute as many bonds of amity and concord.

I have, etc.,

SALISBURY.

[Inclosure 2 in No. 478.]

Draft protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.

Whereas in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 26th October, 1818, it was declared that—

"The United States hereby renounce, for ever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America, not included within certain limits heretofore mentioned;"

And whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, have agreed to appoint, and do hereby authorize the appointment, of a mixed commission for the following purposes, namely:

(1) To agree upon and define, by a series of lines, the limits which shall separate the exclusive from the common right of fishery, on the coasts and in the seas adjacent, of the British North American colonies, in conformity with the first article of the convention of 1818. The said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter; and of repairing damages therein; of purchasing wood, and of obtaining water; and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violation of rights and the transgression of the limits and restrictions which may be hereby adopted.

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged and accepted by the President of the United States, by and with the consent of the Senate, and by Her Majesty the Queen of Great Britain.

Pending a different arrangement on the subject, the United States Government engages to give all proper orders to officers in its employment; and Her Britannic Majesty's Government engages to instruct the proper colonial or other British officers to abstain from hostile acts against British and United States fishermen respectively.

[Inclosure 3 in No. 478.]

Ad interim arrangement proposed by the United States Government.

ARTICLE I.	*Observations on Mr. Bayard's memorandum.*
Whereas, in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the high contracting parties "that the inhabitants of the said United States shall have forever, in com-	The most important departure in this article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbors from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said

mon with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a mixed commission for the following purposes, namely:

(1) To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the first article of the convention of 1818, except that the bays and harbors from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said article, are hereby agreed to be taken to be such bays and harbors as are 10 or less than 10 miles in width, and the distance of 3 marine miles from article, are hereby agreed to be taken to be such harbors as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbors shall be measured from a straight line drawn across the bay or harbor in the part nearest the entrance at the first point where the width does not exceed 10 miles."

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing-grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost landlocked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 and 15 Vict., cap. 63; and Mouat *v.* McPhee, 5 Sup. Court of Canada Reports, p. 66.)

The convention with France in 1839, and similar conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those conventions were doubtless passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of boundary-lines which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

This is shown by the fact that in the French convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States Government, and to the admission made by their statesmen in regard to bays on the American coasts, strengthens this view; and the case of the English ship *Grange* shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the umpire of the commission appointed under the convention of 1853 in the case of the United States fishing-schooner *Washington* that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

such bays and harbors shall be measured from a straight line drawn across the bay or harbor, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, That the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged.

It is submitted, however, that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same power.

The second paragraph of the first article does not incorporate the exact language of the convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," etc.

To make the language conform correctly to the convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

This article would suspend the operation of the statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offenses connected with fishing, but as to customs, harbors, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class or of any other nation. Such vessels would, for example, be free from the duty of reporting at the customs on entering a Canadian harbor, and no safeguard could be adopted to prevent infraction of the customs laws by any vessel asserting the character of a fishing vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

ARTICLE III.

For the purpose of executing Article I of the convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the

This article would deprive the courts in Canada of their jurisdiction, and would vest that jurisdiction in a tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the ad-

southern coasts of Nova Scotia. Whenever a fishing vessel of the United States shall be seized for violating the provisions of the aforesaid convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the vice-admiralty court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the umpire.

ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same rules and regulations and payment of the same port charges as are prescribed for other vessels of the United States.

ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the high contracting parties agree to appoint a joint commission to asjudication of two naval officers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the vice-admiralty court at Halifax, but there would be no redress, no appeal, and no reference to any tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this article of the violations of the convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released. They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast and the delays which must in consequence be frequent in securing the presence at the same time and place of the naval officers of both Powers.

This article is also open to grave objection. It proposes to give the United States fishing vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the convention of 1818 on behalf of fishing vessels, which were thereafter to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is proposed, under this article, to declare that the convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbors of the Dominion.

By this article it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the convention by the last preceding article.

It is assumed, without discussion, that all United States fishing vessels which have been seized since the expiration of the treaty of Washington have been

certain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the treaty of 1818, said commission to make awards therefor to the parties injured.

ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian customs regulations, and the United States agree to admonish its fishermen to comply with them and co-operate in securing their enforcement.

illegally seized leaving as the only question still open for consideration the amount of the damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

This article calls for no remark.

No. 317.

Mr. Phelps to Mr. Bayard.

No. 501.] LEGATION OF THE UNITED STATES,
London, April 22, 1887. (Received May 3.)

SIR: I have the honor to inclose herewith two copies of a parliamentary paper* (United States, No. 2, 1887) just issued by the British Government and containing further correspondence on the subject of the fisheries, together with a leading article from the Times of 21st instant in reference thereto, and the correction I caused to be inserted in to-day's issue of that newspaper of one of its statements.

I have, etc.,

E. J. PHELPS.

[Inclosure 1 in No. 501.—From the Times, Thursday, April 21, 1887.]

The Canadian fisheries question is not finally settled; in fact, that much to be desired end seems far off. The further official correspondence published yesterday shows that diplomacy has moved without advancing much. Who is responsible? Not, in the main, either the Home Government or the Dominion Government. We must do them the justice to own that they have not been exacting or punctilious. The former have made overtures of a fair and even generous nature. Their fault, if any, has been one not unknown in negotiating with astute diplomatists; they have, perhaps, undervalued the advantage of standing still and waiting to see whether the other side moves. Last December the American minister communicated to Lord Iddesleigh a proposal for an *ad interim* arrangement, the chief feature of which was the establishment of a mixed commission in order to "separate the exclusive from the common right of fishing on the coasts and in the adjacent waters of the British North American colonies;" the vexed question of the headlands to be settled by laying it down that the bays and harbors into which entrance is not generally permitted are "to be taken to be such bays and harbors as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbors, to be measured from a straight line drawn across the bay or harbor in the part nearest the entrance at the first point where the width does not exceed 10 miles." The commissioners would also be empowered to make regulations to secure the right of entry of fishermen of the United States into bays and harbors for the purpose of safety and the like, and also to make arrangements for the speedy trial of offenders. In the mean time no seizures would take place; vessels of war of this country and the United States would act as police, and American fishing vessels would have the same commercial privileges, including the purchase of bait and other supplies, as other vessels of the United States. This proposal found no favor in Canada or here. Lord Landsdowne's advisers pointed out

* This paper contains the correspondence between the two Governments which has also been published by the Government of the United States.

that it was open to serious objections. The proposed mode of measuring bays and harbors and the suggested 3-mile line would involve an abandonment by Canada of exclusive rights which are indisputably hers; for example, the land-locked Baie des Chaleurs, which by Imperial statute and judicial construction has been declared to be part of the territory of Canada, would be dealt with as if it were part of the open sea. The proposal as to the provisional position of fishing vessels is equivalent to a request that Canada should give up one of the express benefits of the treaty of 1818. Lord Salisbury was equally unsparing in his criticism of the *ad interim* proposal. As he pointed out, one of the suggestions was to "give to fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class or any other nation."

But very wisely too much has not been made of these objections. The matter has not ended there. The sooner this question is settled the better for all concerned, and the Government acted properly in allowing the door to remain open. "Her Majesty's Government and the Government of Canada," said Lord Salisbury in his dispatch of March 24, "in proof of the earnest desire to treat the question in a spirit of liberality and friendship, are now willing to revert for the coming fishing season, and, if necessary, for a further term, to the condition of things existing under the treaty of Washington, without any suggestion of indemnity"—that is, give for nothing for a season rights for which, under the Halifax award, made in accordance with the fishery articles of the treaty of Washington, the American Government were called upon to pay £1,100,000. This may be scarcely business; it is generous almost to the extent of being quixotic, and to do more would be weakness. We are slow to believe that the American Government will refuse to take advantage of what can cost them nothing to accept. Besides, too, the English Government are ready to fall in with Mr. Bayard's capital proposal for the appointment of a mixed commission. As to that suggestion, which was urged in one of a series of valuable letters on this subject in our columns on February 19 last, Lord Salisbury says: "There can be no objection on the part of Her Majesty's Government to the appointment of a mixed commission, whose business it would be to consider and report upon the matters referred to in the three first articles of the draft protocol communicated to the Earl of Clarendon by Mr. Adams in 1866." Some sort of *modus vivendi* could surely be devised by a well-chosen, authoritative commission. Unfortunately, the longer such a question remains open, the more it loses its original simplicity and becomes perplexed by side issues. The more it is discussed the more diplomatists are embarrassed by propositions to which they or their predecessors stand committed. Insensibly the controversy becomes embittered, and retaliation is talked of. We find but too many illustrations of this deterioration in these dispatches. Perhaps the absence of an equitable temper may be detected in communications from this side of the Atlantic and from the Dominion. We, perhaps naturally, are more struck by the acrimony of the attacks by American diplomatists on the Canadian Government. In the very first communication from Mr. Phelps to the late Lord Iddesleigh he denounces, as "a violation of the principles of natural justice as well as those of the common law," the seizure of a fishing vessel for infringing the treaty of 1818 and certain custom-house regulations. He is particularly angry with the requirement by Canadian law that "the burden of proving the illegality shall be on the owner or claimant." That such provisions exist in almost all laws against smuggling is wholly overlooked. It is impossible not to mark the tendency to look at the question as if it were not one of construction of the treaty of 1818. We find reiterated complaints that "a treaty of friendship" is "tortured into a means of offense," that "existing regulations have been construed with a technical strictness and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both unusual and unnecessary." The House of Representatives took even higher ground, and the Committee on Foreign Affairs reported that the conduct of the local authorities in Canada "has been not only in violation of treaty stipulations and international comity, but, during the fishing season just passed, has been inhuman," The Committee of the Senate on Foreign Relations reported to much the same effect. "It is recommended," they said in their report, "that the President of the United States be invested with the power, and that it be made his duty, whenever he shall be satisfied that unjust, unfair, or unfriendly conduct is practiced by the British Government in respect of our citizens and their property within the ports or waters of British dominions in North America to deny to the subjects of that Government in British North America and their property, or to any class of them, such privileges in the waters and ports of the United States as he may think proper to name, and to suspend in respect of such vessels or classes of vessels, or such property or classes of property of the subjects of such Government the right of entering or being brought within the waters or ports of the United States." The result has been the passing of the retaliatory bill introduced in the Senate, which requires the President, when satisfied that American fishermen have been deprived of any right, or unjustly or vexatiously treated, to retaliate with like restrictions. This development of the controversy does not bode well for

settlement. Politicians, if not diplomatists, have lost sight of the originally simple issue, the meaning of a few words. But we do not despair of the matter being, even at this stage, amicably arranged. if only no further time is lost.

[Inclosure 2 in No. 501.—From the Times, Friday, April 22, 1887.]

THE CANADIAN FISHERIES QUESTION.

We regret that by inadvertence it was stated in the Times of yesterday in a quotation from an official note of the American minister to Lord Iddesleigh, dated December 2, 1886, that Mr. Phelps denounced "the seizure of a fishing vessel for infringing the treaty of 1818 and certain custom-house regulations" as "a violation of the principles of abstract justice, as well as those of the common law." It appears from the note in question that this language referred, not to a seizure of a fishing vessel, but to a provision in the act of the Canadian Parliament of May 22, 1868, which in legal effect casts upon the person accused of an offense the burden of proving his innocence.

No. 318.

Mr. Bayard to Mr. Phelps.

No. 625.] DEPARTMENT OF STATE,
Washington, May 23, 1887.

SIR: I transmit herewith for your information copies of recent correspondence relative to the case of the *Sarah H. Prior*, one of the fishery cases.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 625.]

Mr. Prior to Mr. Bayard.

BOSTON, *May* 13, 1887.

DEAR SIR: I received the inclosed letter to-day and thought best to forward it to you for your perusal and advice. It is in regard to the seine belonging to the schooner *Sarah H. Prior*. The seine was lost off Malpeque and picked up by a British schooner and brought into Malpeque, where the *Prior* was lying. They refused to deliver it up after the captain of the *Prior* had offered to pay salvage on it. I sent you a sworn affidavit last November of the facts in the case. Please let me know when you think it best to enter a claim for damage. Hoping to hear from you at your earliest convenience,

I remain, etc.,

P. H. PRIOR.

P. S.—Please let me know what steps to take in regard to answering the inclosed letter.

P. H. P.

[Inclosure to inclosure 1 in No. 625.]

SOURIS, PRINCE EDWARD ISLAND,
May 2, 1887.

Messrs. P. H. PRIOR & SON,
Boston, Mass.:

SIRS: In October last Captain Wolf of the British schooner *John M. Inglis* delivered to me a wrecked seine which he had picked up at sea. It had the name "Sarah H. Prior" printed somewhere about it. As receiver of wrecks for this district I made the necessary advertisement here and at Ottawa, where the head department is, but before I could ascertain who the owner was winter had set in and nothing could be done.

I had the seine nicely salted and secured for the winter. It is now in as good condition as when it was brought here. I have now to ask if you are the real owners of this property, and if so, what disposition you wish me to make of it, whether you wish to pay the salvage, $25, and some other charges, and have the property shipped to you by steamer or have it kept here until your vessel calls. Something must be done with it soon. I have had it overhauled this spring, and it appears in good condition, except of course the tearing. The purseline, etc., are with it, and it should be worth more than the charges against it.

Will you kindly advise me by return mail what your wishes are in the matter, and oblige,

Yours, etc.

M. J. FOLEY,
Receiver of Wrecks.

[Inclosure 2 in No. 625.]

Mr. Bayard to Mr. Prior.

DEPARTMENT OF STATE,
Washington, May 21, 1887.

SIR: Your letter of the 13th instant in relation to the claim preferred by you because of the alleged refusal of the commander of the Canadian cruiser *Critic* to permit the restoration to your fishing vessel, the *Sarah H. Prior*, of a valuable seine lost at sea and carried into Malpeque by a Canadian vessel, has been received.

As you were informed, by my letter of January 28 last, your original complaint of December 28, 1886, with the accompanying affidavit of the captain and crew of the *Sarah H. Prior* purporting to set forth the facts of the case, was laid before Her Britannic Majesty's minister at this capital. My note and Sir Lionel West's acknowledgment thereof are printed on pages 7 and 8 of the inclosed executive document.

I am now in receipt of Sir Lionel's reply, covering an approved report of a committee of the Dominion privy council, of which a copy is inclosed for your information.

The question appears to have been one of compliance with the usual wreckage and salvage laws, and wholly disconnected from international right and duty.

The sworn statements of the master of the *Sarah H. Prior* as to the refusal of the commander of the *Critic* to permit the restoration of the seine are controverted.

It is alleged that, on the regular course of proceedings for the recovery of his property through the receiver of wrecks being pointed out to Captain McLaughlin, the latter "then said that as the seine was all torn to pieces, he would not bother himself about it"

It appears, from the letter addressed to you, May 2, by Mr. M. J. Foley, receiver of wrecks at Souris, Prince Edward Island, and which you send to me for my information, that the seine in question, after proper care during the winter, is still at your disposal on payment of the adjudged salvage, $25. This sum, it may be noted, is that which Captain McLaughlin offered in the first instance to pay to the master of the *John Ingalls*.

Inasmuch as the rights of salvage are private rights, to be settled in judicial forums, and as no obstacle now exists, or appears to have at any time existed, to the recovery of your lost property by institution of a suit in the usual form, I am unable to discover any connection between the subject-matter of your complaint and any treaty of the United States with Great Britain, or ground for Government interposition.

Wreck-master Foley's letter is herewith returned to you, a copy being retained on file with your letter.

I am, etc.,

T. F. BAYARD.

No. 319.

Mr. Bayard to Mr. Phelps.

No. 629.] DEPARTMENT OF STATE,
Washington, May 27, 1887.

SIR: I inclose herewith a letter, with office copy thereof, from the President to Her Majesty Queen Victoria, congratulating her upon the arrival of the fiftieth anniversary of her accession to the Crown of Great Britain.

You will transmit the office copy to the foreign office with the statement that you will be pleased to present the original in the manner most agreeable to Her Majesty.

I am, etc.,

T. F. BAYARD.

Grover Cleveland, the President of the United States, to Her Majesty Victoria, Queen of Great Britain and Ireland and Empress of India.

GREAT AND GOOD FRIEND: In the name and on behalf of the people of the United States I present their sincere felicitations upon the arrival of the fiftieth anniversary of Your Majesty's accession to the Crown of Great Britain.

I but utter the general voice of my fellow countrymen in wishing for your people the prolongation of a reign so marked with advance in popular well-being, physical, moral, and intellectual.

It is justice and not adulation to acknowledge the debt of gratitude and respect due to your personal virtues, for their important influence in producing and conserving the prosperous and well-ordered condition of affairs now generally prevailing throughout your dominions.

May your life be prolonged, and peace, honor, and prosperity bless the people over whom you have been called to rule; may liberty flourish throughout your Empire under just and equal laws, and your Government be strong in the affections of all who live under it.

And I pray God to have your Majesty in His holy keeping.

Done at Washington, this 26th of May, A. D. 1887.

Your good friend,

GROVER CLEVELAND.

By the President:

T. F. BAYARD,

Secretary of State.

No. 320.

Mr. Phelps to Mr. Bayard.

No. 549.] LEGATION OF THE UNITED STATES,

London, July 9, 1887. (Received July 19.)

SIR: Referring to your instruction numbered 629, of May 27 last, I have the honor to acquaint you that I asked an audience of the Queen through Her Majesty's principal secretary of state for foreign affairs, for the purpose of presenting the President's letter of congratulation upon the completion of the fiftieth year of her reign.

The Queen received me in private audience at Buckingham Palace on Monday, June 20, and in handing her the President's letter I took occasion to assure Her Majesty of the cordial good-will of the American people towards her personally. And I expressed the pleasure I felt at being intrusted with the transmission of a communication in the sentiments of which I so heartily concurred.

The Queen in reply expressed the high gratification with which she received the letter of the President, and her appreciation of the great kindness of feeling always shown her by my countrymen.

I presume that an answer will be sent by Her Majesty to the President through the usual channel in due course.

I have, etc.,

E. J. PHELPS.

No. 321.

Mr. Bayard to Mr. Phelps.

[Extract.]

No. 659 bis.] DEPARTMENT OF STATE,
Washington, July 12, 1887.

SIR: On March 24 last the Marquis of Salisbury made reply to your note to him of December 3, 1886, and communicated the views of the Canadian government upon the *ad interim* arrangement proposed by the Government of the United States, under date of the 15th of November preceding, for the settlement of the fishery disputes.

This reply of his lordship and the "observations" of the Canadian authorities upon the proposal for an arrangement were conveyed in Mr. White's dispatch of March 30, and received at this Department April 11 last, when it had my immediate consideration.

An answer was prepared forthwith to the note of his lordship, as well as to the "observations," and I now inclose two copies of the latter, which, for convenience and intelligibility, has been printed as a third parallel column to the original proposal and the Canadian "observations."

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 659 bis.]

FISHERIES ARRANGEMENT PROPOSED BY UNITED STATES, WITH "OBSERVATIONS" OF BRITISH GOVERNMENT AND REPLY OF GOVERNMENT OF UNITED STATES.

Ad interim Arrangement proposed by the United States, Government.	*Observations on Mr. Bayard's Memorandum.*	*Reply to "Observations" on Proposal.*
ARTICLE I.		
WHEREAS, in the 1st Article of the Convention betweeen the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the Southern coast of Labrador, to and through the Straits on Belleisle, and thence northwardly indefinitely along the coast,	THE most important departure in this Article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles fom such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed 10 miles." This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing grounds of the territorial waters which, by the law of nations, have been invariably	A prior agreement between the two Governments as to the proper definition of the "bays and harbors" from which American fishermen are hereafter to be excluded, would not only facilitate the labors of the proposed Commission, by materially assisting it in defining such bays and harbors, but would give to its action a finality that could not otherwise be expected. The width of ten miles was proposed, not only because it had been followed in Conventions between many other powers, but also because it was deemed reasonable and just in the present case; this Government recognizing the fact that, while it might have claimed a width of six miles as a basis of settlement, fishing within bays and harbors only slightly wider would be confined to areas so narrow as to render it practically valueless and almost necessarily expose the fishermen to constant danger of carrying their opera-

without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely:

1. To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818, except that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost landlocked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and "Mouat *v.* McPhee," 5 Sup. Court of Canada Reports, p. 66.)

The Convention with France in 1839, and similar Conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those Conventions were doubtless passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of the boundary-lines which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

This is shown by the fact that in the French Convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States' Government, and to the admission made by their statesmen in regard [to] bays on the American coasts, strengthens this view; and the case of the English ship "Grange" shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the Umpire of the Commission appointed under the Convention of 1853 in the case of the United States' tions into forbidden waters. A width of more than ten miles would give room for safe fishing more than three miles from either shore, and thus prevent the constant disputes which this Government's proposal, following the Conventions above noticed, was designed to avert.

It was not known to involve the surrender of rights "which had always been regarded as the exclusive property of Canada," or to "make common fishing ground of territorial waters," which, by the law of nations, have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country."

The case of the Baie des Chaleurs, the only case cited in this relation, does not appear to sustain the "observations" above quoted. From 1854 until 1866 American fishermen were permitted free access to all territorial waters of the provinces under treaty stipulations. From 1866 until 1870 they enjoyed similar access under special licenses issued by the Canadian Government. In 1870 the license system was discontinued, and under date of May 14 of that year a draft of special instructions to officers in command of the marine police, to protect the inshore fisheries, was submitted by Mr. P. Mitchell, Minister of Marine and Fisheries of the Dominion, to the Privy Council, and on the same day was approved. In that draft the width of ten miles, as now proposed by this Government, was laid down as the definition of the bays and harbors from which American fishermen were to be excluded; and in respect to the Bay des Chaleurs, it was directed that the officers mentioned should not admit American fishermen "inside of a line drawn "across at that part of such bay "where its width does not exceed "ten miles." (*See* Sess. Pap., 1870; *see* also Appendix "A" to this Memorandum.) It is true that it was stated that these limits were "for the present to be exceptional." But they are irreconcilable with the supposition that the present proposal of this Government "would involve a surrender of fishing

entrance into the bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on Charts prepared in duplicate for the purpose.

2. To agree upon and establish such Regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and Judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions, and Regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws mutually acknowledged.

fishing-schooner "Washington," that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

It is submitted, however, that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same Power.

The second paragraph of the 1st Article does not incorporate the exact language of the Convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," &c.

To make the language conform correctly to the Convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.

"rights which have always been "regarded as the exclusive prop- "erty of Canada."

It is, however, to be observed that the instructions above referred to were not enforced, but were, at the request of Her Majesty's Government, amended, by confining the exercise of police jurisdiction to a distance of three miles from the coasts or from bays less than six miles in width. And in respect to the Bay des Chaleurs, it was ordered that American fishermen should not be interfered with unless they were found "within three miles of the shore. (Sess. Pap., Vol. IV, No. 4, 1871; *see* also Appendix "B.")

The final instructions of 1870, being thus approved and adopted, were reiterated by their reissue in 1871. Such was the condition of things from the discontinuance of the Canadian license system, in 1870, until, by the Treaty of Washington, American fishermen again had access to the inshore fisheries.

As to the statute cited (14 and 15 Vict., cap. 63, August 7, 1851), it is only necessary to say that it can have no relevance to the present discussion, because it related exclusively to the settlement of disputed boundaries between the two British provinces of Canada and New Brunswick, and had no international aspect whatever; and the same may be said of the case cited, which was wholly domestic in its nature.

Excepting the Bay des Chaleurs, no case is adduced to show why the limit adopted in the Conventions regulating the fisheries in the British Channel and in the North Sea would not be equally applicable to the provinces. The coasts bordering on those waters contain numerous "bays" more than ten miles wide; and no other condition has been suggested to make the limit established by Great Britain and other powers as to those coasts "inapplicable" to the coasts of Canada.

The exception referred to (of the oyster beds in Granville Bay) from the ten-mile rule in the Conventions of 1839 and 1843, between Great Britain and France, is found, upon examination of the latter Convention, to be "estab-

lished upon special principles;" and it is believed that the area of waters so excepted is scarcely 12 miles by 19. In this relation it may be instructive to note the terms of the Memorandum proposed for the Foreign Office in 1870, withr eference to a Commission to settle the fishing limits on the coast of British North America. (Sess. Pap., 1871; *see* also Appendix 'C.")

The Bay des Chaleurs is 16¼ miles wide at the mouth, measured from Birch Point to Point Macquereau; contains within its limits several other well-defined bays, distinguished by their respective names, and, according to the "observations," a distance of almost seventy miles inward may be traversed before reaching the ten mile line.

The Delaware Bay is 11½ miles wide at the mouth, 32 miles from which it narrows into the river of that name, and has always been held to be territorial waters, before and since the case of the "Grange"—an international case,—in 1793, down to the present time.

In delivering judgment in the case of the "Washington," the Umpire considered the headland theory and pronounced it "new doctrine." He noted among other facts that one of the headlands of the Bay of Fundy was in the United States, but did not place his decision on that ground. And immediately in the next case, that of the "Argus," heard by him and decided on the same day, he wholly discarded the headland theory and made an award in favor of the owners. The "Argus" was seized, not in the Bay of Fundy, but because (although more than three miles from land) she was found fishing within a line drawn from headland to headland, from Cow Bay to Cape North, on the northeast side of Cape Breton Island.

The language of the Convention of 1818 was not fully incorporated in the second paragraph of the 1st Article of the proposal, because that paragraph relates to regulations for the secure enjoyment of certain privileges expressly reserved. The words "and for no other purpose whatever" would in this

relation be surplusage. The restrictions to prevent the abuse of the privileges referred to would necessarily be such as to prevent the "taking, drying, and curing" of fish. For these reasons the words referred to were not inserted, nor is the usefulness of their insertion apparent

Ad interim Arrangement proposed by the United States' Government.

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

Observations on Mr. Bayard's Memorandum.

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offenses connected with fishing, but as to customs, harbours, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the Convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

Reply to "Observations" on Proposal.

ARTICLE II.

The objections to this Article will, it is believed, be removed by a reference to Article VI, in which "the United States agrees to admonish its fishermen to comply" with Canadian customs regulations and to coöperate in securing their enforcement. Obedience by American fishing vessels to Canadian laws was believed and certainly was intended to be secured by this article. By the consolidation, however, of Articles II and VI the criticism would be fully met.

Ad interim Arrangement proposed by the United States' Government.

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing vessel of the United States shall be seized for

Observations on Mr. Bayard's Memorandum.

This Article would deprive the Courts in Canada of their jurisdiction, and would vest that jurisdiction in a Tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the adjudication of two naval officers, one of them belonging to a foreign country, who, if they

Reply to "Observations" on Proposal.

ARTICLE III.

As the chief object of this Article is not unacceptable to Her Majesty's Government—*i. e.*, the establishment of a joint system of inquiry by naval officers of the two countries in the first instance—it is believed that the objections suggested may be removed by an enlargement of the list of enumerated offenses so as to include infractions of the regulations which may be estab-

violating the provisions of the aforesaid Convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said Convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the Vice-Admiralty Court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as Umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Umpire.

Observations on Mr. Bayard's Memorandum.

This Article is also open to grave objection. It proposes to give the United States fishing vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Convention of 1818 on behalf of fishing vessels, which were thereafter to be denied the right of access to Canada should disagree and be unable to choose an Umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no appeal, and no reference to any Tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this Article of the violations of the Convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the Article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released.

They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast, and the delays, which must in consequence be frequent, in securing the presence at the same time and place of the naval officers of both Powers.

Ad interim Arrangement proposed by the United States' Government.

ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same Rules and Regulations and payment of the same port charges as are established by the Commission. And the treatment to be awarded to such infractions should also be considered by the same body.

Reply to "Observations" on Proposal.

ARTICLE IV.

The Treaty of 1818 related solely to Fisheries. It was not a commercial Convention, and no commercial privileges were renounced by it. It contains no reference to "ports," of which, it is believed, the only ones then existing were Halifax, in Nova Scotia, and possibly one or two more in the other provinces; and these ports were not until long afterwards opened, by recipro-

scribed for other vessels of the United States.

dian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is proposed, under this Article, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbours of the Dominion.

cal commercial regulations, to vessels of the United States engaged in trading.

The right to "obtain" (*i. e.*, take, or fish for) bait, was not insisted upon by the American negotiators, and was doubtless omitted from the Treaty, because, as it would have permitted fishing for that purpose, it was a partial reassertion of the right to fish within the limits as to which the right to take fish had already been expressly renounced.

The purchase of bait and other supplies by the American fishermen in the established ports of entry of Canada, as proposed in Article IV, is not regarded as inconsistent with any of the provisions of the Treaty of 1818; and in this relation it is pertinent to note the declaration of the Early of Kimberly, in his letter of February 16, 1871, to Lord Lisgar, that "the exclusion of "American fishermen from re-"sorting to Canadian ports, ex-"cept for the purpose of shelter, "and of repairing damages "therein, purchasing wood, and "obtaining water, might be war-"ranted by the letter of the "Treaty of 1818, and by the "terms of the Imperial Act 59, "Geo. III, Chap. 38, but Her "Majesty's Government feel "bound to state that it seems "to them an extreme measure "inconsistent with the general "policy of the Empire, and they "were disposed to concede this "point to the United States "Government under such re-"strictions as may be necessary "to prevent smuggling, and to "guard against any substantial "invasion of the exclusive "rights of fishing which may be "reserved to British subjects."

It is not contended that the right to purchase bait and supplies, or any other privilege of trade, was given by the Treaty of 1818. Neither was any such right or privilege stipulated for or given by the Treaty of 1854, nor by the Treaty of Washington; and the Halifax Commission decided in 1877, that it was not "competent" for that tribunal "to award compensation for "commercial intercourse be-"tween the two countries, nor "for purchasing bait, ice, sup-

"plies, &c., nor for permission "to transship cargoes in British "waters." And yet this Government is not aware that, during the existence of the Treaty of 1854 or the Treaty of Washington, question was ever made of the right of American fishermen to purchase bait and other supplies in Canadian ports, or that such privileges were ever denied them.

Ad interim Arrangement proposed by the United States' Government.

ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States' fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.

Observations on Mr. Bayard's Memorandum.

By this Article it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the Convention by the last preceding Article.

It is assumed, without discussion, that all United States' fishing vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

Reply to "Observations" on Proposal.

ARTICLE V.

This Government is not disposed to insist on the precise form of this Article, but is ready to substitute therefor a submission to arbitration in more general terms.

Ad interim Arrangement proposed by the United States' Government.

ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them and co-operate in securing their enforcement.

Observations on Mr. Bayard's Memorandum.

This Article calls for no remark.

APPENDIX A.

"In such capacity, your jurisdiction must be strictly confided within the limit of 'three marine miles of any of the coasts, bays, creeks or harbors,' of Canada, with respect to any acti on you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks or harbors shall not exceed ten geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than ten miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits

should be measured on lines drawn parallel everywhere to the coast and describing its sinuosties, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect, which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width. In the case of any other bay, as the Bay de Chaleurs, for example, you will not admit any United States fishing vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay where its width does not exceed ten miles." (Session Papers, Vol. III, No. 6, 1870.)

APPENDIX B.

"In such capacity, your jurisdiction must be strictly confided within the limit of 'three marine miles of any of the coasts, bays, creeks or harbors' of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks, or harbors shall not exceed six geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than six miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or a creek which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth. *In the case of any other bay, as the Bay des Chaleurs* for example, *you will not interfere* with any United States fishing vessel or boat, or any American fish, ermen, unless they are found within three miles of the shore.

"*Action.*—You will accost every United States vessel or boat actually within three marine miles of the shore along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor, or creek which is less than six geographical miles in width, or inside of a line drawn across any part of such bay, harbor, or creek at points nearest to the mouth thereof not wider apart than six geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above-recited acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not *to do so unless it is evident, and can be clearly proved, that the offense of fishing has been committed*, and that the vessel is captured within the prohibited limits." (Session Papers, Vol. IV, No. 4, 1871.

APPENDIX C.—*The secretary of state for the colonies to the governor-general.*

DOWNING STREET, *October* 10, 1870.

SIR: I inclose a copy of a memorandum, which I have requested Lord Granville to transmit to Sir E. Thornton, with instructions to communicate with you before addressing himself to the Government of United States on the subject to which the memorandum relates.

The object of Her Majesty's Government is, as you will observe, to give effect to the wishes of your Government, by appointing a joint commission, on which Great Britain, the United States, and Canada are to be represented, with the object of inquiring what ought to be the geographical limits of the exclusive fisheries of the British North American colonies. In accordance with the understood desire of your advisers it is proposed that the inquiry should be held in America.

The proposal contained in the last paragraph is made with a view to avoid diplomatic difficulties, which might otherwise attend the negotiation.

I have, etc.,

KIMBERLEY.

Governor-General the Right Hon. Sir JOHN YOUNG, G. C. B., G. C. M. G.

Memorandum for foreign office respecting a commission to settle limits of the right of exclusive fishery on the coast of British North America.

"A convention made between Great Britain and the United States, on the 20th October, 1818, after securing to American fishermen certain rights to be exercised on part of the coasts of Newfoundland and Labrador, proceeded as follows:

"'And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above limits.'

"The right of Great Britain to exclude American fishermen from waters within three miles of the coast is unambiguous and, it is believed, uncontested. But there appears to be some doubt what are the waters described as within three miles of bays, creeks, and harbors. When a bay is less than six miles broad, its waters are within three miles limit, and therefore clearly within the meaning of the treaty; but when it is more than that breadth, the question arises whether it is a bay of Her Britannic Majesty's dominions.

"This is a question which has to be considered in each particular case with regard to international law and usage. When such a bay, etc., is not a bay of Her Majesty's dominions, the American fishermen will be entitled to fish in it, except within three miles of the 'coast;' 'when it is a bay of Her Majesty's dominions,' they will not be permitted to fish within three miles of it; that is to say (it is presumed), within three miles of a line drawn from headland to headland.

"It is desirable that the British and American Governments should come to a clear understanding in the case of each bay, creek, or harbor what are the precise limits of the exclusive rights of Great Britain, and should define those limits in such a way as to be incapable of dispute, either by reference to the bearings of certain headland, or other objects on shore, or by laying the lines down in a map or chart.

"With this object it is proposed that a commission should be appointed, to be composed of representatives of Great Britain, the United States, and Canada, to hold its sittings in America, and to report to the British and American Governments their opinion either as to the exact geographical limits to which the renunciation above quoted applies, or, if this found impracticable, to suggest some line of delineation along the whole coast which, though not in exact conformity with the words of the convention, may appear to them consistent in substance with the just rights of the two nations, and calculated to remove occasion for further controversy.

"It is not intended that the results of the commission should necessarily be embodied in a new convention between the two countries but if an agreement can be arrived at, it may be sufficient that it should be in the form of an understanding between the two Governments as to the practical interpretation which shall be given to the convention of 1818." (Session Papers, 1871.)

No. 322.

Mr. Phelps to Mr. Bayard.

[Extract.]

LEGATION OF THE UNITED STATES,
London, August 2, 1887. (Received August 13.)

SIR: I have the honor to acknowledge the receipt of your instruction of the 12th ultimo, inclosing two copies of your "proposal for an arrangement," with the Canadian "observations" and your reply thereto printed in parallel columns, and to inform you that I have communicated a copy of the same to Lord Salisbury.

I have, etc.,

E. J. PHELPS.

No. 323.

Mr. Bayard to Mr. Phelps.

No. 730.] DEPARTMENT OF STATE,
Washington, November 18, 1887.

SIR: As containing information and suggestions of international interest, I inclose copies of certain representations lately made to my colleague, the Postmaster-General, from many of the chief commercial cen-

ters of the United States, referring to the beneficial results to postal communication from a resort to the system of sending the mails by the most expeditious means offered, without reference to other considerations than certainty and celerity, and efficiency in the transmission of postal correspondence internationally.

The names of the memorialists comprise many of the most responsible and intelligent members of the mercantile community, and are impressive in their number as well as in the standing and character of the individual signers.

In the interests of the facilitation of commercial intercourse these papers are now transmitted, and you can bring them to the notice of the Government to which you are accredited and furnish copies of the documents referred to, should they be desired.

The United States ministers to France, Germany, Russia, Austria, Italy, Spain, Sweden and Norway, and Denmark have been similarly addressed by me.

I am, etc., T. F. BAYARD.

[Inclosure in No. 730.]

Memorial to the Postmaster-General.

OCTOBER, 1887.

Hon. W. F. VILAS, *Postmaster-General:*

SIR: The undersigned, merchants and importers, doing business in New York City, desire to express their appreciation and thanks for your successful efforts to expedite the mails from this country to Europe, as shown by the following statement of the superintendent of foreign mails of the time of transit of mails from New York to London and Paris during the fiscal year ended June 30, 1887:

Line.	Route.	Steamer.	Total number of trips.	Average time per trip.
				Hours.
Cunard Line	New York to London via Queenstown.	Umbria	12	187.5
		Etruria	11	188.0
		Aurania	11	206.9
		Servia	10	211.2
		Gallia	4	234.4
		Bothnia	2	246.7
North German Lloyd	New York to London via Southampton.	Trave	11	199.3
		Aller	13	205.7
		Ems	11	206.4
		Saale	11	207.1
		Eider	11	207.3
		Werra	7	209.8
		Fulda	11	209.9
		Elbe	9	220.2
National	New York to London via Queenstown.	America	3	201.3
Anchor	do	City of Rome	7	203.4
Guion	do	Alaska	10	205.3
		Arizona	11	224.9
		Wisconsin	2	258.1
White Star	do	Britannic	12	219.8
		Germanic	13	228.0
		Adriatic	10	230.9
		Republic	4	235.1
		Celtic	5	236.0
Hamburg-American	New York to London via Plymouth.	Hammonia	6	240.7
		Lessing	4	242.9
		Wieland	7	244.6
		Gellert	5	256.5
Inman	New York to London via Queenstown.	City of Chicago	3	241.6
		City of Berlin	3	242.7
		Baltic	3	244.2
		City of Richmond	2	251.1
		City of Chester	4	256.8
General Transatlantic	New York to Paris via Havre	La Bourgogne	12	202.0
		La Champagne	7	202.2
		La Gascogne	8	203.6
		La Bretagne	9	204.6
		La Normandie	10	219.4

We regret that the postal administrations of some European countries appear not to manifest an equal interest in the prompt and speedy transmission of mails to this country. Under the system of mail dispatches to the United States followed by these European countries, the mails, being often forwarded by steamers of a comparatively low rate of speed, frequently arrive at New York after the arrival of faster steamers belonging to other lines, which, although leaving European ports later and arriving in New York before their competitors, are excluded by some countries from the privilege of carrying mails. This policy, besides causing delay in the mail deliveries, results in many instances in loss and annoyance to the importer, whose goods frequently arrive before the mails containing the invoices necessary to enter such goods, thus involving him in disputes and difficulties with the United States customs authorities.

We therefore take the liberty of requesting you to use your good offices with the postal administrations of such countries, so far as may be consistent with international comity, for the general adoption of the same policy so successfully inaugurated by your Department of dispatching all foreign mails within the territory of the Postal Union by the first and fastest steamers, without regard to the flag under which they sail.

We are, dear sir, with high regard, your obedient servants,

New York.—August Belmont & Co.; Drexel & Co., of Philadelphia; Winslow, Lanier & Co.; Charles M. Fry; Ladenberg, Shallman & Co.; Heidelbach, Ickelheimer & Co.; Spyer & Co.; A. T. Stewart & Co.; Goadby & Laird; for the Merchants' Bank of Canada, H. Hague and B. Harris, agents; First National Bank of New York, E. Scofield, cashier; Knauth, Nachod & Kuhne; John Munroe & Co.; Kessler & Co.; Walkinshaw & Voegt; Leavitt & Mitchell Bros.; Thonet Bros., per A. E. Stiasny, attorney; Weld, Colburn & Welckens; William Demuth & Co.; Hardt & Lindgens; A. Person, Harriman & Co.; Louis Wedigen & Co.; Fleitmann & Co.; J. Meyer & Co.; Strauss, Kupfer & Co.; William Openhym & Co.; Megroz, Portier, Grose & Co.; William Schaus; Stern Bros.; W. Simpson, Crawford & Simpson; Lord & Taylor; Kountze Bros.; Phelps, Dodge & Co.; Fr. Pustet & Co.; John Wygand, 56 and 58 Park Place; Emil Unger & Co., 50 Park Place; Wiebusch & Hilger; Benning, Bissell & Co., 96 Reade st.; H. B. Claflin & Co.; Nicol, Cowlishaw & Co.; G. Schirmer; Edward Schubert & Co.; John Thompson; Henry Rogers; F. Bianchi & Co.; Fred Butterfield & Co.; Calhoun, Robbins & Co.; Pings & Pinner; E. S. Jaffray & Co.; A. Stemhardt & Bro.; Benny, Schmidt & Pleissner; O. K. Krause & Co.; William Pickhardt & Kuttroff; Charles F. Schirmer & Sons; Thebaud Bros.; Pagenstecher & Co.; Mohr, Hannemann & Co.; Hermann, Koop & Co.; Siegfe Gruner & Co., per H. Schaefer; Motle Bros.; Fatman & Co.; Elmenhorst & Co.; F. O. Boyd & Co., per E. Bartro; Hagemeyer & Brunn; Clodin & Teschendorff; Drexel, Morgan & Co.; Morton Bros. & Co.; Brown Bros. & Co.; J. W. Seligman & Co.; Von Hoffmann & Co.; Hallgarten & Co.; Kuhn, Loeb & Co.; Muller, Schall & Co.; for the Bank of Montreal, A. Lang, agent; New York agency, London and Brazilian Bank, limited, J. Lawrence McKeever; Eugene Kelly & Co.; Blake Bros. & Co.; Lazard, Freres & Co.; John Paton & Co.; Forstmann & Co., per F. S. Schultz; Frederick Victor & Acheles; Herman Bernheimer, Son & Co.; James McCreery & Co.; Sylvester, Hilton & Co.; Steiner, Kahn & Co.; Hardt, von Bernuth & Co.; E. Oelbermann & Co.; Benjamin & Caspary; Luckemeyer, Schefer & Co.; Decker, Spies & Co.; Hoeninghaus & Curtiss; Wettstein, Meyer & Co.; C. M. McNullty; Abegg, Daeniker & Co.; M. Knoedler & Co.; Le Boutillier Bros., of 23d st.; B. Altman & Co.; G. Amsinck & Co.; McKesson & Robbins; Bawo & Dotter; Korting Gas Engine Company, limited, George W. Sillcox president; Frederick de Bary & Co., per O. N. Poggenburg; Louis Windmuller & Roelker; Rose, McAlpin & Co.; Herman Boker & Co.; Arnold, Constable & Co.; Sypher & Co.; B. L. Solomon's Sons; Leon Rheims; Luyties Bros.; C. Gutman; Veit & Nelson; C. L. Woodbridge & Co.; Dieckerhoff, Raffloer & Co.; Sweetser, Penbrook & Co.; Wayin, Toel & Co.; Dreyfuss, Weiller & Co.; Passovant & Co.; Otto Heinze & Co.; Muller & Kruger; Recknagel & Co.; W. H. Crossman & Bro.; Knoop, Frerichs & Co., per K. Meisner; Kremelberg & Co.; Meissner, Ackermann & Co.; Lauman & Kemp; Theodore Herrmann; Osborne Bros., per Theodore Willington; M. Obenheim & Co.; Charles Graef (A. Graef, attorney).

Boston, Mass.—Jordan & Marsh & Co.; Coleman, Meade & Co.; Lalley & Collins; Davis, Marean & Co.; Claflin, Larrabee & Co.; Simons, Hatch & Whitten; Jos. Brech & Sons; John D. & M. Williams; J. D. Richards & Sons; Thomas C. Porter & Co.; G. Open & Co.; Hemenway & Brown; A. S. & J. Brown & Co.; Boston Dyewood and Chemical Company, Jos. C. Stevens, president; Strauss, Kinsley & Co.; Pulsifer, Jordan & Pfaff; Franklin Rolfe & Co.; Richardson & Dennie; C. C Bancroft & Co.; Rufus C. Cushman & Co.; George G. Granger; F. A. Leigh & Co.; William Pichardt & Kuttroff, W. H. B., agent; Norway Steel and Iron Company, Albert Geiger, treasurer; Henry A. Gould & Co.; Abram French & Co.; Gorham Rogers & Co.; Albert A. Cobb & Co.; Alfred Winsor & Co.; Howe, Balch & Tay; John P. Squire & Co.; Fuller, Dana & Fitz; F. B. Austin & Co.; Standard Sugar Refinery, by Elvin D. Hall, treasurer; James A. Hayes & Co.; Tho. Firth & Son, per The Abbott Company; The Abbott Company; C. F. Hovey & Co.; Shoninger, Moses & Co.; Walker, Stetson & Sawyer; Brome, Durrell & Co.; Weil, Dreyfris & Co.; Norcross, Mellen & Co.; Hills, Turner & Co.; Adam, Taylor & Co.; E. & F. King & Co.; Cutler Bros. & Co.; L. Higginson & Co.; John F. Brooks; James W. Bird & Co.; Howe & French; Linder & Meyer; Train, Smith & Co., G. M. Mansfield, attorney; Adams & Ingraham; Kinsman & Co.; James E. Whitney; J. Gardner Curtis & Co., per Moore; J. B. Brigham & Co.; Temple R. Fay; William H. Greeley & Co.; Henry W. Peabody & Co.; B. M. Jones & Co.: Gill & Lootz; Benjamin Howard's Sons; Ross, Turner & Co.; J. M. Rodœcenachi & Co.; Willett, Hamlen & Co.; D. H. Tully & Co.; B. S. Pray & Co.; W. W. & C. R. Noyes; Farrar, Simpson & Co.; Whitney, Pousland & Co.; Robinson & Woodworth; Williams & Hall; Nash & Co.

Philadelphia, Pa.—R. Blankenburg & Co.; Whitall, Tatum & Co.; John B. Ellison & Sons; John Wanamaker; J. A. Schwarz; Philadelphia Rubber Works, N. C. Mitchell; Granville B. Haines & Co.; Chas. J. Cohen; Strawbridge & Clothier; French, Richards & Co.; J. E. Caldwell & Co.; Hood, Bonbright & Co.; Wernwag & Dawson; McCallum & Sloan; G. S. Lovell & Co.; William L. Wilson & Sons; Joel J. Bailey & Co.; A. C. Yates & Co.; Aschenbach & Miller; Robert Shoemaker & Co.; Ostheimer Bros.; Samuel H. French & Co.; John Betz; Anton Winters; William Mencke & Bro.; M. A. Baratet; Hughes & Muller; C. F. Rumpp; J. S. Custer, Son & Co.; R. & J. Gerson; Burnham, Parray, Williams & Co.; L. Westergaard & Co.; William Brochie; Winthrop, Cunningham & Sons; Young, Ewen & Co.; Amos Hillborn & Co.; J. B. Lippincott Company, A. P. Morton, treasurer; Gerlach & Harjes; B. F. Dewees; Darlington, Runk & Co.; Jos. A. Wainwright; Homer Boutillier & Co.; Bailey, Banks & Biddle; William H. Horstmann & Son; Harrington & Goodman; Wood, Brown & Co.; James S. Earle & Sons; J. B. Sheppard & Sons; Young, Smith, Field & Co.; Sharpless Bros.; Agnew & English; Myer & Dickinson; Super, Jones & Co.; A. R. McCown & Co.; Jacob Reed's Sons; William Gerlach; Armstrong, Wilkins & Co.; Otto Martin & Co.; L. Dannenbaum, Son & Ellicott; H. S. Burbank & Co.; Snodgrass, Murray & Co.; F. Weber & Co.; M. J. Fahy & Co.; F. Wight; Partridge & Richardson; Powers & Weightman; Moelling & Antenrieth; Wesenberg & Co.; Trymby, Hunt & Co.; R. J. Allen, Son & Co.; Tyndale & Mitchell Company.

Baltimore, Md.—The Baltimore News Company; Geyer & Wilkins; Gustavus & Co.; E. Hazen & Co.; Dulany, Meyer & Co.; A. Seemullen & Co.; David T. Buzby & Co.; W. P. Harvey & Co.; Gill & Fisher; Edwin Hewes & Co.; Jas. Fletcher, jr., & Co.; Drexel, Rauschenberg & Co.; Kummer & Becker; F. W. Wilson & Son; Edwin B. Eruce & Co.; George May; Alex. Kerr Bros. & Co.; John A. Hambleton & Co.; McKem & Co.; Cushings & Bailey; Rogg & Hoch; Hurst, Purnell & Co.; Henry Keidel & Co., per L. Keidel; George Frank & Son; Claus Volkert; George Franke; G. W. Gail & Ax; Oliver Hoblitzell; The Basin Fertilizer Company, W. B. McAtee, treasurer; John Turnbull, jr., & Co.; J. Leopold & Co.; Henry Knefely; George T. Gambrill & Co.; Baer & Brother; E. Walters & Co.; J. H. Whiteley & Co.; Gilpin, Langdon & Co.; Lawrence, Thomson & Co.; E. Levering & Co.; Fred Heim; A. Schumacher & Co.; H. R. Tucker & Co.; Tate Hinrichs & Co.; Thomas M. Norris; B. T. Babbitt; Martin Gillett & Co.; I. M. Parr & Co.; Tate, Muller & Co.; C. A. Gambrill Manufacturing Company; John Patterson & Co.; Jas. Cary Coale; A. Brown & Sons; Henry Lauts & Co.; C. Morton Stewart & Co.; Mudge, Smith & Co.; Forster, Clark & Co.; Wilson, Colston & Co.; Wm. Knabe & Co.;

J. J. Nicholson & Sons; Wilson, Palmer & Co.; Vogeler, Son & Co.; Hodges Brothers; E. E. Wenck; p. p. F. Schaus; F. W. Felgner & Son; Middendorf, Oliver & Co.; J. Hilles & Co.; Armstrong, Cator & Co.; Lyon, Hall & Co.; Prior & Hilgenberg; Gieske & Niemann; Von Kapff & Arens; S. R. Corners & Co.; Frank H. Shallus; Heald & Co.; Parrish Brothers; Dix & Wilkins; Markell Brothers.

Chicago, Ill.—Marshall, Field & Co.; Kohn Brothers; N. K. Fairbank & Co., Guy F. Gosman, secretary; Mandel Brothers; Armour & Co.; Petersen Bros. & Co.; C. L. Hutchinson; International Bank, G. M. Schweisthal, cashier; Peter Von Schaak & Sons, wholesale druggists; Leopold, Mayer & Son; Fuller & Fuller Company; Chas. P. Kellogg & Co.; McCormick Harvesting Machine Company, W. R. Selleck, treasurer; Lindauer & Bros. & Co.; Simeon, Farwell & Co.; Storm & Hill; Reid, Murdoch & Fisher; W. M. Hoyt Company; J. W. Doane & Co.; Charles Arndt & Co.; D. B. Fisk & Co.; Dr. Jaeger's Sanitary Woolen System Company; Chapin & Gore; Jacob Meyer & Bros.; Sprague, Warner & Co.; Otto Young & Co.; S. Hyman & Co.; Best, Russell & Co.: Kirchoff & Neubarth; A. F. Seeberger & Co.; George Bohner & Co.; Burley & Tyrrell; Robt. Stevenson & Co.; F. Madlener; A. C. McClurg & Co.; Gabain & Co., E. Chadoux, secretary and treasurer; B. V. Page Company, Murice Pincoffo, manager; Jno. V. Farwell & Co.; Carson, Pirie, Scott & Co.; N. B. Haynes; Schweitzer & Beer; Schwartz, Dupee & Co.; Henry Dummert; Grommes & Ulrich, importers of Hungarian wines; H. Tallert & Son, importers of Hungarian wines; Steel Wedeles & Co.; H. C. & C. Durand; John Buchler; Chase & Sanborn, per Benj. S. Premen; Jas. H. Walker & Co.; Wilson Brothers; Counselman & Day; Kahn Bros. & Co.; Frankenthal, Freudenthal & Co.; W. H. Schimpfernman & Son; The John D. Zernitz Company; John A. Tolman Company; Franklin MacVeagh & Co.; Funch, Potter & Wilson; Edson Keith & Co.; Paul Bracht; H. Kessler; Cahn, Wampold & Co.; Aug. Beck & Co.; The Fair, Otto Young, secretary; Stanton & Co.; Hart Brothers; Albert Pick; Pitkin & Brooks; National Yeast Company, Parsons; E. B. Millar & Co., G. H. Clark, treasurer; Morrison, Plummer & Co.; Schmidt & Labes; Henry Schoellkopf; Chapin & Edwards; Maurice Pincoffo; A. C. Helmholz.

Saint Louis, Mo.—Seeman & Co.; Greeley, Burnham Grocery Company, by Dwight Tredway, secretary; Krafft, Holmes Grocery Company; Chas. W. Barstow; Whitelaw Brothers; Geo. K. Hopkins & Co.; Meyer Bros. & Co.; Wm. Barr Dry Goods Company, Jos. Franklin, vice-president; J. B. Greensfelder & Co.; Simmons Hardware Company; B. Nugent & Bro.; Wulfing, Diechriede & Co.; Adam Roth Grocery Company; Mound City Paint and Color Company, by Norris B. Gregg, secretary; Barnhart Mercantile Company, C. L. Barnhart, vice-president; Trorlicht, Duncher & Penard; J. Kennard & Sons Carpet Company, by Chas. Lacy, secretary and treasurer; D. J. Bushnell & Co.; Geo. S. Mepham & Co.; Chas. H. Wyman & Co.; Richardson Drug Company, L. H. Crip, agent; David Nicholson; Penny & Gentles; D. Crawford & Co.; Fink & Nasse; Schweppe Grocery Company; Jacob Furth & Co.; Brookmire & Rankin; A. S. Aloe & Co.; Fourth National Bank of Saint Louis, by Jno. C. H. D. Block, president.

San Francisco, Cal.—Wm. T. Coleman; John D. Spreckels & Bros.; Whittier Fuller & Co.; Henry Lund & Co.; William Alvord; Parrott & Co.; Murphy, Grant & Co.; Williams, Dimond & Co.; A. Carpentier; W. W. Montague & Co.; Macondray & Co.; Kittle & Co.; Dickson, De Wolf & Co.; G. W. McNear; Levi Strauss & Co.; Huntington, Hopkins & Co.; Catton, Bell & Co.; Chas. Duisenberg & Co.

New Orleans, La.—J. G. Schriever, traffic manager Southern Pacific C. Atlantic System; S. V. Fornaris & Co., agents French Commercial Line; E. B. Wheelock, president New Orleans and Pacific Railway; C. Stockmeyer, agent North German Lloyd Steamship Line; John A. Stevenson, agent St. Louis and Mississippi Valley Transportation Company; Pozzi Bros.; S. Hernsheim, Bros. & Co.; J. H. Wright, agent Southern Transportation Line; Lucas E. Moore & Co., Harrison Line; Alfred Moulton & Co., agents Cromwell Steamship Line; A. K. Miller & Co., agents for "Serra," "Olano," and Glynn Line steamships; Ross, Keen & Co., ship and steamship agents; D. C. Roberts, general agent Louisville and Nashville Railroad, New Orleans; R. F. Reynolds & Co., Louisville, New Orleans and Texas Railway; Chas. A. Stein; W. Agar & Co.; James T. Hayden, president Whitney National Bank; J. B. Woods, agent St. Louis and New Orleans Anchor Line.

Cincinnati, Ohio.—H. W. Hughes; Grafrey Holterhoff; Levi C. Goodale; O. H. Tudor; W. B. Wessel; M. Friedberger; Dawson Blackmore; W. B. Crail; John W. Hartwell; Wm. H. Lemmon; Sam'l Hill; C. R. Brent; Chapman Johnson; S. W. Coflin; W. B. Stevens; S. F. Covington; R. E. Dunlap; Edwin L. Allen; Davis C. Anderson; C. M. Holloway; Jno. A. Robinson; W. H. Gilpin; John Dunholter; J. M. McCullough's Sons; S. Kuhn & Sons; J. M. Blair; Jacob Scheuer; Lewis Wald & Co.; Geo. B. Johnson; Knost Bros. & Co.; The John Church Company; A. Squire; Patterson Bros. & Co., S. L. Werner; The Geo. Fox Starch Company; Jas. Espey; G. E. Eustis; Theo. Baur; D. Wachman; Sam. W. Weidler; L. L. Latta; F. A. Brown; G. Tompkins; W. W. Peabody; Edwin Stevens; Wm. E. Hutton; J. C. Sherlock; J. M. Kirtley; R. W. Wise; Frank Evans; Frederick Pfiester; S. W. Bard: J. A. Loudon; J. D. Parker; James L. Michie; Val. P. Collins; Chas. B. Murray; Theo. Hanwood; Geo. Peck & Co.; F. X. Reno; A. J. Seasonwood; Bohm Bros. & Co.; Cranston & Stowe; The H. F. West & Bro. Co.; A. E. Burkhardt & Co.; C. H. Burton & Co.; W. H. Evans & Co.; Hurrins Sons & Stewart; James Morrison & Co.; Alex. Fries & Bros.; The Brooks Waterfield Company; A. J. Tronnston & Co.; R. B. Bowler; The H. & S. Pogue Company; The John Shillito Company, Wm. A. Hopple, secretary; Voorhies, Miller & Rupel; Aaron F. Perry; H. B. Morehead; F. W. Dohrmann & Son; Alms & Doehke; The Geo. W. McAlpin Company, Geo. W. McAlpin, president.

Saint Paul, Minn.—Geo. Berry & Sons; Foot, Schultze & Co.; H. Burbank & Co.; Allen, Moon & Co.; C. Gotzian & Co., per P. H. Gotzian, director; Mannheimer Bros.; The St. Paul Real Estate Title Insurance Company, F. Willins, president; J. B. Tarbox & Co.; Cochran & Walsh; Averill, Carpenter & Co.; Strong-Hackett Hardware Company, per F. P. Strong, treasurer; Lindeke & Ladd; The First National Bank of St. Paul, H. P. Upham, president; Streissguth & Drake; Bank of Minnesota, W. Dawson, president; Hermann Scheffer; Gordon & Ferguson; F. H. Anderson; D. W. Ingersoll; Quimby & Abbott; P. H. Kelly Mercantile Company, P. H. Kelly, president; Pruden Stove Company; Lindekes, Warner & Schermeier; Rogers & Ordway; Baupre, Keogh & Co.; Ryan Drug Company; Blabon, Warren & Chipley; Maxfield & Seabury; P. R. L. Hardenbergh & Co.; St. Paul Book and Stationary Company, D. D. Merrill, president; The German-American Bank, F. Willins, president; Gustav Willins, president of the National German-American Bank; G. Sommers & Co.; McKibbon & Co.; Campbell, Walsh & Jelson; C. H. Lienau; The Merchants' National Bank, W. L. Merriam, president; A. M. Peabody & Co.; Commercial National Bank, Saint Paul, Minn.; St. Paul National Bank; Germania Bank, William Bickel, cashier; De Coster & Clark; Lewis Baker; Yanz, Greggs & Howes; Farwell, Ozmun, Kirk & Co.; W. S. Runyon; Auerbach, Finch & Van Slyck.

Buffalo, N. Y.—F. Aug. Georger, president of The German Bank; L. Allgewahr; R. Hoffeld; Wm. S. Crosthwaite; Wesp, Lautz Bros. & Co.; M. Strauss; Daniel B. Long; Joseph Metz; J. F. Schoellkopf; Hurd & Haunstein; Jacob Dold; Philip Houck; Lautz Bros. & Co.; Chas. M. King; Henry Reuling; J. F. Schoellkopf's Sons; Simon Weil.

Louisville, Ky.—Theo. Schwartz & Co., Kentucky National Bank; Griffith & Semple; C. H. Bliss; Bayless Bros. & Co.; Goebel & Gerst; F. W. Johanboeke & Sons; Rankins, Snyder & Co.; Carter Brothers & Co.; Bamberger, Bloom & Co.; The F. A. Gerst Company, F. A. Gerst, president; Adolph Rassinier & Co., by Adolph Rassinier; J. Dolfinger & Co.; Sharpe & Middleton; Nanz & Nenner; Hermann Bros.; Peaslee, Gaulbert & Co., by F. M. Lampton; German Bank, by P. Viglini, president; E. C. Bohne & Co.; J. J. Fischer, cashier German Insurance Bank; J. T. Burghard; German Security Bank, per J. L. Barrett, cashier; Moore & Selliger; W. B. Belknap & Co.; D. W. Thomas & Co.; Henry & Bowan; Stege & Reiling; Kremelberg Company; P. Schwarzenbacher; Geo. P. Nash; W. T. Grant & Co.; Wm. G. Meiers & Co.; E. C. Franke & Co.; Bocker, Garth & Schroeder; Barber & Castleman; Julius Winter; Von Borries & Co.; J. M. Robinson & Co.; R. A. Robinson & Co.; J. B. Wilden & Co.; Arthur Peter & Co.; C. Rosenheim & Co.; McCloskey & Evans; Virgil S. Wright; Sievers, Carson Hardware Company; H. W. Reese; Octave Passimere; B. F. Rodgers & Co.; George Wolf & Co.; M. Muldoon & Co.; Hart Hardware Company, by N. N. Claggett; W. Kendricks Sons; Meyer & Dreifer; Deppen & Son; Geo. Zubrod & Co.; Adolph Reutlinger, German National Bank; Renz

& Henry; J. Bacon & Sons; The Anderson & Nelson Dist. Company, Hermann Beckewitz, president; The J. M. Atherton Company; Aug. Coldewel; Masonic Savings Bank, Jacob Krieger, sr., president; C. Opdelreck; E. Girard; W. M. & C. D. Campbell; W. S. Mathews & Sons; G. Vaughan & Co.; W. H. Frayser; J. Wille & Co.

Charleston, S. C.—William A. Courtenay, mayor; Charles O. Witle, president People's National Bank; Knoop, Frerichs & Co.; E. H. Frost, president South Carolina Loan and Trust Company; W. N. Taft; H. H. De Leon; Priolean & Co.; A. R. Taft & Co.; C. Bart & Co.; John B. Reeves; C. T. Lowndes & Co.; S. Y. Tupper & Son; Wayne & von Kolnitz; Bolman & Bros.; O. F. Wieters; Boyd Bros.; Melchers & Co.; William E. Holmes & Co.; L. G. Trepholm; Ashepos Phosphate Company, by J. R. Robertson, president and treasurer; Carrigan & Silcox; James M. Seignions; Y. A. Wilburt & Son; Johnston, Crews & Co.; McGahan, Bates & Co.; Dowie & Moise; Carrington & Thomas & Co.; Louis Cohen & Co.; F. B. Hocker; Eugene P. Jervey; A. B. Murray; Witte Bros.; Edisto Phosphate Company; Andrew Simonds, president First National Bank; George W. Williams, president Carolina Savings Bank; William K. Ryan & Son.; E. H. Frost & Co.; Jacob Small, president Germania Savings Bank; Henry W. Frost & Co.; Greig & Mathews; P. M. Marshall & Bro.; Rudolph Siegling, president Bank of Charleston; Ravenel, Johnson & Co.; C. Mulbern & Co.; Mantone & Co.; F. W. Wagener & Co.; Hermann, Klatte & Bro.; George W. Steffins William M. Bird & Co.; Seckendorf & Middleton; Robertson, Taylor & Williams; Cohen & Wells; Henry T. Williams; S. A. Norwood & Co.; S. R. Marshall & Co.; Edmonds T. Brown & Co.; William L. Webb; William Shepperd & Co.; C. & E. L. Kerrison; Kohn, Furchgott & Benedict; Hart & Co.; William C. Bee & Co.; Charles S. Bennett & Co.; C. H. Jackson; J. B. E. Sloan & Son; Pelzer, Rodgers & Co.

CORRESPONDENCE WITH THE BRITISH LEGATION AT WASHINGTON.

No. 324.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *December* 2, 1886. (Received December 3.)

SIR: I have the honor to inclose to you herewith a memorandum with regard to the application of the Treasury decision (No. 6934) of May 25, 1885, to shipwrecked seamen and other distressed British subjects who may be sent by Her Majesty's consular officers to American ports for immediate transshipment to their destination, and whose expenses are provided for by the British Government, as well as with regard to its application under similar circumstances to shipwrecked and other distressed Canadians, in view of section 22 of the article of June 26, 1884; and in submitting this matter to your notice I have, etc.

L. S. SACKVILLE WEST.

[Inclosure No. 1.—Memorandum.]

Under the act of Congress of August 3, 1882, a tax of 50 cents per head was imposed on alien passengers arriving at sea-ports in the United States. This act appears to have been for some time construed as applying solely to immigrants, but a decision of the Treasury made it applicable to "tourists" or "travelers" as well. Since the date of this decision the collector of customs at Boston (Massachusetts) has imposed this tax on shipwrecked and other distressed British seamen sent to that port by Her Majesty's consular officers to be forwarded home in cases where there was no direct means of conveyance to destination.

The question has been raised as to whether the aforesaid Treasury decision is intended to be made applicable to the cases of such seamen, under the head "alien passengers," as "tourists" or "travelers."

The Canadian Government have also asked whether, in similar cases, exemption from this tax is not provided for under section 22 of the act of June 26, 1884, which limits the provisions of the act of August 3, 1882, as regards passengers coming by vessels employed exclusively in the trade between the ports of the United States and the ports of the Dominion of Canada or the ports of Mexico.

No. 325.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, December 11, 1886.

SIR: I have the honor to acknowledge your note* of the 7th instant, with which you communicate, by the direction of the Earl of Iddesleigh, a copy of the report of a committee of the privy council of Canada, approved October 26 last, wherein the regret of the Canadian Government is expressed for the action of Captain Quigley, of the Canadian Government cruiser *Terror*, in lowering the flag of the United States fishing schooner *Marion Grimes* whilst under detention by the customs authorities, in the harbor of Shelburne, Nova Scotia, on October 11 last.

Before receiving this communication I had instructed the United States minister at London to make representation of this regrettable occurrence to Her Majesty's minister for foreign affairs, and desire now to express my satisfaction at the voluntary action of the Canadian authorities, which, it seems, was taken in October last, but of which I had no intimation until your note of the 7th instant was received.

I have, etc.,

T. F. BAYARD.

No. 326.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, December 15, 1886.

SIR: With reference to your note of the 2d instant, inquiring whether shipwrecked seamen and other distressed British subjects who may be sent by British consular officers to American ports for immediate transshipment to their destination, and whose expenses are provided for by the British Government, are subject to the capitation tax imposed by the act of Congress of August 3, 1882, I have the honor to inform you that I have just received a letter from my colleague, the Secretary of the Treasury, in which he states that it is a well recognized rule in the administration of the American tariff and navigation laws that special exemptions are to be granted to vessels and foreign goods thrown upon the shores of this country by shipwreck or other casualty; that goods under such circumstances are not treated as importations, unless the parties in interest waive the exemption; that wrecked vessels are, as a general rule, exempt from the requirements of law as to entry, and that

* Printed, p. 491 Foreign Relations, 1886.

the general principle underlying these rulings is that our laws relating to foreign commerce are intended to apply in their restrictive provisions to trade and commerce only when carried on under normal conditions, that is to say, when voluntary and free, and not when enforced by a pressure of circumstances beyond the control of the parties concerned.

The Secretary of the Treasury adds that, in his opinion, the spirit of the above rulings in respect to laws governing trade and commerce should apply *a fortiori* to laws like that in question, which, while akin to those relating merely to matters of trade, subserve a higher purpose in the interests of humanity. He holds, therefore, that seamen and others in distress, of the character referred to in your note, are not subjects for the tax prescribed by the act of Congress in question, and that of course the same exemption applies to shipwrecked and other distressed Canadians.

I have, etc.,

T. F. BAYARD.

No. 327.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *December* 24, 1886. (Received December 27.)

SIR: With reference to your note* of the 11th ultimo, I have the honor to inform you that I am requested by the Earl of Iddesleigh to acquaint you that Her Majesty's Government have desired the Canadian Government to furnish them with a report on the circumstances attending the alleged inhospitable treatment of United States fishing schooners *Laura Sayward* and *Jennie Seavers* by the Canadian authorities.

I have, etc.,

L. S. SACKVILLE WEST.

No. 328.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *January* 6, 1887. (Received January 7.)

SIR: With reference to your letters† of the 19th and 20th October, I have the honor to transmit to you herewith reports from the Government of Canada relative to the cases of the United States fishing vessels *Pearl Nelson* and *Everett Steele*, which I have been instructed by the Earl of Iddesleigh to communicate to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure 1.]

The Marquis of Lansdowne to Mr. Stanhope.

GOVERNMENT HOUSE, OTTAWA, *November* 29, 1886.

SIR: I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada, furnishing the report asked for in your telegraphic message

* Printed, p. 425 Foreign Relations, 1886.
† Printed p. 421 Foreign Relations, 1886.

of the 6th November, with reference to the detention of the American schooner *Everett Steele*, at Shelburne, Nova Scotia, for an infraction of the customs regulations of the Dominion.

I have, etc.,

LANSDOWNE.

[Inclosure 2.]

Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 18th November, 1886.

The committee of the privy council are in receipt of a telegram from the right honorable the secretary of state for the colonies, in the words:

"United States Government protest against proceedings of Canadian authorities in the case of *Pearl Nelson* and *Everett Steele*, said to have put into Arichat and Shelburne, respectively, for purposes sanctioned by convention. Particulars by post. Send report soon as possible."

The minister of marine and fisheries, to whom the telegram was referred, submits that the schooner *Everett Steele* appears from the report of the collector of customs at Shelburne to have been at that port on the 25th March last, and sailed without reporting. On her return to Shelburne in September she was detained by the collector of customs for an infraction of the customs law.

The captain having assured the collector that he had been misled by the deputy harbor-master, who informed him his vessel could remain in port for twenty-four hours without entering, and that he had no intention of violating the customs regulations, this statement was reported to the minister of customs at Ottawa, when the vessel was at once allowed to proceed to sea, and that no evidence is given of any desire or intention of denying to the captain of the *Everett Steele* any treaty privileges he was entitled to enjoy.

The committee, concurring in the above, respectfully recommend that your excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All of which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council.

[Inclosure 3.]

The Marquis of Lansdowne to Mr. Stanhope.

GOVERNMENT HOUSE, OTTAWA, *November* 29, 1886.

SIR: With reference to your telegraphic message of the 6th instant, asking to be furnished with a report in the case of the *Pearl Nelson* and *Everett Steele*, I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada, embodying a report of my minister of marine and fisheries, to which is appended a copy of the correspondence which has passed between the commissioner of customs for Canada and the United States consul-general at Halifax relating to the case of the American schooner *Pearl Nelson*.

I have, etc.,

LANSDOWNE.

[Inclosure 4.]

Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 18th November, 1886.

The committee of the privy council are in receipt of a telegram from the right honorable the secretary of state for the colonies, in the words:

"United States Government protest against proceedings of Canadian authorities in case of *Pearl Nelson* and *Everett Steele*, said to have put into Arichat and Shelburne, respectively, for purposes sanctioned by convention. Particulars by post. Send report soon as possible."

The minister of marine and fisheries, to whom the telegram was referred, submits a copy of a letter addressed by the commissioner of customs for Canada to the consul-general of the United States at Halifax, and also a copy of Mr. Phelan's reply thereto.

The minister submits that it is clear, from Captain Kempt's affidavit, that he was guilty of an infraction of the customs regulations in allowing men to land from his vessel before she had been reported, and the minister of customs having favorably

considered Captain Kempt's representations as to his ignorance of the customs regulations requiring that vessels should be reported before landing either men or cargo therefrom, has remitted the fine of $200 which had been imposed in the case of the American schooner *Pearl Nelson*.

The minister further submits that it would appear from the collector of customs' report that his remark that "he would seize the vessel" had reference solely to her violation of the customs law, and that no evidence is given of any desire or intention of denying to the captain of the *Pearl Nelson* any treaty privileges he was entitled to enjoy.

The committee, concurring in the above, respectfully recommend that your excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council, Canada.

[Inclosure 5]

Mr. Parmelee to Mr. Phelan.

OTTAWA, *October* 22, 1886.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, *re* seizure of the American schooner *Pearl Nelson* for an infraction of the customs laws, etc.

The commissioner of customs' report in connection with this matter, which has been approved by the minister of customs, reads as follows:

"The undersigned, having examined this case, has come to the conclusion that the captain of the vessel did violate the provisions of sections 25 and 180 of 'the customs act, 1883,' by landing a number of his crew before going to the custom-house to report; that his plea of having come into port solely from stress of weather is inconsistent with the circumstances, and is denied by the collector of customs, who reports that 'the night was one of the finest and most moderate experienced there this summer,' and that 'his crew were landed only in the morning.' That even if the 'stress of weather' plea was sustained by facts it would not exempt him from the legal requirement of reporting his vessel before 'breaking bulk' or landing his crew, and it is evident that there was nothing to hinder his reporting, as the crew appear to have had no difficulty in handling the vessel's boats; that it was very easy for the crew or any of them to have taken valuable contraband goods ashore on their persons in the absence of any customs officer at the landing-place. Inasmuch, however, as there is no charge of actual smuggling preferred against the vessel, the undersigned respectfully recommends that the deposit of $200 be refunded, deducting therefrom any expenses incurred.

"J. JOHNSON."

I trust the above may be considered a satisfactory answer to your letter referred to.

I have, etc.,

W. G. PARMELEE,
Assistant Commissioner.

[Inclosure 6.]

Mr. Phelan to Mr. Parmelee.

HALIFAX, *November* 2, 1886.

SIR: I have the honor to acknowledge the receipt of your communication of the 22d ultimo, concerning the action of the customs department of Canada in the case of the American schooner *Pearl Nelson*, and to say I was much pleased at the decision arrived at in that case. I have informed the Government of the United States that the fine in the case referred to was ordered to be refunded.

I have also to say that the Department of State, in acknowledging the receipt of a dispatch from me setting forth that you had placed all the papers in the cases of the American schooners *Crittenden* and *Holbrook* in my hands for perusal, said: "The attention of Mr. Parmelee in referring the matter to you is appreciated. It shows a proper spirit."

I trust the department of customs will pass on the other cases as soon as possible.

I have, etc.

M. H. PHELAN,
Consul-General.

No. 329.

Sir L. S. Sackville West to Mr. Bayard.

BRITISH LEGATION,
Washington, January 19, 1887. (Received January 21.)

SIR: With reference to your note* of the 23d of September last, I have the honor inclose to you herewith a copy of a dispatch from the governor-general of Canada to Her Majesty's secretary of state for the colonies, inclosing a report from his Government on the case of the United States fishing vessel *Crittenden*.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure 1.]

Lord Lansdowne to Mr. Stanhope.

CANADA, GOVERNMENT HOUSE,
Ottawa December 4, 1886.

SIR: In reply to your dispatch of the 12th of October last, transmitting a copy of a letter with its inclosure from the foreign office, requesting to be furnished with a report in the case of the United States fishing vessel *Crittenden*, I have the honor to forward herewith a copy of an approved minute of the privy council of Canada embodying a report of my minister of marine and fisheries, to which is appended a statement of the customs officer at Steep Creek on the subject.

I have, etc.,

LANSDOWNE.

[Inclosure 2.]

Certified copy of a report of a committee of the honorable the privy council, approved by his excellency the governor-general in council, on the 16th November, 1886.

The committee of the privy council have had under consideration a dispatch, dated 12th October, 1886, from the secretary of state for the colonies, transmitting a copy of a letter from Mr. Bayard, United States Secretary of State, to the British minister at Washington, calling attention to an alleged denial of the rights guaranteed by the convention of 1818 in the case of the American fishing schooner *Crittenden* by the customs officer at Steep Creek, in the Straits of Canso, Nova Scotia.

The minister of marine and fisheries, to whom the dispatch and inclosure were referred, submits a statement of the customs officer at Steep Creek, and observes that the captain of the *Crittenden* violated the customs laws by neglecting to enter his vessel, as requested by the customs officer, and landing and shipping a man clearly exceeded any treaty provision he was entitled to avail himself of.

It would appear that the remark made by the customs officer "that he would seize the vessel" had reference solely to the captain's violation of the customs regulations, and, the minister submits, cannot be construed into a denial of any treaty privileges the master was entitled to enjoy.

The committee, concurring in the above, respectfully recommended that your excellency be moved to inform the right honorable the secretary of state for the colonies in the sense of the report of the ministry of marine and fisheries.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council.

[Inclosure 3.]

Mr. Carr to the Minister of Marine and Fisheries.

STEEP CREEK, *November* 1, 1886.

SIR: Yours of the 28th of October came to hand to-day, and, in reply, can state to you that part of the crew of the schooner *Crittenden* came on shore at Steep Creek and landed their barrels and fill them with water. I went direct to the men who

*Printed p. 414 Foreign Relations, 1886.

were filling the barrels, and told them to come and enter before taking wood and water. They said they would not enter or make any report. I told them that I would seize the schooner *Crittenden* for violating the customs laws. They said they would risk that, as the schooner was now out of the way about 3 miles from my station down the straits, and it was impossible for me to board the vessel. They also landed a man the same day with his effects, and on their return from Gloucester to the Bay St. Lawrence they shipped a man. Was looking out for the vessel, but could not catch her. I reported the case to the collector of customs at Port Hawkesbury, and on the schooner *Crittenden's* return from the Bay St. Lawrence she was seized, and Collector Bourinot got the affidavits of the captain of the said schooner and also of some of the crew, which he stated to the department. I was in the office at the time when Collector Bourinot received a telegram from the department to release the schooner *Crittenden* on the deposit of $400.

I remain, etc.,

JAMES H. CARR,
Pro *Collector*.

No. 330.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, January 27, 1887.

SIR: I have the honor to inclose a copy of an affidavit of the captain and two members of the crew of the schooner *Sarah H. Prior*, of Boston, stating the refusal of the captain of the Canadian revenue cutter *Critic* to permit the restoration to the former vessel, in the port of Malpeque, Prince Edward Island, of her large seine, which she had lost at sea, and which had been found by the captain of a Canadian vessel, who offered to return the seine to the *Prior*, but was prevented from doing so by the captain of the *Critic*.

This act of prevention, the reason for which is not disclosed, practically disabled the *Prior*, and she was compelled to return home without having completed her voyage, and in debt.

I have the honor to ask that Her Majesty's Government cause investigation of this case to be made.

I have, etc.,

T. F. BAYARD.

[Inclosure 1.]

Mr. Prior to Mr. Bayard.

BOSTON, *December* 28, 1886.

DEAR SIR: I wrote to Senator W. P. Frye, setting forth in my letter the facts contained in the affidavit inclosed. He wrote me to have it sworn to and to send it to you, which I have done. Will you please let me know what course is best to pursue in regard to it, whether to enter a claim or not? I think it is a clear, strong case, and the claim would be a just one, and will be pleased to receive your advice in the matter.

Yours, very truly,

P. H. PRIOR.

[Inclosure 2.]

Affidavit of the captain and crew of the schooner Sarah H. Prior.

On this 28th day of December, A. D. 1886, personally appeared before me Captain Thomas McLaughlin, master, and George F. Little and Charles Finnegan, two of the crew of the schooner *Sarah H. Prior*, of Boston, and being duly sworn, signed and made oath to the following statement of facts:

On September 10, 1886, the schooner *Sarah H. Prior*, while running for Malpeque, Prince Edward Island, and about seven miles from that port, lost her large seine.

Four days afterwards the schooner *John Ingalls*, of Halifax, N. S., Captain Wolfe, came into Malpeque and had the seine on board, which she had picked up at sea. Captain Wolfe offered to deliver the seine to Captain McLaughlin in consideration of twenty-five dollars, which offer the latter accepted and paid him the money. The Canadian revenue cutter *Critic*, Captain McLearn, was lying at Malpeque at the time, and Captain McLaughlin went to see him, to ascertain if there would be any trouble in delivering the seine. Captain McLearn would not allow the captain of the *John Ingalls* to give up the seine, so the latter returned the twenty-five dollars to Captain McLaughlin.

The schooner *Sarah H. Prior* had two seines, one large and one small size. It was the large one which she lost and the schooner *John Ingalls* picked up. She had to leave Malpeque without it, and consequently came home with a broken voyage and in debt.

THOS. MCLAUGHLIN.
GEORGE F. LITTLE.
CHARLES FINNEGAN.

SUFFOLK, *ss:*

BOSTON, *December* 28, 1886.

Personally appeared before me Thomas McLaughlin, George F. Little, and Charles Finnegan, who signed and made oath that the foregoing statement was true.

[SEAL.] CHARLES W. HALLSTRAIN,
Notary Public.

No. 331.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *January* 28, 1887. (Received January 29.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, and to inform you that I have submitted the case of the American schooner *Sarah H. Prior* to Her Majesty's Government for investigation, as requested by you.

I have, etc., L. S. SACKVILLE WEST.

No. 332.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *January* 28, 1887. (Received January 29.)

SIR: With reference to your note* of the 20th of May last, I have the honor to transmit to you herewith copy of a report by the minister of justice of the Dominion of Canada upon the seizure of the American fishing vessel *David J. Adams*, which I am instructed by Her Majesty's principal secretary of state for foreign affairs to communicate to the United States Government.

I have, etc., L. S. SACKVILLE WEST.

[Inclosure 1.]

The Marquis of Lansdowne to Mr. Stanhope.

GOVERNMENT HOUSE, OTTAWA,
November 9, 1886. (Received November 22.)

SIR: With reference to Earl Granville's dispatch of the 24th June last, respecting the fisheries question and inclosing copies of two letters from the foreign office and one from the United States minister in London, addressed to the secretary of state

* Printed page 377, Foreign Relations, 1886.

for foreign affairs, I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada concurring in a report of the minister of justice dealing with the points raised by Mr. Phelps in his note of the 2d June last on the subject of the seizure of the United States fishing vessel *David J. Adams*, near Digby, Nova Scotia.

I have, etc.,

LANSDOWNE.

[Inclosure 2.]

Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the administrator of the Government in council on the 2d November, 1886.

The committee of the privy council have had under consideration a dispatch dated 24th June, 1886, from the right honorable the secretary of state for the colonies respecting the fisheries question, and inclosing copies of letters on the subject from the foreign office to the colonial office, and of one from Mr. Phelps to the secretary of state for foreign affairs.

The minister of justice, to whom the dispatch and inclosures were referred, submits a report thereon herewith.

The committee concur in the said report, and advise that your excellency be moved to transmit a copy thereof, if approved, to the right honorable the secretary of state for the colonies.

All of which is submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council, Canada.

[Inclosure 3.]

Report of the Minister of Justice.

DEPARTMENT OF JUSTICE, OTTAWA,
July 22, 1886.

To his Excellency the Administrator of the Government in council:

With reference to the dispatch of the 24th June last from the secretary of state for the colonies to your excellency, respecting the fisheries question, and inclosing copies of letters on the subject from the foreign office to the colonial office and of one from Mr. Phelps to the secretary of state for foreign affairs, the undersigned has the honor to report as follows:

The letter of Mr. Phelps seems designed to present to Earl Rosebery the case of the *David J. Adams*, the fishing vessel seized a short time ago near Digby, in the province of Nova Scotia.

Mr. Phelps intimates that he has received from his Government a copy of the report of the consul-general of the United States at Halifax, giving full details and depositions relating to the seizure, and that that report and the evidence annexed to it, appear fully to sustain the points which he had submitted to Earl Rosebery at an interview which he had had a short time before the date of his letter.

The report of the consul-general and the depositions referred to seem not to have been presented to Earl Rosebery, and their contents can only be inferred from the statements made in Mr. Phelps's letter.

These statements appear to be based on the assertions made by the persons interested in the vessel by way of defense against the complaint under which she was seized, but can not be regarded as presenting a full or accurate representation of the case. The undersigned submits the facts in regard to this vessel as they are alleged by those on whose testimony the Government of Canada can rely to sustain the seizure and detention.

THE OFFENSE AS TO THE TREATY AND FISHERY LAWS.

The *David J. Adams* was a United States fishing vessel. Whether, as alleged in her behalf, her occupation was deep-sea fishing or not, and whether, as suggested, she had not been engaged, nor was intended to be engaged, in fishing in any limit prescribed by the treaty of 1818 or not, are questions which do not, in the opinion of the undersigned, affect the validity of the seizure, and of the proceedings subsequent thereto, for reasons which will be hereafter stated, but in so far as they may be deemed

material to the defense they are questions of fact, which remain to be proved in the vice-admiralty court at Halifax, in which the proceedings for the vessel's condemnation are pending, and in respect of which proof is now being taken, and inasmuch as the trial has not been concluded (much less a decision reached), it is perhaps premature for Mr. Phelps to claim the restoration of the vessel, and to assert a right to damages for her detention, on the assumption of the supposed facts before referred to.

It is alleged in the evidence on behalf of the prosecution that the *David J. Adams*, being a United States fishing vessel, on the morning of the 5th of May, 1886, was in what is called the Annapolis Basin, which is a harbor on the northwest coast of Nova Scotia. She was several miles within the basin, and the excuse suggested (that the captain and crew may have been there through a misapprehension as to the locality) by the words of Mr. Phelps's letter, "Digby is a small fishing settlement, and its harbor not defined," is unworthy of much consideration.

Digby is not a fishing settlement, although some of the people on the neighboring shores engage in fishing. It is a town with a population of about 2,000 persons. Its harbor is formed by the Annapolis Basin, which is a large inlet of the Bay of Fundy, and the entrance to it consists of a narrow strait marked by conspicuous headlands, which are little more than a mile apart. The entrance is called "Digby Gut," and for all purposes connected with this inquiry the harbor is one of the best defined in America.

The *David J. Adams* was, on the morning of the 5th day of May, 1886, as has already been stated, several miles within the Gut. She was not there for the purpose of "shelter," or "repairs," nor to "purchase wood," nor to obtain water. She remained there during the 5th and the 6th of May, 1886; she was lying at anchor about half a mile from the shore, at a locality called "Clements West."

On the morning of the 6th of May, 1886, the captain made application to the owners of a fishing weir near where he was laying for bait, and purchased 4½ barrels of that article. He also purchased and took on board about two tons of ice. While waiting at anchor for these purposes the name of the vessel's "hailing place" was kept covered by canvas, and this concealment continued while she afterwards sailed down past Digby.

One of the crew represented to the persons attending the weir that the vessel belonged to the neighboring province of New Brunswick. The captain told the owner of the weir, when the treaty was spoken of by the latter, that the vessel was under British register. The captain said he would wait until the next morning to get more bait from the catch in the weir which was expected that day. At daybreak, however, on the morning of the 7th of May, 1886, the Government steamer *Lansdowne* arrived off Digby, and the *David J. Adams* got under way without waiting to take in the additional supply of bait, and sailed down the basin towards the Gut.

Before she had passed Digby she was boarded by the first officer of the *Lansdowne*, and to him the captain made the following statement: That he had come to that place to see his people, as he had formerly belonged there; that he had no fresh bait on board, and that he was from the "Banks," and bound for Eastport, Me. The officer of the *Lansdowne* told him he had no business there, and asked him if he knew the law. His reply was, "Yes."

A few hours afterwards, and while the *David J. Adams* was still inside the Gut, the officer of the *Lansdowne*, ascertaining that the statements of the captain were untrue, and that bait had been purchased by him within the harbor on the previous day, returned to the *David J. Adams*, charged the captain with the offense, and received for his reply the assertion that the charge was false, and that the person who gave the information was a "liar."

The officer looked into the hold of the vessel and found the herring which had been purchased the day before, and which, of course, was perfectly fresh; but the captain declared that this "bait" was ten days old.

The officer of the *Lansdowne* returned to his ship, reported the facts, and went again to the *Adams*, accompanied by another officer, who also looked at the bait. Both returned to the *Lansdowne*, and then conveyed the *Adams* the direction that she should come to Digby and anchor near the *Lansdowne*. This was, in fact, the seizure.

These are the circumstances by which the seizure was, in the opinion of Mr. Phelps, "much aggravated," and which make it seem very apparent to him that the seizure "was not made for the purpose of enforcing any right or redressing any wrong."

The fact that the seizure was preceded by visitations and searches was due to the statements of the master and the reluctance of the officers of the *Lansdowne* to enforce the law until they had ascertained to a demonstration that the offense had been committed and that the captain's statements were untrue.

THE OFFENSE AS TO CUSTOMS LAWS.

The *David J. Adams*, as already stated, was in harbor upwards of forty-eight hours, and when seized was proceeding to sea without having been reported at any customs-

house. Her business was not such as to make it her interest to attract the attention of the Canadian authorities, and it is not difficult, therefore, to conjecture the reason why she was not so reported, or to see that the reason put forward, that Digby is but "a small fishing settlement and its harbor not defined," is a disingenuous one. In going to the weir to purchase bait the vessel passed the custom-house at Digby almost within hailing distance. When at the weir she was within 1 or 2 miles of another custom-house (at Clementsport), and within about 15 miles of another (at Annapolis). The master has not asserted that he did not know the law on this subject, as it is established that he knew the law in relation to the restriction on foreign fishing vessels.

The provisions of the customs act of Canada on this subject are not essentially different from those of his own country. The captain and crew were ashore during the 5th and 6th of May, 1886. The following provisions of the customs act of Canada apply:

"The master of every vessel coming from any port or place out of Canada, or coastwise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the custom-house for the port or place of entry where he arrives, and there make a report in writing to the collector or other proper officer of the arrival and voyage of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and, if laden, the marks and numbers of every package and parcel of goods on board, and where the same was laden, and the particulars of any goods stored loose, and where and to whom consigned, and where any and what goods, if any, have been laden or unladen, or bulk has been broken during the voyage, what part of the cargo, and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in Canada, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board as far as any of such particulars are or can be known to him." (46 Vic., cap. 12, sec. 25.)

"The master shall at the time of making his report, if required by the officer of customs, produce to him the bills of lading of the cargo, or true copies thereof, and shall make and subscribe an affidavit referring to his report, and declaring that all the statements made in the report are true, and shall further answer all such questions concerning the vessel and cargo, and the crew, and the voyage, as are demanded of him by such officer, and shall, if required, make the substance of any such answer part of his report." (46 Vic., cap. 12, sec. 28.)

"If any goods are unladen from any vessel before such report is made, or if the master fails to make such report, or makes an untrue report, or does not truly answer the questions demanded of him, as provided in the next preceding section, he shall incur a penalty of $400, and the vessel may be detained until such penalty is paid." (46 Vic., cap. 12, sec. 28.)

PROCEEDINGS FOLLOWING THE SEIZURE.

These have been made the subject of complaint by Mr. Phelps, although the explanations which were given in the previous memorandum of the undersigned (in reference to the letters of Mr. Bayard to Her Majesty's minister at Washington), and in the report on the same subject of the minister of marine and fisheries, laid before his excellency the governor-general on the 14th of June ultimo, coupled with a disavowal, by the Canadian Government, of any intention that the proceedings in such cases should be unnecessarily harsh or pursued in a punitive spirit, might have been expected to be sufficient. After the seizure was made, the commander of the *Lansdowne* took the *David J. Adams* across the Bay of Fundy to St. John, a distance of about 40 miles. He appears to have had the impression that, as his duties would not permit him to remain at Digby, the vessel would not be secure from rescue, which has in several cases occurred after the seizure of fishing vessels. He believed she would be more secure in the harbor of St. John, and that the legal proceedings, which in due course would follow, could be taken there. He was immediately directed, however, to return with the vessel to Digby, as it seemed more in order, and more in compliance with the statutes relating to the subject, that she should be detained in the place of seizure, and that the legal proceeding should be taken in the vice-admiralty court of the province where the offense was committed. It does not seem to be claimed by the United States authorities that any damage to the vessel, or that any injury or inconvenience to any one concerned, was occasioned by this removal to St. John and by her return to Digby, occupying as they did but a few hours, and yet this circumstance seems to be relied on as "aggravating the seizure," and as depriving it of the character of a seizure made "to enforce a right or to redress a wrong."

Another ground of complaint is that in Digby, "the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such a manner as to prevent its contents being read," and that "the request of the captain, and of the United States consul-general, to be allowed to detach the writ from the mast, for the purpose of learning its contents, was positively refused by the provincial official in charge; that the United States consul-general was not able to learn from the commander of the *Lansdowne* the nature of the complaint against the vessel, and that his respectful application to that effect was fruitless."

(1) As to the position of the paper on the mast. It is not a fact that it was nailed to the vessel's mast "in such a manner as to prevent its contents being read." It was nailed there for the purpose of being read, and could have been read.

(2) As to the refusal to allow it to be detached, such refusal was not intended as a discourtesy, but was legitimate and proper. The paper purported to be, and was, a copy of the writ of summons and warrant, which were then in the registry of the vice-admiralty court at Halifax. It was attached to the mast by the officer of the court, in accordance with the rules and procedure of that court. The purposes for which it was so attached did not admit of any consent for its removal.

(3) As to the desire of the captain and of the United States consul-general to ascertain the contents of the paper, the original was in the registry of the court, accessible to every person, and the registry is within 80 yards of the consul-general's office. All the reasons for the seizure and detention were made, however, to the captain, days before the paper arrived to be placed on the mast, and, before the consul-general arrived at Digby; these reasons were not only matters of public notoriety, but had been published in the newspapers of the province and in hundreds of other newspapers circulating throughout Canada and the United States. The captain and the consul-general did not need, therefore, to take the paper from the mast in order to learn the causes of the seizure and detention.

(4) As to the application of the consul-general having been fruitless, the fact has transpired that he had reported the seizure and its causes to his Government before the application was made. It has been already explained in the previous memorandum of the undersigned, and in the report of the minister of marine and fisheries, that the application was for a specific statement of the charges, and that it was made to an officer who had neither the legal acquirements nor the authority to state them in a more specific form than that in which he had already stated them. The commander of the *Lansdowne* requested the consul-general to make his request to the minister of the marine and fisheries, and, if he had done so, the specific statement which he had desired could have been furnished in an hour. It is hoped that the explanation already made, and the precautions which have been taken against even the appearance of discourtesy in the future, will, on consideration, be found to be satisfactory.

INCIDENTS OF THE CUSTOMS SEIZURE.

Mr. Phelps presents the following views with respect to the claim that the *David J. Adams*, besides violating the treaty and the statutes relating to "fishing by foreign vessels," is liable to be detained for the penalty under the customs law.

(1) That this claim indicates the consciousness that the vessel could not be forfeited for the offense against the treaty and fishing laws. This supposition is groundless. It is by no means uncommon in legal proceedings, both in Canada and the United States, for such proceedings to be based on more than one charge, although any one of the charges would in itself, if sustained, be sufficient for the purpose of the complainant. The success of this litigation, like that of all litigation, must depend not merely on the rights of the parties but on the proof which may be adduced as to a right having been infringed. In this instance it appears from Mr. Phelps's letter that the facts which are to be made the subject of proof are evidently in dispute, and the Government of Canada could, with propriety, assert both its claims, so that both of them should not be lost by any miscarriage of justice in regard to one of them. This was likewise the proper cause* to be taken in view of the fact than an appeal might at any time be made to the Government by the owners of the *David J. Adams* for the remission of the forfeiture incurred in respect of the fishery laws. The following is a section of the Canadian statute relating to fishing by foreign vessels:

"In cases of seizure under this act, the governor in council may direct a stay of proceedings, and in cases of condemnation may relieve from the penalty in whole or in part, and on such terms as are deemed right." (31 Vic., cap. 61, sec. 19.)

It seems necessary and proper to make at once any claim founded on infraction of the customs laws, in view of the possible termination of the proceedings by executive interference under this enactment. It would surely not be expected that the Government of Canada should wait until the termination of the proceedings under the fishery acts before asserting its claim to the penalty under the customs act. The

* Course?

owners of the offending vessel and all concerned were entitled to know as soon as they could be made aware what the claims of the Government were in relation to the vessel, and they might fairly urge that any which were not disclosed were waived.

(2) Mr. Phelps remarks that this charge is "not the one on which the vessel was seized" and "was an after-thought." The vessel was seized by the commander of the *Landsdowne* for a violation of the fishery laws before the customs authorities had any knowledge that such a vessel had entered into the port, or had attempted to leave it, and the commander was not aware at that time whether the *David J. Adams* had made proper entry or not. A few hours afterwards, however, the collector of customs at Digby ascertained the facts, and on the facts being made known to the head of his department at Ottawa, was immediately instructed to take such steps as might be necessary to assert the claim for the penalty which had been incurred. The collector did so.

(3) Mr. Phelps asserts that the charge of breach of the customs law is not the one which must now be principally relied on for condemnation. It is true that condemnation does not necessarily follow. The penalty prescribed is a forfeiture of $400, on payment of which the owners are entitled to the release of the vessel. If Mr. Phelps means by the expression just quoted that the customs offense cannot be relied on in respect to the penalty claimed, and that the vessel cannot be detained until that penalty is paid, it can only be said that in this contention the Canadian Government does not concur. Section 39 of the customs act, before quoted, is explicit on that point.

(4) It is also urged that the offense was, at most, "only an accidental and clearly technical breach of a custom-house regulation, by which no harm was intended, and from which no harm came, and would in ordinary cases be easily condoned by an apology, and perhaps payment of costs." What has already been said under the heading "the offense as to the customs laws" presents the contention opposed to the offense being considered as accidental." The master of the *David J. Adams* showed by his language and conduct that what he did he did with design, and with the knowledge that he was violating the laws of the country. He could not have complied with the customs law without frustrating the purposes for which he had gone into port.

As to the breach being a "technical" one, it must "be remembered that with thousands of miles of coast indented, as the coasts of Canada are, by hundreds of harbors and inlets, it is impossible to enforce the fishery law without a strict enforcement of the customs laws. This difficulty was not unforeseen by the framers of the treaty of 1818, who provided that the fishermen should be "under such restrictions as might be necessary to prevent their taking, drying, or curing fish * * * or in any other manner whatever *abusing the privilege reserved to them.*" No naval force which could be equipped by the Dominion would of itself be sufficient for the enforcement of the fishery laws.

Foreign fishing vessels are allowed by the treaty to enter the harbors and inlets of Canada, but they are allowed to do so only for specified purposes. In order to confine them to those purposes it is necessary to insist on the observance of the customs laws, which are enforced by officers all along the coast. A strict enforcement of the customs laws, and one consistent with the treaty, would require that, even when coming into port for the purposes for which such vessels are allowed to enter our waters, a report should be made at the custom-house, but this has not been insisted on in all cases; when the customs laws are enforced against those who enter for other than legitimate purposes, and who choose to violate both the fishery laws and customs laws, the Government is far within its right, and should not be asked to accept an apology and payment of costs. It may be observed here, as affecting Mr. Phelps's demands for restoration and damages, that the apology and costs have never been tendered, and that Mr. Phelps seems to be of opinion that they are not called for.

(5) Mr. Phelps is informed by the cousul-general at Halifax that it is "conceded by the customs authorities there that foreign fishing vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port and made no landing, and that no seizure had ever before been made or claim against them for so doing." Nothing of this kind is or could be conceded by the customs authorities there or elsewhere in Canada.

The bay referred to, the Annapolis Basin, is like all the other harbors of Canada, except that it is unusually well defined and land-locked and furnished with customs-houses. Neither there nor anywhere else have foreign fishing vessels been accustomed to go in and out at pleasure without reporting. If they had been so permitted the fishery laws could not have been enforced, and there would have been no protection against illicit trading. While the reciprocity treaty of 1854 and the fishery clauses of the Washington treaty were in force, the convention of 1818 being, of course, suspended, considerable laxity was allowed to the United States fishing vessels, much greater than the terms of those treaties entitled them to, but the consul-

general is greatly mistaken when he supposes that at other times the customs laws were not enforced, and that seizures of foreign fishing vessels were not made for omitting to report. Abundant evidence on this point can be had.

In 1839 Mr. Vail, the Acting Secretary of State (United States) reported that most of the seizures, which then were considered numerous, were for alleged violation of the customs laws (Papers relating to the Treaty of Washington, vol. vi, p. 283, Washington edition). From a letter of the United States consul at Charlottetown, dated August 19, 1870, to the United States consul-general at Montreal, it appears that it was the practice of the United States fishermen at that time to make regular entry at the port to which they resorted. The consul said, "Here the fishermen enter and clear, and take out permits to land their mackerel from the collector, and as their mackerel is a free article in this island, there can be no illicit trade."

In the year 1870, two United States fishing vessels, the *H. W. Lewis* and the *Granada*, were seized on like charges in Canadian waters.

What Mr. Phelps styles "a custom-house regulation" is an act of the Parliament of Canada, and has for many years been in force in all the provinces of the Dominion. It is one which the Government can not at all alter or repeal, and which its officers are not at liberty to disregard.

(6) It is suggested, though not asserted, in the letter of Mr. Phelps, that the penalty can not reasonably be insisted on, because a new rule has been suddenly adopted without notice. The rule, as before observed, is not a new one, nor is its enforcement a novelty. As the Government of the United States choose to put an end to the arrangement under which the fishermen of that country were accustomed to frequent Canadian waters with so much freedom, the obligation of giving notice to those fishermen that their rights were thereafter, by the action of their own Government, to be greatly restricted, and that they must not infringe the laws of Canada, was surely a duty incumbent on the Government of the United States rather than on that of Canada. This point can not be better expressed than in the language reported to have been recently used by Mr. Bayard, the United States Secretary of State, in his reply to the owners of the *George Cushing*, a vessel recently seized on a similar charge: "You are well aware that questions are now pending between this Government and that of Great Britain in relation to the justification of the rights of American fishing vessels in the territorial waters of British North America, and we shall relax no effort to arrive at a satisfactory solution of the difficulty. In the mean time it is the duty and manifest interest of all American citizens entering Canadian jurisdiction to ascertain and obey the laws and regulations there in force. For all unlawful depredations of property or commercial rights this Government will expect to procure redress and compensation for the innocent sufferers."

INTERPRETATION OF THE TREATY.

Mr. Phelps, after commenting in the language already quoted from his letter on the claim for the customs penalty, treats, as the only question, whether the vessel is to be forfeited for purchasing bait to be used in lawful fishing. In following his argument on this point, it should be borne in mind, as already stated, that in so far as the fact of the bait having been intended to be used in lawful fishing is material to the case, that is a fact which is not admitted. It is one in respect of which the burden of proof is on the owners of the vessel, and it is one on which the owners of the vessel have not yet obtained an adjudication by the tribunal before which the case has gone.

Mr. Phelps admits "that if the language of the treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port for any purpose whatever, except to obtain wood or water, or to repair damages, or to seek shelter."

It is claimed on the part of the Government of Canada that this is not only the language of the treaty of 1818, but "its spirit and plain intent." To establish this contention it should be sufficient to point to the clear, unambiguous words of the treaty. To those clear and unambiguous words Mr. Phelps seeks to attach a hidden meaning by suggesting that certain "preposterous consequences" might ensue from giving them their ordinary construction. He says that with such a construction a vessel might be forfeited for entering a port "to post a letter, to send a telegram, to buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants, etc."

There are probably few treaties or statutes, the literal enforcement of which might not in certain circumstances produce consequences worthy of being described as preposterous.

At most, this argument can only suggest that, in regard to this treaty, as in regard to every enactment, its enforcement should not be insisted on where accidental hardships or "preposterous consequences" are likely to ensue. Equity and a natural

sense of justice would doubtless lead the Government with which the treaty was made to abstain from its rigid enforcement for inadvertent offenses, although the right so to enforce it might be beyond question. It is for this reason that, inasmuch as the enforcement of this treaty to some extent devolves on the Government of Canada, the Parliament of the Dominion has in one of the sections already quoted of the statute relating to fishing by foreign vessels (31 Vic., cap. 61, sec. 19) intrusted the executive with power to mitigate the severity of those provisions when an appeal to executive interference can be justified. In relation to every law of a penal character the same power for the same purpose is vested in the executive. Mr. Phelps will find it difficult, however, to discover any authority among the jurists of his own country or of Great Britain, or among the writers on international law, for the position that, against the plain words of a treaty or statute, an interpretation is to be sought which will obviate all chances of hardship and render unnecessary the exercise of the executive power before mentioned.

It might fairly be urged against his argument that the convention of 1818 is less open to an attempt to change its plain meaning than even a statute would be. The latter is a declaration of its will by the supreme authority of the state, the former was a compact deliberately and solemnly made by two parties, each of whom expressed what he was willing to concede, and by what terms it was willing to be bound. If the purposes for which the United States desired that their fishing vessels should have the right to enter British American waters included other than those expressed, their desire can not avail them now, nor be a pretext for a special interpretation after they assented to the words "and for no other purpose whatever." If it was "preposterous" that their fishermen should be precluded from entering provincial waters "to post a letter" or for any other of the purposes which Mr. Phelps mentions, they would probably never have assented to a treaty framed as this was. Having done so they can not now urge that their language was "preposterous," and that its effect must be destroyed by resort to "interpretation."

But that which Mr. Phelps calls "literal interpretation" is by no means so preposterous as he suggests, when the purpose and object of the treaty come to be considered. While it was not desired to interfere with ordinary commercial intercourse between the people of the two countries, the deliberate and declared purpose existed on the part of Great Britain, and the willingness existed on the part of the United States, to secure absolutely and free from the possibility of encroachment the fisheries of the British possessions in America to the people of those possessions, excepting as to certain localities, in respect of which special provisions were made. To effect this it was merely necessary that there should be a joint declaration of the right which was to be established, but that means should be taken to preserve that right. For this purpose a distinction was necessarily drawn between the United States vessels engaged in commerce and those engaged in fishing. While the former had free access to our coasts, the latter were placed under a strict prohibition.

The purpose was to prevent the fisheries from being poached on, and to preserve them to "the subjects of his Britannic Majesty in North America, not only for the pursuit of fishing within the waters adjacent to the coast (which can under the law of nations be done by any country), but as a basis of supplies for the pursuit of fishing in the deep sea." For this purpose it was necessary to keep out foreign fishing vessels, excepting in case of dire necessity, no matter under what pretext they might desire to come in. The fisheries could not be preserved to our people if every one of the United States fishing vessels that were accustomed to swarm along our coasts could claim the right to enter our harbors "to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence," or to "buy medicine," or to "purchase a new rope."

The slightest acquaintance with the negotiations which led to the treaty of 1818, and with the state of the fishery question preceding it, induces the belief that if the United States negotiators had suggested these as purposes for which their vessels should be allowed to enter our waters, the proposal would have been rejected as "preposterous," to quote Mr. Phelps's own words. But Mr. Phelps appears to have overlooked an important part of the case when he suggested that it is a "preposterous" construction of the treaty, which would lead to the purchase of bait being prohibited. So far from such a construction being against "its spirit and plain intent," no other meaning would accord with that spirit and intent. If we adopt one of the methods contended for by Mr. Phelps of arriving at the true meaning of the treaty, namely, having reference to the "attending circumstances," etc., we find that so far from its being considered by the framers of the treaty that a prohibition of the right to obtain bait would be a "preposterous" and an extreme instance, a proposition was made by the United States negotiators that the proviso should read thus: "*Provided, however,* That American fishermen shall be permitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water, *and bait,*" and the insertion of the word "bait" was resisted by the British negotiators and struck out. After

this, how can it be contended that any rule of interpretation would be sound which would give to United States fishermen the very permission which was sought for on their behalf during the negotiations successfully resisted by the British representatives and deliberately rejected by the framers of the convention?

It is a well-known fact that the negotiations preceding the treaty had reference very largely to the deep-sea fisheries, and that the right to purchase bait in the harbors of the British possessions for the deep-sea fishing was one which the United States fishermen were intentionally excluded from. Referring to the difficulties which subsequently arose from an enforcement of the treaty, an American author says:

"It will be seen that most of those difficulties arose from a change in the character of the fisheries; cod being caught on the banks, were seldom pursued within the 3-mile limit, and yet it was to cod, and perhaps halibut, that all the early negotiations had referred.

"The mackerel fishing had now sprung up in the Gulf of St. Lawrence, and had proved extremely profitable. This was at that time an inshore fishery." (Schuyler's American Diplomacy, page 411.)

In further amplification of this argument, the undersigned would refer to the views set forth in the memorandum before mentioned in the letters of Mr. Bayard in May last, and to those presented in the report of the minister of marine and fisheries, approved on the 14th June ultimo.

While believing, however, that Mr. Phelps can not, by resort to any such matters, successfully establish a different construction for the treaty from that which its words present, the undersigned submits that Mr. Phelps is mistaken as to the right to resort to any matters outside the treaty itself to modify its plain words. Mr. Phelps expresses his contention thus: "It seems to me clear that the treaty may be considered in accordance with those ordinary and well settled rules, applicable to all written instruments, which without such salutary assistance must constantly fail of their purpose. By these rules the letter often gives way to the intent, or rather is only used to ascertain the intent, and the whole document will be taken together and will be considered in connection with the attending circumstances, the situation of the parties, and the object in view, and thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended." It may be readily admitted that such rules of interpretation exist, but when are they to be applied? Only when interpretation is necessary—when the words are plain in their ordinary meaning, the task of interpretation does not begin. Vattel says in reference to the "interpretation of treaties:"

"The first general maxim of interpretation is, *that it is not allowable to interpret what has no need of interpretation.* When the deed is worded in clear and precise terms, when its meaning is evident and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it is but an attempt to elude it.

"Those cavilers who dispute the sense of a clear and determined article are accustomed to seek their frivolous subterfuges in the pretended intentions and views which they attribute to its author. It would be very often dangerous to enter with them into the discussion of these supposed views that are pointed out in the piece itself. The following rule is better calculated to foil such cavilers, and will at once cut short all chicanery: *If he who could and ought to have explained himself clearly and fully has not done it, it is the worse for him;* he cannot be allowed to introduce subsequent restrictions which he has not expressed. This is a maxim of the Roman law, '*Pactionem obscuram us usure* [? iis nocere] *in quorum fuit potestate legem apertius conscribere.*' The equity of this rule is glaringly obvious, and its necessity is not less evident." (Vattel's Interpretation of Treaties, lib. ii, chap. 17.)

Sedgwick, the American writer on the "Construction of Statutes" (and treaties are construed by much the same rules as statutes), says, at page 194: "The rule is, as we shall constantly see, cardinal and universal; but if the statute is plain and unambiguous, there is no room for construction or interpretation. The legislature has spoken; their interpretation is free from doubt, and their will must be obeyed. 'It may be proper,' it has been said in Kentucky, 'in giving a construction to a statute, to look to the effects and consequences when its provisions are ambiguous or the legislative intention is doubtful. But when the law is clear and explicit and its provisions are susceptible of but one interpretation, if evil, can only be avoided by a change of the law itself, to be effected by legislative and not judicial action, 'So, too,' it is said by the Supreme Court of the United States, 'where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction.'"

At the tribunal of arbitration at Genoa,* held under the Washington treaty in 1872,

*Geneva.

a similar question arose. Counsel for Her Majesty's Government presented a supplemental argument, in which the ordinary rules for the interpretation of treaties were invoked. Mr. Evarts, one of the counsel for the United States and afterwards Secretary of State, made a supplemental reply, in which the following passage occurs: "At the close of the special argument we find a general presentation of canons for the construction of treaties and some general observations as to the light or the controlling reason under which these rules of the treaty should be construed. These suggestions may be briefly dismissed. It certainly would be a very great reproach to these nations which had deliberately fixed upon three propositions as expressive of the law of nations, in their judgment, for the purposes of this trial, that a resort to general instructions for the purpose of interpretation was necessary. Eleven canons of interpretation drawn from Vattel are presented in order, and then several of them, as the case suits, are applied as valuable in elucidating this or that point of the rules. But the learned counsel has omitted to bring to your notice the first and most general rule of Vattel, which being once understood would, as we think, dispense with any consideration of these subordinate canons which Vattel has introduced to be used only in case his first general rule does not apply. This first proposition is that *'it is not allowable to interpret what has no need of interpretation.'*" (Washington Treaty Papers, vol. iii, pp. 446–7.)

In a letter of Mr. Hamilton Fish to the United States minister in England on the same subject, dated April 16, 1872, the following view was set forth: "Further than this, it appears to me that the principles of English and American law (and they are substantially the same) regarding the construction of statutes and treaties, and of written instruments generally, would preclude the seeking of evidence of intent outside the instrument itself. It might be a painful trial on which to enter, in seeking the opinions and recollections of parties, to bring into conflict the different expectations of those who were engaged in the negotiation of an instrument." (Washington Treaty Papers, vol. ii, p. 473.)

But even at this barrier the difficulty in following Mr. Phelps's argument, by which he seeks to reach the interpretation he desires, does not end. After taking a view of the treaty which all authorities thus forbid, he says: "Thus regarded, it appears to me clear that the words 'for no other purpose whatever,' as employed in the treaty, mean for no other purpose inconsistent with the provisions of the treaty." Taken in that sense the words would have no meaning, for no other purpose would be consistent with the treaty, excepting those mentioned. He proceeds, "or prejudicial to the interests of the provinces or their inhabitants." If the United States authorities are the judges as to what is prejudicial to those interests, the treaty will have very little value; if the provinces are to be the judges, it is most prejudicial to their interests that United States fishermen should be permitted to come into their harbors on any pretext, and it is fatal to their fishery interests that these fishermen, with whom they have to compete at such a disadvantage in the markets of the United States, should be allowed to enter for supplies and bait, even for the pursuit of the deep-sea fisheries. Before concluding his remarks on this subject, the undersigned would refer to a passage in the answer on behalf of the United States to the case of Her Majesty's Government as presented to the Halifax Fisheries Commission in 1877: "The various incidental and reciprocal advantages of the treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the treaty of Washington confers no such rights on the inhabitants of the United States, *who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enforcement of former oppressive statutes.*"

Mr. Phelps has made a lengthy citation from the imperial act, 59 George III, cap. 38, for the purpose of establishing—

1st. That the penalty of forfeiture was not incurred by any entry into British ports, unless accompanied by fishing, or preparing to fish, within the prohibited limits.

2d. That it was not the intention of Parliament, or its understanding of the treaty, that any other entry should be regarded as an infraction of the provisions of that act.

As regards the latter point, it seems to be effectually disposed of by the quotation which Mr. Phelps has made. The act permits fishermen of the United States to enter into the bays or harbors of His Britannic Majesty's dominions in America for the purposes named in the treaty, "and for no other purpose whatever," and after enacting the penalty of forfeiture in regard to certain offenses, provides a penalty of £200 sterling against any person otherwise offending against the act. It can not, therefore, be successfully contended that Parliament intended to permit entry into the British American waters for the purchase of bait, or for any other than the purposes specified in the treaty.

As to the first point, it is to be observed that the penalty of forfeiture was expressly pronounced as applicable to the offense of fishing or preparing to fish. It may be that forfeiture is incurred by other illegal entry, contrary to the treaty and contrary to the statute. It may also be contended that preparing, within the prohibited limits, to fish in any place is the offense at which the penalty is aimed, or it may be that the

preparing within these waters to fish is evidence of preparing to fish within the prohibited waters under the imperial statute, and especially under the Canadian statute, which places the burden of proof on the defendant.

The undersigned does not propose at this time to enter into any elaborate argument to show the grounds on which the penalty of forfeiture is available, because that question is one which is more suitable for determination by the courts, to whose decision it has been referred in the very case under consideration.

The decision in the case of the *David J. Adams* will be soon pronounced, and as the Government of Canada will be bound by the ultimate judgment of competent authority on this question, and can not be expected to acquiesce in the view of the United States Government without such a judgment, any argument of the case in diplomatic form would be premature and futile.

In order, however, to show that Mr. Phelps is in error when he assumes that the practical construction hitherto given to the treaty is in accordance with his views, it it as well to state that in the year 1815 the commander of one of Her Majesty's ships of war seized four United States fishing vessels (see Sabine on Fisheries), and again in 1817 the Imperial Government acted on the view that they had the right to seize foreign vessels encroaching on the fishing grounds. Instructions were issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbors or creeks in the British North American possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication. Several vessels were seized and information was fully communicated to the Government of the United States. This, it will be remembered, was not only before the treaty, but before the imperial act above referred to.

The following were the words of the Admiralty instructions then issued:

"On your meeting with any foreign vessels, fishing or at anchor in any of the harbors or creeks in His Majesty's North American provinces, or within our maritime jurisdiction, you will seize and send such vessels so trespassing to Halifax for adjudication, unless it should clearly appear that they have been obliged to put in there in consequence of distress, acquainting me with the cause of such seizure and every other particular, to enable me to give all information to the lords commissioners of the Admiralty."

Under these instructions eleven or twelve American fishing vessels were seized in Nova Scotia on June 8, 1817, in consequence of their frequenting some of the harbors of that province.

In 1818 the fishing vessels *Mabby* and *Washington* were seized and condemned for entering and harboring in British American waters.

In 1835 the *Java, Independence, Magnolia,* and *Hart* were seized and confiscated, the principal charge being that they were within British American waters without legal cause.

In 1840 the *Papineau* and *Mary* were seized and sold for purchasing bait.

In the spring of 1819 a United States fishing vessel named the *Charles* was seized and condemned in the vice-admiralty court in New Brunswick for having resorted to a harbor of that province after warning and without necessity.

In the year 1871 the United States fishing vessel *J. H. Nickerson* was seized for having purchased bait within 3 marine miles of Nova Scotian shore, and condemned by the judgment of Sir William Young, chief justice of Nova Scotia and judge of the court of vice-admiralty. The following is a passage from his judgment:

"The vessel went in, not to obtain water or men, as the allegation says, but to purchase or procure bait (which, as I take it, is a preparing to fish), and it was contended that they had a right to do so, and that no forfeiture accrued on such entering. The answer is, that if a privilege to enter our harbors for bait was to be conceded to American fishermen it ought to have been in the treaty, and it is too important a matter to have been accidentally overlooked. We know, indeed, from the state papers that it was not overlooked; that it was suggested and declined. But the court, as I have already intimated, does not insist upon that as a reason for its judgment. What may be fairly and justly insisted on is, that beyond the four purposes specified in the treaty—shelter, repairs, water, and wood—here is another purpose or claim not specified, while the treaty itself declares that no such other purpose shall be received to justify an entry. It appears to me an inevitable conclusion that the *J. H. Nickerson*, in entering the Bay of Ingonish for the purpose of procuring bait while there, became liable to forfeiture, and upon the true construction of the treaty and acts of Parliament was legally seized." (*Vide* Halifax Com., vol. iii, p. 3398, Washington edition.)

In view of these seizures and of this decision it is difficult to understand the following passages in the letter of Mr. Phelps:

"The practical construction given to the treaty, down to the present time, has been in entire accord with the conclusions thus deduced from the act of Parliament. The British Government has repeatedly refused to allow interference with American fishing vessels, unless for illegal fishing, and has given explicit orders to the contrary."

"Judicial authority upon the question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known, but in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the purchase of bait or of any other supplies. On the hearing before the Halifax Fishery Commission in 1877-'78, this question was discussed and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty, either of fishing or preparing to fish within the prohibited limits."

Although Mr. Phelps is under the impression that "in the hearing before the Halifax Fishery Commission in 1877 this question was discussed and no case could be produced of any such condemnation," the fact appears in the records of that Commission, as published by the Government of the United States, that on a discussion which there arose, the instances above mentioned were nearly all cited, and the judgment of Sir William Young in the case of the *J. H. Nickerson* was presented in full, and it now appears among the papers of that Commission. (See vol. iii, Documents and Proceedings of Halifax Commission, page 3398, Washington edition.) The decision in the case of the *J. H. Nickerson* was subsequent to that in the case of the *White Fawn* mentioned, to the exclusion of all the other cases referred to by Mr. Phelps. Whether that decision should be reaffirmed or not is a question more suitable for judicial determination than for discussion here.

RIGHT OF THE DOMINION PARLIAMENT TO MAKE FISHERY ENACTMENTS.

Mr. Phelps deems it unnecessary to point out that it is not in the power of the Canadian Parliament to alter or enlarge the provisions of the act of the Imperial Parliament, or to give to the treaty either a construction or a legal effect not warranted by that act.

No attempt has ever been made by the Parliament of Canada, or by that of any of the provinces to give a "construction" to the treaty, but the undersigned submits that the right of the Parliament of Canada, with the royal assent given in the manner provided in the constitution, to pass an act on this subject to give that treaty effect, or to protect the people of Canada from the infringement of the treaty provisions, is clear beyond question. An act of that parliament, duly passed according to constitutional forms, has as much the force of law in Canada, and binds as fully offenders who may come within its jurisdiction, as any act of the Imperial Parliament.

The efforts made on the part of the Government of the United States to deny and refute the validity of colonial statutes on this subject have been continued for many years, and in every instance have been set at naught by the Imperial authorities and by the judicial tribunes.

In May, 1870, this vain contention was completely abandoned, a circular was issued by the Treasury Department at Washington, in which circular the persons to whom it was sent were authorized and directed to inform all masters of fishing vessels that the authorities of the Dominion of Canada had resolved to terminate the system of granting fishing licenses to foreign vessels.

The circular proceeds to state the terms of the treaty of 1818 in order that United States fishermen might be informed of the limitation thereby placed on their privileges. It proceeds further to set out at large the Canadian act of 1868, relating to fishing by foreign vessels, which has been hereinbefore referred to.

The fishermen of the United States were by that circular expressly warned of the nature of the Canadian statute, which it is now once more pretended is without force, but no intimation was given to those fishermen that these provisions were nugatory and would be resisted by the United States Government. Lest there should be any misapprehension on that subject, however, on June 9 of the same year, less than a month after that circular, another circular was issued from the same Department stating again the terms of the treaty of 1818, and then containing the following paragraph: "Fishermen of the United States are bound to respect the British laws for the regulation and preservation of the fisheries to the same extent to which they are applicable to British and Canadian fishermen." The same circular, noticing the change made in the Canadian fishery act of 1868 by the amendment of 1870, makes this observation: "It will be observed that the warning formerly given is not required under the amended act, but that vessels trespassing are liable to seizure without such warning."

THE CANADIAN STATUTE OF 1886.

Mr. Phelps is again under an erroneous impression with regard to the statute introduced at the last session of the Dominion Parliament.

He is informed that "since the seizure" the Canadian authorities have pressed, or are pressing, through the Canadian Parliament in much haste, an act which is designed, for the first time in the history of the legislature under this treaty, to make the facts

upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

The following observations are appropriate in relation to this passage of Mr. Phelps's letter:

(1) The act which he refers to was not passed in haste. It was passed through the two houses in the usual manner, and with the observance of all the usual forms. Its passage occupied probably more time than was occupied in the passage through the Congress of the United States of a measure which possesses much the same character, and which will be referred to hereafter.

(2) The act has no bearing on the seizures referred to.

(3) It does not make any act illegal which was legal before, but declares what penalty attaches to the offenses which were already prohibited. It may be observed in reference to the charges of "undue haste," and of "legislating for the first time in the history of the legislation under the treaty," that before the statute referred to had become law the United States Congress passed a statute containing the following section:

"That whenever any foreign country whose vessels have been placed on the same footing in the ports of United States as American vessels (the coastwise trade excepted) shall deny to any vessel of the United States any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessel of the United States, is hereby authorized to issue his proclamation, excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of each foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States in the enforcement of this act, or aiding and abetting any other person in such opposition, shall forfeit $800 and shall be guilty of a misdemeanor, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years." (Sec. 17 of act No. 85 of Congress, 1886.)

This enactment has all the features of hostility which Mr. Phelps has stigmatized as "unprecedented in the history of legislation under the treaty."

ENFORCEMENT OF THE ACTS WITHOUT NOTICE.

Mr. Phelps insists upon what he regards as "obvious grounds of reason and justice" and "upon common principles of comity, that previous notice should have been given of the new stringent restrictions" it was intended to enforce.

It has already been shown that no new restrictions have been attempted. The case of the *David J. Adams* is proceeding under the statutes which have been enforced during the whole time when the treaty had operation.

It is true that for a short time prior to the treaty of Washington, and when expectations existed of such a treaty being arrived at, the instructions of 1870, which are cited by Mr. Phelps, were issued by the Imperial authorities. It is likewise true that under these instructions the rights of Her Majesty's subjects in Canada were not insisted on in their entirety. These instructions were obviously applicable to the particular time at which and the particular circumstances under which they were issued by Her Majesty's Government.

But it is obviously unfair to invoke them now under wholly different circumstances as establishing a "practical construction" of the treaty, or as affording any ground for claiming that the indulgence which they extended should be perpetual.

The fishery clauses of the treaty of Washington were annulled by a notice from the Government of the United States, and, as has already been urged, it would seem to have been the duty of that Government, rather than of the Government of Canada, to have warned its own people of the consequences which must ensue. This was done in 1870 by the circulars from the Treasury Department at Washington, and might well have been done at this time.

Mr. Phelps has been pleased to stigmatize "the action of the Canadian authority in seizing and still detaining the *David J. Adams*" as not only unfriendly and discourteous, but altogether unwarrantable.

He proceeds to state that that vessel "had violated no existing law," although his letter cites the statute which she had directly and plainly violated; and he states that she "had incurred no penalty that any known statute imposed"; while he has

directed at large the words which inflict a penalty for the violation of that statute. He declares it seems impossible for him to escape the conculsion that "this and similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing vessels in the pursuit of their lawful employment," and that the injury is very much aggravated by the motives which appear to have prompted it.

He professes to have found the real source of the difficulty in the "irritation that has taken place among a portion of the Canadian people, on account of the termination by the United States Government of the Washington treaty," and in a desire to drive the United States "by harassing and annoying their fishermen into the adoption of a new treaty, by which Canadian fish shall be admitted free," and he declares that "this scheme is likely to prove as mistaken in policy as it is unjustifiable in principle."

He might, perhaps, have more accurately stated the real source of the difficulty, had he suggested that the United States authorities have long endeavored, and are still endeavoring, to obtain that which by their solemn treaty they deliberately renounced, and to deprive the Canadian people of that which by treaty the Canadian people lawfully acquired.

The people of the British North American Provinces ever since the year 1818 (with the exception of those periods in which the reciprocity treaty and the fishery clauses of the Washington treaty prevailed), have, at enormous expense, and with great difficulty, been protecting their fisheries against encroachments by fishermen of the United States, carried on under every form and pretext, and aided by such denunciations as Mr. Phelps has thought proper to reproduce on this occasion. They value no less now than they formerly did the rights which were secured to them by the treaty, and they are still indisposed to yield those rights, either to individual aggression or official demands.

The course of the Canadian Government, since the rescision of the fishery clauses of the Washington treaty, has been such as hardly to merit the aspersions which Mr. Phelps has used. In order to avoid irritation and to meet a desire which the Government represented by Mr. Phelps professed to entertain for the settlement of all questions which could reawaken controversy, they canceled for six months after the expiration of those clauses all the benefits which the United States fishermen had enjoyed under them, although, during that interval, the Government of the United States enforced against Canadian fishermen the laws which those fishery clauses had suspended.

Mr. Bayard, the United States Secretary of State, has made some recognition of these facts in a letter which he is reported to have written recently to the owners of the *David J. Adams*. He says:

"More than one year ago I sought to protect our citizens engaged in fishing from results which might attend any possible misunderstanding between the Governments of Great Britain and the United States as to the measure of their mutual rights and privileges in the territorial waters of British North America. After the termination of the fishery articles of the treaty of Washington, in June last, it seemed to me then, and seems to me now, very hard that differences of opinion between the two Governments should cause loss to honest citizens, whose line of obedience might be thus rendered vague and uncertain, and their property be brought into jeopardy. Influenced by this feeling, I procured a temporary arrangement which secured our fishermen full enjoyment of all Canadian fisheries, free from molestation, during a period which would permit discussion of a just international settlement of the whole fishery question; but other counsels prevailed, and my efforts further to protect fishermen from such trouble as you now suffer were unavailing."

At the end of the interval of six months the United States authorities concluded to refrain from any attempt to negotiate for larger fishery rights for their people, and they have continued to enforce their customs laws against the fishermen and people of Canada.

The least they could have been expected to do under these circumstances was to leave to the people of Canada the full and unquestioned enjoyment of the rights secured to them by treaty. The Government of Canada has simply insisted upon those rights and has presented to the legal tribunals its claim to have them enforced.

The insinuations of ulterior motives, the imputations of unfriendly dispositions, and the singularly inaccurate representation of all the leading features of the questions under discussion, may, it has been assumed, be passed by with little more comment. They are hardly likely to induce Her Majesty's Government to sacrifice the rights which they have heretofore helped our people to protect, and they are too familiar to awaken indignation or surprise.

The undersigned respectfully recommends that the substance of this memorandum, if approved, be forwarded to the secretary of state for the colonies, for the information of Her Majesty's Government.

JNO. S. D. THOMPSON,
Minister of Justice.

OTTAWA, *July* 22, 1886.

No. 333.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *January* 28, 1887. (Received January 29.)

SIR: With reference to your notes* of the 19th and 20th of October last, I have the honor to transmit to you herewith copy of a dispatch from the governor-general of Canada to Her Majesty's secretary of state for the colonies relative to the cases of the American fishing vessels *Pearl Nelson* and *Everett Steele*, which I am instructed by Her Majesty's principal secretary of state for foreign affairs to communicate to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

The Marquis of Lansdowne to Mr. Stanhope.

GOVERNMENT HOUSE, *December* 20, 1886.

SIR: I had the honor of receiving your dispatch of the 22d of November in regard to the case of the *Everett Steele* and *Pearl Nelson*, recently detained at Shelburne and Arichat, Nova Scotia, for non-compliance with the customs regulations of the Dominion.

The circumstances under which the conduct of these vessels attracted the attention of the customs authorities were set out in the privy council orders of the 18th of November, certified copies of which were forwarded to you under cover of my dispatches of the 29th November.

The information contained in these documents was obtained in order to comply with the request for a report on these two cases which you had addressed to me by telegram on a previous date. I have now carefully examined the fuller statements made by Mr. Bayard, both as to the facts and as to the considerations by which the conduct of the local officials should in his opinion have been governed. You will I think find, on reference to the privy council orders already before you, that the arguments advanced by Mr. Bayard have been sufficiently met by the observations of my minister of marine and fisheries, whose reports are embodied in those orders.

It is not disputed that the *Everett Steele* was in Shelburne Harbor on the 25th March and sailed thence without reporting. In consequence of this omission on the master's part his vessel was, on her return to Shelburne, in September, detained by the collector. The master having explained that his presence in the harbor had been occasioned by stress of weather, and that his failure to report was inadvertent, and this explanation having been telegraphed to the minister of marine at Ottawa, the vessel was at once allowed to proceed to sea; her release took place at noon on the day following that of her detention.

In the case of the *Pearl Nelson* it is not denied that nine of her crew were landed in Arichat Harbor at a late hour in the evening of her arrival and before the master had reported to the custom-house. It is obvious that if men were to be allowed to go on shore, under such circumstances, without notification to the authorities, great facilities would be offered for landing contraband goods, and there can be no question that the master, by permitting his men to land, was guilty of a violation of sections 25 and 180 of the customs act. There seems to be reason to doubt his statement that he was driven into Arichat by stress of weather; but, be this as it may, the fact of his having entered the harbor for a lawful purpose would not carry with it a right to evade the law to which all vessels frequenting Canadian ports are amenable. In this case, as in that of the *Everett Steele*, already referred to, the statement of the master that his offense was due to inadvertence was accepted, and the fine imposed at once remitted.

I observe that in his dispatch relating to the first of these cases Mr. Bayard insists with much earnestness upon the fact that certain "prerogatives" of access to the territorial waters of the Dominion were specially reserved under the convention of 1818 to the fishermen of the United States, and that a vessel entering a Canadian harbor for any purpose coming within the terms of Article 1 of that convention has as

*Printed pp. 419, 421, Foreign Relations, 1886.

much right to be in that harbor as she would have to be upon the high seas, and he proceeds to institute a comparison between the detention of the *Everett Steele* and the wrongful seizure of a vessel on the high seas upon the suspicion of being engaged in the slave trade. Mr. Bayard further calls attention to the special consideration to which, from the circumstances of their profession, the fishermen of the United States are, in his opinion, entitled, and he dwells upon the extent of injury which would result to them if they were debarred from the exercise of any of the rights assured to them by treaty or convention.

I observe that in Sir Julian Pauncefote's letter inclosed in your dispatch it is stated that the secretary of state for foreign affairs wishes to urge upon the Dominion Government the great importance of issuing stringent instructions to its officials not to interfere with any of the privileges expressly reserved to United States fishermen under Article 1 of the convention of 1818.

I trust that the explanations which I have already been able to give in regard to the cases of these vessels will have satisfied you that the facts disclosed do not show any necessity for the issuing of instructions other than those already circulated to the local officials intrusted with the execution of the customs as fishery law.

There is certainly no desire on the part of my Government (nor, I believe, does the conduct of the local officials justify the assumption that such a desire exists) to curtail in any respect the privileges enjoyed by United States fishermen in Canadian waters. It can not on the other hand be contended that because these privileges exist, and are admitted by the Government of the Dominion, those who enjoy them are to be allowed immunity from the regulations to which all vessels resorting to Canadian waters are without exception subjected under the customs act of 1883 and the different statutes relating to the fisheries of the Dominion.

In both of the cases under consideration their was a clear and undoubted violation of the law, and the local officials would have been culpable if they had omitted to notice it. That there was no animus on their part or on that of the Canadian Government is, I think, clearly proved by the promptitude with which the circumstances were investigated and the readiness shown to overlook the offense, and to remit the penalty incurred, as soon as proof was forthcoming that the offense had been unintentionally committed. In support of this view I would draw your attention to the letter (see inclosure to my dispatch of 29th November) of Mr. Phelan, the consul-general of the United States at Halifax, who has expressed his own satisfaction at the action of the authorities in the case of the *Pearl Nelson* and who also refers to a communication received by him from the Department of State, in which it is stated that the conduct of the assistant commissioner of customs in dealing with two other cases of a somewhat similar complexion "shows a proper spirit."

I have, etc.,

LANSDOWNE.

No. 334.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *April* 4, 1887. (Received April 6.)

SIR: With reference to my note of the 28th of January last, I have the honor to inclose to you herewith copy of an approved report of a committee of the privy council of Canada, embodying a report of the minister of marine and fisheries on the cases of the United States fishing vessels *Pearl Nelson* and *Everett Steele.*

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 15th January, 1887.

The committee of the privy council have had under consideration a dispatch dated November 22, 1886, from the secretary of state for the colonies, inclosing letters from Mr. Secretary Bayard, bearing date 19th October, and referring to the cases of the schooners *Pearl Nelson* and *Everett Steele.*

The minister of marine and fisheries, to whom the dispatch and inclosures were referred, reports that in reply to a telegram from the secretary of state for the colonies, an order in council, passed on the 18th November last, containing a full statement of facts regarding the detention of the above-named vessels, was transmitted to Mr. Stanhope; it will not therefore be necessary to repeat this statement in the present report.

The minister observes in the first place that the two fishing schooners *Evcrett Steele* and *Pearl Nelson* were not detained for any alleged contravention of the treaty of 1818 or the fishery laws of Canada, but solely for the violation of the customs law. By this law all vessels of whatever character are required to report to the collector of customs immediately upon entering port, and are not to break bulk or land crew or cargo before this is done.

The minister states that the captain of the *Everett Steele* had on a previous voyage entered the port of Shelburne on the 25th March, 1886, and after remaining for eight hours had put to sea again without reporting to the customs. For this previous offense he was, upon entering Shelburne Harbor on the 10th September last, detained and the facts were reported to the minister of customs at Ottawa. With these facts was coupled the captain's statement that on the occasion of the previous offense he had been misled by the deputy harbor-master, from whom he understood that he would not be obliged to report unless he remained in harbor for twenty-four hours. The minister accepted the statement in excuse and the *Everett Steele* was allowed to proceed on her voyage.

The customs laws had been violated; the captain of the *Everett Steele* admitted the violation, and for this the usual penalty could have been legally enforced. It was, however, not enforced, and no detention of the vessel occurred beyond the time necessary to report the facts to headquarters and obtained the decision of the minister.

The minister submits that he can not discern in this transaction any attempt to interfere with the privileges of United States fishing vessels in Canadian waters or any sufficient case for the protest of Mr. Bayard.

The minister states that in the case of the *Pearl Nelson* no question was raised as to her being a fishing vessel or her enjoyment of any privileges guarantied by the treaty of 1818. Her captain was charged with a violation of the customs law, and of that alone, by having, on the day before reporting to the collector of customs at Arichat, landed ten of his crew.

This he admitted upon oath. When the facts were reported to the minister of customs he ordered that the vessel might proceed upon depositing $200, pending a fuller examination. This was done, and the fuller examination resulted in establishing the violation of the law and in finding that the penalty was legally enforceable. The minister, however, in consideration of the alleged ignorance of the captain as to what constituted an infraction of the law, ordered the deposit to be refunded.

In this case there was a clear violation of Canadian law; there was no lengthened detention of the vessel; the deposit was ultimately remitted, and the United States consul-general at Halifax expressed himself by letter to the minister as highly pleased at the result.

The minister observes that in this case he is at a loss to discover any well-founded grievance or any attempted denial of or interference with any privileges guarantied to United States fishermen by the treaty of 1818.

The minister further observes that the whole argument and protest of Mr. Bayard appears to proceed upon the assumption that these two vessels were subjected to unwarrantable interference in that they were called upon to submit to the requirements of Canadian customs law, and that this interference was prompted by a desire to curtail or deny the privileges of resort to Canadian harbors for the purposes allowed by the treaty of 1818.

It is needless to say that this assumption is entirely incorrect.

Canada has a very large extent of sea-coast with numberless ports, into which foreign vessels are constantly entering for purposes of trade. It becomes necessary in the interests of legitimate commerce that stringent regulations should be made by compulsory conformity to which illicit traffic should be prevented. These customs regulations all vessels of all countries are obliged to obey, and these they do obey, without in any way considering it a hardship. United States fishing vessels come directly from a foreign and not distant country, and it is not in the interests of legitimate Canadian commerce that they should be allowed access to our ports without the same strict supervision as is exercised over all other foreign vessels, otherwise there would be no guaranty against illicit traffic of large dimensions to the injury of honest trade and the serious diminution of the Canadian revenue. United States fishing vessels are cheerfully accorded the right to enter Canadian ports for the purpose of obtaining shelter, repairs, and procuring wood and water; but in exercising this right they are not, and can not be, independent of the customs laws. They have the right to enter for the purposes set forth, but there is only one legal way in which to enter, and that is by conformity to the customs regulations.

When Mr. Bayard asserts that Captain Forbes had as much right to be in Shelburne Harbor seeking shelter and water "as he would have had on the high seas carrying on under shelter of the flag of the United States legitimate commerce," he is undoubtedly right, but when he declares, as he does in reality, that to compel Captain Forbes, in Shelburne Harbor, to conform to Canadian customs regulations, or to punish him for their violation, is a more unwarrantable stretch of power than "that of seizure on the high seas of a ship unjustly suspected of being a slaver," he makes a statement which carries with it its own refutation.

Customs regulations are made by each country for the protection of its own trade and commerce, and are enforced entirely within its own territorial jurisdiction, while the seizure of a vessel upon the high seas, except under extraordinary and abnormal circumstances, is an unjustifiable interference with the free right of navigation common to all nations.

As to Mr. Bayard's observation that by treatment such as that experienced by the *Everett Steele*, "the door of shelter is shut to American fishermen as a class," the minister expresses his belief that Mr. Bayard can not have considered the scope of such an assertion or the inferences which might reasonably be drawn from it.

If a United States fishing vessel enters a Canadian port for shelter, repairs, or for wood and water, her captain need have no difficulty in reporting her as having entered for one of those purposes, and the *Everett Steele* would have suffered no detention had her captain, on the 25th March, simply reported his vessel to the collector. As it was, the vessel was detained for no longer time than was necessary to obtain the decision of the minister of customs, and the penalty for which it was liable was not enforced. Surely Mr. Bayard does not wish to be understood as claiming for United States fishing vessels total immunity from all customs regulations, or as intimating that if they can not exercise their privileges unlawfully they will not exercise them at all.

Mr. Bayard complains that the *Pearl Nelson*, although seeking to exercise no commercial privileges, was compelled to pay commercial fees, such as are applicable to trading vessels. In reply the minister observes that the fees spoken of are not "commercial fees;" they are harbor-master's dues, which all vessels making use of legally constituted harbors are, by law, compelled to pay, and entirely irrespective of any trading that may be done by the vessel.

The minister observes that no single case has yet been brought to his notice in which any United States fishing vessel has in any way been interfered with for exercising any rights guarantied under the treaty of 1818 to enter Canadian ports for shelter, repairs, wood, or water; that the Canadian Government would not countenance or permit any such interference, and that in all cases of this class when trouble has arisen it has been due to a violation of Canadian customs law, which demands the simple legal entry of the vessel as soon as it comes into port.

The committee concurring in the above report recommend that your excellency be moved to transmit a copy thereof to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council.

No. 335.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, April 11, 1877.

SIR: I have the honor to acknowledge the receipt of your note of the 4th instant, accompanied by a copy of an approved report of a committee of a privy council of Canada in relation to the cases of the American fishing vessels *Pearl Nelson* and *Everett Steele* which were brought to your attention by my notes of October 19th and 20th last.

I have, etc.,

T. F. BAYARD.

No. 336.

Sir L. S. Sackville West to Mr. Bayard.

Washington, April 25, 1887. (Received April 26.)

SIR: Her Majesty's Government have instructed me by cable to ascertain whether under the existing law Irish emigrants sent out at the public cost and who have friends in the United States able to help and support them will be allowed to land, and I have the honor, therefore, to request you to be good enough to enable me to reply.

I have, etc.,

L. S. SACKVILLE WEST.

No. 337.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, May 7, 1887.

SIR: I have had the honor to receive your note of the 25th ultimo, inquiring whether under existing laws "Irish emigrants sent out at the public cost," and who have "friends in the United States able to help them and support them, will be allowed to land."

By section 2 of an act of Congress, approved August 3, 1882, to regulate immigration to the United States, it is provided that the officers charged with the duty of supervising such immigration shall examine into the condition of persons arriving in the ports of the United States, and that "if on such examination there shall be found * * * any person unable to take care of himself or herself without becoming a public charge, they (the officers) shall report the same in writing to the collector of such port, and such persons shall not be permitted to land."

So far as the permission to land is concerned, the provisions of this act are clear and explicit. The officers charged with its execution are required to make an examination, and upon the result of that examination in each case depends the decision of the question whether the person seeking entrance into the United States shall be permitted to land. It is, therefore, impossible to give any general assurance that persons belonging to a particular class will not be obnoxious to the provisions of the law. The only test therein provided is the ability of the intended immigrant "to take care of himself or herself without becoming a public charge," and this test is to be applied impartially to all persons of whatever nationality.

I am, however, constrained to notice that, aside from the enforcement of the act of 1882, your inquiry suggests another question which has heretofore been discussed between the Government of the United States and that of Great Britain, and upon which the views of this Government have been fully set forth.

The economic and political conditions of the United States have always led the Government to favor immigration, and all persons seeking a new field of effort and coming hither with a view to the improvement of their condition by the free exercise of their faculties, have been cordially received. The same conditions have caused other kinds of immigration to be regarded as undesirable, and led to the adoption by Congress of laws to prevent the coming of paupers, contract labor-

ers, criminals, and certain other enumerated classes. Such immigration the economic and political conditions of the United States render peculiarly unacceptable.

In view of this policy and these laws, this Government could not fail to look with disfavor and concern upon the sending to this country, by foreign governmental agencies and at the public cost, of persons not only unlikely to develop qualities of thrift and self-support, but sent here because it is assumed that they have "friends" in this country able to "help and support" them. The mere fact of poverty has never been regarded as an objection to an immigrant, and a large part of those who have come to our shores have been persons who relied for support solely upon the exercise of thrift and manual industry; and to such persons, it may be said, the development of the country has in a large degree been due. But persons whose only escape from immediately becoming and remaining a charge upon the community is the expected, but entirely contingent, voluntary help and support of friends, are not a desirable accession to our population, and their exportation hither by a foreign Government in order to get rid of the burden of their support could scarcely be regarded as a friendly act, or in harmony with existing laws.

It is proper to say that experience has shown that not unfrequently when helpless and destitute persons have been aided by public funds to come to the United States, upon the supposition that friends and relations here would receive and care for them, such friends and relations have totally failed to appear, and diligent search has been unable to discover them, and the authorities have been compelled under the provisions of the law to return the emigrants to their native country.

I have, etc.,

T. F. BAYARD.

No. 338.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *May* 17, 1887. (Received May 18.)

SIR: With reference to your notes of the 1st December, 11th November, and 27th January last, I have the honor to inclose herewith copies of dispatches from the governor-general of Canada covering reports of a committee of the privy council respecting the cases of the United States fishing vessels *Mollie Adams*, *Laura Sayward*, *Jennie Seaverns*, and *Sarah H. Prior*, which I have received from the Marquis of Salisbury for communication to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure 1.]

The Marquis of Lansdowne to Sir Henry Holland.

GOVERNMENT HOUSE,
Ottawa, April 12, 1887.

SIR: I caused to be referred for the consideration of my government a copy of your dispatch of the 23d February last transmitting copy of a letter from the foreign office, with its inclosures, respecting the case of the *Sarah H. Prior* and requesting to be furnished with a report upon the alleged conduct of the captain of the Canadian revenue

cutter *Critic* on the occasion referred to, and I have now the honor to forward herewith a certified copy of an approved report of a committee of my privy council embodying a statement of Captain McLaren, of the *Critic*, with reference to the circumstances complained of.

I have, etc.,

LANSDOWNE.

[Inclosure 2.]

Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on the 7th April, 1887.

The committee of the privy council have had under consideration a dispatch dated 23d February, 1887, from the rght honorable the secretary of state for the colonies asking that an investigation may be made into the conduct of the captain of the Canadian cruiser *Critic* as regards the treatment extended to Capt. Thomas McLaughlin, of the U. S. fishing schooner *Sarah H. Prior*, in the harbor of Malpeque, Prince Edward Island, in September last.

The minister of marine and fisheries, to whom the dispatch was referred, submits the following statement of Captain McLaren, of the *Critic*, with reference to the circumstances complained of.

On or about the 14th September, 1886, Captain McLaughlin, of the *Sarah H. Prior*, came on board the government cruiser *Critic* at Malpeque, Prince Edward Island, wanting to know if he would be infringing on the laws by paying the captain of the schooner *John Ingalls* a small sum of money for the recovery of a seine which he said he had lost a few days before, and which had been picked up by the said captain.

I told him that I would not interfere with him if the captain of the *Ingalls* chose to run the risk of taking the matter in his own hands, but that the proper course would be for the captain of the *John Ingalls* to report the matter to the collector of customs, who was also receiver of wrecks, and then if he (Captain McLaughlin) could prove that the seine was his, he could recover it by paying the costs. Captain McLaughlin then said that as the seine was all torn to pieces, he would not bother himself about it.

The captain of the *John Ingalls* did not come to see me about the matter, and I heard nothing of it afterwards.

W. MCLAREN.

The committee respectfully advise that your excellency be moved to forward the foregoing statement of Captain McLaren to the right honorable the secretary of state for the colonies in answer to his dispatch of the 23d February last.

JOHN J. MCGEE,
Clerk Privy Council.

[Inclosure 3.]

The Marquis of Lansdowne to Sir H. Holland

GOVERNMENT HOUSE,
Ottawa, April 2, 1887.

SIR: I have the honor to inclose herewith a certified copy of a privy council order respecting the case of the United States schooner *Mollie Adams*, which formed the subject of your predecessor's dispatches of the 6th October and 16th December.

I have to express my regret that it should have proved impossible to supply you with the necessary information bearing upon this case at an earlier date. Some time was, however, taken in collecting the evidence embodied in the reports, copies of which accompany the minute, and the occurrence of the general elections for the federal parliament to some extent interrupted the course of business in the public departments and increased the delay.

You will find in the report of my minister of marine and fisheries, and in the inclosures appended to it, a full and, I think, satisfactory reply to the whole of the charges made by the Government of the United States against the conduct of the Canadian officials concerned in the matter of the *Mollie Adams*.

I would venture to draw your especial attention to the concluding passages of the minister's report, in which he earnestly deprecates the manner in which in this, as well as in other cases in which disputes have arisen under conditions of a similar character, the Government of the United States has not hesitated to adopt without

any inquiry, and to support with the whole weight of its authority, *ex parte* charges entirely unconfirmed by collateral evidence, and unaccompanied by any official attestation.

In view of the fact that owing to the action of the Government of the United States in terminating the fishery clauses of the treaty of Washington, a large body of American fishermen have suddenly found themselves excluded from waters to which they had for many years past resorted without molestation, and that the duty of thus excluding them has been thrown upon a newly constituted force of fishery police, necessarily without experience of the difficult and delicate duties which it is called upon to perform, there would be no cause for surprise if occasional cases of hardship or of overzealous action upon the part of the local authorities engaged in protecting the interests of the Dominion were to be brought to light. It is the earnest desire of my government to guard against the occurrence of any such cases, to deal in a spirit of generosity and forbearance with United States fishermen resorting to Canadian waters in the exercise of their lawful rights, and to take effectual measures for preventing arbitrary or uncalled-for interference on the part of its officials with the privileges allowed to foreign fishermen under the terms of the convention of 1818.

The difficulty of acting in such a spirit must, however, be greatly increased by the course which has been pursued in this and in numerous other cases already brought to your notice in founding not only the most urgent remonstrances, but the most violent and offensive charges and the most unjust imputation of motives upon complaints such as that put forward by the captain of the *Mollie Adams*, a person so illiterate that he appears not to have been qualified to make out the ordinary entry papers on his arrival in a Canadian port, but whose statements, many of which bear upon the face of them evidence of their untrustworthiness, appear to have been accepted *in globo* without question by the Secretary of State.

You will, I cannot help thinking, concur in the opinion expressed in the minister's report that such hasty and indiscriminate accusations can only have the effect of prejudicing and embittering public feeling in both countries, and of retarding the prospect of a reasonable settlement of the differences which have unfortunately arisen between them upon these subjects.

I have, etc.,

LANSDOWNE.

[Inclosure 4.]

Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on the 31st March, 1887.

The committee of the privy council have had under consideration a dispatch dated 6th October, 1886, from the right honorable the secretary of state for the colonies, transmitting a copy of a letter from the foreign office inclosing copy of a dispatch from Her Majesty's minister at Washington with a note from the Secretary of State of the United States, calling attention to the alleged refusal of the collector of customs at Port Mulgrave, Nova Scotia, to allow the master of the United States fishing vessel *Mollie Adams* to purchase barrels to hold a supply of water for the return voyage, and also a further dispatch dated 16th December, 1886, referring to the same schooner, the *Mollie Adams*, and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia, and requesting an early report on the circumstances of this case.

The minister of marine and fisheries to whom the said dispatches and inclosures were referred submits the following report thereon:

Mr. Bayard's note of the 10th September calls attention to the alleged refusal of the collector of customs at Port Mulgrave, Nova Scotia, to allow the master of the *Mollie Adams* to purchase barrels to hold a supply of water for which the vessel had put into port. The report of the subcollector of customs at Port Mulgrave, which is hereto annexed, and which he expresses his readiness to verify upon oath, shows that the *Mollie Adams* was fitted out with a water-tank which was reported as leaking, that the collector offered to borrow barrels for carrying the water on board if the tank were made tight, and even offered to send a man on board to perform this work; that while the captain of the schooner and he were in conversation one of the crew brought the information that the cook had succeeded in calking the tank.

That thereupon the subcollector borrowed the seven barrels, with which the crew supplied water for their vessel; that the barrels were returned to the collector, and the captain appeared well pleased with what had been done. The good will of the subcollector is also shown in his giving the men a letter to his superior officer, in explanation of the circumstances, and recommended that the purchase of barrels be allowed, a step which was rendered unnecessary by the arrangements later made.

The subcollector in answer to his inquiry as to what had become of the water barrels in use on board the vessel was informed that they had been filled with mackerel. This answer goes to prove that Mr. Murray was acting strictly within the scope of his duty in ascertaining that the barrels sought to be purchased were not to be used for an illicit purpose.

The colonial secretary's dispatch of the 16th December, 1886, refers to the same schooner, the *Mollie Adams*, and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia.

In this case Mr. Bayard's representations are based solely upon a letter written to him by the captain of the vessel under date the 12th November, which is unsupported by any other evidence, and upon the strength of which Mr. Bayard proceeds to charge the Canadian authorities with "churlish and inhospitable treatment," and with exhibiting a coldness and rudeness of conduct at variance with the hospitable feelings of common humanity.

The minister of marine and fisheries submits, as a complete reply to the allegations contained in Captain Jacob's letter—(1) The statement of the collector of customs at Malpeque, Prince Edward Island, (2) the statement of Captain McLaren, of the Canadian cruiser *Critic*, and (3) the report of the collector of customs at Port Medway.

The two former officers, although giving their reports without concert, agree upon the main points at issue, and the statements of all three are clear, straightforward, and reasonable, and in marked contrast to the sensational and improbable story related by Captain Jacobs.

Captain Jacobs declares that on or about the 26th September last, during very heavy weather, he fell in with the bark *Neskilita*, which had run on a bar at Malpeque Harbor and become a total wreck. That he took off the crew, seventeen in number, at 12 o'clock at night, carried them to his own vessel, fed them for three days, and then gave them $60 with which to pay their fare home, and provisions to last them on their way. He states that the captain of the Canadian cruiser *Critic* came on board, was told the circumstances, but offered no assistance, and that no one on shore would take the wrecked men unless he became responsible for the payment of their board.

The collector at Malpeque in his report says that early on the morning after the wreck, so soon as the news reached him he repaired to the harbor to see what assistance could be given; that he then met the captain of the *Neskilita* in company with Captain Jacobs, and was told by the latter that the crew of the wrecked vessel were comfortably cared for on his vessel, and that nothing more could be done.

Captain McLaren, of the *Critic*, says that he at once visited the *Mollie Adams* and was told by Captain Jacobs that "he had made all arrangements for the crew."

The collector and Captain McLaren agree in stating from information gathered by them that the crew of the wrecked vessel came to shore in their own boat unassisted, and after boarding a Nova Scotia vessel were invited by Captain Jacobs, with whom the captain of the *Neskilita* had beforetime sailed out of Gloucester, to go on board the *Mollie Adams*.

The collector was asked by the captain of the *Neskilita* if he would assist himself and crew to their homes, and answered that he could not unless assured that they themselves were without means for that purpose, in which case he would have to telegraph to Ottawa for instructions. The captain of the *Neskilita* made no further application.

The minister observes that it is the practice of the Dominion Government to assist shipwrecked and destitute sailors, in certain cases of great hardship, to their destination or homes, but in all cases it must be clear that they are destitute, and the application for assistance must be made to Ottawa through the collector of customs. Had such an application been made by the captain of the *Neskilita* it would have received due consideration.

In answer to the charge that board could not be obtained for the wrecked crew, it is stated by Captain McLaren that the crew of a United States vessel wrecked about the same time found no difficulty in getting board and that the captain of the *Neskilita* had himself arranged to board with the collector, who expressed surprise at his failing to come.

Captain Jacobs complains that he was not allowed to land from his vessel the material saved from the wreck. To this charge the collector replies that he received no intimation of any wrecked material except the crew's luggage being on board the *Mollie Adams*, and Captain Jacobs made no request to him regarding the landing of wrecked material, and that he (the collector) gave all assistance in his power to the captain of the *Neskilita* in saving material from the wreck.

It was subsequently discovered that Captain Jacobs had on board the *Mollie Adams* a seine from the wrecked vessel belonging to the underwriters, for taking care of which, when obliged to give it up, Captain Jacobs claimed and was paid the sum of $10.

Captain Jacobs states that he was put to a loss of ten days' fishing by his detention with the *Neskilita*. The reports of both the collector and Captain McLaren agree in

giving a very different and sufficient reason, viz, very bad weather and consequent inability to fish, a disability experienced by the whole fishing fleet at that time anchored in Malpeque.

The second complaint of Mr. Bayard is that when Captain Jacobs, experiencing a dearth of provisions as a consequence of his charitable action, shortly after put into Port Medway and asked to purchase half a barrel of flour and enough provisions to take him home, the collector, "with full knowledge of all the circumstances," refused the request and threatened him with seizure if he bought anything whatever.

The collector's report, hereto annexed, shows that Captain Jacobs entered his port on the 25th October, fully one month after the occurrence at Malpeque; that in entering he made affirmation that he called for shelter and repairs, and for no "other purpose whatever;" that just before leaving he asked permission to purchase half a barrel of flour, and when asked by the collector if he was without provisions, he replied that he was not, adding that he had "a good supply of all kinds of provisions except flour, and enough of that to last him home unless he met some unusual delay."

Under these circumstances the collector did not give the permission asked, but he made no threat of seizure of vessel or imposition of penalty.

Mr. Bayard supports the complaint of Captain Jacobs that he was charged fees for entering his vessel at Canadian customs, and that these fees varied at different ports, being, for instance, 15 cents at Souris, Prince Edward Island, 50 cents at Port Mulgrave, and 50 cents at Port Hood, at which latter port Captain Jacobs sent his brother to enter for him, but was informed that his entry was illegal and that he, as master, must himself enter his vessel. He complains of being obliged to pay twice, once for his brother's entry and once for his own.

The minister states with regard to this that no collector of customs in Canada is authorized to charge a fee for entering or clearing a vessel, nor for any papers necessary to do this. Sailing masters, however, who are unused to the law, or not competent to make out their papers, are in the habit of employing persons as customs brokers to make out their papers for them, and for this service these brokers charge a small fee. These are not Government officers nor under Government control, and their services are voluntarily paid for by those who employ them. The small fees of which Captain Jacobs complains need not have been paid by him if he had been willing or qualified to make out his own papers. That he was not so willing or qualified and that he employed a broker to make out his papers is conclusively shown by the following telegram received from the collector at Port Hood, the charges at which port Mr. Secretary Bayard so vigorously denounces.

[Copies of telegrams.]

"Deputy minister of fisheries to collector, Port Hood, Nova Scotia.

"OTTAWA, *March* 16, 1887.

"Did you during last season exact from Captain Solomon Jacobs, of schooner *Mollie Adams*, any charge for reporting, or other service at Port Hood? If so, please state amount received and for what."

"Collector, Port Hood, to deputy minister of fisheries.

"PORT HOOD, NOVA SCOTIA, *March* 16, 1887.

"Solomon Jacobs, of schooner *Mollie Adams*, sent one of his crew to report 13th September last; he made a report. I told him, however, that the report should be made by the master. A few hours afterwards Jacobs himself came and reported. They got Dan. McLennan, who is now in Halifax, to write out the reports. I believe he charged them 25 cents each for brokerage. No other charges whatever were made."

The minister states that he has no doubt that the other payments at customs ports alluded to by Mr. Bayard were made for services rendered Captain Jacobs by persons making out his entry papers, and which he does not appear to have been qualified to do himself.

With reference to Mr. Bayard's reiteration of Captain Jacobs's complaint that in different harbors he was obliged to pay a different scale of dues, the minister of marine submits that in Canada there are distinct classes of harbors. Some are under the control of a commission appointed wholly or in part by the Government, under whose management improvements are made and which regulates, subject to the approval of Government, the harbor dues which are to be paid by all vessels entering such ports and enjoying the advantages therein provided.

Others are natural harbors in great part unimproved, whose limits are generally defined by order in council and for which a harbor-master is appointed by Government, to whom all vessels entering pay certain nominal harbor-master's fees, which

are regulated by a general act of parliament, and which constitute a fund out of which the harbor-master is paid a small salary for his services in maintaining order within the harbor. The port of St. John, New Brunswick, is entirely under municipal control and has its own stated and uniform scale of charges.

Harbor dues are paid whenever a vessel enters a port which is under a commission, and harbor-master's fees are paid only twice per calendar year by vessels entering ports not under a commission. Sydney belongs to the first class, and at that port Captain Jacobs paid the legal harbor dues. Malpeque and Port Mulgrave belong to the second class, and in those Captain Jacobs paid the legal harbor-master's fees, which, for a vessel like his, of from 100 to 200 tons, is $1.50. That he paid only $1 in Malpeque is due to an error of the harbor master, who should have charged him $1.50, and by this error Captain Jacobs saved 50 cents, of which he should not complain. For full information as to the legal status of Canadian harbors Mr. Bayard is respectfully referred to the Canadian Statutes, 36 Vict., cap. 63; 42 Vict., cap. 30; and 38 Vict., cap. 30.

The minister of marine and fisheries believes that after a thorough perusal of these Mr. Bayard will not cite the payments made by Captain Jacobs as evidences of the "irresponsible and different treatment to which he was subjected in the several ports he visited, the only common feature of which seems to have been a surly hostility."

The minister submits that, from a careful consideration of all the circumstances, he can not resist the conviction that, in this whole transaction, Captain Jacobs was more concerned in making up a case against the Canadian authorities than in unobtrusively performing any necessary acts of hospitality, and that his version of the matter, as sent to Mr. Bayard, is utterly unreliable.

The *Neskilita* was wrecked off a Canadian harbor; the crew, it is stated, came ashore in their own boat and unassisted; a Canadian collector was at hand offering his services, and within easy appeal to the Government, and the captain of a Canadian cruiser was in port; yet, Captain Jacobs would appear, by his own story, to have taken complete charge of the captain, to have ignored all proffers of assistance, and to have constituted himself the sole guardian and spokesman of the wrecked crew, to have been in short the one sole man actuated by kindly, humane feelings among a horde of cruel and unsympathetic Canadians.

For any exercise of good-will and assistance to Canadian seamen in distress by either foreign or native vessels, the Canadian Government can not but feel deeply grateful, and stands ready, as has been its invariable custom, to recognize suitably and reward such services, and when Captain Jacobs performs any necessary act of charitable help towards Canadian seamen in distress without the obvious aim of manufacturing an international grievance therefrom, he will not prove an exception to Canada's generous treatment.

The minister observes that in a dispatch to the governor-general, dated the 27th December, 1886, and in reference to this same case, Mr. Stanhope writes: "With reference to my dispatch of the 16th instant relating to the case of the United States fishing vessel *Mollie Adams*, and referring to the general complaints made on the part of the United States Government of the treatment of American fishing vessels in Canadian ports, I think it right to observe that whilst Her Majesty's Government do not assume the correctness of any allegations without first having obtained the explanations of the Dominion Government, they rely confidently upon your ministers taking every care that Her Majesty's Government are not placed in a position of being obliged to defend any acts of questionable justice or propriety."

The minister, while thanking Her Majesty's Government for the assurance conveyed that it will not "assume the correctness of any allegations without having obtained the explanations of the Dominion Government," and whilst assuring Her Majesty's Government that every possible care has been and will be taken that no "acts of questionable justice or propriety" are committed by the officers of the Dominion Government, can not refrain from calling attention to the loose, unreliable, and unsatisfactory nature of much of the information supplied to the United States Government, and upon which very grave charges are made, and very strong language officially used against the Canadian authorities. For instance, as stated in a previous part of this report, the strong representations made by Mr. Bayard in the case of the *Mollie Adams* are based solely upon a letter written by Captain Jacobs, not even accompanied by an official attestation, and not supported by a tittle of corroborative evidence.

It does not appear that any attempt was made to investigate the truth of this story, unreasonable and improbable as it must have appeared, as the letter written by Captain Jacobs bears date the 12th November, while Mr. Bayard's note based thereupon is dated the 1st December. It would seem only fitting that in so grave a matter, involving alike the good name of a friendly country and the continued subsistence of previous amicable relations, great care should have been taken to avoid the use of such strong and even hostile language, based upon the unsupported statements of an interested skipper, and one whose reputation for straightforward conduct does not appear to be above reproach, if credence is to be given to the attached

description, taken from the Boston Advertiser, of a transaction said to have occurred in his native city, and in which Captain Jacobs appears to have played no enviable part.

Numerous other instances of like flimsy and unreliable foundations for charges made against the Canadian authorities in regard to their treatment of United States fishing vessels can not have failed to attract the attention of Her Majesty's Government in the dispatches which from time to time have reached it from the United States.

The master of a United States fishing vessel, imperfectly understanding the provisions of the convention of 1818, the requirements of the Canadian customs law, or the regulations of Canadian ports, having, perhaps, an exaggerated idea of his supposed rights, or, it may be, desirous of evading all restrictions, is brought to book by officers of the law. He feels aggrieved and angry, and straightway conveys his supposed grievance to the authorities at Washington. Thereupon, without any seeming allowance for the possibility of the statement being inaccurate or the narrator unfriendly, and with apparently no attempt to investigate the truth of the statement, it is made the basis of strong and unfriendly charges against the Canadian Government. Canada has suffered from such unfounded representations, and against the course adopted by the United States in this respect the minister enters his most earnest protest.

As an additional instance of the manner in which evidence is gathered and used to the prejudice of the Canadian case the minister calls attention to a communication submitted to the Senate of the United States by Mr. Edmunds, and which forms printed Document No. 54 of the Forty-ninth Congress, second session. This is the report of Mr. Spencer F. Baird, United States Fish Commissioner, containing a list, with particulars, of sixty-eight New England fishing vessels which had, as he alleged, "been subjected to treatment which neither the treaty of 1818 nor the principles of international law would seem to warrant."

The minister observes that it will appear from a perusal of this report that these sixty-eight cases were made up by Mr. Baird's officer from answers of owners, agents, or masters of fishing vessels in response to a circular letter sent to all New England fishing vessels, inviting them to forward statements of any interference with their operations by the Canadian Government.

Not a single statement was investigated by the Commissioner or any one acting for him, and not a single statement is accompanied by the affidavit of the person making it, or by corroborative evidence of any kind. In most instances, neither date, locality, nor name of Canadian officer is given, and an analysis of many of the cases affords prima facie evidence that they embody no real cause for complaint; yet Mr. Baird and his officer, Mr. Earle, vouched for the correctness and entire reliability of these sixty-eight statements. They were gravely submitted to the Senate as trustworthy evidence of Canadian aggression, and became, no doubt, powerful factors in influencing Congressional legislation hostile to Canadian and British interests.

The minister, while inviting attention to and strongly deprecating such action as above recited on the part of the United States, takes occasion, at the same time, to express his entire confidence that the rights of Canada will not thereby be in any degree prejudiced in the eyes of Her Majesty's Government.

The committee concur in the foregoing report of the minister of marine and fisheries, and they recommend that your Excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council Canada.

[Inclosure 5.]

Mr. Murray, jr., to Mr. Tilton.

PORT MULGRAVE, NOVA SCOTIA,
November 1, 1886.

SIR: Referring to your letter of 28th October, I beg to say that on Monday, the 30th August, the schooner *Mollie Adams*, of Gloucester, Mass., Solomon Jacobs, master, passed two customs ports in the Straits of Canso before coming to my port. In fact, he sent his boat (dory) with his brother and a Captain Campbell to me to see if I would allow him to get seven empty barrels to put water in. I asked the men what they did with their water barrels. They told me they had filled them with mackerel, and that their tank leaked. I told the men that I had no power to allow them to purchase barrels, but I would borrow barrels to fill with water if they would caulk the tank. I also gave them a letter to take up to my superior, asking him to allow Captain Jacobs to purchase the barrels. They went on board, told their story, and

the captain anchored his vessel and came ashore to see me. I offered to send a man on board to caulk the tank. In the mean time one of the crew came on shore and said that the cook had succeeded in tightening the tank; that it held salt water. I then borrowed the seven barrels to fill the water, which they did, and I returned the barrels again, and the captain was well pleased, as he appeared so.

If this is not satisfactory I can make oath to the foregoing.

I am, etc.,

DAVID MURRAY, Jr.,
Subcollector Customs.

[Inclosure 6.]

Mr. McNutt to Mr. Tilton.

MALPEQUE, PRINCE EDWARD ISLAND, *January* 7, 1887.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th December, covering statements made by Captain Jacobs, and now adjoin statement of facts as personally known by and communicated to me of wreck of the *Neskilita* on Malpeque Bar, on Sunday night, the 26th September last. Information reached me early on the following morning, and I at once proceeded to the harbor to see what assistance could be given in the case, when I met Captain Thornborne, of the *Neskilita*, and Captain Jacobs in company, and was informed by the latter that the crew were on board his vessel, and assured that everything that could be done for their comfort had been done. I was also given to understand that during the night the crew had abandoned their schooner and come in the harbor unassisted in their seine-boat, and boarded a Nova Scotia schooner lying in the harbor, and were the next morning invited by Captain Jacobs to make his vessel their home. I was also informed by Captain McLaren, commander of the Canadian cruiser *Critic*, that he also tendered his assistance, and was rather haughtily received by Captain Jacobs with the information that the crew were aboard his vessel and that he (Captain McLaren) did not think the case demanded him to force his assistance.

With regard to the wrecked material aboard of Captain Jacobs's vessel, I have only to say that this is the first intimation I have ever had of such material being aboard his vessel, except the crew's luggage, and that assuredly Captain Jacobs did not, so far as I can recollect, make any request of me whatever with regard to the landing of wrecked material.

With reference to the saving of material from the wrecked vessel, I would wish to say that I rendered the captain of the *Neskilita* all necessary assistance in procuring suitable men to do that work (and who were thus employed by him), and although I am aware that Captain Jacobs did accompany the captain of the *Neskilita* to the wreck, I can not say in what capacity or under what authority he did so.

So far as the assertion that the crew received the means to take them home from Captain Jacobs is concerned, I know nothing positive, except that he (Captain Jacobs) asked me if the Canadian Government would remunerate him for his attention to the crew, and feeling that I had nothing to do with him, I merely replied that I did not know. But I may say that shortly after the wreck occurred the captain of the *Neskilita* asked me if I could render them (the crew) any assistance in getting home, and I answered that I could not unless I was assured that they themselves were without the means of doing so, and that in any case I would have to telegraph to the department at Ottawa for instructions. Here the matter stopped, the captain making no further application.

With regard to the delay of ten days, said to be occasioned (Captain Jacobs) by reason of the shipwrecked crew, I may say that during the ten or fourteen days following on the said shipwreck we had an almost continuous period of stormy weather, with the exception of a couple or so of fine days, which were taken advantage of by the fishing fleet, and one at least by Captain Jacobs himself, but by all reports received by me resulting in little or no catches of mackerel.

These, so far as I can now recall them to memory, are the true facts in the case.

I am, etc.,

JAMES MCNUTT,
Subcollector.

[Inclosure 7.]

Mr. McLaren to Mr. Tilton.

GEORGETOWN, PRINCE EDWARD ISLAND, *January* 6, 1887.

DEAR SIR: Yours of the 29th ultimo to hand. In reference to the first part of the statement made by Captain Jacobs, I would say that he may have been off Malpeque at the time the wreck occurred, but I do not think he took the crew off; as, so far as

I could learn at the time, they came ashore in one of their own seine-boats and went first to a Nova Scotia vessel and afterwards on board the *Mollie Adams*.

On the morning after the wreck occurred I went on board the *Mollie Adams*, and was immediately told by Captain Jacobs that he had made all arrangements for the crew, and having secured a team, was going with the captain of the *Neskilita* to the custom-house to note a protest. As I could see by the conduct of both captains that I was not wanted, I returned to my own vessel. Afterwards, in the course of a conversation with the captain of the *Neskilita*, he informed me that he had sailed out of Gloucester for some time, and in the course of that time with Captain Jacobs.

As to the statement that he could not get a boarding-house for his crew, I think it is false, as the crew of one of the American vessels wrecked about the same time had no difficulty in getting the people to board them. Once while talking with Mr. McNutt, the collector of customs at Malpeque, he mentioned that the captain of the *Neskilita* had engaged to board at his place, and he expressed his surprise that he was not coming. Both Captain Jacobs and the captain of the *Neskilita* were committing a fraud in trying to get off with the seine of the wrecked vessel, as it belonged to the underwriters; and I think that it was the prospect of getting Captain Jacobs to get away with the seine that prevented the captain of the *Neskilita* from asking me for assistance. However, Captain Jacobs, on finding he could not carry out his fraud, presented a claim of $10 for the salvage of the seine and gear, which sum was paid him by Mr. Lemuel Poole, Charlottetown, who was acting on behalf of the underwriters. It may be possible that Captain Jacobs staid at Malpeque after I sailed, but, if so, it was his own fault, as the crew of the *Neskilita* had gone home before then.

It is my opinion that Captain Jacobs need not have lost one hour of time, for during the time the *Neskilita's* crew were on board his vessel the fleet, with the exception of one or two small vessels, was anchored in Malpeque, and unable to put to sea owing to the heavy sea on the bar.

After the occurrence of the wreck, about the 20th September, Captain Jacobs cruised in the North Bay and on the Cape Breton coast, and not until the 24th October was he reported as passing through Canso bound home.

As to the paying of the crew's passage home, I can say nothing, except that if he did he did it voluntarily, as the captain of the *Neskilita* could have sent his crew home without his assistance.

Yours, etc.,

WM. MCLAREN.

[Inclosure 8.]

Mr. Letsom to the deputy minister of fisheries, Ottawa.

CUSTOM-HOUSE, *Port Medway, January* 6, 1887.

SIR: In reply to your letter of the 30th ultimo, inclosing extract of statement made by Captain S. Jacobs, of the schooner *Mollie Adams*, I have to say that on the 25th October last, Captain Solomon Jacobs, of schooner *Mollie Adams*, reported at this office. His report is now before me, in which he swears that he called here for shelter and repairs and for no other purpose. After making his report and when about leaving the office, Captain Jacobs asked if I would allow him to purchase a half barrel of flour. I asked him if he was without provisions, and he replied that he was not, adding that he had a good supply of all kinds of provisions except flour, and enough of that to last him home unless he met with some unusual delay. I then told him that under the circumstances I could not give him permission to purchase the flour; but no threat was made about seizing his vessel or imposing any penalty whatever.

The above I am quite willing to substantiate under oath, and can produce a witness to the truth of the statement.

I am, etc.,

E. E. LETSOM,
Collector.

[Inclosure 9.]

Extract from the Boston, United States, Advertiser of November 19, 1886.—Gloucester politics.—An appearance of ballot-stuffing.—George Morse nominated for mayor.

GLOUCESTER, *November* 13.

At a citizens' mass meeting held here this evening, Lawyer Tuft, chairman, to nominate a mayor, a committee, consisting of J. J. Whalen, Albert P. Babson, Capt. Solomon Jacobs, J. N. Dennison, and Edwin L. Lane, was appointed to count ballots.

After much wrangling, one informal and then formal ballots were taken, when Mr. Dennison made a minority report, accusing Capt. Solomon Jacobs of stuffing the ballot-box. William T. Merchant counted the ballots while being cast, making 264, but the committee reported 312 cast, which tended to show that Jacobs had put in 48 illegally.

Much excitement prevailed, and a motion was made that he be dismissed from the committee. The chairman called for Jacobs to come forward and explain his action, but it was found that he had disappeared. He was in favor of David J. Robinson as candidate for mayor, but went over to William A. Pew, jr.

Another ballot was taken and Dr. George Morse received the nomination.

[Inclosure 10.

Forty-ninth Congress, second session. Senate Mis. Doc. No. 54.—In the Senate of the United States, February 8, 1887.—Ordered to be printed.]

Mr. Edmunds submitted the following communication from Spencer F. Baird, United States Commissioner of Fish and Fisheries:

UNITED STATES COMMISSION OF FISH AND FISHERIES,
Washington, D.C., February 5, 1887.

SIR: I forward herewith for your information a copy of a communication from Mr. R. Edward Earle, in charge of the Division of Fisheries of this Commission, accompanied by a list of New England fishing vessels which have been inconvenienced in their fishing operations by the Canadian authorities during the past season; these being in addition to the vessels mentioned in the revised list of vessels involved in the controversy with the Canadian authorities furnished to your committee on the 26th of January by the Secretary of State.

The papers containing the statements were received from the owners, masters, or agents of the vessels concerned, and though not accompanied by affidavits are believed to be correct.

Very, etc.,

SPENCER F. BAIRD,
Commissioner.

Hon. GEORGE F. EDMUNDS,
Chairman Committee on Foreign Relations, United States Senate.

[Inclosure 1 to inclosure 10.]

Mr. Earle to Mr. Baird.

UNITED STATES COMMISSION OF FISH AND FISHERIES,
Washington, D. C., February 5, 1887.

SIR: Some time since, at your request, I mailed circulars to owners or agents of all New England vessels employed in the food-fish fisheries. These called for full statistics of the vessels' operations during the year 1886, and in addition for statements of any inconvenience to which the vessels had been subjected by the recent action of the Canadian Government in denying to American fishing vessels the right to buy bait, ice, or other supplies in its ports, or in placing unusual restrictions on the use of its harbors for shelter.

A very large percentage of the replies to these circulars have already been received, and our examination shows that in addition to the vessels mentioned in the revised list transmitted by the Secretary of State to the Committee on Foreign Relations of the United States Senate on the 26th January, 1887, sixty-eight other New England fishing vessels have been subjected to treatment which neither the treaty of 1818 nor the principles of international law would seem to warrant.

I inclose for your consideration list of these vessels, together with a brief abstract of the statements of the owners or masters regarding the treatment received. The statements were not accompanied by affidavits, but are believed to be entirely reliable. The name and address of the informant are given in each instance.

Very, etc.,

R. EDWARD EARLE,
In charge Division of Fisheries.

[Inclosure 2 to inclosure 10.]

Partial list of vessels involved in the fisheries controversy with the Canadian authorities from information furnished to the United States Commissioner of Fish and Fisheries

(Supplementing a list transmitted to the Committee on Foreign Relations, United States Senate, by the Secretary of State, 26th January, 1887.)

Eliza A. Thomes (schooner), Portland, Me.; E. S. Bibbs, master. Wrecked on Nova Scotia shore, unable to obtain assistance. Crew not permitted to land or to save any-

thing until permission was received from captain of cutter. Canadian officials placed guard over fish saved, and everything saved from wreck narrowly escaped confiscation. (From statements of C. D. Thomes, owner, Portland, Me.)

Christina Ellsworth (schooner), Eastport, Me.; James Ellsworth, master. Entered Port Hastings, Cape Breton, for wood; anchored 10 o'clock and reported at custom-house. At 2 o'clock was boarded by captain of cutter *Hector* and ordered to sea, being forced to leave without wood. In every harbor entered was refused privilege of buying anything. Anchored under the lee of land in no harbor, but was compelled to enter at custom-house. In no two harbors were the fees alike. (From statements of James Ellsworth, owner and master, Eastport, Me.)

Mary E. Whorf (schooner), Wellfleet, Mass.; Simon Berrio, master. In July, 1886; lost seine off North Cape, Prince Edward Island, and not allowed to make any repairs on shore, causing a broken voyage and a long delay. Ran short of provisions, and being denied privilege of buying any on land had to obtain from another American vessel. (From statements of Freeman A. Snow, owner, Wellfleet, Mass.)

Stowell Sherman (schooner), Provincetown, Mass.; S. F. Hatch, master. Not allowed to purchase necessary supplies and obliged to report at custom-houses situated at distant and inconvenient places. Ordered out of harbors in stress of weather, namely, out of Cascumpic Harbor, Prince Edward Island, nineteen hours after entry, and out of Malpeque Harbor, Prince Edward Island, fifteen hours after entry, wind then blowing too hard to admit of fishing. Returned home with broken trip. (From statements of Samuel T. Hatch, owner and master, Provincetown, Mass.)

Walter L. Rich (schooner), Wellfleet, Mass.; Obadiah Rich, master. Ordered out of Malpeque, Prince Edward Island, in unsuitable weather for fishing, having been in harbor only twelve hours; denied right to purchase provisions; forced to enter at custom-house at Port Hawkesbury, Cape Breton, on Sunday, collector fearing that vessel would leave before Monday and he would thereby lose his fee. (From statements of Obadiah Rich, owner and master, Wellfleet, Mass.)

Bertha D. Nickerson (schooner), Booth Bay, Me.; N. E. Nickerson, master. Occasioned considerable expense by being denied Canadian harbors to procure crew, and detained in spring while waiting for men to come from Nova Scotia. (From statements of Nickerson and sons, owners, Booth Bay, Me.)

Newell B. Hawes (schooner), Wellfleet, Mass.; Thomas C. Kennedy, master. Refused privilege of buying provisions in ports in Bay St. Lawrence, and in consequence obliged to leave for home with half a cargo. Made harbor at Shelburne, Nova Scotia, in face of storm at 5 p. m., and master immediately started for custom-house, 5 miles distant, meeting captain of cutter *Terror* on way, to whom he explained errand. On returning found two armed men from cutter on his vessel. At 7 o'clock next morning was ordered to sea, but refused to go in the heavy fog. At 9 o'clock the fog lifted slightly, and, though the barometer was very low and a storm imminent, vessel was forced to leave. Soon met the heavy gale, which split sails, causing considerable damage. Captain of *Terror* denied claim to right of remaining in harbor twenty-four hours. (From statements of T. C. Kennedy, part owner and master, Wellfleet, Mass.)

Helen F. Tredick (schooner), Cape Porpoise, Maine; R. J. Nunan, master. July 20, 1886, entered Port Latour, Nova Scotia, for shelter and water. Was ordered immediately to sea. (From statements of R. J. Nunan, owner and master, Cape Porpoise, Maine.)

Nellie M. Snow (schooner), Wellfleet, Mass.; A. E. Snow, master. Was not allowed to purchase provisions in any Canadian ports or to refit or land and ship fish, consequently obliged to leave for home with broken trip; not permitted to remain in ports longer than local Canadian officials saw fit. (From statements of J. C. Young, owner, Wellfleet, Mass.)

Gertrude Summers (schooner), Wellfleet, Mass.; N. S. Snow, master. Refused privilege of purchasing provisions, which resulted in injury to voyage. Found harbor regulations uncertain; sometimes could remain in port twenty-four hours; again was ordered out in three hours. (From statement of N. S. Snow, owner and master, Wellfleet, Mass.)

Charles R. Washington (schooner), Wellfleet, Mass.; Jesse S. Snow, master. Master informed by collector at Ship Harbor, Cape Breton, that if he bought provisions, even if actually necessary, he would be subject to a fine of $400 for each offense. Refused permission by the collector at Souris, Prince Edward Island, to buy provisions, and was compelled to return home 10th September, before close of fishing season. Was obliged to report at custom-house every time he entered the harbor, even if only for shelter. Found no regularity in the amount of fees demanded, this being apparently at the option of the collector. (From statements of Jesse S. Snow, owner and master, Wellfleet, Mass.)

John M. Ball (schooner), Provincetown, Mass.; N. W. Freeman, master. Driven out of Gulf of St. Lawrence to avoid fine of $400 for landing two men in the port of Malpeque, Prince Edward Island. Was denied all supplies except wood and water in same port. (From statements of N. W. Freeman, owner and master, Provincetown, Mass.)

Zephyr (schooner), Eastport, Me., Warren Pilk, master. Cleared from Eastport 31st May, 1886, under register for West Isles, New Brunswick, to buy herring. Collector refused to enter vessel, telling the captain that if he bought fish, which were plenty at the time, the vessel would be seized. Returned to Eastport, losing about a week, which resulted in considerable loss to owner and crew. (From statements of Guildford Mitchell, owner, Eastport, Me.)

Abdon Keene (schooner), Bremen, Me.; William C. Keene, master. Was not allowed to ship or land crew at Nova Scotia ports, and owner had to pay for their transportation to Maine. (From statements of William C. Keene, owner and master, Bremen, Me.)

William Keene (schooner), Portland, Me.; Daniel Kimball, master. Not allowed to ship a man, or to send a man ashore except for water at Liverpool, Nova Scotia, and ordered to sea as soon as water was obtained. (From statements of Henry Trefethen, owner, Peak's Island, Me.)

John Nye (schooner), Swan's Island, Me.; W. L. Joyce, master. After paying entry fees and harbor dues was not allowed to buy provisions at Molpeque, Prince Edward Island, and had to return home for same, making a broken trip. (From statements of W. L. Joyce, owner and master, Atlantic, Me.)

Asa H. Pervere (schooner), Wellfleet, Mass.; A. B. Gore, master. Entered harbor for shelter; ordered out after twenty-four hours. Denied right to purchase food. (From statements of S. W. Kemp, agent, Wellfleet, Mass.)

Nathan Cleaves (schooner), Wellfleet, Mass.; P. E. Hickman, master. Ran short of provisions, and not being permitted to buy, left for home with a broken voyage. Customs officers at Port Mulgrave, Nova Scotia, would allow purchase of provisions for homeward passage, but not to continue fishing. (From statements of Parker E. Hickman, owner and master, Wellfleet, Mass.)

Frank G. Rich (schooner), Wellfleet, Mass.; Charles A. Gorham, master. Not permitted to buy provisions or to lie in Canadian ports over twenty-four hours. (From statements of Charles A. Gorham, owner and master, Wellfleet, Mass.)

Emma O. Curtis (schooner), Provincetown, Mass.; Elisha Rich, master. Not allowed to purchase provisions, and therefore obliged to return home. (From statements of Elisha Rich, owner and master, Provincetown, Mass.)

Pleiades (schooner), Wellfleet, Mass.; F. W. Snow, master. Driven from harbor within twenty-four hours after entering. Not allowed to ship or discharge men under penalty of $400. (From statements of S. W. Snow, owner and master, Well fleet, Mass.)

Charles F. Atwood (schooner), Wellfleet, Mass.; Michael Burrows, master. Captain was not permitted to refit vessel or to buy supplies, and when out of food had to return home. Found Canadians disposed to harass him and put him to many inconveniences; not allowed to land seine on Canadian shore for purpose of repairing same. (From statements of Michael Burrows, owner and master Wellfleet, Mass.)

Gertie May (schooner), Portland, Me.; J. Doughty, master. Not allowed, though provided with permit, to touch and trade, to purchase fish-bait in Nova Scotia, and driven from harbor. (From statements of Charles F. Guptill, owner, Portland, Me.)

Margaret S. Smith (schooner), Portland, Me.; Lincoln W. Jewett, master. Twice compelled to return home from Bay St. Lawrence with broken trip, not being able to secure provisions to continue fishing. Incurred many petty inconveniences in regard to customs regulations. (From statements of A. M. Smith, owner, Portland, Me.)

Elsie M. Smith (schooner), Portland, Me.; Enoch Bulger, master. Came home with a half fare, not being able to get provisions to continue fishing. Lost seine in a heavy gale rather than be annoyed by customs regulations when seeking shelter. (From statements of A. M. Smith, Portland, Me.)

Fannie A. Spurling (schooner), Portland, Me.; Caleb Parris, master. Subject to many annoyances and obliged to return home with a half-fare, not being able to procure provisions. (From statements of A. M. Smith, owner, Portland, Me.)

Carleton Bell (schooner), Booth Bay, Me.; Seth W. Eldridge, master. Occasioned considerable expense by being denied right to procure crew in Canadian harbors, and detained in spring while waiting for men to come from Nova Scotia. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)

Abbie M. Deering (schooner), Portland, Me.; Emery Gott, master. Not being able to procure provisions obliged to return home with a third of a fare of mackerel. (From statements of A. M. Smith, owner, Portland, Me.)

Cora Louisa (schooner), Booth Bay, Me.; Obed Harris, master. Could get no provisions in Canadian ports and had to return home before getting a full fare of fish. (From statements of S. Nickerson & Sons, Booth Bay, Me.)

Eben Dale (schooner), North Haven, Me.; R. G. Babbidge, master. Not permitted to buy bait, ice, or to trade in any way. Driven out of harbors, and unreasonable restrictions whenever near the land. (From statements of R. G. Babbidge, owner and master, Pulpit Harbor, Me.

Charles Haskell (schooner), North Haven, Me.; Daniel Thurston, master. Obliged to leave Gulf of St. Lawrence at considerable loss, not being allowed to buy provisions. (From statements of C. S. Staples, owner, North Haven, Me.)

Willie Parkman (schooner), North Haven, Me.; William H. Banks, master. Unable to get supplies while in Gulf of St. Lawrence, which necessitated returning home at great loss, with a broken voyage. (From statements of William H. Banks, owner and master, North Haven, Me.)

D. D. Geyer (schooner), Portland, Me.; John K. Craig, master. Being refused privilege of touching at a Nova Scotia port to take on resident crew already engaged, owner was obliged to provide passage for men to Portland at considerable cost, causing great loss of time. (From statements of J. H. Jordan, owner, Portland, Me.)

Good Templar (schooner), Portland, Me.; Elias Tarlton, master. Touched at La Have, Nova Scotia, to take on crew already engaged, but was refused privilege and ordered to proceed. The men being indispensable to voyage, had them delivered on board outside of 3-mile limit by a Nova Scotia boat. (From statements of Henry Trefethen, owner, Peak's Island, Me.)

Eddie Davidson (schooner), Wellfleet, Mass.; John D. Snow, master. On the 12th of June, 1886, touched at Cape Island, Nova Scotia, but was not permitted to take on part of crew. Boarded by customs officer, and ordered to sail within twenty-four hours. Not allowed to buy food in ports of Gulf St. Lawrence. (From statements of John D. Snow, owner and master, Wellfleet, Mass.)

Alice P. Higgins (schooner), Wellfleet, Mass.; Alvin W. Cobb, master. Driven from harbors twice in stress of weather. (From statements of Alvin W. Cobb, master, Wellfleet, Mass.)

Cynosure (schooner), Booth Bay, Me.; L. Rush, master. Was obliged to return home before securing a full cargo, not being permitted to purchase provisions in Nova Scotia. (From statements of S. Nickerson & Sons, owners, Booth Bay, Me.)

Naiad (schooner), Lubec, Me.; Walter Kennedy, master. Presented frontier license (heretofore acceptable) on arriving at St. George, New Brunswick, but collector would not recognize same. Was compelled to return to Eastport and clear under register before being allowed to purchase herring, thus losing our trip. (From statements of Walter Kennedy, master, Lubec, Me.)

Louisa A. Grant (schooner), Provincetown, Mass.; Joseph Hatch, jr., master. Took permit to touch and trade. Arrived at St. Peters, Cape Breton, in afternoon of the 19th May, 1886. Entered and cleared according to law. Was obliged to take inexperienced men, at their own prices, to complete fishing crew to get to sea before the arrival of a seizing officer, who had started from Straits of Canso at 5 o'clock same afternoon in search of vessel, having been advised by telegraph of shipping of men. (From statements of Joseph Hatch, jr., owner and master, Provincetown, Mass.)

Lottie E. Hopkins (schooner), Vinal Haven, Me.; Emery J. Hopkins, master. Refused permission to buy any article of food in Canadian ports. Obtained shelter in harbors only by entering at custom-house. (From statement of Emery J. Hopkins, owner and master, North Haven, Me.)

Florine F. Nickerson (schooner), Chatham, Mass.; Nathaniel E. Eldridge, master. Engaged fishermen for vessel at Liverpool, Nova Scotia, but action of Canadian Government necessitated their transportation to the United States, and loss of time to vessel while awaiting their arrival; otherwise would have called for them on way to fishing grounds. Returning touched at Liverpool, but immediately on anchoring Canadian officials came aboard and refused permission for men to go ashore. Captain at once signified his intention of immediately proceeding on passage, but officer prevented his departure until he had reported at custom-house, vessel being thereby detained two days. (From statements of Kendrick & Bearse, owners, South Harwich, Mass.)

B. B. B. (sloop), Eastport, Me.; George W. Copp, master. Obliged to discontinue business of buying sardine herring in New Brunswick port, for Eastport canneries, as local customs regulations were during the season of 1886 made so exacting that it was impossible to comply with them without risk of the fish becoming stale and spoiled by detention. (From statements of George W. Copp, master, Eastport, Me.)

Sir Knight (schooner), Southport, Me.; Mark Rand, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

Uncle Joe (schooner), Southport, Me.; J. W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

Willie G. (schooner), Southport, Me.; Albert F. Orne, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

Lady Elgin (schooner), Southport, Me.; George W. Pierce, master. Compelled to pay transportation for crew from Nova Scotia to Maine, the vessel not being allowed to call at Nova Scotia ports for them on her way to the fishing grounds. (From statements of William T. Maddocks, owner, Southport, Me.)

John H. Kennedy (schooner), Portland, Me., David Dougherty. Called at a Nova Scotia port for bait but left without obtaining same, fearing seizure and fine, returning home with a broken voyage. At a Newfoundland port was charged $16 lighthouse dues, giving draft on owners for same, which, being excessive, they refused to pay. (From statement of E. G. Willard, owner, Portland, Me.)

Ripley Ropes (schooner), Southport, Me., C. E. Hare master. Vessel ready to sail when telegram from authorities at Ottawa refused permission to touch at Canadian ports to ship men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)

Jennie Armstrong (schooner), Southport, Me., A. O. Webber master. Vessel ready to sail when telegram from authorities at Ottawa refused permission to touch at Canadian ports to shp men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)

Vanguard (schooner), Southport, Me., C. C. Dyer master. Vessel ready to sail when telegram from authorities refused permission to touch at Canadian ports to ship men; consequently obliged to pay for their transportation to Maine, and vessel detained while awaiting their arrival. (From statements of Freeman Orne & Son, owners, Southport, Me.)

Electric Flash (schooner), North Haven, Me., Aaron Smith master. Unable to obtain supplies in Canadian ports, and obliged to return home before obtaining full cargo. (From statements of Aaron Smith, master and agent, North Haven, Me.)

Daniel Simmons (schooner), Swan's Island, Me., John A. Gott master. Compelled to go without necessary outfit while fishing in Gulf of St. Lawrence. (From statements of Mr. Stimpson, owner, Swan's Island, Me.)

Grover Cleveland (schooner), Boston, Mass., George Lakeman master. Compelled to return home with only partial fare of mackerel, being refused supplies in Canadian ports. (From statements of B. F. DeButts, owner, Boston, Mass.)

Andrew Burnham (schooner), Boston, Mass., Nathan F. Blake master. Not allowed to buy provisions or to land and ship fish to Boston, thereby losing valuable time for fishing. (From statements of B. F. DeButts, owner, Boston, Mass.)

Harry G. French (schooner), Gloucester, Mass., John Chisholm master. Refused permission to purchase provisions or to land cargo for shipment to the United States. (From statements of John Chisholm, master and owner, Gloucester, Mass.)

Colonel J. H. French (schooner), Gloucester, Mass., William Harris master. Was refused permission to purchase any supplies or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

W. H. Wellington (schooner), Gloucester, Mass., D. S. Nickerson master. Was refused permission to purchase any supplies or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

Ralph Hodgdon (schooner), Gloucester, Mass., Thomas F. Hodgdon master. Was refused permission to purchase any supplies or to forward fish to the home port by steamer, causing much loss of time and money. (From statements of John Chisholm, owner, Gloucester, Mass.)

Hattie Evelyn (schooner), Gloucester, Mass., James A. Cromwell master. Not allowed to buy any provisions in any provincial ports, and thereby compelled to return home during the fishing season, causing broken voyage and great loss. (From statements of James A. Cromwell, owner and master, Gloucester, Mass.)

Emma W. Brown (schooner), Gloucester, Mass., John McFarland master. Was forbidden buying provisions at any provincial ports, and thereby lost three weeks' time and was compelled to return home with only part of cargo. (From statement of John McFarland, master, Gloucester, Mass.)

Mary H. Thomas (schooner), Gloucester, Mass., Henry B. Thomas master. Prohibited from buying provisions, and, in consequence, had to return home before close of fishing season. (From statements of Henry B. Thomas, owner and master, Gloucester, Mass.)

Hattie B. West (schooner), Gloucester, Mass., C. H. Jackman master. Prevented from buying provisions to enable vessel to continue fishing; two of crew deserted in a Canadian port, and captain went ashore to report at custom-house and to secure return of men; was delayed by custom-officer not being at his post and ordered to sea by first officer of cutter *Howlett* before having an opportunity of reporting at custom-house or of finishing business; had to return and report on same day or be subject to a fine. Prevented from shipping men at same place. At Port Hawkesbury, Nova

Scotia, while on homeward passage, not allowed to take on board crew of seized American fishing schooner *Morro Castle*, who desired to return home. (From statements of C. H. Jackman, master, Gloucester, Mass.)

Ethel Maud (schooner), Gloucester, Mass., George H. Martin master. Provided with a United States permit to touch and trade. Entered Tignish, Prince Edward Island, to purchase salt in barrels; was prohibited from buying anything. Collector was offered permit, but declared it to be worthless, and would not examine it; vessel obliged to return home for articles mentioned. On second trip was not permitted to get any food. (From statements of George H. Martin, owner and master, East Gloucester, Mass.)

John W. Bray (schooner), Gloucester, Mass., George McLean master. On account of extreme prohibitory measures of the Canadian government in refusing shelter and supplies, and other conveniences, was obliged to abandon her voyage and come home without fish. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)

Henry W. Longfellow (schooner), Gloucester, Mass., W. W. King master. Obliged to leave Gulf of St. Lawrence with only 62 barrels of mackerel, on account of restrictions imposed by Canadian government in preventing captain from procuring necessary supplies to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)

Rushlight (schooner), Gloucester, Mass., James L. Kenney master. Compelled to leave Gulf of St. Lawrence with only 90 barrels of mackerel, because of restrictions imposed by Canadian government in prohibiting captain from purchasing supplies needed to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)

Belle Franklin (schooner), Gloucester, Mass., Henry D. Kendrick master. Obliged to leave Gulf of St. Lawrence with 156 barrels of mackerel, on account of restrictions imposed by Canadian government in denying the captain the right to procure necessary supplies to continue fishing. (From statements of John F. Wonson & Co., owners, Gloucester, Mass.)

Neponset (schooner), Boston, Mass., E. S. Frye master. On 27th August, 1886, anchored in Port Hawkesbury, Cape Breton, and immediately reported at custom-house; being short of provisions, master asked collector for permits to buy, but was twice refused. The master expressing his intention of seeing the United States consul at Port Hastings, Cape Breton, 3 miles distant, the customs officer forbade him landing at that port to see the consul; he did so, however, saw the consul, but could get no aid, the consul stating that if provisions were furnished, the vessel would be seized. Master being sick, and wishing to return home by rail, at the suggestion of the consul, he landed secretly, and traveled through the woods to the station, 3 miles distant. (From statements of E. S. Frye, owner and master, Boston, Mass.)

[Inclosure 11.]

The Marquis of Lansdowne to Sir H. Holland.

GOVERNMENT HOUSE, OTTAWA, *April* 2, 1887.

SIR: With reference to Mr. Stanhope's dispatch of the 16th December last, transmitting a copy of a letter from the foreign office, with its inclosures, respecting the alleged improper conduct of authorities in the Dominion in dealing with the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and requesting to be furnished with a report on these cases for communication to the United States Government, I have the honor to forward herewith a copy of an approved minute of the privy council of Canada, embodying a report of my minister of marine and fisheries on the subject.

I have much pleasure in calling your attention to the penultimate paragraph of that report, from which you will observe that it will, in the opinion of my Government, be possible, in cases like that of the *Jennie Seaverns*, where a foreign fishing vessel has entered a Canadian harbor for a lawful purpose and in the pursuance of her treaty rights, to exercise, the necessary supervision over the conduct of her master and crew, and to guard against infractions of the customs law and other statutes binding upon foreign vessels while in Canadian waters, without placing an armed guard on board or preventing reasonable communication with the shore.

My advisers are, in regard to such matters, fully prepared to recognize that a difference should be made between the treatment of vessels *bona fide* entering a Canadian harbor for shelter or repair, or to obtain wood and water, and that of other vessels of the same class entering such harbors ostensibly for a lawful purpose, but really with the intention of breaking the law.

I have, etc.,

LANSDOWNE.

[Inclosure 12.]

Report of a committee of the honorable the privy council for Canada approved by his excellency the governor-general in council on the 23d March, 1887.

The committee of the privy council have had under consideration a dispatch dated the 16th December, 1886, from the right honorable the secretary of state for the Colonies, transmitting a copy of a letter from the foreign office covering a copy of a dispatch from Her Majesty's minister at Washington inclosing notes which he has received from Mr. Bayard, United States Secretary of State, protesting against the conduct of the Dominion authorities in their dealings with the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and requesting to be furnished with a report on the subject for communication to the Government of the United States.

The minister of marine and fisheries, to whom the dispatch and inclosures were referred for immediate report, observes that Mr. Bayard takes exception to the "inhospitable and inhuman conduct" of the collector of customs at the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose, of the *Laura Sayward*, to buy sufficient food to last himself and crew on their homeward voyage, and complains of the action of the collector in "unnecessarily retaining" the papers of the vessel. Mr. Bayard bases his representation upon the annexed declaration made by Captain Rose, but supported by no other testimony.

The minister states that immediately on the receipt of the dispatch above mentioned a copy of the charges was forwarded to the collector at the port of Shelburne, and his statement in reply thereto is annexed.

The minister believes that Collector Atwood's statement is a reasonable and sufficient answer to the allegations made by the captain of the *Sayward*, and leaves no ground of justification for the strong language used by Mr. Bayard in his note to Sir L. Sackville West.

The minister further observes that, with reference to the *Jennie Seaverns*, Mr. Bayard complains of the conduct of Captain Quigley, of the *Terror*, in preventing the captain of the *Jennie Seaverns* from landing to visit his relations in Liverpool, Nova Scotia, and in forbidding his relatives to visit him on board his vessel, and in placing a guard upon the *Seaverns* while she was in port. These complaints are based upon the affidavit of Captain Tupper, of the *Seaverns*, a copy of which is attached. The statements of Captain Quigley, and his first officer, Bennett, are submitted in reply, and seem to afford ample proof that no violence or injustice was done to the fishing schooner.

The minister is of the opinion that the captain of the *Jennie Seaverns* has nothing to complain of. He came in solely for shelter, and this was not denied him. He was requested to report at the customs, with which request he, upon his own evidence, willingly complied.

The other precautions taken by Captain Quigley were simply to insure that, while shelter was being had, the provisions of the convention and of the customs law were not violated.

The minister, however, while assured that the vessel in question suffered no deprivation of or interference with its rights as defined by the convention of 1818, is of opinion that, in pursuance of the spirit of uniform kindly interpretation of the law, which it has been the constant aim of the government of Canada to exemplify in its dealings with United States fishermen, it is possible for the officers in charge of the cruisers to efficiently guard the rights of Canadian citizens and enforce the provisions of the law without in such cases as the above finding it necessary to place an armed guard on board the fishing vessel, or preventing what may be deemed reasonable communication with the shore.

The committee, concurring, in the report of the minister of marine and fisheries, recommend that your excellency be moved to transmit a copy of this minute to the right honorable the secretary of state for the colonies for the purpose of communication to the Government of the United States.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council Canada.

[Inclosure 13.]

Deposition of Medeo Rose.

I, Medeo Rose, master of schooner *Laura Sayward*, of Gloucester, being duly sworn, do depose and say: That on Saturday, the 2d October, being then on Western Bank, on a fishing trip, and being short of provisions, we hove up anchor and started for home. The wind was blowing almost a gale from the northwest, and, being almost dead

ahead, we made slow progress on our voyage home. On Tuesday, the 5th October, we made Shelburne, Nova Scotia, and arrived in that harbor about 8 p. m. on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbor of Shelburne, arriving at the town about 4 p. m. On going ashore I found the custom-house closed, and hunted up the collector and entered my vessel, and asked permission from him to buy 7 pounds of sugar, 3 pounds of coffee, and 1 bushel of potatoes, and 2 pounds butter or lard or pork, and oil enough to last us home, and was refused.

I stated to him my situation, short of provisions, and a voyage of 250 miles before, and pleaded with him for this slight privilege, but it was of no avail. I then visited the American consul and asked his assistance, and found him powerless to aid me in this matter. The collector of customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions, say about one and a half hours after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provisions, we having but a little flour and water, and liable to be buffeted for days before reaching home.

MEDEO ROSE.

MASSACHUSETTS, ESSEX, *ss:*

Personally appeared Medeo Rose and made oath to the truth of the above statement before me.

[SEAL.]

AARON PARSONS,
Notary Public.

OCTOBER 13, 1886.

[Inclosure 14.]

Mr. Atwood to Mr. Johnson.

CUSTOM-HOUSE, SHELBURNE, *January* 5, 1887.

SIR: With reference to the statement by Medeo Rose, master of the schooner *Laura Sayward*, I beg to say that in many particulars it is not true and is very unjust. The custom-house was not closed, as stated. Office hours are supposed to be from 9 a. m. to 4 p. m., but masters of vessels, American fishermen particularly, are allowed to report their vessels inward and outward, and obtain clearances at any hour between 6 a. m. and 11 p. m. (Sundays excepted), and the office is always open. On the 6th October last I left at 4 p. m., and went to an agricultural exhibition, not an eighth of a mile distant—say a three minutes' walk—and left word at the office to tell any one who called where I could be found. I had been on the grounds about fifteen minutes when Captain Rose put in an appearance, and I at once came to the office, and he reported his vessel, stated that he was from the bank bound home, and came in to fill water, and wanted provisions, as follows, viz: 7 pounds of sugar, 3 pounds of coffee, 1 bushel of potatoes, and 2 pounds of butter; this was all. I took a memorandum and attached to his inward report, and oil is not mentioned; stated that he had plenty of flour, fish, and other provisions sufficient for voyage home.

I gave him permission to fill water at once; but as the treaty made no provision for purchase of supplies, I would telegraph the department at Ottawa, and no doubt it would be allowed. Captain Rose expressed his willingness to remain until a reply was received. He called at the office next morning (Thursday) at 6.30 a. m., and finding I had not received a reply, said as the wind was fair and a good breeze, he would not wait longer and would take a clearance, which I gave him. I told him an answer to telegram would probably be received by 10 a. m. I did not consider it a case of actual distress by any means, as by the master's own statement he had plenty of other provisions, and all that he really and actually needed was to fill water.

The statement that I held his papers, although he asked for them, etc., and that I refused to give them to him until next morning, is all false. He did not ask further until next morning, when he got his clearance. The statement that the treatment he received was harsh and driving him to sea having little water and flour, etc., is all untrue, as what I have already stated will prove. Captain Medeo Rose was here with his vessel on the 23d November last, and entered his vessel and obtained clearance at 8 in the evening; was here again on the 27th November and remained five days for repairs, and nothing was said by him of the "inhuman conduct" or "harsh treatment" on the part of the collector towards him.

The above is a plain statement of the facts, and many of the statements can be corroborated by the American consul of this port if referred to him.

I am, etc.,

W. W. ATWOOD,
Collector.

[Inclosure 15.]

Deposition of Joseph Tupper.

I, Joseph Tupper, master of the schooner *Jennie Seaverns*, of Gloucester, being duly sworn, do depose and say: That on Thursday, the 28th October, while on my passage home from a fishing trip, the wind blowing a gale from southeast and a heavy sea running, I was obliged to enter the harbor of Liverpool, Nova Scotia, for shelter. Immediately on coming to anchor was boarded by Captain Quigley, of Canadian cruiser *Terror*, who ordered me to go inshore at once and report at the custom-house, to which I replied that such was my intention. He gave me permission to take two men in the boat with me, but they must remain in the boat and must not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relations who resided in Liverpool and whom I had not seen for many years. This privilege was denied me. After entering, having returned to my vessel, some of my relatives came to see me off. When Captain Quigley saw their boat alongside of my vessel he sent an officer and boat's crew, who ordered them away, and at sundown he placed an armed guard on board our vessel, who remained on board all night, and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way; but to be made a prisoner on board my own vessel, and treated like a suspicious character, grates harshly upon the feelings of an American seaman, and I protest against such treatment, and respectfully ask from my own Government protection from such unjust, unfriendly, and arbitrary treatment.

JOSEPH TUPPER.

MASSACHUSETTS, ESSEX, *ss:*

Personally appeared Joseph Tupper, and made oath to the truth of the above statement before me,

AARON PARSONS,
Notary Public.

NOVEMBER 4, 1886.

[Inclosure 16.]

Mr. Quigley to Major Tilton.

NEWCASTLE, *January* 19, 1887.

SIR: In reference to the American schooner *Jennie Seaverns* of Gloucester, I find she arrived on Thursday, the 28th October, as stated in his complaint, at Liverpool, Nova Scotia, and after she anchored I sent Chief Officer Bennett on board with instructions, telling him what the law was, so that he would not do anything through ignorance of it, and get his vessel in trouble. These instructions were to report his vessel at the customs before sailing, and to take two of his crew and boat with him when he did go for that purpose, but the rest of his crew were not to go on shore, and that after he reported no person from his vessel was to go on shore, as he got all he put in for, viz., shelter; and he reported his vessel putting in for that purpose and for no other; not for the purpose of letting his crew on shore.

The boat that was ordered from his vessel was from shore, and was not allowed alongside of these vessels, as it gave the crews a chance to get ashore with them, or to smuggle provisions alongside, so they were ordered off in all cases. (See chief officer's statement regarding the men who rowed the captain on shore.)

I never prevented the men who went ashore with the masters of vessels from landing and going with the masters to the custom-house if they wished, nor gave instructions to prevent them.

I placed two watchmen on board this vessel, as I did in all other cases, to prevent them from breaking the law in any respect through the night, and they were taken off in the morning before he sailed.

It is not true that I boarded this vessel as stated. I never spoke to him. There were two other American seiners in at the same time and were treated in the same way, less the watchmen, which were not required in their case, as they were close to me and I could see what was done on board them at all times from my vessel. These are the facts.

I have, etc.,

THOMAS QUIGLEY.

[Inclosure 17.]

Deposition of Albert Bennett.

I, Albert Bennett, late first officer of the Dominion cutter *Terror*, Captain Quigley, remember boarding the American seiner *Jennie Seaverns*, of Gloucester, United States, at the port of Liverpool, Nova Scotia, on the 28th October last past; boarded her,

ordered Captain Tupper to report to the customs at Liverpool aforesaid, which he did, taking with him two men in his boat. Never told Captain Tupper not to allow his men to leave his boat while on shore; further, Captain Tupper, to the best of my knowledge and belief, never intimated to me that he had friends or relatives that he wished to visit in Liverpool, Nova Scotia.

Seeing a boat alongside, I went on board and ordered them away. Captain Tupper told me he did not know the visitors, and further, did not wish them on board his vessel.

Further, during the time the *Jennie Seaverns* was in the harbor of Liverpool, Nova Scotia, Captain Quigley never was on board her, I boarding her and carrying out his instructions to me.

ALBERT BENNETT,
Late First Officer Cutter Terror.

HOPEWELL CAPE, N. B., *January* 14, 1887.

No. 339.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *May* 17, 1887. (Received May 18.)

SIR: With reference to my note of the 25th ultimo and to your reply of the 7th instant, I have the honor to inform you that Her Majesty's Government intimate that the intending emigrants are not paupers, but crofters, whose passages are only partly paid from public funds, and that Her Majesty's Government would be glad to know whether this affects in any way the tenor of your above-mentioned note.

I have, etc.,

L. S. SACKVILLE WEST.

No. 340.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, May 19, 1887.

SIR: I have the honor to acknowledge the receipt, yesterday, of your note of the 17th instant in response to my notes of the 11th of November, 1st December, and 27th of January last, respecting the cases of the United States fishing vessels *Mollie Adams*, *Laura Sayward*, *Jennie Seaverns*, and *Sarah H. Prior*.

I have, etc.,

T. F. BAYARD.

No. 341.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, May 20, 1887.

SIR: With reference to previous correspondence concerning aided emigration, I have the honor to acknowledge the receipt of your communication of the 17th instant, in which you inform me that the in-

tending emigrants are not paupers, but crofters, whose passages are only partly paid from public funds, and inquire whether this affects in any way the tenor of my note of the 7th instant to you.

For the reasons stated in my note of the 7th instant the Department is unable to give any assurances that any particular class of immigrants will be permitted to land. The provisions of the law look to the actual condition of each person, and are impartial in their operation.

I have, etc.,

T. F. BAYARD.

No. 342.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *July* 18, 1887. (Received July 19.)

SIR: In your note of the 11th of November last, inclosing copies of the statements with affidavits from Captain Medeo Rose, master of the schooner *Laura Sayward*, of Gloucester, Mass., you state that these papers impressively describe the "inhospitable" and "inhuman" conduct "of the collector of the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers, and thus preventing him, with a wholly inadequate supply of provisions, from proceeding on his voyage." This note, I observe, appears in the papers relating to the foreign relations of the United States transmitted to Congress with the President's message, 1886 (No. 231, page 425.)

I have now the honor to inform you that I am instructed by the Marquis of Salisbury to communicate to you the inclosed copy of a dispatch from the governor-general of Canada, together with copy of an approved minute of the privy council, to which is appended a letter from the collector of customs at Shelburne, inclosing a declaration made by Captain Rose, in which he states that the statements made by him in the affidavit alluded to in your above-mentioned note *are all untrue.*

In communicating these papers to you I am further instructed to ask whether the United States Government have any observations to make thereupon.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure 1.]

Colonial office to foreign office. (*Received June* 17.)

DOWNING STREET, *June* 17, 1887.

SIR: With reference to the letter from this department of the 27th April, relating to the treatment of the United States fishing vessels *Laura Sayward* and *Jenny Seaverns*, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, for such action as he may think proper to take upon it, a copy of a dispatch from the governor-general of Canada, with an affidavit by the master of the *Laura Sayward.*

I am, etc.,

JOHN BRAMSTON.

[Inclosure 2.]

The Marquis of Lansdowne to Sir H. Holland.

GOVERNMENT HOUSE, TORONTO, *May* 20, 1887.

SIR: With reference to previous correspondence on the subject of the alleged ill-treatment of the United States fishing vessel, *Laura Sayward* and *Jennie Seaverns*, and with especial reference to the affidavit purporting to have been sworn to by Capt. Medeo Rose, of the first-named vessel, copy of which formed an inclosure in Mr. Stanhope's dispatch of the 16th December last, I have the honor to forward herewith a certified copy of an approved minute of my privy council, to which is appended a letter from the collector of customs at Shelburne, inclosing a declaration made by Captain Rose, in which he states that the statements alleged to have been made by him in that affidavit "are all untrue."

I have, etc.,

LANSDOWNE.

[Inclosure 3.]

Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on May 16, 1887.

On a report dated the 10th May, 1887, from the minister of marine, and fisheries, submitting, with reference to his report, approved in council on the 23d March last, as to the alleged ill-treatment of the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and to the affidavit of Capt. Medeo Rose, of the first-named vessel, the copy of a letter from the collector of customs at Shelburne, Nova Scotia, dated the 20th ultimo, together with an affidavit from Captain Rose, herewith, in which it will be observed that he not only bears testimony to the generous treatment that had been extended to him when at the port of Shelburne on previous occasions, but also declares that the statements made in the affidavit of the 15th October last, purporting to be sworn to by him, and which affidavit formed the basis of a dispatch from Mr. Bayard, the United States Secretary of State, protesting against the inhuman and inhospitable conduct of the collector of customs at Shelburne, Nova Scotia, to use Captain Rose's own words, "are all untrue."

The committee recommend that your excellency be moved to forward a copy of this minute, together with copies of the papers mentioned, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,
Clerk Privy Council, Canada.

[Inclosure 4.]

Mr. Atwood to commissioner of customs, Ottawa.

CUSTOM-HOUSE, SHELBURNE, *April* 20, 1887.

SIR: With reference to my letter of the 5th January last and a statement made by Medeo Rose, of schooner *Laura Sayward*, a copy of which was sent me from your department for my report thereon, I beg to state that Captain Rose, with his vessel, is now lying off Sandy Point. He reported and obtained clearance yesterday on board Dominion cutter *Triumph*. On being questioned by Captain Lorway relative to the statement made in October last, he said much of it was untrue, and denied having made it. Inclosed please find a statement signed by Captain Rose in my presence at Sandy Point, sworn to and witnessed by Capt. John Purney, justice of the peace. He made no objection at all to signing it, and admits that this statement is true in every particular. Will you kindly have it forwarded to John Tilton, esq., deputy minister of fisheries?

I am, etc.,

W. W. ATWOOD,
Collector.

[Inclosure 5.]

Declaration of the captain of the Laura Sayward.

I, Medeo Rose, master of the schooner *Laura Sayward*, of Gloucester, do solemnly declare and say that on the 6th October last I arrived at the port of Shelburne, Nova Scotia, and reported my vessel at the custom-house some time after 4 p. m.

Stated to the collector that I was from Western Banks, bound home, and required provisions, as follows, viz: 7 pounds of sugar, 3 pounds of coffee, 1 bushel of potatoes, 2 pounds of butter, and to fill water. This was all. The collector told me to fill the water, but as there was no provision made in the treaty for the purchase of supplies or stores, he would telegraph the department at Ottawa at once; that no doubt they would be allowed; and I consented to wait until the next morning for a reply.

I called at the custom-house early the next morning, before 7 o'clock; stated that, as the wind was fair and blowing a strong breeze, I would not wait for a reply to telegram, but take a clearance, which the collector gave me. I was treated kindly, allowed to enter my vessel after customs hours, and a clearance granted me next morning before the office was supposed to be opened. I was at the port again in November, on my way to the banks, and the collector allowed me to report my vessel inwards and outwards and gave me a clearance at 8 in the evening.

The statements purporting to have been made by me to the effect that the collector refused to give me my papers when I asked for them, also that this treatment towards me was harsh and cruel, driving myself and crew to sea, having but little flour and water, etc., are all untrue.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of an act of Parliament entitled "An act for the suppression of voluntary and extrajudicial oaths."

MEDEO ROSE.

Taken and declared before me, at Sandy Point, this 20th day of April, A. D. 1887.

JOHN PURNEY,
Justice of the Peace.

No. 343.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *July* 18, 1887. (Received July 19.)

SIR: I have the honor to inform you that I am instructed by the Marquis of Salisbury to communicate to you the inclosed copy of a dispatch which his lordship has addressed to me on the subject of the proposed conference of the sugar-producing powers, to be held in London, and at the same time to invite the Government of the United States to take part in it upon the bases therein laid down, adding that, in the interests of the sugar industry, Her Majesty's Government attach great importance to an early decision being arrived at upon the subject.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.—Circular.]

The Marquis of Salisbury to Sir L. West.

FOREIGN OFFICE, *July* 2, 1887.

SIR: You are aware that in consequence of the recommendation made in 1880 by the select committee of the House of Commons on sugar industries "that Her Majesty's Government should invite the sugar-producing powers to a conference with a view of arriving at a common understanding for the suppression of bounties on a basis of manufacturing and refining under excise supervision, the question of equivalents for this system not being precluded from consideration," an invitation was addressed to the Governments of Austria, Belgium, France, Germany, and Holland, inviting them

to take part in an international conference for the purpose of considering the sugar question, with a view, if possible, so to arrange the collection of duties as to avoid or reduce to the lowest possible limits anything in the nature of a bounty on exported sugar. The proposal, however, of Her Majesty's Government was not favorably entertained by the Governments of the countries interested in the question, and although four years later, in 1885, the Government of Belgium endeavored to promote a conference to improve the condition of the sugar interests, their efforts were also unsuccessful, and no action has since been taken in the direction of convoking an international conference upon the sugar question.

The questions, however, affecting the sugar industry in 1887 remain practically what they were in 1880, and Her Majesty's Government consider that the reasons for a conference which were valid then are at the present time of even greater weight. Before addressing a formal invitation to the Governments interested, Her Majesty's Government have taken steps to ascertain the views of the Governments of those countries in which the bounty system most extensively prevails. Her Majesty's Government have been glad to learn that the objections on the part of certain Governments which existed in 1881 appear no longer to exist, and that the powers chiefly interested are not indisposed to take part in an international conference, provided that some indication is given of the questions connected with the sugar industry which their delegates would be called upon to discuss. In the opinion of Her Majesty's Government, the attention of the conference should be devoted to the following points:

1. What steps, if any, can be taken for the removal of causes of disturbance of the sugar producing and refining industry, so far as they are due to the action of Governments;

2. Whether it would be practicable for the various Governments to agree to manufacture and refine sugar in bond; or

3. Whether a common system can be agreed upon for correlating duties and drawbacks according to the various methods of levying duties on the roots, canes, juice, etc., so that one system of correlation shall be the equivalent of the other;

4. And generally to discuss any proposals with the object of inducing all Governments interested to give up the bounties.

In making these suggestions as to the scope of the conference Her Majesty's Government have no wish to exclude the consideration of any further point which the Governments interested may consider it advantageous to discuss, their object in proposing the meeting of the conference being to effect a final settlement of this long outstanding and intricate question.

I have accordingly to request that you will address a formal invitation to the Government to take part in a conference in London upon the above mentioned bases; and you will add that, in the interests of the sugar industry, Her Majesty's Government attach great importance to an early decision being arrived at upon the subject.

You are authorized to leave a copy of this dispatch with the minister for foreign affairs.

I am, etc., SALISBURY.

No. 344.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, July 19, 1887.

SIR: I have the honor to acknowledge your note, dated yesterday and received to-day, inclosing a copy of the declaration of Captain Medes Rose, master of the schooner *Laura Sayward*, of Gloucester, Mass., made on April 12 last, at Sandy Point, before a justice of peace, apparently in contradiction of the statement made by the same party under oath on October 13 last.

This document will be instantly made the subject of investigation, and the observations of this Government thereon, as suggested by your note, will be communicated to you as soon as information on the matter shall have been received from the collector of customs at Gloucester, through whom the original affidavits of Captain Rose were forwarded to this Department.

Accept, etc., T. F. BAYARD.

No. 345.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *July* 24, 1887. (Received July 26.)

SIR: I have the honor to inform you that I am instructed by the Marquis of Salisbury to inform the United States Government, in compliance with the provisions of article 34 of the general act of Berlin, that, by a proclamation dated the 14th May last, the whole of Zululand, including the territory known as the Zulu Reserve Territory, but excluding the territory known as the New Republic, and bounded as follows: On the north and southwest by the Colony of Natal, on the west and northwest by the New Republic; on the north by Amatonga land, and on the east by the Indian Ocean, was declared to be a British possession under the name of Zululand.

I have, etc., L. S. SACKVILLE WEST.

No. 346.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, July 25, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 18th instant, inviting this Government to take part in a proposed conference of the sugar-producing powers to be held in London.

In reply I have the honor to inform you that the proper authorities are considering the propriety of submitting this invitation to Congress, as the effective presence of a representative of the United States at the proposed conference could only be procured by the action of the legislative branch of this Government.

I have the honor, etc., T. F. BAYARD.

No. 347.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, July 28, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 24th instant, in which you notify this Department that Her Britannic Majesty's Government has formally declared the whole of Zululand, South Africa, to be a British possession.

I have, etc., T. F. BAYARD.

No. 348.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *August* 3, 1887. (Received August 4.)

SIR: I have the honor to inform you that I am instructed by the Marquis of Salisbury, Her Majesty's principal secretary of state for foreign affairs, to notify the Government of the United States, in accordance with the general act of the conference at Berlin relative to

the Congo, dated February 26, 1885, that Her Majesty's Government have entered into arrangements with certain tribes on the Somali coast for extending to them the protection of Great Britain, and that the British protectorate established by the agreements in question extends from the point of Ras Jiburti on the southern coast of the bay of Tajurrah to Bunder Ziadeh, in the forty-ninth parallel of east longitude (Greenwich).

I have, etc.,

L. S. SACKVILLE WEST.

No. 349.

Mr. Porter to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, August 4, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 3d instant, in which you notify this Department that Her Britannic Majesty's Government has entered into arrangement with certain tribes on the Somali coast of Africa for extending to them the protection of Great Britain, and that the British protectorate established by the agreements in question extends from the point of Ras Jiburti, on the southern coast of the bay of Tajurrah, to Bunder Ziadeh, in the forty-ninth parallel of east longitude (Greenwich).

I have the honor, etc.,

JAS. D. PORTER,
Acting Secretary.

No. 350.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *August* 15, 1887. (Received August 16.)

SIR: I have the honor to inclose a letter which the Queen has addressed to the President of the United States in answer to that addressed to Her Majesty by the President conveying his congratulations on the occasion of her jubilee, and to request that the same may be delivered into the hands of the President.

A copy of the letter is also inclosed.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

Queen Victoria to the President.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, Empress of India, etc., to the President of the United States of America, sendeth greetings: Our good friend: We have received from the hands of Mr. Phelps, the United States minister at our court, the letter which you addressed to us on the 26th of May last, and in which you convey your congratulations and those of the people of the United States on the occasion of the celebration of the fiftieth anniversary of our accession to the Throne. We request you to accept our best thanks for this proof of friendship and good-will which, with the similar

proofs we have received from the rulers and people of other states, has caused us the most sincere gratification. In thanking you also for the choice which you have made of Mr. Phelps to be the interpreter of your sentiments on this occasion, we request you to accept in return our best wishes for your own uninterrupted happiness and welfare, and forthe prosperity of the United States of America. And so we recommend you to the protection of the Almighty.

Given at our court at Windsor Castle the 18th day of July, in the year of our Lord 1887, and in the fifty-first year of our reign.

Your good friend,

VICTORIA R. and I

SALISBURY.

No. 351.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *October* 19, 1887. (Received October 21.)

SIR: In compliance with instructions which I have received from the Marquis of Salisbury, I have the honor to transmit to you herewith copies of an "act to consolidate and amend the law relating to fraudulent marks on merchandise" which has recently been passed in Great Britain, together with copies of a memorandum explaining the nature of its provisions. In framing this act, Her Majesty's Government have sought to protect not only the interests of British subjects but also those of subjects and citizens of foreign states, by providing remedies against the fraudulent practices in question, whether committed to the detriment of British or foreign manufacturers.

The Government of the United States being a party to the international union for the protection of industrial property, Her Majesty's Government feel confident that the passing of this act will be recognized by them as an attempt to carry out in their complete spirit the principles of that union, of which the main motive is the prevention of fraudulent practices of this description.

In transmitting to you for the information of the Government of the United States the act and memorandum in question, I am instructed to recommend them to your careful consideration and to state that Her Majesty's Government appeal with some confidence to that of the United States to take any steps which may be in their power to initiate legislation in the same direction whereby reciprocal protection might be afforded in America in similar circumstances to British subjects.

I am, etc.,

L. S. SACKVILLE WEST.

Merchandise-marks act, 1887.

[50 and 51 Vict., ch. 28.]

CHAPTER 28.—An act to consolidate and amend the law relating to fraudulent marks on merchandise. [23d August, 1887.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as the Merchandise-marks act, 1887.

2. (1) Every person who—

(*a*) Forges any trade-mark; or

(*b*) Falsely applies to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive; or

(*c*) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade-mark; or

(*d*) Applies any false trade description to goods; or

(e) Disposes of or has in his possession any die, block, machine, or other instrument for the purpose of forging a trade-mark; or

(f) Causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this act, and unless he proves that he acted without intent to defraud, be guilty of an offense against this act.

(2) Every person who sells, or exposes for or has in his possession for sale, or any purpose of trade or manufacture, any goods or things to which any forged trade-mark or false trade description is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a) That, having taken all reasonable precautions against committing an offense against this act, he had at the time of the commission of the alleged offense no reason to suspect the genuineness of the trade-mark, mark, or trade description; and

(b) That on demand, made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently;

be guilty of an offense against this act.

(3) Every person guilty of an offense against this act shall be liable—

(i) On conviction on indictment, to imprisonment, with or without hard labor, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(ii) On summary conviction, to imprisonment, with or without hard labor for a term not exceeding four months, or to a fine not exceeding £20, and in the case of a second or subsequent conviction, to imprisonment, with or without hard labor, for a term not exceeding six months, or to a fine not exceeding £50; and

(iii) In any case, to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offense has been committed.

(4) The court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit.

(5) If any person feel aggrieved by any conviction made by a court of summary jurisdiction, he may appeal therefrom to a court of quarter sessions.

(6) Any offense for which a person is under this act liable to punishment on summary conviction may be prosecuted, and any articles liable to be forfeited under this act by a court of summary jurisdiction may be forfeited, in manner provided by the summary jurisdiction acts: *Provided*, That a person charged with an offense under this section before a court of summary jurisdiction shall, on appearing before the court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires be so tried accordingly.

3. (1) For the purposes of this act—

The expression "trade-mark" means a trade-mark registered in the register of trade-marks kept under the patents, designs, and trade-marks acts, 1883, and includes any trade-mark which, either with or without registration, is protected by law in any British possession or foreign state to which the provisions of the one hundred and third section of the patents, designs, and trade-marks act, 1883, are, under order in council, for the time being applicable.

The expression "trade description" means any description, statement, or other indication, direct or indirect—

(a) As to the number, quantity, measure, gauge, or weight of any goods; or

(b) As to the place or country in which any goods were made or produced; or

(c) As to the mode of manufacturing or producing any goods; or

(d) As to the material of which any goods are composed; or

(e) As to any goods being the subject of an existing patent, privilege, or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this act.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade-mark, or part of a trade-mark, shall not prevent such trade description being a false trade description within the meaning of this act.

The expression "goods" means anything which is the subject of trade, manufacture, or merchandise.

The expression "person," "manufacturer, dealer, or trader," and "proprietor" include any body of persons corporate or unincorporate.

The expression "name" includes any abbreviation of a name.

(2) The provisions of this act respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words, or marks, or arrangement or combination thereof, whether including a trade-mark or not, as

are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than a person whose manufacture or merchandise they really are.

(3) The provisions of this act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression "false name or initials" means, as applied to any goods, any name or initials of a person which—

(*a*) Are not a trade-mark, or part of a trade-mark, and

(*b*) Are identical with, or a colorable imitation of, the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials, and

(*c*) Are either those of a fictitious person or of some person not bona fide carrying on business in connection with such goods.

4. A person shall be deemed to forge a trade-mark who either—

(*a*) Without the assent of the proprietor of the trade-mark, makes that trade-mark or a mark so nearly resembling that trade-mark as to be calculated to deceive; or

(*b*) Falsifies any genuine trade-mark, whether by alteration, addition, effacement, or otherwise;

and any trade-mark or mark so made or falsified is in this act referred to as a forged trade-mark: *Provided*, That in any prosecution for forging a trade-mark the burden of proving the assent of the proprietor shall lie on the defendant.

5. (1) A person shall be deemed to apply a trade-mark or mark or trade description to goods who—

(*a*) Applies it to the goods themselves; or

(*b*) Applies it to any covering, label, reel, or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade, or manufacture; or

(*c*) Places, incloses, or annexes any goods which are sold or exposed or had in possession for any purpose of sale, trade, or manufacture, in, with, or to any covering, label, reel, or other thing to which a trade-mark or trade description has been applied; or

(*d*) Uses a trade-mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade-mark or mark or trade description.

(2) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame, or wrapper; and the expression "label" includes any band or ticket.

A trade-mark or mark or trade description shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade-mark or mark who, without the assent of the proprietor of a trade-mark, applies such trade-mark, or a mark so nearly resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade-mark or mark to goods the burden of proving the assent of the proprietor shall lie on the defendant.

6. Where a defendant is charged with making any die, block, machine, or other instrument for the purpose of forging, or being used for forging, a trade-mark, or with falsely applying to goods any trade-mark or any mark so nearly resembling a trade-mark as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

(*a*) That in the ordinary course of his business he is employed on behalf of other persons to make dies, blocks, machines, or other instruments for making, or being used in making, trade-marks, or, as the case may be, to apply marks or descriptions to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the United Kingdom, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(*b*) That he took reasonable precautions against committing the offense charged; and

(*c*) That he had, at the time of the commission of the alleged offense, no reason to suspect the genuineness of the trade-mark, mark, or trade description; and

(*d*) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade-mark, mark, or description was applied—

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defense.

7. Where a watch-case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall prima facie be deemed to be a description of that country within the meaning of this act, and the provisions of this act with respect to goods to which a false trade description has been applied, and with respect to selling or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch-case.

8. (1) Every person who, after the date fixed by order in council, sends or brings a watch-case, whether imported or not, to any assay office in the United Kingdom for the purpose of being assayed, stamped, or marked, shall make a declaration declaring in what country or place the case was made. If it appears by such declaration that the watch-case was made in some country or place out of the United Kingdom, the assay office shall place on the case such a mark (differing from the mark placed by the office on a watch-case made in the United Kingdom), and in such a mode as may be from time to time directed by order in council.

(2) The declaration may be made before an officer of an assay office, appointed in that behalf by the office (which officer is hereby authorized to administer such a declaration), or before a justice of the peace or a commissioner having power to administer oaths in the supreme court of judicature in England or Ireland, or in the court of session in Scotland, and shall be in such form as may be from time to time directed by order in council.

(3) Every person who makes a false declaration for the purposes of this section shall be liable, on conviction on indictment, to the penalties of perjury, and on summary conviction to a fine not exceeding £20 for each offense.

9. In any indictment, pleading, proceeding, or document, in which any trade-mark or forged trade-mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or fac simile, to state that trade-mark or forged trade-mark to be a trade-mark or forged trade-mark.

10. In any prosecution for an offense against this act—

(1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.

(2) In the case of imported goods, evidence of the port of shipment shall be prima facie evidence of the place or country in which the goods were made or produced.

11. Any person who, being within the United Kingdom, procures, counsels, aids, abets, or is accessory to the commission, without the United Kingdom, of any act which, if committed in the United Kingdom, would under this act be a misdemeanor, shall be guilty of that misdemeanor as a principal, and be liable to be indicted, proceeded against, tried, and convicted in any county or place in the United Kingdom in which he may be, as if the misdemeanor had been there committed.

12. (1) Where, upon information of an offense against this act, a justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said justice on or after issuing the summons or warrant, or any other justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offense has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such justice may issue a warrant under his hand by virtue of which it shall be lawful for any constable named or referred to in the warrant, to enter such house, premises, or place at any reasonable time by day, and to search there for and seize and take away these goods or things; and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are or are not liable to forfeiture under this act.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this act, is unknown or can not be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised stating that, unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this act, may be destroyed or otherwise disposed of, in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realized by the disposition of such goods (all trade-marks and trade descriptions

being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

13. The act of the session of the twenty-second and twenty-third years of the reign of her present Majesty, chapter 17, entitled "An act to prevent vexatious indictments for certain misdemeanors," shall apply to any offense punishable on indictment under this act, in like manner as if such offense were one of the offenses specified in section 1 of that act, but this section shall not apply to Scotland.

14. On any prosecution under this act the court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

15. No prosecution for an offense against this act shall be commenced after the expiration of three years next after the commission of the offense, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

16. Whereas it is expedient to make further provision for prohibiting the importation of goods which, if sold, would be liable to forfeiture under this act; be it therefore enacted as follows:

(1) All such goods, and also all goods of foreign manufacture bearing any name or trade-mark being or purporting to be the name or trade-mark of any manufacturer, dealer, or trader in the United Kingdom, unless such name or trade-mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the United Kingdom, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section 42 of the customs consolidation act, 1876.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the commissioners of customs may require the regulations under this section, whether as to information, security, conditions, or other matters, to be complied with, and may satisfy themselves, in accordance with those regulations, that the goods are such as are prohibited by this section to be imported.

(3) The commissioners of customs may from time to time make, revoke, and vary regulations, either general or special, respecting the detention and forfeiture of goods the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices, and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colorable imitation of the name of a place in the United Kingdom, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the United Kingdom.

(5) Such regulations may apply to all goods the importation of which is prohibited by this section, or different regulations may be made respecting different classes of such goods or of offenses in relation to such goods.

(6) The commissioners of customs, in making and in administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Commissioners of Her Majesty's treasury.

(7) The regulations may provide for the informant reimbusing the commissioners of customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this section shall be published in the London Gazette and in the Board of Trade Journal.

(9) This section shall have effect as if it were part of the customs consolidation act, 1876, and shall accordingly apply to the Isle of Man as if it were part of the United Kingdom.

(10) Section 2 of the revenue act, 1883, shall be repealed as from a day fixed by regulations under this section, not being later than the 1st day of January, 1888, without prejudice to anything done or suffered thereunder.

17. On the sale or in the contract for the sale of any goods to which a trade-mark, or mark, or trade description has been applied the vendor shall be deemed to warrant that the mark is a genuine trade-mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this act, unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

18. Where, at the passing of this act, a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this act with respect to false trade descriptions shall not apply to such trade description when so applied: *Provided*, That where such trade description includes

the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner, with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

19. (1) This act shall not exempt any person from action, suit, or other proceeding which might, but for the provisions of this act, be brought against him.

(2) Nothing in this act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offense against this act.

(3) Nothing in this act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the United Kingdom who bona fide acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

20. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of Her Majesty, or any of the royal family, or any Government department, shall be liable, on summary conviction, to a penalty not exceeding £20.

21. In the application of this act to Scotland the following modifications shall be made:

The expression "summary jurisdiction acts" means the summary procedure act, 1864, and any acts amending the same.

The expression "justice" means sheriff.

The expression "court of summary jurisdiction" means the sheriff court, and all jurisdiction necessary for the purpose of this act is hereby conferred on sheriffs.

22. In the application of this act to Ireland the following modification shall be made:

The expression "summary jurisdiction acts" means, so far as respects the police district of Dublin metropolis, the acts regulating the powers and duties of justices of the peace of such district, and as regards the rest of Ireland means the petty sessions (Ireland) act, 1851, and any act amending the same.

The expression "court of summary jurisdiction" means justices acting under those acts.

23. The merchandise marks act, 1862, is hereby repealed, and any unrepealed enactment referring to any enactment so repealed shall be construed to apply to the corresponding provision of this act; provided that this repeal shall not affect—

(*a*) Any penalty, forfeiture, or punishment incurred in respect of any offense committed against any enactment hereby repealed; nor

(*b*) The institution or continuance of any proceeding or other remedy under any enactment so repealed for the recovery of any penaly incurred, or for the punishment of any offense committed before the commencement of this act; nor

(*c*) Any right, privilege, liability, or obligation acquired, accrued, or incurred under any enactment hereby repealed.

Memorandum.

"The merchandise marks act, 1887," has been passed with the object, *inter alia*, of giving effect to the international convention signed at Paris on the 20th March, 1883, for the protection of industrial property, and also of giving effect, to a certain extent, to the recommendations made at the second meeting of the conference held in Rome in the early part of 1886.

Her Majesty's Government have been assured that a habit largely prevails in various parts of the world of marking goods with false indications of origin, which habit tends to defraud, not only the purchaser who buys articles produced in one place believing them produced in another, but also those trade communities who, having justly attained a high reputation for excellence, find their name pirated by makers of inferior goods, not only in their own, but also in foreign countries. It is believed that any enactment which tends to discourage this habit, and to afford to the purchaser reasonable assurance that the goods he buys are what they purport to be, will be for the benefit, not only of the whole body of the consumers, but also of trading communities both in the United Kingdom and in foreign countries.

The act deals with two principal classes of offenses: those connected with forged or imitated trade-marks, and those connected with false trade descriptions. It is an offense under the act to forge a trade-mark, or to make or have in possession any machine or other instrument for the purpose of forging a trade-mark.

It is also an offense to apply any false trade description to any goods, or to be in possession for sale of any goods to which a false description or trade-mark has been applied.

A "trade-mark" is defined so as to include foreign trade-marks entitled to protection in the United Kingdom, as well as trade-marks registered in the United Kingdom.

A "trade description" is defined as meaning any description, statement, or other indication, direct or indirect—

1. As to the number, quantity, measure, gauge, or weight of any goods;
2. As to the place or country in which the goods were produced;
3. As to the mode of manufacture of such goods;
4. As to the material of which they are composed; or
5. As to their being the subject of any existing patent or copyright.

A "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied.

An application includes not only a direct application, but an application to any cover, label, etc., in or with which the goods are sold, and also placing goods in any covering, label, etc., to which a trade-mark or trade description has been applied.

The several offenses of making and applying forged marks, applying false descriptions, and selling goods so falsely marked, are punishable under the act with imprisonment and fine according to the two British methods of procedure by indictment and by summary conviction. It is competent for any foreigner in the United Kingdom, whether he be the proprietor of a pirated trade-mark, or a member of an injured community, to set the law in motion for the punishment of an offender.

Provision is also made under the act for the forfeiture and disposal of falsely-marked goods, whether found in the possession of an accused person or otherwise.

It is apparent, however, that much of the existing injury occasioned to traders and communities by false marking may be obviated by the prohibition on importation into the several countries of falsely-marked goods; and the attention of the representatives at the conferences of Paris and Rome was largely devoted to the formulation of principles upon which the countries of the union respectively should frame their customs regulations.

As to the precise limits of prohibition, complete unanimity was not, indeed, attained at the conferences. It was distinctly recognized that goods falsely marked, whether by means of forged trade-marks, false names, or descriptions, should throughout the countries of the union be seized at the port of importation; but the conference at Rome made an exception to the effect that the consent of the manufacturer should be taken as showing absence of fraudulent intent.

Her Majesty's Government are assured, however, that trading communities suffer much injury to their commercial reputation through the importation by their own members of inferior goods made elsewhere, and they are aware that the same feeling is entertained in other countries.

Her Majesty's Government therefore decided, in the bill which they submitted to parliament, and which has now passed into law, that no such exception shall be made; and the act accordingly provides for the issue of customs regulations under which all goods which are falsely marked in any manner specified in the act, and whether imported with the consent of the manufacturer or not, will be seized and forfeited.

Inasmuch as the existing mischief largely consists in marking goods made in one country with the names of manufacturers and places in another, and in the exportation of these goods to a third, it is evident that the interests of the injured manufacturer or community can be safeguarded only in the country of manufacture and in that to which the goods are exported.

Under the present act and the forthcoming customs regulations, the rights of all foreign manufacturers and trading communities will be protected alike in British courts of justice and at British ports.

While Her Majesty's Government, therefore, believe that the evils complained of can not be altogether suppressed without international harmony of legislation and customs regulations, they entertain a confident opinion that, under the merchandise marks act, foreign traders and communities will obtain in the United Kingdom a very ample protection.

No. 352.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, October 31, 1887.

SIR: On the 19th of July last I had the honor to receive from you a letter, dated the day previous, inclosing a printed copy of a declaration made by Medeo Rose, formerly master of the schooner *Laura Say-*

ward, of Gloucester, Mass., in which he controverts certain statements theretofore made by him under oath, in relation to his treatment by Mr. Atwood, collector of customs at Shelburne, Nova Scotia, on the 13th of October.

Upon receiving your letter I at once communicated its contents to the collector of the port of Gloucester, Mass., through whom the original complaint had been forwarded to this Department.

To-day, for the first time, I was informed that on the 5th of August last a reply and sworn statement, by way of explanation of this variance between his affidavit of October 13, 1886, and his subsequent declaration at Sandy Point, Nova Scotia, dated April 20, 1887, had been in my absence received at this Department, and by inadvertence not laid before me until to-day.

I therefore now inclose a copy of the affidavits of Captain Rose and Augustus Rogers, made at Gloucester, Mass., on August 3 last, before a notary public, by which it appears that his declaration of April 20, 1887, was not voluntary, but was obtained from him by the collector, Atwood through fear and intimidation, under circumstances fully stated.

I should transmit the documents without further comment, but that, in closing your note to me of July 18 last, you stated that you were further "instructed to ask whether the United States Government have any observations to make thereupon."

In my reply to you on the 19th of July, I promised to comply with your request, and for that reason I now remark that the incident which has been the subject of this correspondence affords but another illustration and additional evidence, if any were needed, of the unwisdom of imperiling the friendly relations of two kindred and neighboring countries by intrusting the interpretation and execution of a treaty between them to the discretion of local and petty officials, and vesting in them powers of administration wholly unwarranted and naturally prolific of the irritations which wise and responsible rulers will always seek to avoid.

On the eve of a negotiation touching closely the honor and interests of two great nations, I venture to express the hope that the anticipated result of our joint endeavors to harmonize all differences may render it hereafter impossible to create a necessity for those representing our respective Governments to be called upon to consider such questions as are presented in the case of the *Laura Sayward*.

I have, etc.,

T. F. BAYARD.

[Inclosure.]

Affidavits of Capt. Medeo Rose and Augustus Rogers.

I, Medeo Rose, of Gloucester, being under oath, do depose and say, that I was master of the schooner *Laura Sayward* during the year 1886, and that I am now master of the schooner *Gleaner* of Gloucester.

On April 18, 1887, I went into the lower harbor of Shelburne, Nova Scotia, in said schooner *Gleaner* for shelter and water.

On the morning of April 19, Mr. Atwood, the collector of customs, with two men wearing badges, which I supposed were Government badges, came on board. Their appearance filled me with fear, for I felt some trouble must be in store for me when Collector Atwood would leave his office and come so far (about 4 miles) to board my vessel. I invited him into the cabin, where he showed me a copy of my statement of October 13, 1886, in regard to the treatment I received from him when in schooner *Laura Sayward* (October 5, 1886), and asked me if I made that statement. I told him I did. Well, said he, everything in that statement is false. I told him my statement was true. He then produced a prepared written statement, which he read to me, which

stated that my statement of October 13 was untrue, and told me I must go on shore and sign it. Being nervous and frightened, and fearing trouble if I refused, I went on shore with him, to the store of Mr. Purney, and before Mr. Purney signed and swore to the statement.

On the afternoon of the same day, realizing the wrong I had done, I hired a team and, with one of my crew (Augustus Rogers), went to the custom-house and asked Collector Atwood to read to me the statement I had signed. He did so, and I again told him it was wrong and that my first statement was true.

He said I did not ask for all the articles mentioned in my first statement; that he did not refuse me my paper, and also that that statement might be the cause of his removal from his office. I told him I did not want to injure him, and I did not want to make myself out a liar at Washington.

About the 3d day of June last I went into Shelburne again solely to get a copy of the last statement. I went to the custom-house, taking the same man (Augustus Rogers) with me, and asked Collector Atwood for a copy of the statement.

He refused to give it to me, and said my lawyers had been advising me what to do and that I need never expect a favor from him.

The above is a true statement of the case. The statement obtained from me by Collector Atwood was obtained through my fear of seizure if I refused.

MEDEO ROSE.

I, Augustus Rogers, one of the crew of schooner *Gleaner*, being duly sworn, do depose and say, that I went with Capt. Medeo Rose to the custom-house at Shelburne, Nova Scotia, on the 19th day of April last, and also on the 3d day of June. I heard his conversation with Collector Atwood on both occasions, and hereby certify that the statements of those interviews, as made above, are correct and true.

AUGUSTUS ROGERS.

MASS., ESSEX, *ss:*

Personally appeared Medeo Rose and Augustus Rogers, and made oath to the truth of the above statements before me.

[SEAL.]

AARON PARSONS,
Notary Public.

AUGUST 3, 1887.

No. 353.

Sir L. S. Sackville West to Mr. Bayard.

WASHINGTON, *November* 8, 1887. (Received November 11.)

SIR: With reference to your note of the 25th July last I have the honor to inform you, in obedience to instructions received from Lord Salisbury, that the Governments of Austria, Belgium, Brazil, Denmark, France, Germany, Italy, the Netherlands, Russia, Spain, and Sweden have accepted the invitation of Her Majesty's Government to be represented at an international conference on the sugar question, to be held in London. The Governments of Norway and Portugal have declined the invitation on the ground that they are not concerned in this question. The Roumanian Government will now be invited to be represented.

In view of the general acceptance, as above stated, of the invitation given by Her Majesty's Government, the Marquis of Salisbury is of opinion that the 24th instant may now be definitely proposed as the date for the meeting of the conference.

By your note under reply you were good enough to inform me that the effective presence of a representative of the United States at the proposed conference could only be procured by the action of the legislative branch of your Government.

I am, accordingly, to state that Her Majesty's Government will be very glad if it should be possible for delegates on behalf of the United States to join the conference during its sitting.

I am to add that in order to facilitate the progress of business it seems to Lord Salisbury advisable that an authorized and correct statement respecting the system of levying duties, whether of customs or of excise on sugar, or on the raw material from which it is made, and of the drawbacks on export allowed, in the several countries represented, should be placed before the conference when it meets; and I am accordingly instructed to suggest that, in the event of your being in a position to give a formal acceptance to the invitation, a statement of duties and drawbacks, as above indicated, should be prepared and communicated as early as possible, in order that a proof may be submitted for correction to the delegates of the United States Government upon their arrival in London, and the document itself be distributed at the conference.

I have, etc.,

L. S. SACKVILLE WEST.

No. 354.

Mr. Bayard to Sir L. S. Sackville West.

DEPARTMENT OF STATE,
Washington, November 12, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 8th instant respecting the conference on the sugar question.

You state that the conference will meet, on the 24th instant, and inform me that your Government will be pleased to have delegates in behalf of the United States join the conference during its session.

I have the honor to say in reply that as no delegates can be sent without the authority of Congress, and as Congress does not meet until December 5, it is not probable that, even if legislative action were contemplated, any representative of the United States could be effectively present during the sittings of the conference which commence eleven days before the meeting of Congress.

I have, etc.,

T. F. BAYARD.

CORRESPONDENCE WITH THE LEGATION OF GUATEMALA AT WASHINGTON.

No. 355.

Mr. Lainfiesta to Mr. Bayard.

LEGATION OF GUATEMALA AT WASHINGTON,
New York, October 22, 1887. (Received October 24.)

SIR: I have the honor to inform the United States Government, through your excellency, that the constituent assembly convoked by the President of the Republic when he assumed the dictatorship on the 26th of June last, was formally organized in the city of Guatemala on the 1st instant, and that one of the first acts of that honorable body was to approve, by acclamation, the attitude assumed and the decrees issued by the Executive, in his capacity as dictator, from the aforesaid 26th of June up to the time of the organization of the Assembly, inas-

much as they were deemed necessary and conducive to the salvation of popular principles and of the national credit.

I have the honor herewith to transmit to your excellency a copy of the President's message,* and also one of the decree referred to; and I hope that these important events and the re-establishment of the legal regimen in Guatemala will be regarded with gratification by the United States Government, from which my Government receives so many valued tokens of sympathy.

I take pleasure, etc.,

FRANCO. LAINFIESTA.

Inclosure 1.)

Organization of the Constituent National Assembly and decree issued by the same under dat of to-day.

We, who have been chosen representatives in the constituent assembly of the Republic of Guatemala, which was convoked by a decree of the 26th of June last, having met in sufficient numbers, having examined our respective credentials, and having found the same to be in the form required by law,

Do hereby declare that the National Constituent Assembly is formally organized in the name of the nation.

Let this be communicated to the executive for publication. Done at the hall of sessions, in Guatemala, this first day of October, one thousand eight hundred and eighty-seven.

Ramon Uriarte, deputy for Atitlan, president; J. Pinto, deputy for El Quiché, first vice-president; José Reyna Barrios, deputy for Izabal Livingston; Manuel Aguilar, deputy for Amatitlan; Abraham de Leon, deputy for Huehuetenango; D. Rodriguez C., deputy for Tactic; Domingo Fuentes, deputy for the department of Sololá; J. Padilla, deputy for Jutiapa; Miguel Flores, deputy for Quezaltenango; P. Morales, deputy for San Marcos; J. Francisco Muñoz, deputy for Quezaltenango; Mariano S. Montenegro, deputy for Amatitlan; Alberto Molina, deputy for Momostenango; Narciso T. Escobar, deputy for Totonicapam; Felipe Marquez, deputy for Guatemala; Francisco Vela, deputy for Salamá; Fernando D. Ramirez, deputy for the district of Esquipulas; Demetrio Orantes, deputy for Guatemala; Joaquin Yela, deputy for Guatemala; Gabriel Pinillos, deputy for Sololá; F. Neri Prado, deputy for Totonicapam; Marcial Prem, deputy for Chimaltenango; Pedro Fonseca, deputy for Chiquimulila; J. A. Mandujano, deputy for Jacaltenango; Frederico Arévalo, deputy for Coban; Daniel Rodriguez, deputy for Franklin; J. M. Reina A., deputy for Salamá; Manuel Cardona, deputy for San Marcos; José F. Quezada, deputy for Guatemala; Mariano Berdúo, deputy for Cuajiniquilapa; José Antonio Rivera, deputy for Chiquimula; Lucas T. Cojulun, deputy for Salamá; Manuel Montúfar, deputy for Sacapulas; J. Davila Carrillo, deputy for Patzun; E. Martines Sobral, deputy for San Martin; Salvador Escobar, deputy for Jalapa; Ramon Bengoechea, deputy for San Juan Sacatepequez; Rafael Salazar, deputy for Guatemala; Camilo Alvarez, deputy for Escuintla; Severo Marroquin, deputy for Retalhuleu; Ventura Saravia, deputy for Cotzumalguapa; Eliseo Goyena, deputy for Zacapa; Francisco Villagran, deputy for Coban; Julian Salazar, deputy for San Juan; J. Maria Ruiz Aguilar, deputy for Coban; M. Trabanino, deputy for Jacaltenango; José V. Aparicio, deputy for Flores; Victor M. Lainfiesta, deputy for La Antigua; Francisco Galindo, deputy for Patzun; F. A. Pérez, deputy for El Quiché; R. A. Salazar, deputy for Guatemala, secretary; Rafael Montúfar, deputy for Chiquimula, secretary; Manel Morales, deputy for Jutiapa, secretary; M. Carillo, deputy for Huehuetenango, secretary.

Executive Mansion, Guatemala, October the first, one thousand eight hundred and eighty-seven.

Let it be published.

M. L. BARILLAS.

F. ANGUIANO,
Secretary of State in the Department of Government and Justice.

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* Not published.

(Inclosure 2.)

Decree No. 1.

The National Constituent Assembly of the Republic of Guatemala hereby decrees as follows:

1. Decree No. 380, which was issued on the 26th day of June last, by Gen. Manuel Lisandro Barillas, President of the Republic, is hereby approved by acclamation.

2. A vote of thanks is returned to the chief magistrate of the nation and to his present cabinet for the patriotic attitude assumed by them for the re-establishment of a liberal and progressive regimen, which was desired and approved by the people of the Republic.

Done at the Hall of Sessions, October the first, one thousand eight hundred and eighty seven.

RAMON URIARTE,
President.
R. A. SALAZAR,
Secretary.
M. CARRILLO.
Secretary.

Executive Mansion, Guatemala, October the first, one thousand eight hundred and eighty-seven.

Let it be published.

M. L. BARRILLAS.

F. ANGUIANO,
Secretary of State in the Department of Government and Justice.

No. 356.

Mr. Bayard to Mr. Lainfiesta.

DEPARTMENT OF STATE,
Washington, November 9, 1887.

SIR: I have the honor to acknowledge receipt of your note of the 22d ultimo, announcing that the National Assembly of Guatemala, convoked the 26th of June last, had approved, by acclamation, the course of His Excellency Manuel Lisandro Barillas in proclaiming himself dictator.

The sympathy of the people of Guatemala thus expressed through their chosen representatives, so largely in favor of General Barillas, affords a gratifying assurance that those forms of stable administration which are essential to the peace, happiness, and prosperity of any self-governed people, and which the United States Government hopes that of Guatemala may abundantly enjoy, will be conserved through the agency of the present Executive of that Republic.

Accept, etc.,

T. F. BAYARD.

HAWAIIAN ISLANDS

No. 357.

Mr. Merrill to Mr. Bayard.

No. 78.] LEGATION OF THE UNITED STATES,
Honolulu, September 2, 1886. (Received October 9.)

SIR: Referring to the bill authorizing a loan of $2,000,000, mentioned in my dispatch No. 74, of July 27, 1886, I have the honor to inform you that the same has been reported from the committee, and after several amendments concerning the purposes for which the money shall be expended, the bill passed the legislature, and was approved by the King on the 1st instant. At the time of the recess of the legislature in July it was generally conceded that no loan was required and the bill would not be further considered, but about the time of the reassembling of the legislature in August, Mr. H. R. Armstrong, an agent of London capitalists, arrived, and soon thereafter the "loan bill" became a prominent measure. After the approval of the bill yesterday, Mr. Macfarlane, a member of the House of Nobles, also being one of His Majesty's staff officers, sailed on the steamer *Australia* for San Francisco, where, from best information obtainable, he is to meet the London agent, who had previously departed for San Francisco on the steamer *Maravoa*, leaving here August 28 on business connected with the loan. It is generally believed, and present appearances certainly indicate, that the bonds will be negotiated in London. I inclose three copies of the act authorizing a national loan as authoritatively published.

I also inclose three copies of an act amendatory of "An act to encourage ocean telegraph cables." The original act was passed in 1884. This amendment consists in inserting after "San Francisco," and before the words "the minister" in section 1, the following words, "or any other port or place on the North American continent connecting with the American telegraph system." As will be noticed, the original act, offering a subsidy, confined the terminal point on the American continent to San Francisco, while the amended act extends it to any point on the North American continent.

While the legislature thus indicate a desire to increase the possibilities of cable communication between these islands and the American continent, yet it is generally believed that this amendment is in the interest of the Canadian Pacific Railway Company in permitting it to compete for the subsidy offered, and thus to aid a contemplated connection of Honolulu by cable with the telegraph system of that company.

I have etc.,

GEO. W. MERRILL.

[Inclosure 1 in No. 78.]

BY AUTHORITY:

AN ACT to authorize a national loan and to define the uses to which the money borrowed shall be applied.

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. The minister of finance with the approval of the King in Cabinet Council is hereby authorized to issue coupon bonds of the Hawaiian Government of a denomination not less than one hundred dollars and in the aggregate not exceeding two millions of dollars, in the manner and for the purposes in this act stated.

SEC. 2. Said bonds shall be exempt from any taxes whatsoever and shall bear interest payable semi-annually at the rate of not more than six per centum per annum and shall be redeemable not less than five nor more than twenty years after the date of their issue, the principal and interest to be paid in gold coin of the United States or its equivalent.

SEC. 3. Said bonds shall be signed by the minister of finance and by the registrar of public accounts and be sealed by the seal of the department of the minister of finance, and shall not be issued at less than their nominal par value in gold coin of the United States of the present standard except that the minister of finance with the approval of the King in Cabinet Council may allow a commission not exceeding five per centum to any person or syndicate which may negotiate said bonds: *Provided, however,* That such commission shall not be allowed for any bonds sold in this Kingdom or to residents of this Kingdom.

SEC. 4. The sums borrowed under this act shall be placed in the treasury to the credit of the "loan fund," and shall be paid out for the following purposes and no other:

Schedule.

1. To recall and cancel all bonds bearing 7 and 9 per cent. interest issued under any act of the Legislature prior to the date of this loan, and to pay interest on the same	$300,000.00
2. Encouragement of immigration	250,000.00
3. Honolulu water-works	75,000.00
4. Sewerage of Honolulu	100,000.00
5. Improvement of the harbor of Honolulu and for new wharves	350,000.00
6. Improvement of the streets of Honolulu and roadways of the Kingdom	250,000.00
7. Interisland cable communication	250,000.00
8. New bridges and landings	75,000.00
9. Highway across the island of Oahu	75,000.00
10. Repayment special loan	150,000.00
11. Purchase steam-tug *Eleu*	39,000.00
12. Expense floating loan, etc	86,000.00
	2,000,000.00

SEC. 5. The minister of finance is hereby authorized to pay out of the moneys so borrowed under this act such commission as may be allowed as commission under section 3 hereof, and such expenses as may be incurred for preparing said bonds and coupons.

SEC. 6. The minister of finance shall make such proper arrangements as will enable the holders of said bonds to receive the interest due on the same either in Honolulu or in the city of San Francisco, or in such financial center as he may deem advisable.

SEC. 7. This act shall be in force from and after its approval.

Approved this 1st day of September, A. D. 1886.

KALAKAUA REX.

[Inclosure 2 in No. 78.]

BY AUTHORITY:

AN ACT to amend Chapter XLI, Session Laws of 1884, entitled "An act to encourage ocean telegraph cables."

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. Chapter XLI of the Session Laws of 1884 is hereby amended to read as follows:

"SECTION 1. Whenever telegraph communication shall be established between Honolulu and San Francisco or any other port or place on the North American conti-

nent connecting with the American telegraph system, the minister of finance is hereby authorized to contract with the person or persons maintaining such telegraph communication for the paying of an annual subsidy not exceeding twenty thousand dollars, and for a period not exceeding fifteen years."

SEC. 2. This act shall take effect from and after the date of its approval.

Approved this 28th day of August, A. D. 1886.

KALAKAUA REX.

No. 358.

Mr. Merrill to Mr. Bayard.

No. 84.] LEGATION OF THE UNITED STATES,
Honolulu, October 14, 1886. (Received November 6.)

SIR: I have the honor to inform you that a change of ministry is officially announced this morning, as follows:

His excellency Walter M. Gibson, minister of foreign affairs and premier, vice his excellency Robt. J. Creighton, resigned;

His excellency Paul P. Kanoa, minister of finance, reappointed;

Honorable John L. Kaulukou, attorney-general, vice his excellency John T. Dare, resigned.

Except his excellency Walter M. Gibson, the ministry is now composed of natives of this Kingdom who speak only the native language.

The immediate cause of the resignation of the ministers was their defeat, by a majority of 10, on an amendment offered by the attorney-general to section 4 of the act authorizing a national loan. The proposed amendment reads as follows:

Provided, That hereafter no bonded debt shall be incurred nor any bonds issued prior to the maturity of the bonds issued hereunder unless provision be first made for the payment of bonds issued under and in accordance with the provisions of this act.

Notwithstanding Mr. Gibson was one of the ministers voting with the minority he was again called to form a new ministry, which includes Hon. John L. Kaulukou, also one of the members of the Legislature, and an active supporter of the amendment.

* * * * * * *

I have, etc.,

GEO. W. MERRILL.

No. 359.

Mr. Merrill to Mr. Bayard.

[Extract.]

No. 85.] LEGATION OF THE UNITED STATES,
Honolulu, October 19, 1886. (Received November 6.)

SIR: Referring to my dispatch, No. 78, of September 2, 1886, in which I inclosed an act to authorize a national loan, I have the honor to inform you that Mr. Macfarlane, referred to in the same dispatch as interesting himself in negotiating the bonds in London, returned here on the 9th instant. On the 12th instant the attorney-general, as an amendment to section 4 of the loan act, offered the following: "*Provided*, That hereafter no bonded debt shall be incurred, nor any bonds issued prior to the maturity of the bonds issued hereunder, unless provision

be first made for the payment of bonds issued under and in accordance with the provisions of this act," which was earnestly supported by the ministry, except the minister of finance, but was defeated on a division by a majority of 10, and caused the change of ministry as stated in my dispatch, No. 84, of the 14th instant.

One peculiar feature of the vote by which the amendment was defeated was that nearly all the members of what is known as the opposition party, who have constantly opposed borrowing and advocated the limitation of the expenditure of money to the lowest possible sum, suddenly changed, and not only voted against the amendment offered by the attorney-general, but supported other amendments, which were adopted, and which I inclose, whereby the bonds can be negotiated for 98 per cent. of their nominal par value, while the consolidated revenue of the Kingdom is pledged for the payment of the interest.

In the discussion of the amendment in the Legislature it was charged that it was offered in the interest of Spreckels & Co., American bankers, doing business in Honolulu, to whom the Hawaiian Government now are indebted in the sum of about $700,000, while a counter-charge was made that those opposing were acting in the interest of an English syndicate.

I am reliably informed and it is well understood here that in the event the amendment to section 4 was adopted not only Spreckels & Co. would, if desired, take the total amount of bonds at par, but that Bishop & Co., American bankers of Honolulu, were willing to advance a portion, at least, of the $2,000,000 on the bonds at par. Even under the law as amended it is probable a portion if not all the bonds could be negotiated either here or in San Francisco if an opportunity was offered.

The defeat of the amendment offered by the attorney-general and the adoption of those inclosed, as well as the evident intention not to offer the bonds here, doubtless means the placing of the bonds in London, or, at least, endeavoring to do so before offering them in any other market.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 85.]

AN ACT to amend an act entitled "An act to authorize a national loan, and to define the uses to which the money borrowed shall be applied," approved September 1, 1886.

Be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. That section 2 of said act be, and the same is hereby amended so as to read as follows:

"SEC. 2. Said bonds shall be exempt from any taxes whatsoever, and shall bear interest payable semi-annually at the rate of 6 per centum per annum, the payment of which interest shall be a charge upon the consolidated revenue of the Kingdom and shall be redeemable not less than ten nor more than thirty years after the date of their issue, either by means of a sinking fund to be established after the tenth year of the issue of the bonds or otherwise as may by the minister of finance, with the approval of the King in cabinet council, be deemed most advisable at the periods of such redemption; the principal and interest to be paid in gold coin of the United States of the present standard or its equivalent."

SEC. 2. That section 3 of said act be, and the same is hereby, amended so as to read as follows:

"SEC. 3. Said bonds shall be signed by the minister of finance and by the registrar of public accounts and be sealed by the seal of the department of the minister of finance, and shall not be issued at less than the rate of 98 per centum of their nominal par value in gold coin of the United States of the present standard or its equivalent, except that the minister of finance, with the approval of the King in cabinet council

may allow to any person or syndicate, which may negotiate the sale of said bonds a commission not exceeding 5 per cent. of the first issued portion of the loan, to wit, for $1,000,000, and such percentage as may be found necessary upon further issues, but not to exceed 5 per cent. upon such further issues."

SEC. 3. That section 4 of said act be, and the same is hereby, amended so as to read as follows:

"SEC. 4. The sums borrowed under this act shall be placed in the treasury to the credit of the loan fund, and shall be paid out for the following purposes and no other:

1. To recall and cancel all bonds at present outstanding, issued under any act of the legislature prior to the date of this loan, special loan and the interest accrued on special loan and outstanding bonds.	$1,235,000.00
2. Encouragement of immigration	150,000.00
3. Inter-island cable and electric light, Honolulu	100,000.00
4. Honolulu water-works	50,000.00
5. Improvement of the harbor of Honolulu, and new wharves	100,000.00
6. Improvement of the streets of Honolulu and roadways of the kingdom	150,000.00
7. New bridges and landings	75,000.00
8. Purchase of steam tug *Eleu*	40,000.00
9. Expense of floating loan, etc	100,000.00
	2,000,000.00"

SEC. 4. This act shall be in force from and after its approval.

Approved this 15th day of October, A. D. 1886.

KALAKAUA REX.

No. 360.

Mr. Merrill to Mr. Bayard.

No. 86.] LEGATION OF THE UNITED STATES,
Honolulu, October 19, 1886. (Received November 6.)

SIR: I have the honor to inform you that the Hawaiian Legislative Assembly was finally prorogued on Saturday, the 16th instant, after the unusually long session of five and a half months.

Upon reassembling in August last, after a vacation of two weeks, a liberal spirit seemed to be infused into the members of the Legislature, as the appropriation bill will show. Instead of reducing expenses, as recommended by His Majesty the King, and keeping the expenditures to the limit of $2,633,169, as was proposed and mentioned in my dispatch No. 74, of July 27, 1886, the amount of the appropriation bill has been increased to $4,552,477.16.

The currency bill mentioned in my No. 74, of July 27, 1886, was slightly amended and passed in the last days of the session, and I inclose three copies of the same.

I also inclose a copy of the speech of the King, delivered by himself at the prorogation of the Legislative Assembly.

It will be noticed that His Majesty refers to the "Polynesian communities," and hopes to assist in securing their permanent autonomy.

I have the honor, etc.,

GEO. W. MERRILL.

[Inclosure 1 in No. 86.]

BY AUTHORITY:

AN ACT to regulate the currency of the Hawaiian Kingdom.

Be it enacted by the King and Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. The gold coins of the United States of America are the standard and legal tender at their nominal value in the payment of all debts, public and private, within the Hawaiian Kingdom.

SEC. 2. The silver coins of the Hawaiian Kingdom are legal tender at their nominal value for any amount not exceeding $10 in any one payment.

SEC. 3. All outstanding silver certificates and all certificates to be issued under this act—except the 10-dollar certificates—whether they contain the words "silver coin," or not, shall be redeemed, at their nominal value on demand, in United States gold coin, and all certificates so redeemed shall be forthwith withdrawn and canceled by the registrar of public accounts.

And it shall be lawful for the minister of finance to issue or cause to be issued from the treasury, from time to time, certificates of deposit of the denomination of $10, $20, $50, and $100, respectively, upon transferring from the general fund and setting apart as a special deposit an equal amount of lawful coin of the Kingdom as security for the redemption of such certificates, the whole amount of such outstanding and new issue of certificates as aforesaid not to exceed, in the aggregate at any one time, the sum of $325,000, of which not exceeding $30,000 shall be in certificates of the denomination of $10.

SEC. 4. The certificates provided for in section 3 of this act shall be signed by the minister of finance and countersigned by the registrar of public accounts, and the special deposit of coin in the treasury for their redemption shall be used only for the payment and redemption of such certificates, and shall be kept as a special deposit for such purpose and no other.

SEC. 5. Chapter XVIII of the session laws of 1884 and all other laws conflicting with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect from and after its approval.

Approved this 15th day of October, A. D. 1886.

KALAKAUA REX.

[Inclosure 2 in No. 86.]

The King's speech.

NOBLES AND REPRESENTATIVES: At the close of an unusually prolonged and arduous session it is pleasing to me to have to congratulate you upon the character of the numerous measures which you have passed to which my assent has been given. Many of these measures I recognize as being of great importance in their relation to the promotion of health and education, the advancement of commerce and of manufacturing and agricultural industry, and of the general welfare of my people. Among them there are measures which give a definite settlement to questions which have been long debated, and I entertain a well-founded hope that the results of your deliberations will under a patriotic administration redound to the permanent advantage of the country.

I thank you for the liberal supplies you have generously voted for the royal family and for the administration of my Government and for the development of the resources of the country. I feel assured that the ordinary revenue of the country, augmented as it will be by the laws you have passed together with the proceeds of the loan you have authorized, will suffice to allow my ministers to carry out to the fullest extent the policy of progress and development which is embodied in the appropriation act.

It is a source of satisfaction to me that you have provided measures which will enable my ministers to carry out various matters of national policy which I brought before you at the opening of the session.

That large part of the capital which was the scene of such serious disaster in April last has, in consequence of your legislative action, been laid out anew with full regard to sanitation and to its protection from a repetition of the conflagration which laid it waste.

You have wisely provided the means for carrying out the policy of advising and aiding those Polynesian communities, of the same race as the Hawaiian which still preserve their independence. I entertain a sanguine hope that these kindred peoples will, through your liberality, be assisted to secure their permanent autonomy by the establishment among them of stable governments and a reliable administration of justice.

The subsidy you have voted for ocean steam service will secure for the country that regular and frequent communication with America which is of vital importance to the commercial and agricultural interests of the Kingdom. Other measures for the development of commerce and maritime enterprise which you have passed will be of permanent value.

The wants of the country in regard to its internal communications and facilities for shipping have, I am happy to say, received thorough consideration at your hands.

I am pleased to recognize that for the proper organization of the forces of the Kingdom you have made a judicious provision of law.

Reviewing all that has been accomplished during the session I can, without hesitation, congratulate you upon the results of your labors, and thank you for the earnest consideration you have bestowed upon the important matters on which you have been called to deliberate.

I pray that the Almighty will have you in His holy keeping.

Nobles and Representatives, I now declare the Legislative Assembly of 1886 prorogued.

No. 361.

Mr. Hastings to Mr. Bayard.

No. 89.] LEGATION OF THE UNITED STATES,
Honolulu, October 28, 1886. (Received December 20.)

SIR: Continuing the subject of Minister Merrill's dispatches of the 2d ultimo and 19th instant, Nos. 78 and 85, I have the honor to report that on the 22d instant Hon. George W. Macfarlane, a member of the House of Nobles, was commissioned by the King as financial agent of the Hawaiian Government to negotiate its loan, and left for London by steamer hence the 23d instant.

Since his departure the minister of finance has advertised in the local papers for tenders for the loan to the amount of $500,000.

From the copy of the loan act submitted with Mr. Merrill's No. 85, it will be seen that of the sum of $2,000,000 to be borrowed, about $1,235,000 is for the redemption of outstanding bonds and other Government obligations. It is also provided that the new bonds may be sold at 98 per cent. of the par value and a commission not exceeding 5 per cent. is allowed for negotiating them.

It being generally understood that this commission would be allowed to home purchasers, thus making the margin on the bonds 7 per cent. less than their par value, numerous applications have been made to the finance office for their purchase. I am credibly informed that bids for the loan have been made amounting to nearly $800,000, or $300,000 more than the portion to be disposed of here.

Under this arrangement parties holding Hawaiian Government securities are enabled to return them to the treasury at 100 or par, and take out the new bonds at 93 bearing the same rate of interest; *i. e.*, 6 per cent.

The amount to be borrowed is not thought excessive, and although the need for the money to carry on the improvements projected may be urged it is not deemed to be sufficiently so to warrant the sale of Government paper at so large a discount.

I have, etc., FRANK P. HASTINGS.

No. 362.

Mr. Hastings to Mr. Bayard.

No. 92.] LEGATION OF THE UNITED STATES,
Honolulu, November 22, 1886. (Received December 8.)

SIR: Your dispatch No. 33, of the 15th of October last, in relation to the celebration of the fiftieth anniversary of His Majesty King Kalakaua, has been received at this legation.

With a view to carrying out the instructions to Minister Merrill contained therein, I at once communicated to the minister of foreign affairs the friendly desire of the President, at the same time informing him of other arrangements to honor the occasion had our Government had sufficient notice beforehand of the intended celebration.

In reply to my communication the minister of foreign affairs informed me that His Majesty was extremely gratified to learn of the interest felt by our President and people in the celebration of his fiftieth anniversary, and requested that as the representative of the legation I should convey personally the President's cordial message, naming an hour on which His Majesty would be pleased to receive me in special audience for the purpose.

I append hereto an account of the audience, published by authority of the Hawaiian foreign office.

I have, etc.,

FRANK P. HASTINGS.

[Innclosure in No. 92.]

This day had audience of the King, Frank P. Hastings, esq., acting chargé d'affaires and vice and deputy consul-general for the United States of America, to present to His Majesty the congratulations of the President of the United States on his fiftieth birthday. To which audience he was introduced by his excellency Hon. Walter M. Gibson, minister of foreign affairs.

Mr. Hastings addressed His Majesty in the following terms:

"YOUR MAJESTY: By special direction of the President of the United States, it becomes my agreeable duty to convey on this auspicious event the President's cordial felicitations on the attainment of your fiftieth year.

"It is needless for me to refer to the many evidences your Majesty has received of the steady friendship of the Government and people of the United States, or to repeat the many expressions of regard and good-will that have so often been made by them in regard to the welfare and success of Hawaii and its people.

"In assuring your Majesty of the continuance of all these friendly wishes, I am requested to add the sincere hope of our President and people that the close and mutually beneficial relations now existing between Hawaii and the United States may be maintained and developed. Added to these sentiments of national good-will, allow me to express the hope that the prosperity with which this Kingdom has been blessed during your Majesty's reign may long continue, and that many years may be added to your Majesty's life as well as to that of each member of your royal family, with the attendant blessings of health, happiness, and peace."

Mr. Hastings then proceeded to say: "I can not let this occasion, so kindly granted to me by your Majesty, pass without expressing on behalf of the people of Charleston, S. C., their deep gratitude for the gracious message of sympathy so promptly sent to them in their distress. It will be remembered by them so long as kindly sympathies shall exist in the human heart."

To which His Majesty replied, expressing his gratitude for the kindly message sent to him in this special manner by the President of the United States, a message which was peculiarly pleasing as being the first to reach him and coming from the head of so great a nation as the United States of America.

His Majesty was attended on this occasion by his excellency Hon. Walter M. Gibson, minister of foreign affairs and premier; Major-General the Hon. Curtis P. Iaukea, governor of Oahu, His Majesty's chamberlain; Maj. John D. Holt, of the staff of the governor of Oahu; and Capt. Samuel Nowlein, quartermaster-general of the forces.

No. 363.

Mr. Hastings to Mr. Bayard.

[Extract.]

No. 93.] LEGATION OF THE UNITED STATES,
Honolulu, December 27, 1886. (Received January 31, 1887.)

SIR: I have the honor to report that on the 22d instant, Hon. John E. Bush was commissioned by His Majesty the King as "minister plenipotentiary to the Kings of Samoa and Tonga, and the independent chiefs and peoples of Polynesia."

Mr. Bush is a half-caste Hawaiian of considerable ability, a member of the house of nobles and at one time a member of the cabinet as minister of interior.

He left here for Samoa on the 26th instant, taking with him a secretary of legation and two attaches.

I have, etc.,

FRANK P. HASTINGS.

No. 364.

Mr. Merrill to Mr. Bayard.

No. 96.] LEGATION OF THE UNITED STATES,
Honolulu, January 15, 1887. (Received February 3.)

SIR: I have the honor to inclose herein the quarterly statement of the collector general of customs showing the principal domestic exports of the Hawaiian Kingdom for the quarter ending December 31, 1886; also containing a comparative table of exports for the years 1885 and 1886. A comparison of the total export values for the two past years gives the following result:

Domestic exports, 1886	$10,340,375.17
Domestic exports, 1885	8,958,663.88
Increase, 1886	1,381,711.29

I have, etc.,

GEORGE W. MERRILL.

[Inclosure in No. 96.]

Domestic exports of Hawaii.

CUSTOM-HOUSE RETURNS.

We have been permitted by his excellency the minister of finance to publish the report of the collector general of customs, which is as follows:

FINANCE DEPARTMENT, BUREAU OF CUSTOMS,
Honolulu, H. I., January 3, 1887.

His Excellency PAUL P. KANOA,
H.M.'s Minister of Finance:

SIR: I have the honor to submit to your excellency the table of the principal domestic exports of the Hawaiian Islands for the quarter ending December 31, 1886. Also, a comparative table of exports for the twelve months 1885, and the corresponding period 1886.

With the highest respect and esteem, I have the honor to be your excellency's very obedient humble servant,

JNO. M. KAPENA,
Collector-General.

Quantities and values of the principal domestic exports by customs districts for the three months ending December 31, 1886.

Articles.	Honolulu.		Kahului.		Hilo.		Total at all ports.	
	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.	Quantity.	Value.
Sugar, pounds	12,920,851	$527,039.67	295,163	$14,266.36	539,550	$24,950.73	13,755,564	$566,256.76
Molasses, gallons	45,746	6,057.00			4,320	453.60	50,066	6,510.60
Rice, pounds	1,936,900	76,800.55					1,936,900	76,800.55
Coffee, pounds	1,300	220.00					1,300	220.00
Bananas, bunches	10,760	10,407.00					10,760	10,407.00
Taro flour, pounds	220	15.60	220	23.22			440	38.22
Goat-skins, pieces	6,690	3,733.00					6,690	3,733.00
Hides, pieces	8,302	27,929.42	508	2,170.62	165	604.37	8,975	30,641.41
Calf-skins, pieces	105	105.00					105	105.00
Sheep-skins, pieces	1,895	189.00					1,895	189.00
Tallow, pounds	5,420	216.00					5,420	216.00
Wool, pounds	345,604	30,372.08					345,604	30,372.08
Betel leaves, boxes	72	360.00					72	360.00
Awa, pounds	15,740	2,820.00			3,767	656.54	19,507	3,476.54
Sundries		1,456.00						1,456.00
Total value		687,719.72		16,397.20		26,665.24		730,782.16

Quantities and values of the principal domestic exports for the twelve months ending December 31, 1885 and 1886, showing increase and decrease.

Articles.	Twelve months ending December 31, 1885.		Twelve months ending December 31, 1886.		Quantities.	
	Quantity.	Value.	Quantity.	Value.	Increase.	Decrease.
Sugar, pounds	171,350,314	$8,356,061.04	216,223,615	$9,775,132.12	44,873,301	
Rice, pounds	7,367,253	387,296.63	7,338,615	326,628.98		28,638
Hides, pieces	19,045	71,532.78	31,207	111,910.72	12,162	
Bananas, bunches	60,046	58,809.50	45,862	43,824.25		14,184
Wool, pounds	474,121	49,573.93	418,784	37,372.08		55,337
Goat-skins, pieces	19,782	15,023.32	21,173	12,644.35	1,391	
Molasses, gallons	57,941	7,050.00	113,137	14,501.76	55,196	
Dried bananas, boxes	892	4,265.00				892
Betel leaves, boxes	350	1,945.00	295	1,482.50		55
Sheep-skins, pieces	8,783	1,735.62	9,255	988.00	472	
Coffee, pounds	1,675	283.00	5,931	1,067.00	4,256	
Fungus, pounds	1,137	113.70				1,137
Calf-skins, pieces	26	20.00	105	105.00	79	
Taro flour, pounds			440	38.22	440	
Tallow, pounds			21,305	1,011.00	21,305	
Awa, pounds			20,372	3,550.24	20,372	
Sundries		4,954.36		10,118.95		
Total value		8,958,663.88		10,340,375.17		

No. 365.

Mr. Merrill to Mr. Bayard.

No. 97.] LEGATION OF THE UNITED STATES,
Honolulu, January 17, 1887. (Received February 3.)

SIR: I have the honor to inclose herein three copies of the quarterly statement of the revenue of the Hawaiian treasury, published "by authority," showing the receipts and expenditures for the quarter ending December 31, 1886.

Among the expenditures the $150,366.62 itemized as "special loan" represents the sum paid Spreckels & Co., being the full amount due that firm for accommodation loans, concerning which there has been

some newspaper comments and rumors of repudiation by the Government on account of their supposed illegality. The only remaining indebtedness of the Government to Spreckels & Co., outside the subsidy accruing monthly to the steam-ship line, is on bonds not yet due, which, I am informed, the Government offers to pay at par, but the holders decline to surrender.

I have, etc., GEO. W. MERRILL.

[Inclosure in No. 97.]

QUARTERLY STATEMENT OF REVENUE.

Following is the statement of receipts and expenditures of the Hawaiian treasury for the quarter ending December 31, 1886:

Receipts and expenditures Hawaiian treasury for the three months ending December 31, 1886.

	October.	November.	December.	Total.
RECEIPTS.				
Balance from September				$49,132.51
Fines, penalties, and costs	$4,994.84	$2,932.99	$2,970.20	10,853.03
Interior department	40,030.38	27,610.53	33,057.27	100,698.18
Customs receipts	53,234.39	50,279.33	38,508.00	142,021.72
Government realizations	27.75	1.50	170.25	199.50
Loan fund, October 15, 1886	185,000.00	115,000.00	5,000.00	305,000.00
Brands	37.00			37.00
Hawaiian Postal Savings Bank	11,000.00	11,000.00	3,000.00	25,000.00
Revenue stamps	1,589.00	1,314.50	1,323.00	4,226.50
Internal revenue		26,645.74	193,747.38	220,393.12
Total	295,868.36	234,784.59	277,776.10	857,561.56
EXPENDITURES.				
Civil list	2,377.00	10,625.33	9,543.00	22,545.33
Permanent settlements	100.00	538.00	703.50	1,341.50
Judiciary	7,056.25	6,836.25	5,298.50	19,191.00
Attorney-general	11,739.11	16,541.28	8,170.83	36,451.22
Department of foreign affairs	8,242.61	19,674.87	14,775.21	42,692.69
Interior department	70,705.22	58,579.54	119,798.12	249,082.88
Finance department	134,112.79	29,993.60	23,419.74	187,526.13
Board of health	16,759.36	22,235.67	5,873.46	44,868.49
Special loan	20,000.00	51,163.00	79,203.62	150,366.62
Expenses of legislature, 1886	6,894.28	3,878.10	637.17	11,409.55
Board of education		6,726.63	3,283.00	10,009.63
	277,986.62	226,792.27	270,706.15	775,485.04
Balance, cash in treasury				82,076.52
				857,561.56

P. P. KANOA,
Minister of Finance.

TREASURY OFFICE, *December* 31, 1886.

No. 366.

Mr. Merrill to Mr. Bayard.

No. 109.] LEGATION OF THE UNITED STATES,
Honolulu, March 14, 1887. (Received March 31.)

SIR: I have the honor to inform you that the Hawaiian Government received advices, per steamer arriving here on the 9th instant, that $500.000 had been placed to its credit at the Bank of California, in

San Francisco, by the English syndicate, on the $2,000,000 loan account negotiated under the act of 1886. This is the first installment of the loan from England, and through unofficial, yet considered reliable, sources I am informed this amount is advanced on the condition that the money shall be expended for some one of the purposes named in the loan act, and that vouchers must be produced therefor, while the advancement of further sums will depend largely upon the judicious expenditure of this amount and the prompt payment of the interest thereon.

Prior to the arrival of the steamer many rumors were in circulation, seemingly of some authenticity, to the effect that the legislative assembly would be called in extra session for the purpose of extending the authority to borrow money, also to provide for a contemplated trip of Her Majesty the Queen to Europe.

* * * * * * *

I have, etc.,

GEO. W. MERRILL.

No. 367.

Mr. Merrill to Mr. Bayard.

No. 111.] LEGATION OF THE UNITED STATES,
Honolulu, March 29, 1887. (Received April 23.)

SIR: I have the honor to transmit herewith three printed copies of a treaty of "political confederation" between Hawaii and Samoa, officially published at Honolulu in the Hawaiian Government Gazette March 28, 1887.

On the 26th instant a copy of this treaty was transmitted to this legation by the Hawaiian minister of foreign affairs, with the information that a copy would be communicated to the United States Government by His Hawaiian Majesty's envoy extraordinary and minister plenipotentiary at Washington.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 111.—From Hawaiian Government Gazette.]

Treaty between the Kingdom of Samoa and the Kingdom of the Hawaiian Islands—Proclamation.

[L. S.]

By virtue of my inherent and recognized rights as King of the Samoan Islands by my own people and by treaty with the three great powers of America, England, and Germany, and by and with the advice of my Government, and the consent of Taimua and Faipule, representing the legislative powers of my kingdom, I do hereby freely and voluntarily offer and agree and bind myself to enter into a political confederation with His Majesty Kalakaua, King of the Hawaiian Islands, and I hereby give this solemn pledge that I will conform to whatever measures may hereafter be adopted by His Majesty Kalakaua and be mutually agreed upon to promote and carry into effect this political confederation, and to maintain it now and forever.

In witness whereof I have hereunto set my hand and seal this 17th day of February, A. D. 1887.

(M. R.) MALIETOA,
King of Samoa.

By the King:
WM. COE.

We, Taimua and Faipule, of the Government of Samoa, appointed by the house of Taimua and Faipule, hereby approve of and support the above agreement.

Taimua.	Districts.	Faipule.	Districts.
Utumapu	Itu o tane.	Tafi	Loa Atua.
Pau	Faasaleleaga.	Vaafai	Launuia.
Tuisam	Lufi Lufi.	Unga	Itu tane.
Tuao	Lulumoega (L. S.).	Alipia	Lulumoega.
Leia Taua	Manono.	Taotua	Faasaleleaga
Teo	Tuamasaga.	Faanaua	Itu teme.
Su	Faleao Palauli.	Sao	Itu teme.
Molioo	Atua.	Vailuu	Aana.

LE MAMEA,
Minister of Interior.

WILLIAM COE,
Assistant Secretary of State.

I hereby certify that the foregoing is a full and true translation of the original document in the Samoan language.

WILLIAM COE,
His Samoan Majesty's Interpreter.

Kalakaua, by the grace of God, of the Hawaiian Islands, King. To all to whom these presents shall come, greeting:

Whereas, on the 17th day of February last past, His Majesty Malietoa, King of the Samoan Islands, entered into an agreement and treaty binding himself to enter into a political confederation with us; and whereas the said agreement and treaty was at the same time approved by the Taimua and Faipule of Samoa, and accepted in our name and by our minister plenipotentiary, Hon. John E. Bush: Now, therefore, having read and considered the said agreement and treaty, we do, by these presents, approve, accept, confirm, and ratify it for ourselves, our heirs, and successors, subject to the obligations which His Majesty Malietoa may be under to those foreign powers with which he and the people of Samoa, and the Government thereof have at this time any treaty relations, engaging and promising upon our royal word to enter into political confederation with His Majesty King Malietoa, and to conform to such measures as may be hereafter agreed upon between us for the carrying into effect of such confederation. For the greater testimony and validity of all which we have caused the great seal of our kingdom to be affixed to these presents, which we have signed with our royal hand.

Given at our palace of Iolani this twentieth day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and in the fourteenth year of our reign.

[L. S.] (M. R.) KALAKAUA.

By the King:

WALTER M. GIBSON,
Minister of Foreign Affairs and Premier.

Now be it known, that the above treaty having been duly accepted and ratified by His Majesty the King:

Therefore the said treaty has become a part of the laws of this Kingdon, and is to be observed accordingly.

WALTER M. GIBSON,
Minister of Foreign Affairs.

FOREIGN OFFICE, *Honolulu, March* 21, 1887.

No. 368.

Mr. Merrill to Mr. Bayard.

No. 114.] LEGATION OF THE UNITED STATES,
Honolulu, April 6, 1887. (Received April 27.)

SIR: I have the honor to inclose three copies of the quarterly report of the collector-general of customs, published, in the Daily Advertiser

of this city, showing the principal domestic exports of the Hawaiian Islands for the quarter ending March 31, 1887.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 114.]

CUSTOM-HOUSE RETURNS.

We have been permitted by his excellency the minister of finance to publish the quarterly report of the collector-general of customs, which is as follows:

FINANCE DEPARTMENT, BUREAU OF CUSTOMS,
Honolulu, Hawaiian Islands, April 4, 1887.

His Excellency PAUL P. KANOA,
His Majesty's Minister of Finance:

SIR: I have the honor to submit to your excellency the table of the principal domestic exports of the Hawaiian Islands for the quarter ending March 31, 1887.

The total value of the exports during the quarter just ended amounted to $2,930,358, being a decrease in the value of such exports during the corresponding period of 1886 by $426,687.

With the highest respect and esteem, I have the honor to be, your excellency's very obedient, humble servant,

JNO. M. KAPENA,
Collector-General.

Quantities and values of the principal domestic exports, Hawaiian Islands, for the quarter ending March 31, 1887, *by customs districts.*

Articles.	Honolulu.		Kahului.	
	Quantity.	Value.	Quantity.	Value.
Sugar ..... pounds..	57,202,471	$2,370,756.96	7,067,912	$329,353.35
Molasses ..... gallons..	21,415	3,815.00	.....	.....
Rice ..... pounds..	2,288,400	94,123.41	.....	.....
Coffee ..... do....	1,500	276.00	.....	.....
Bananas ..... bunches..	12,931	12,139.75	.....	.....
Goat-skins ..... pieces..	3,247	1,630.45	.....	.....
Hides ..... do....	6,777	23,442.00	523	2,029.48
Betel leaves ..... boxes..	94	515.00	.....	.....
Sheep skins ..... pieces..	1,800	177.00	.....	.....
Awa ..... pounds..	.....	.....	.....	.....
Sundries	.....	1,626.50	.....	.....
Total value	.....	2,508,502.07	.....	331,382.83

Articles.	Hilo.		Total.	
	Quantity.	Value.	Quantity.	Value.
Sugar ..... pounds..	2,016,462	$88,733.00	66,286,845	$2,788,843.31
Molasses ..... gallons..	.....	.....	21,415	3,815.00
Rice ..... pounds..	.....	.....	2,288,400	94,123.41
Coffee ..... do....	.....	.....	1,500	276.00
Bananas ..... bunches..	.....	.....	12,931	12,139.75
Goat-skins ..... pieces..	.....	.....	3,247	1,630.45
Hides ..... do....	272	798.05	7,572	26,269.53
Betel leaves ..... boxes..	.....	.....	94	515.00
Sheep-skins ..... pieces..	.....	.....	1,800	177.00
Awa ..... pounds..	1,936	236.82	1,936	236.82
Sundries	.....	705.82	.....	2,332.32
Total value	.....	99,473.79	.....	2,930,358.69

Domestic exports, Hawaiian Islands, first quarter, 1887, compared with first quarter, 1886.

Articles.	1887.	1886.	Increase.	Decrease.
Sugar ..... pounds..	66,286,845	67,975,279	.....	1,688,434
Molasses ..... gallons..	21,415	15,288	6,127	.....
Rice ..... pounds..	2,288,400	1,447,550	840,850	.....
Coffee ..... do....	1,500	3,864	.....	2,364
Bananas ..... bunches..	12,931	13,402	.....	471
Goat-skins ..... pieces..	3,247	3,238	9	.....
Hides ..... do....	7,572	6,392	1,180	.....
Tallow ..... pounds..	.....	15,885	.....	15,885
Wool ..... do....	.....	73,180	.....	73,180
Betel Leaves ..... boxes..	94	130	.....	36
Sheep-skins ..... pieces..	1,800	3,110	.....	1,310
Awa ..... pounds..	1,936	865	1,071	.....

E. and O. E.

JNO. M. KAPENA,
Collector-General.

COLLECTOR-GENERAL'S OFFICE,
Honolulu, March 31, 1887.

No. 369.

Mr. Merrill to Mr. Bayard.

No. 117.] LEGATION OF THE UNITED STATES,
Honolulu, April 11, 1887. (Received April 27.)

SIR: To-day, and since mailing my despatch No. 115, of April 9, in reference to the contemplated visit of Her Majesty the Queen, I have the honor to inform you that I have received from the minister of foreign affairs an official communication upon the subject, a copy of which I inclose.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 117.]

Mr. Gibson to Mr. Merrill.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, April 11, 1887.

SIR: I have the honor to inform your excellency that Her Majesty the Queen, accompanied by Her Royal Highness Princess Liliuokalani and General the honorable John O. Dominis, leave here to-morrow, the 12th instant, to pay a visit to the United States of America and Europe.

It is the intention of Her Majesty and Her Royal Highness to pay a visit to the city of Washington and to pay their respects to the President of the United States of America.

I shall be obliged if your excellency will inform your Government of this contemplated visit.

I have, etc.,

WALTER M. GIBSON.

No. 370.

Mr. Merrill to Mr. Bayard.

No. 119.] LEGATION OF THE UNITED STATES,
Honolulu, May 2, 1887. (Received May 24.)

SIR: I have the honor to inclose copies of the Annual Report* of the collector-general of customs relative to the imports, exports, immigration, and navigation of the Hawaiian Islands for the year ending December 31, 1886.

The report shows that the total value of the export and import trade of these islands for the year 1886 amounted to the sum of $15,335,024.31, exceeding that of 1885 by $2,428,906.

It is gratifying to call attention to the fact that of the total export and import trade of these islands for 1886 the United States has received $14,414,751, or 94 per cent. of the total value, being an increase of 2 per cent. over that of 1885.

Of the total export trade of the islands, amounting to $10,457,285.58, the United States has received $10,412,827.47, while of the total import trade, amounting to $4,877,738.73, there has been received from the United States imports of the value of $4,001,923.83.

The duties also show that during the year 1886 American vessels have carried 76 per cent. of the domestic exports of the islands and 71 per cent. of the value of the total exports and imports.

I have, etc.,

GEO. W. MERRILL.

No. 371.

Mr. Merrill to Mr. Bayard.

[Extract.]

No. 127.] LEGATION OF THE UNITED STATES,
Honolulu, July 11, 1887. (Received August 13.)

SIR: Availing myself of an opportunity afforded by the departure of a sailing vessel, leaving here for San Francisco to-morrow, I have the honor to inform you that a new constitution for Hawaii, as demanded by the citizens was signed by the King on the 6th instant, and on the 7th instant the constitution granted by Kamehameha V, in 1864, was abrogated, and the new constitution duly promulgated by proclamation of His Majesty.

Since the signing and promulgation of the new constitution the intense feeling existing during the two weeks prior thereto has very much subsided, and business is being resumed.

Mr. Gibson, late minister of foreign affairs, is under arrest, charged with embezzlement and the time for his examination set for to-morrow, but the general impression is the charge will not be sustained.

I inclose herewith a copy of the new constitution, also a copy of the King's proclamation, published "by authority."

I have, etc.,

GEO. W. MERRILL.

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* Report not published.

[Inclosure 1 in No. 127.]

Constitution.

Whereas the constitution of this Kingdom heretofore in force contains many provisions subversive of civil rights and incompatible with enlightened constitutional government;

And whereas it has become imperative, in order to restore order and tranquillity, and the confidence necessary to a further maintenance of the present Government, that a new constitution should be at once promulgated:

Now, therefore, I, Kalakaua, King of the Hawaiian Islands, in my capacity as sovereign of this Kingdom, and as the representative of the people hereunto by them duly authorized and empowered, do annul and abrogate the constitution promulgated by Kamehameha the Fifth, on the 20th day of August, A. D. 1864, and do proclaim and promulgate this constitution.

ARTICLE 1. God hath endowed all men with certain inalienable rights, among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ART. 2. All men are free to worship God according to the dictates of their own consciences; but this sacred privilege hereby secured shall not be so construed as to justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.

ART. 3. All men may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech or of the press.

ART. 4. All men shall have the right, in an orderly and peaceable manner, to assemble, without arms, to consult upon the common good, and to petition the King or Legislature for redress of grievances.

ART. 5. The privilege of the writ of habeas corpus belongs to all men, and shall not be suspended, unless by the King when in cases of rebellion or invasion the public safety shall require its suspension.

ART. 6. No person shall be subject to punishment for any offense except on due and legal conviction thereof in a court having jurisdiction of the case.

ART. 7. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a police or district justice, or in summary proceedings for contempt), unless upon indictment, fully and plainly describing such crime or offense, and he shall have the right to meet the witnesses who are produced against him face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself, and cross-examine those produced against him, and to be fully heard in his own defense. In all cases in which the right of trial by jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than $50.

ART. 8. No person shall be required to answer again for an offense of which he has been duly convicted or of which he has been duly acquitted.

ART. 9. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law.

ART. 10. No person shall sit a judge or juror in any case in which his relative, by affinity or by consanguinity within the third degree, is interested either as plaintiff or defendant, or in the issue of which said judge or juror may have, either directly or through such relative, any pecuniary interest.

ART. 11. Involuntary servitude, except for crime, is forever prohibited in this Kingdom. Whenever a slave shall enter Hawaiian territory he shall be free.

ART. 12. Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and effects; and no warrants shall issue, except on probable cause, supported by oath or affirmation, and describing the place to be searched and the persons or things to be seized.

ART. 13. The Government is conducted for the common good, and not for the profit, honor, or private interest of any one man, family, or class of men.

ART. 14. Each member of society has a right to be protected in the enjoyment of his life, liberty, and property according to law; and, therefore, he shall be obliged to contribute his proportional share to the expense of his protection, and to give his personal services, or an equivalent, when necessary. Private property may be taken for public use, but only upon due process of law and just compensation.

ART. 15. No subsidy, duty, or tax of any description shall be established or levied without the consent of the Legislature; nor shall any money be drawn from the public treasury without such consent, except when between the sessions of the Legislature the emergencies of war, invasion, rebellion, pestilence, or other public disaster shall arise, and then not without the concurrence of all the cabinet and of a majority of

the whole privy council; and the minister of finance shall render a detailed account of such expenditure to the Legislature.

ART. 16. No retrospective laws shall ever be enacted.

ART. 17. The military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the Legislature.

ART. 18. Every elector shall be privileged from arrest on election days, during his attendance at election and in going to and returning therefrom, except in case of treason, felony, or breach of the peace.

ART. 19. No elector shall be so obliged to perform military duty on the day of election as to prevent his voting, except in time of war or public danger.

ART. 20. The supreme power of the Kingdom in its exercise is divided into the executive, legislative, and judicial. These shall always be preserved distinct, and no executive or judicial officer, or any contractor or employé of the Government, or any person in the receipt of salary or emolument from the Government, shall be eligible to election to the Legislature of the Hawaiian Kingdom or to hold the position of an elective member of the same. And no member of the Legislature shall, during the time for which he is elected, be appointed to any civil office under the Government, except that of a member of the cabinet.

ART. 21. The government of this Kingdom is that of a constitutional monarchy under His Majesty Kalakaua, his heirs, and successors.

ART. 22. The Crown is hereby permanently confirmed to His Majesty Kalakaua, and to the heirs of his body lawfully begotten, and to their lawful descendants in a direct line; failing whom, the Crown shall descend to Her Royal Highness the Princess Liliuokalani, and the heirs of her body, lawfully begotten, and their lawful descendants in a direct line. The succession shall be to the senior male child, and to the heirs of his body; failing a male child the succession shall be to the senior female child and to the heirs of her body. In case there is no heir as above provided, the successor shall be the person whom the sovereign shall appoint with the consent of the nobles and publicly proclaim during the sovereign's life; but should there be no such appointment and proclamation, and the Throne become vacant, then the cabinet, immediately after the occurring of such vacancy, shall cause a meeting of the Legislature, who shall elect by ballot some native alii of the Kingdom as successor to the Throne; and the successor so elected shall become a new *stirps* for a royal family; and the succession from the sovereign thus elected shall be regulated by the same law as the present royal family of Hawaii.

ART. 23. It shall not be lawful for any member of the royal family of Hawaii who may by law succeed to the Throne to contract marriage without the consent of the reigning sovereign. Every marriage so contracted shall be void, and the person so contracting a marriage may, by the proclamation of the reigning sovereign, be declared to have forfeited his or her right to the Throne, and after such proclamation the right of succession shall vest in the next heir as though such offender were dead.

ART. 24. His Majesty Kalakaua will, and his successors shall, take the following oath: I solemnly swear in the presence of Almighty God to maintain the constitution of the Kingdom whole and inviolate, and to govern in conformity therewith.

ART. 25. No person shall ever sit upon the Throne who has been convicted of any infamous crime, or who is insane or an idiot.

ART. 26. The King is the commander-in-chief of the army and navy, and of all other military forces of the Kingdom by sea and land. But he shall never proclaim war without the consent of the Legislature; and no military or naval force shall be organized except by the authority of the Legislature.

ART. 27. The King, by and with the advice of his privy council and with the consent of the cabinet, has the power to grant reprieves and pardons after conviction for all offenses, except in case of impeachment.

ART. 28. The King convenes the Legislature at the seat of Government or at a different place if that should become insecure from an enemy or any dangerous disorder, and prorogues the same; and in any great emergency he may, with the advice of the privy council, convene the Legislature in extraordinary session.

ART. 29. The King has the power to make treaties. Treaties involving changes in the tariff or in any law of the Kingdom, shall be referred for approval to the Legislature. The king appoints public ministers, who shall be commissioned, accredited, and instructed agreeably to the usage and law of nations.

ART. 30. It is the King's prerogative to receive and acknowledge public ministers; to inform the Legislature by royal message, from time to time, of the state of the Kingdom; and to recommend to its consideration such measures as he shall judge necessary and expedient.

ART. 31. The person of the King is inviolable and sacred. His ministers are responsible. To the King and the cabinet belongs the executive power. All laws that have passed the Legislature shall require His Majesty's signature in order to their validity, except as provided in Article 48.

ART. 32. Whenever, upon the decease of the reigning sovereign, the heir shall be less than eighteen years of age, the royal power shall be exercised by a regent or council of regency, as hereinafter provided.

ART. 33. It shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a regent or council of regency, who shall administer the Government in his name; and likewise the King may, by his last will and testament, appoint a regent or council of regency to administer the Government during the minority of any heir to the Throne; and should a sovereign decease, leaving a minor heir, and having made no last will and testament, the cabinet at the time of such decease shall be a council of regency, until the Legislature, which shall be called immediately, be assembled and the Legislature immediately that it is assembled shall proceed to choose, by ballot, a regent or council of regency who shall administer the Government in the name of the King, and exercise all the powers which are constitutionally vested in the King, until such heir shall have attained the age of eighteen years, which age is declared to be the legal majority of such sovereign.

ART. 34. The King is sovereign of all the chiefs and of all the people.

ART. 35. All titles of honor, orders, and other distinctions emanate from the King.

ART. 36. The King coins money and regulates the currency by law.

ART. 37. The King, in case of invasion or rebellion, can place the whole Kingdom, or any part of it, under martial law.

ART. 38. The national ensign shall not be changed, except by act of the Legislature.

ART. 39. The King can not be sued or held to account in any court or tribunal of the Kingdom.

ART. 40. There shall continue to be a council of state, for advising the King in all matters for the good of the state, wherein he may require its advice, which council shall be called the King's privy council of state, and the members thereof shall be appointed by the King, to hold office during His Majesty's pleasure, and which council shall have and exercise only such powers as are given to it by the constitution.

ART. 41. The cabinet shall consist of the minister of foreign affairs, the minister of the interior, the minister of finance, and the attorney-general, and they shall be His Majesty's special advisers in the executive affairs of the Kingdom; and they shall be *ex officio* members of His Majesty's privy council of state. They shall be appointed and commissioned by the King and shall be removed by him only upon a vote of want of confidence passed by a majority of all the elective members of the Legislature, or upon conviction of felony, and shall be subject to impeachment. No act of the King shall have any effect unless it be countersigned by a member of the cabinet, who by that signature makes himself responsible.

ART. 42. Each member of the cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks. The cabinet hold seats *ex officio*, in the Legislature, with the right to vote, except on a question of want of confidence in them.

ART. 43. The minister of finance shall present to the Legislature in the name of the Government, on the first day of each biennial session, the financial budget in the Hawaiian and English languages.

ART. 44. The legislative power of the Kingdom is vested in the King and the Legislature, which shall consist of the nobles and representatives sitting together.

ART. 45. The legislative body shall be styled the Legislature of the Hawaiian Kingdom, and shall assemble, biennially, in the month of May. The first regular session shall be held in the year of our Lord eighteen hundred and eighty-eight.

ART. 46. Every member of the Legislature shall take the following oath: I solemnly swear in the presence of Almighty God that I will faithfully support the constitution of the Hawaiian Kingdom, and conscientiously and impartially discharge my duties as a member of the Legislature.

ART. 47. The Legislature has full power and authority to amend the constitution as hereinafter provided; and from time to time to make all manner of wholesome laws, not repugnant to the constitution.

ART. 48. Every bill which shall have passed the Legislature, shall, before it becomes law, be presented to the King. If he approve he shall sign it, and it shall thereby become a law, but, if not, he shall return it, with his objections, to the Legislature, which shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration it shall be approved by a two-thirds vote of all the elective members of the Legislature it shall become a law. In all such cases the votes shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of the Legislature. If any bill shall not be returned by the King within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature by their adjournment prevent its return, in which case it shall not be a law.

ART. 49. The Legislature shall be the judge of the qualifications of its own members, except as may hereafter be provided by law, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the

attendance of absent members, in such manner and under such penalties as the Legislature may provide.

ART. 50. The Legislature shall choose its own officers and determine the rules of its own proceedings.

ART. 51. The Legislature shall have authority to punish by imprisonment, not exceeding thirty days, every person, not a member, who shall be guilty of disrespect to the Legislature by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall publish any false report of its proceedings, or insulting comments upon the same; or who shall threaten harm to the body or estate of any of its members for any thing said or done in the Legislature; or who shall assault any of them therefor, or who shall assault or arrest any witness, or other person ordered to attend the Legislature, on his way going or returning; or who shall rescue any person arrested by order of the Legislature.

ART. 52. The Legislature may punish its own members for disorderly behavior.

ART. 53. The Legislature shall keep a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

ART. 54. The members of the Legislature shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the Legislature, and in going to and returning from the same; provided such privilege as to going and returning shall not cover a period of over twenty days; and they shall not be held to answer for any speech or debate made in the Legislature, in any court or place whatsoever.

ART. 55. The representatives shall receive for their services a compensation to be determined by law, and paid out of the public treasury, but no increase of compensation shall take effect during the biennial term in which it shall have been made; and no law shall be passed increasing the compensation of representatives beyond the sum of two hundred and fifty dollars each for each biennial term.

ART. 56. A noble shall be a subject of the Kingdom, who shall have attained the age of twenty-five years and resided in the Kingdom three years, and shall be the owner of taxable property in this Kingdom of the value of three thousand dollars over and above all incumbrances, or in receipt of an income of not less than six hundred dollars per annum.

ART. 57. The nobles shall be a court, with full and sole authority to hear and determine all impeachments made by the representatives, as the grand inquest of the Kingdom, against any officers of the Kingdom, for misconduct or maladministration in their offices; but previous to the trial of every impeachment the nobles shall respectively be sworn truly and impartially to try and determine the charge in question, according to evidence and law. Their judgment, however, shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit under this Government; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment, and punishment according to the laws of the land.

ART. 58. Twenty-four nobles shall be elected as follows: Six from the island of Hawaii; six from the islands of Maui, Molokai, and Lanai; nine from the island of Oahu; and three from the islands of Kauai and Niihau. At the first election held under this constitution, the nobles shall be elected to serve until the general election to the Legislature for the year of our Lord 1890, at which election, and thereafter, the nobles shall be elected at the same time and places as the representatives. At the election for the year of our Lord 1890 one-third of the nobles from each of the divisions aforesaid shall be elected for two years, and one-third for four years, and one-third for six years, and the electors shall ballot for them for such terms, respectively; and at all subsequent general elections they shall be elected for six years. The nobles shall serve without pay.

ART. 59. Every male resident of the Hawaiian Islands, of Hawaiian, American, or European birth or descent, who shall have attained the age of twenty years, and shall have paid his taxes, and shall have caused his name to be entered on the list of voters for nobles for his district, shall be an elector of nobles, and shall be entitled to vote at any election of nobles, provided:

First: That he shall have resided in the country not less than three years, and in the district in which he offers to vote not less than three months immediately preceding the election at which he offers to vote;

Second: That he shall own and be possessed, in his own right, of taxable property in this country of the value of not less than $3,000 over and above all encumbrances, or shall have actually received an income of not less than $600 during the year next preceding his registration for such election;

Third: That he shall be able to read and comprehend an ordinary newspaper printed in either the Hawaiian, English, or some European language;

Fourth: That he shall have taken an oath to support the constitution and laws, such oath to be administered by any person authorized to administer oaths, or by any inspector of elections:

Provided, however, that the requirements of a three years' residence and of ability to read and comprehend an ordinary newspaper, printed either in the Hawaiian, English, or some European language, shall not apply to persons residing in the Kingdom at the time of the promulgation of this constitution, if they shall register and vote at the first election which shall be held under this constitution.

ART. 60. There shall be twenty-four representatives of the people elected biennially, except those first elected under this constitution, who shall serve until the general election for the year of our Lord, 1890. The representation shall be based upon the principles of equality and shall be regulated and apportioned by the Legislature according to the population to be ascertained from time to time by the official census. But until such apportionment by the Legislature, the apportionment now established by law shall remain in force, with the following exceptions, namely: there shall be but two representatives for the districts of Hilo and Puna on the island of Hawaii, but one for the districts of Lahaina and Kaanapali on the island of Maui, and but one for the districts of Koolauloa and Waialua on the island of Oahu.

ART. 61. No person shall be elegible as a representative of the people unless he be a male subject of the Kingdom, who shall have arrived at the full age of twenty-one years; who shall know how to read and write either the Hawaiian, English, or some European language; who shall understand accounts; who shall have been domiciled in the Kingdom for at least three years, the last of which shall be the year immediately preceding his election; and who shall own real estate within the Kingdom of a clear value, over and above all encumbrances, of at least $500; or who shall have an annual income of at least $250, derived from any property or some lawful employment.

ART. 62. Every male resident of the Kingdom, of Hawaiian, American, or European birth or descent, who shall have taken an oath to support the constitution and laws in the manner provided for electors of nobles; who shall have paid his taxes; who shall have attained the age of twenty years; and shall have been domiciled in the Kingdom for one year immediately preceding the election; and shall know how to read and write either the Hawaiian, English, or some European language (if born since the year 1840), and shall have caused his name to be entered on the list of voters of his district as may be provided by law, shall be entitled to one vote for the representative or representatives of that district: *Provided, however*, That the requirements of being domiciled in the Kingdom for one year immediately preceding the election, and of knowing how to read and write either the Hawaiian, English, or some European language, shall not apply to persons residing in this Kingdom at the time of the promulgation of this constitution, if they shall register and vote at the first election which shall be held under this constitution.

ART. 63. No person shall sit as a noble or representative in the Legislature unless elected under and in conformity with the provisions of this constitution. The property or income qualifications of representatives, of nobles, and of electors of nobles, may be increased by law, and a property or income qualification of electors of representatives may be created and altered by law.

ART. 64. The judicial power of the Kingdom shall be vested in one supreme court, and in such inferior courts as the Legislature may, from time to time, establish.

ART. 65. The supreme court shall consist of a chief justice, and not less than two associate justices, any of whom may hold the court. The justices of the supreme court shall hold their offices during good behavior, subject to removal upon impeachment, and shall, at stated times, receive for their services a compensation, which will not be diminished during their continuance in office: *Provided, however*, That any judge of the supreme court or any court of record may be removed from office, on a resolution passed by two-thirds of all the members of the Legislature, for good cause shown to the satisfaction of the King. The judge against whom the Legislature may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least ten days before the day on which the Legislature shall act thereon. He shall be heard before the Legislature.

ART. 66. The judicial power shall be divided among the supreme court and the several inferior courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the inferior courts of the Kingdom shall be such as may be defined by the law creating them.

ART. 67. The judicial power shall extend to all cases in law and equity arising under the constitution and laws of this Kingdom, and treaties made, or which shall be made under their authority, to all cases affecting public ministers and consuls, and to all cases of admiralty and maritime jurisdiction.

ART. 68. The chief justice of the supreme court shall be the chancellor of the Kingdom; he shall be *ex officio* president of the nobles in all cases of impeachment, unless when impeached himself; and shall exercise such jurisdiction in equity or other cases

as the law may confer upon him; his decisions being subject, however, to the revision of the supreme court on appeal. Should the chief justice ever be impeached, some person specially commissioned by the King shall be president of the court of impeachment during such trial.

ART. 69. The decisions of the supreme court, when made by a majority of the justices thereof, shall be final and conclusive upon all parties.

ART. 70. The King, his cabinet, and the Legislature shall have authority to require the opinions of the justices of the supreme court upon important questions of law, and upon solemn occasions.

ART. 71. The King appoints the justices of the supreme court, and all other judges of courts of record. Their salaries are fixed by law.

ART. 72. No judge or magistrate shall sit alone on an appeal or new trial, in any case on which he may have given a previous judgment.

ART. 73. The following persons shall not be permitted to register for voting, to vote, or to hold office under any department of the Government, or to sit in the Legislature, namely: Any person who is insane or an idiot, or any person who shall have been convicted of any of the following named offenses, viz: Arson, barratry, bribery, burglary, counterfeiting, embezzlement, felonious branding of cattle, forgery, gross cheat, incest, kidnapping, larceny, malicious burning, manslaughter in the first degree, murder, perjury, rape, robbery, sodomy, treason, subornation of perjury, and malfeasance in office, unless he shall have been pardoned by the King and restored to his civil rights, and by the express terms of his pardon declared to be eligible to offices of trust, honor, and profit.

ART. 74. No officer of this Government shall hold any office, or receive any salary from any other Government or power whatever.

ART. 75. The Legislature votes the appropriations biennially, after due consideration of the revenue and expenditure for the two preceding years, and the estimates of the revenue and expenditure of the two succeeding years, which shall be submitted to them by the minister of finance.

ART. 76. The enacting style in making and passing all acts and laws shall be, "Be it enacted by the King, and the Legislature of the Hawaiian Kingdom."

ART. 77. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in its title.

ART. 78. Wherever by this constitution any act is to be done or performed by the King or the Sovereign, it shall, unless otherwise expressed, mean that such act shall be done and performed by the Sovereign by and with the advice and consent of the cabinet.

ART. 79. All laws now in force in this Kingdom shall continue and remain in full effect until altered or repealed by the Legislature; such parts only excepted as are repugnant to this constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this constitution, shall be null and void.

ART. 80. The cabinet shall have power to make and publish all necessary rules and regulations for the holding of any election or elections under this constitution, prior to the passage by the Legislature of appropriate laws for such purpose, and to provide for administering to officials, subjects, and residents the oath to support this constitution. The first election hereunder shall be held within ninety days after the promulgation of this constitution, and the Legislature the nelected may be convened at Honolulu upon the call of the cabinet council, in extraordinary session at such time as the cabinet council may deem necessary, thirty days' notice thereof being previously given.

ART. 81. This constitution shall be in force from the 7th day of July, A. D. 1887, but that there may be no failure of justice, or inconvenience to the Kingdom, from any change, all officers of this Kingdom, at the time this constitution shall take effect, shall have, hold, and exercise all the power to them granted. Such officers shall take an oath to support this constitution within sixty days after the promulgation thereof.

ART. 82. Any amendment or amendments to this constitution may be proposed in the Legislature, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature, which proposed amendment or amendments shall be published for three months previous to the next election of representatives and nobles; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all the members of the Legislature, such amendment or amendments shall become part of the constitution of this Kingdom.

KALAKAUA REX.

By the King:
W. L. GREEN,
Premier.

HONOLULU, *Oahu, ss:*

I, Kalakaua, King of the Hawaiian Islands, in the presence of Almighty God, do solemnly swear to maintain this constitution whole and inviolate, and to govern in conformity therewith.

KALAKAUA REX.

Subscribed and sworn to before me, this 6th day of July, A. D. 1887.

A. F. JUDD,
Chief Justice of the Supreme Court.

[Inclosure 2 in No. 127.]

BY AUTHORITY.

Proclamation.

Kalakaua, King of the Hawaiian Islands. To all subjects and residents of the Hawaiian Kingdom, greeting:

Know ye that I did, on the 6th day of July, A. D. 1887, abrogate the constitution granted by his late Majesty Kamehameha V on the 20th day of August, 1864, being moved thereto by the advice of my cabinet council; and in pursuance of such advice did sign, ordain, and publish a new constitution for considerations appearing therein, which constitution having this day been duly promulgated is now and from henceforth shall be in full force and effect as the fundamental law of this land.

Of this let all persons take due notice and govern themselves accordingly.

Given at the royal palace of Iolani, at Honolulu, on the 7th day of July, A. D. 1887.

KALAKAUA REX.

By the King:

L. A. THURSTON,
Minister of the Interior.

No. 372.

Mr. Bayard to Mr. Merrill.

No. 52.] DEPARTMENT OF STATE,
Washington, July 12, 1887.

SIR: The tenor of your late dispatches coincides with other reports from the Hawaiian Kingdom, and indicates the most unsatisfactory and disturbed condition of affairs in the government of that country, which renders it essential that the strictest vigilance should be exercised by those charged with the care of the rights of American citizens within that jurisdiction, as well as the rights of the United States secured under existing international conventions.

Whilst regretting deeply the existence of domestic disorders in Hawaii, and with no disposition whatever to interfere therein or to obtrude counsel unasked, yet the consequences which may possibly result to the interests of American citizens which have grown up under the extension of the commerce between that country and the United States, under the guaranties of existing treaty, must not be jeopardized by internal confusion in the government of these islands, and it is the duty of the United States to see that these interests are not imperiled or injured, and to do all things necessary for their just protection.

The existing treaty between the United States and Hawaii, as was contemplated and intended by the parties thereto, has created and fostered commercial relations more intimate in their nature and of incomparably greater volume and value than Hawaii ever had or ever can have with any other Government.

The growth of this commerce and the consequent advancement of these islands in wealth and importance has been most satisfactory to the United States, and by reason of their geographical position and comparative propinquity to our own territory they possess an interest and importance to us far exceeding that with which they can be regarded by any other power. In the absence of any detailed information from you of the late disorders in the domestic control of Hawaii, and the changes which have taken place in the official corps of that Government, I am not able to give you other than general instructions, which may be communicated in substance to the commanding officer of the vessel or vessels of this Government in the waters of Hawaii, with whom you will freely confer, in order that such prompt and efficient action may be taken as the circumstances may make necessary.

Whilst we abstain from interference with the domestic affairs of Hawaii, in accordance with the policy and practice of this Government, yet obstruction to the channels of legitimate commerce under existing treaty must not be allowed, and American citizens in Hawaii must be protected in their persons and property by the representatives of their country's law and power, and no internal discord must be suffered to impair them. Your own aid and counsel, as well as the assistance of the officers of our Government vessels, if found necessary, will therefore be promptly afforded to promote the reign of law and respect for orderly government in Hawaii.

As is well known, no intent is cherished or policy entertained by the United States which is otherwise than friendly to the autonomical control and independence of Hawaii, and no other member of the family of nations has so great and immediate an interest in the welfare and prosperity of Hawaii on such a basis as this Republic.

The vast line of our national territory on the Pacific coast, and its neighborhood to the Hawaiian group, indicate the recognized predominance of our interests in the region of these islands.

This superiority of interest in the welfare of the Hawaiian Islands is accompanied by an appreciation of the right of these friendly inhabitants and their Government to our good offices, which we freely tender whenever they can be efficacious in securing the safety and promoting the welfare of that island group.

I am, etc.,

T. F. BAYARD.

No. 373.

Mr. Merrill to Mr. Bayard.

No. 130.] LEGATION OF THE UNITED STATES,
Honolulu, July 13, 1887. (Received August 15.)

SIR: I have the honor to transmit herewith a copy of an official note received at this legation from his excellency Godfrey Brown, informing me of the recall of His Majesty's embassy and mission to Samoa and to the chiefs and people of Polynesia. In a personal interview Mr. Brown informs me that orders have been forwarded directing the immediate return to Honolulu of His Majesty's training-ship *Kaimiloa*, and that on her arrival here the officers and crew will be discharged and the vessel sold for the benefit of the Hawaiian Treasury.

Thus will terminate what is commonly known as the Hawaiian Polynesian policy.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 130.]

Mr. Brown to Mr. Merrill.

DEPARTMENT OF FOREIGN AFFAIRS,
Honolulu, July 12, 1887.

SIR: I have the honor to notify your excellency that His Majesty's embassy and mission to Samoa and to the chiefs and people of Polynesia has been unconditionally recalled.

His Majesty's commands to this effect went forward by the steamer hence for the colonies on the 9th instant.

I have, etc.,

GODFREY BROWN.

No. 374.

Mr. Merrill to Mr. Bayard.

[Extract.]

No. 135.] HONOLULU, *July* 30, 1887. (Received August 17.)

SIR: In order that the important events in the late political commotion referred to in my dispatches may be more compact, I inclose herewith the demands of the citizens, expressed by resolution, the King's reply to the resolutions, the new constitution* signed by His Majesty, and the official promulgation† of the new constitution.

During the month of June there was evidently a quiet determination on the part of those one met in business houses, or on the streets of Honolulu, that sooner or later some change must be made in Government affairs.

This feeling seemed to be participated in and was most apparent among the American, British, and German residents.

It was believed, however, that no action would be taken until replies were received to the several petitions, and especially did I counsel Americans not to encourage or participate in any act whereby trade and commerce would be interrupted.

On June 28 I received information that Mr. Gibson and all the cabinet had resigned.

The news rapidly spread through the town, and many were doubtful, but hoped it was correct, while some of the extremists apparently hoped it might not be true.

Then began speculation as to who would be called to form a new ministry; but nothing definite was ascertained until the following day, June 29, when it was generally known that Mr. W. L. Green, the present premier, had been called upon.

On June 28, however, the steamer *Australia* arrived from San Francisco, having on board a large amount of arms and ammunition consigned to well-known firms in Honolulu.

The arms were delivered as consigned, and were soon thereafter distributed to various individuals. On Wednesday evening, June 29, there appeared a printed call for a mass-meeting, to be held at the armory building at 2 o'clock p. m., and in accordance with that call, a mass-meeting was held at the place and hour appointed.

During the day business houses were generally closed as by common consent.

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* Printed page 574, *supra*.

† Printed page 480, *supra*.

From June 30, day of the mass-meeting, to the 6th instant, the date of signing the new constitution, business was mostly suspended, although the mercantile establishments were generally open.

During the whole affair no violence has occurred.

Reports from other islands in the Kingdom indicate a general acquiescence in the change, while in Honolulu there is some dissatisfaction regarding the distribution of the offices, as well as concerning some of the provisions of the new constitution.

Mr. Gibson, who was arrested on a charge of embezzlement, was released and sailed for San Francisco on the 12th instant.

Business is now moving along in the usual course and affairs have a quiet appearance, yet I shall endeavor to exercise the strictest vigilance concerning events and report as promptly as possible.

I have, etc.,

GEO. W. MERRILL.

[Inclosure 1 in No. 135.]

Resolutions of a public meeting held in Honolulu June 30, 1887.

We, the citizens resident and tax-payers of Honolulu, acting, as we firmly believe, in sympathy with and in behalf of all right-minded citizens, residents, and tax-payers of this Kingdom, and being assembled in mass-meeting in the city of Honolulu on the 30th day of June, 1887, do resolve as follows:

1. That the administration of the Hawaiian Government has ceased, through corruption and incompetence, to perform the functions and afford the protection to personal and property rights for which all Governments exist.

2. That while some of the evils of which we complain can not be at once adequately redressed and their recurrence prevented, and many others are incurable except by radical changes in the present constitution, yet there are some evils which we feel must be remedied at once, before a permanent reform movement can be inaugurated with any reasonable prospect of success.

3. Holding these views, we request of the King:

First. That he shall at once and unconditionally dismiss his present cabinet from office, and we ask that he shall call one of these persons, viz, William L. Green, Henry Waterhouse, Godfrey Brown, or Mark P. Robinson, to assist him in selecting a new cabinet, which shall be committed to the policy of securing a new constitution.

Second. That Walter M. Gibson shall be at once dismissed from each and every office held by him under the Government.

Third. In order, so far as possible, to remove the stain now resting on the throne, we request of the King that he shall cause immediate restitution to be made of the sum, to wit: Seventy-one thousand dollars ($71,000), recently obtained by him in violation of law and of his oath of office, under promises that the persons from whom the same was obtained should receive the license to sell opium, as provided by statute of the year 1886.

Fourth. Whereas one Junius Kaae was implicated in the obtaining of said $71,000, and has since been, and still is, retained in office as register of conveyances, we request, as a safeguard to the property interests of the country, that said Kaae be at once dismissed from said office, and that the records of our land titles be placed in the hands of one in whose integrity the people can safely confide.

Fifth. That we request a specific pledge from the King—

(1) That he will not in the future interfere either directly or indirectly with the election of representatives.

(2) That he will not interfere with or attempt to unduly influence legislation or legislators.

(3) That he will not interfere with the constitutional administration of his cabinet.

(4) That he will not use his official position or patronage for private ends.

Resolved, That Paul Isenberg, W. W. Hall, J. A. Kennedy, W. H. Rice, Capt. Jas. A. King, E. B. Thomas, H. C. Reed, John Vivas, W. P. A. Brewer, W. B. Oleson, Cecil Brown, Capt. John Ross, J. B. Atherton, are hereby appointed to present the foregoing resolutions and requests to the King; and said committee is hereby instructed to request of the King that a personal answer to the same be returned within twenty-four hours of the time when the same are presented; and to further inform

the King that his neglect so to answer the same within said time will be construed as a refusal of the said requests.

Resolved, That said committee, in case of the King's refusal to grant said requests, or in case of his neglect to reply to the same, is authorized to call another mass-meeting at this place on Saturday, July 2, at 2 p. m., to further consider the situation.

[Inclosure 2 in No. 135.]

THE KING'S REPLY.

To honorable Paul Isenberg and the gentlemen composing the committee of a meeting of subjects and citizens:

GENTLEMEN: In acknowledging the receipt of the resolutions adopted at a mass-meeting held yesterday and presented to us by you, we are pleased to convey through you to our loyal subjects as well as to the citizens of Honolulu our expression of good-will and our gratification that our people have taken the usual constitutional steps in presenting their grievances.

To the first proposition contained in the resolutions passed by the meeting whose action you represent, we reply that it has been substantially complied with by the formal resignation of the ministry, which took place on the 28th day of June, and was accepted on that date, and that we had already requested the Hon. W. L. Green to form a new cabinet on the day succeeding the resignation of the cabinet.

To the second proposition we reply that Mr. Walter M. Gibson has severed all his connections with the Hawaiian Government by resignation.

To the third proposition we reply that we do not admit the truth of the matters stated therein, but will submit the whole subject to our new cabinet, and will gladly act according to their advice, and will cause restitution to be made by the parties found responsible.

To the fourth proposition we reply that at our command Mr. Junius Kaae resigned the office of registrar of conveyances on the 28th day of June, and his successor has been appointed.

To the fifth proposition we reply that the specific pledges required of us are each severally acceded to.

We are pleased to assure the members of the committee and our loyal subjects that we are, and shall at all times be, anxious and ready to co-operate with our counselors and advisers as well as with our intelligent and patriotic citizens in all matters touching the honor, welfare, and prosperity of our Kingdom.

Given at our palace this 1st day of July, A. D. 1887, and the fourteenth year of our reign.

KALAKAUA REX.

No. 375.

Mr. Bayard to Mr. Merrill.

No. 58.] DEPARTMENT OF STATE,
Washington, August 18, 1887.

SIR: I have to acknowledge, with thanks, the receipt of your interesting and valuable dispatch, No. 135, of July 30, 1887, giving a detailed account of the recent political events in Hawaii.

I am, etc., T. F. BAYARD.

No. 376.

Mr. Merrill to Mr. Bayard.

No. 137.] LEGATION OF THE UNITED STATES,
Honolulu, August 25, 1887. (Received September 10.)

SIR: Availing myself of the opportunity afforded by the mail steamer *Alameda*, due here to-morrow from Australia en route to San Francisco, I have the honor to inform you that matters pertaining to the political

situation in Hawaii remain quiet, and business, in all its branches, is moving along in its accustomed channels, yet generally the merchants complain of "dull times," while hoping for more activity after the election, which occurs on September 12.

The election for nobles and representatives has been called much earlier than was anticipated at the time of the departure of the last mail for San Francisco, for the reason, as alleged, that it is desirable, on account of business interests generally, to have the complexion of the legislature under the new constitution determined at an early date.

On the 18th instant the Reform party, comprising those who were instrumental in effecting the recent constitutional and ministerial changes, held their first convention, composed of delegates from nine wards, into which this city is divided for political purposes, and nominated candidates for nobles for the island of Oahu and representatives for the district of Honolulu.

The nominees comprise persons of various nationalities, including those of American, British, German, and Hawaiian birth.

The nine candidates for the House of Nobles for the island of Oahu are generally considered to be fair representatives of the business interests of the community. So far as I am able to ascertain, the Reform party's candidates for the Legislature throughout the Kingdom are generally men identified with the business interests and welfare of the Kingdom.

I inclose a copy of the platform adopted by the convention of the Reform party in Honolulu.

As yet there seems to be no well-organized opposition, although public meetings, composed principally of native Hawaiians, have been held in Honolulu and opposition candidates have been named for the Legislature without promulgating any party platform or declaration of principles.

It is the general impression that the Reform party will succeed in electing a majority of the Legislature.

I have, etc.,

GEO. W. MERRILL.

[Inclosure in No. 137.—The Daily Bulletin, Thursday, August 18, 1887.]

Platform of the Reform party.

Report of committee on resolutions was next submitted.

Preamble.—Whereas in convention assembled we deem it fitting that a declaration be made of the principles of the Reform party of Hawaii Nei; and whereas we recognize that the shameless extravagances and reckless policy of the recent government have brought the Hawaiian nation into deserved disgrace; and whereas it is necessary that the national honor be redeemed by securing a radical reform of the civil service, we do hereby declare our adherence to the following:

PLATFORM.

1. That all unnecessary offices in the Government be abolished, and that excessive salaries be curtailed.
2. That the principles of rigid economy be applied to every department of the Government.
3. That provision be made for the liquidation of the national debt.
4. That as soon as practicable the rate of taxation be reduced, and that the revenue of the Kingdom be turned into channels of internal improvements.
5. That the autonomy and independence of the Kingdom be preserved.

On motion of Anahu, the report was accepted.

CORRESPONDENCE WITH THE HAWAIIAN LEGATION AT WASHINGTON.

No. 377.

Mr. Carter to Mr. Bayard.

HAWAIIAN LEGATION,
Washington, D. C., August 5, 1886. (Received August 7.)

SIR: The Hawaiian Government naturally takes a great interest in the matter of a trans-Pacific Ocean telegraph service, and the Legislative Assembly of Hawaii has authorized His Majesty's Government to assist in the laying and maintenance of a cable to connect the coast of America and the Hawaiian Islands to the extent of $20,000 a year for the period of fifteen years.

His Hawaiian Majesty entertains the hope that the great and growing interests of the United States in the Pacific Ocean may lead the Government of the United States to look with favor upon such an enterprise, and to give substantial assistance towards its completion and support.

I am, therefore, instructed to bring the matter to your attention, and to apprise you of the readiness of His Majesty's Government to join other Governments interested and to contribute to the extent before named.

I have, etc.,

H. A. P. CARTER.

No. 378.

Mr. Bayard to Mr. Carter.

DEPARTMENT OF STATE,
Washington, August 9, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 5th instant, saying that in view of the interest taken by your Government in the trans-Pacific Ocean telegraph service, the Legislative Assembly had authorized His Majesty's Government to assist in the laying and maintaining of a cable connecting the United States and Hawaii to the extent of $20,000 a year for fifteen years. You accordingly express the hope that this Government will look with favor upon the enterprise and give substantial assistance towards its completion and support.

The United States would certainly regard the accomplishment of such an enterprise as favorable to the intimate relations this Government is anxious to maintain with that of Hawaii. Beyond this moral support, however, the United States has no existing authority to go in the direction of substantial assistance. But if American and Hawaiian capital built up the enterprise, its quasi-international character might be recognized by treaty guaranties, *ad hoc*.

Accept, etc.,

T. F. BAYARD.

No. 379.

Mr. Carter to Mr. Bayard.

HAWAIIAN LEGATION,
Washington, D. C., May 9, 1887. (Received May 9.)

SIR: I am commanded by Her Majesty Queen Kapiolani, on behalf of herself and suite, to thank you for the many kind courtesies extended to them by the United States Government during her visit to Washington, and to say that she will ever cherish the memories of the very pleasant days spent in this capital.

Her Majesty also desires to express her grateful appreciation of the delicate and courteous attentions of Mr. Sevellon Brown, of the State Department, and to ask you to convey to the honorable Secretaries of War and of the Navy her high sense of the considerate services of Captain Taylor, U. S. Army, and of Lieutenant Rodgers, U. S. Navy, representing their respective branches of the public service in attendance upon her; and also to the officers at the Washington Barracks for the salute and parade on Thursday last, and to the officers at the navy-yard and of the United States vessels *Dispatch* and *Galena* for salutes and courtesies.

I shall take great pleasure myself, Mr. Secretary, in detailing to my Government the many courtesies extended to Her Majesty and suite, which add to the notable evidences of the consideration which has ever marked the relations of the United States Government toward the royal family and people of Hawaii and which it is ever the desire of His Majesty and people to reciprocate so far as is possible.

I seize, etc.

H. A. P. CARTER.

No. 380.

Mr. Carter to Mr. Bayard.

HAWAIIAN LEGATION,
Washington, D. C., May 30, 1887. (Received May 31.)

SIR: Her Majesty Queen Kapiolani, on embarking for Europe commanded me to address you, requesting you to convey to the honorable Secretaries for War and of the Navy, her grateful thanks for the attentions and honor paid her by the officers of the United States Army at Governor's Island, and by Commodore Gherardi and officers of the United States Navy at the navy-yard at Brooklyn, on the occasion of her visits at those posts. On both those occasions Her Majesty was the recipient of the kindest attentions, both public and private, and she desires that her very sincere acknowledgments may be properly conveyed to those officers of the Army and Navy of the United States stationed at those posts, and to Captain Kane of the training-ship *Minnesota* for a royal salute on the occasion of her embarking for Governor's Island.

I have, etc.,

H. A. P. CARTER.

No. 381.

Mr. Bayard to Mr. Carter.

DEPARTMENT OF STATE,
Washington, September 22, 1887.

SIR: I have the honor to invite your attention to the present status of the supplementary convention, signed December 6, 1884, by my predecessor, the late Frederick T. Frelinghuysen, and yourself as the envoy extraordinary and minister plenipotentiary of His Majesty the King of Hawaii, for a postponement of the term within which notification of the termination of the existing convention of January 30, 1875, between the United States and Hawaii may be given by either party to the other, as therein provided.

That supplementary convention having been submitted to the Senate of the United States, that body on the 20th of January last, two-thirds of the Senators present concurring, advised and consented that it be ratified, with the following amendments:

After Article I insert the following as Article II:

His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

Change the number of Article II in the original so that it will read Article III.

The President, having considered the convention and the amendment thereto as so advised and consented to by the Senate, is desirous that the same be accepted by His Majesty as amended, in order that ratifications may be exchanged.

As the result of verbal conferences heretofore held by us in relation to this subject, I have the honor to communicate to you the action of the Senate upon the said supplementary convention, in order that the convention as amended and advised and consented to by the Senate of the United States may be submitted to the consideration of the Government of His Majesty the King of Hawaii.

If, as the personal interchange of views between us leads me to expect, the amendments of the Senate shall be approved by the Government of His Majesty the King, it will be necessary to embody them in the ratification of His Majesty.

For your convenience I append the text of the convention, with the Senate's amendments therein included.

Asking that you will transmit this announcement to your Government, with expression of the President's desire for the early confirmation of a measure so well calculated to strengthen and preserve the intimate and mutually beneficial relations which have been established between the United States and Hawaii under the operation of the existing convention, to which the present instrument is supplementary, I avail myself, etc.,

T. F. BAYARD.

[Inclosure.]

Supplementary convention to limit the duration of the convention respecting commercial reciprocity between the United States of America and the Hawaiian Kingdom, concluded January 30, 1875.

Whereas a convention was concluded between the United States of America and His Majesty the King of the Hawaiian Islands, on the thirtieth day of January, 1875,

concerning commercial reciprocity, which, by the fifth article thereof, was to continue in force for seven years from the date after it was to come into operation, and further, until the expiration of twelve months after either of the high contracting parties should give notice to the other of its wish to terminate the same; and

Whereas the high contracting parties consider that the increase and consolidation of their mutual commercial interests would be better promoted by the definite limitation of the duration of the said convention;

Therefore, the President of the United States of America, and His Majesty the King of the Hawaiian Islands, have appointed:

The President of the United States of America, Frederick T. Frelinghuysen, Secretary of State; and

His Majesty the King of the Hawaiian Islands, Henry A. P. Carter, accredited to the Government of the United States, as His Majesty's envoy extraordinary and minister plenipotentiary;

Who, having exchanged their respective powers, which were found sufficient and in due form, have agreed upon the following articles:

ARTICLE I.

The high contracting parties agree, that the time fixed for the duration of the said convention shall be definitely extended for a term of seven years from the date of the exchange of the ratifications hereof, and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same, each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.

ARTICLE II.

His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

ARTICLE III.

The present convention shall be ratified and the ratifications exchanged at Washington as soon as possible.

In witness whereof the respective plenipotentiaries have signed the present convention in duplicate, and have hereunto affixed their respective seals.

Done at the city of Washington the 6th day of December, in the year of our Lord 1884.

FREDK. T. FRELINGHUYSEN. [L. S.]
HENRY A. P. CARTER. [L. S.]

No. 382.

Mr. Carter to Mr. Bayard.

HAWAIIAN LEGATION,
Washington, September 23, 1887.

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, in which you invite my attention to the present status of the supplementary convention signed December 6, 1884, between your predecessor, the late Mr. Frederick T. Frelinghuysen, and myself, and inform me that the Senate of the United States had advised and consented to the ratification of that supplementary convention, with certain amendments which you communicate to me, stating that the President having considered the convention and amendments desires that the same be accepted by His Majesty the King of Hawaii as amended in order that ratifications may be exchanged, and asking me to transmit this announcement to my Government.

The amendment which you now communicate officially to me was inserted into the convention in secret session of the Senate, and no opportunity was given for mutual consultation and consideration of its terms, consequently my Government has had no part in its construction, and could not have suggested any changes in its wording to guard against misapprehension. Under these circumstances it becomes proper in me before transmitting it to my Government to ascertain the views of the Government of the United States as to the construction proper to be put upon the interpolated article.

The first question of construction has reference to the effect of the license or right to enter the harbor of Pearl River upon the jurisdiction of the Hawaiian Government over that harbor. It would seem to be clear that the question of Hawaiian jurisdiction is left untouched by the article, and that in the event of the United States Government availing itself of the right stipulated for, the autonomous control of the Hawaiian Government remains the same as its control over other harbors in the group where national vessels may be, except that the article in accordance with Article IV of the existing convention prevents the Hawaiian Government from granting similar exclusive privileges during the continuance of the convention to any other nation.

As no special jurisdiction is stipulated for in the article inserted by the Senate, it can not be inferred from anything in the article that it was the intention of the Senate to invade the autonomous jurisdiction of Hawaii and to transfer the absolute property in, and jurisdiction over, the harbor to the United States.

To satisfy the natural and proper susceptibilities of Hawaiians, of which, as I have heretofore informed you, strong intimations have emanated from those charged with the administration of my Government, in their communications to me, I take occasion to say that I consider it probable that my Government will desire that its understanding of the article in this respect shall be made known to the Government of the United States.

Another point which may to some minds be left in doubt would be the duration of the license or right granted by the interpolated article.

The article mentions no special term for the continuance of the privileges, but as the whole and only purpose of the convention into which the article was inserted was, as stated in its preamble, to fix the definite limitation of the duration of the existing convention providing for the reciprocal exchange of privileges, to which this privilege is added by virtue of this interpolated article, it follows, in the absence of any stipulation to the contrary, that its term of duration would be the same as that fixed for the other privileges given by the original convention.

The only excuse for the insertion of such an article into a treaty of this nature would be its relevancy to the privileges stipulated for in the original convention of 1875, to which this is supplementary, and the duration of which this convention is intended to limit and define.

No separate single article or part of a treaty can be held to have a continuing power apart from the rest of the treaty, unless provided for in specific terms. The supplementary provisions and the original provisions which they affect, are necessarily merged into one instrument to be dealt with thenceforth as a whole.

It could not have been expected in the Senate that Hawaii would consent to a perpetual grant of the privilege sought in return for a seven years extension of the term of the treaty of 1875, especially in view of the danger of a material lessening of the advantages to Hawaii by changes in the tariff laws of the United States, and it must be ap-

parent that if any different term of duration was intended it would have been stipulated for, as it can not be thought that the Senate had any other intent than that plainly set forth.

Therefore the conclusion which I have reached, and which I think is the obvious conclusion to be drawn from the words of the interpolated article, is that it does not and is not intended to invade or diminish in any way the autonomous jurisdiction of Hawaii while giving to the United States the exclusive rights of use in Pearl Harbor stipulated therein, for the sole purpose stated in the article, and further, that the Article II of the convention, and the privileges conveyed by it, will cease and determine with the termination of the treaty of 1875, under the conditions fixed by this convention.

I apprehend that my Government will agree with my conclusions, and that in considering the advisability of ratifying the convention with the amendment inserted by the United States Senate my sovereign will doubtless be aided in coming to a favorable conclusion if it shall be found that on these questions of interpretation of the convention the two Govments do not differ, and the Hawaiian Government will doubtless desire that their understanding, which I believe that I have set forth in this note, shall be fully understood by the Government of the United States before ratifications are exchanged.

With renewed assurances, etc.,

H. A. P. CARTER.

No. 383.

Mr. Bayard to Mr. Carter.

DEPARTMENT OF STATE,
Washington, September 23, 1887.

SIR: I have the honor to acknowledge the receipt of your note of today's date, in response to mine of the 22d instant, touching the pending supplementary convention between the United States and His Majesty the King of the Hawaiian Islands.

The amendment relating to the harbor of Pearl River was adopted, in its executive sessions, by the Senate, and I have no other means of arriving at its intent and meaning than the words employed naturally import.

No ambiguity or obscurity in that amendment is observable, and I can discern therein no subtraction from Hawaiian sovereignty over the harbor to which it relates, nor any language importing a longer duration for the interpolated Article II than is provided for in Article I of the supplementary convention.

The limitation of my official powers does not make it competent for me in this connection to qualify, expand, or explain the amendments ingrafted on that convention by the Senate, but in the present case I am unable to perceive any need for auxiliary interpretation or ground for doubt as to the plain scope and meaning thereof, and, as the President desires a ratification of the supplementary convention in its present shape, I can see no cause for any misapprehension by your Government as to the manifest effect and meaning of the amendment in question.

I therefore trust that it will be treated as it is tendered, in simple good faith, and accepted without doubt or hesitation.

Accept, etc.,

T. F. BAYARD.

No. 384.

Mr. Carter to Mr. Bayard.

HAWAIIAN LEGATION,
Washington, November 5, 1887.

SIR: I have the honor to inform you that I have received from Honolulu a copy of the supplementary convention negotiated in this city in December, 1884, between the late Mr. Frelinghuysen and myself, as amended by the Senate of the United States during the last session of Congress, duly signed by His Majesty the King of Hawaii, together with full power to exchange the ratification of His Majesty for that of the President of the United States.

The notes exchanged between yourself and this legation on the 23d of September last removed any objections previously existing to the ratification of the convention as amended, and if you will kindly name a day and hour when it will be convenient to you to exchange the ratifications I shall take pleasure in waiting upon you for that purpose.*

With renewed assurance, etc.,

H. A. P. CARTER.

* The ratifications of the Supplementary Convention of December 6, 1884, were exchanged November 9, 1887.

HAYTI.

No. 385.

Mr. Bayard to Mr. Thompson.

No. 74.] DEPARTMENT OF STATE,
Washington, March 8, 1887.

SIR: I transmit for your information copies of certain executive documents relating to the claims of A. Pelletier and A. H. Lazare against Hayti.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 74.]

[Senate Ex. Doc. No. 64, Forty-ninth Congress, second session.]

Message from the President of the United States, transmitting report of the Secretary of State, in response to Senate resolution of December 8, 1886, *upon the claim of Antonio Pelletier et al. against the Republic of Hayti.*

JANUARY 21, 1887.—Read and referred to the Committee on Foreign Relations.
FEBRUARY 1, 1887.—Ordered to be printed.

To the Senate:

I transmit herewith a report of the Secretary of State in answer to the resolution of the Senate of December 8, 1886, relative to the claims of Antonio Pelletier and A. H. Lazare against the Republic of Hayti.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, January 20, 1887.

To the President:

The Secretary of State, to whom was referred the resolution of the Senate of December 8, 1886, calling upon the President to communicate to that body, "if not inconsistent with the public interests, copies of the awards made by the arbitrator in the case of Antonio Pelletier and in the case of A. H. Lazare against the Republic of Hayti, under a protocol made by and between the Secretary of State of the United States and the minister plenipotentiary for the Republic of Hayti, dated 24th May, 1884, together with such action as may have been had in relation thereto," has the honor to make the following report:

I.—PELLETIER'S CASE.

The case of Pelletier, which is the first referred to in the resolution before me, was first brought to the attention of this Department by a dispatch, dated April 13, 1861, from Mr. G. E. Hubbard, commercial agent of the United States at Cape Haytien, who reported, in language to be hereafter more fully quoted, that Pelletier was under arrest in Hayti on the charge of attempted enslavement in Haytian waters of Haytian citizens. Mr. Seward, then Secretary of State, after a prolonged correspondence, finally refused, on November 30, 1863, to interfere with the action of Hayti in the matter, taking the position in an instruction to Mr. Whidden, then United States commissioner in Hayti, that "his [Pelletier's] conduct in Hayti and on its coasts is conceived to have afforded the reasonable ground of suspicion against him

on the part of the authorities of that Republic which led to his arrest, trial, and conviction in regular course of law, with which result it is not deemed expedient to interfere."

Early in 1864 Pelletier escaped from Hayti, and on July 16 of that year brought his claim formally before the Department in a long memorial. Nothing was then done, however, by this Department, except in response to a call of the House of Representatives to send a copy of all the papers in the case on record to that body on April 3, 1868. No further action was then taken by the House.

A second application was made to the Department in 1871. The result is stated in the following note addressed to then counsel of Pelletier:

DEPARTMENT OF STATE,
Washington, September 26, 1871.

Messrs. BARTLEY AND CASEY, *Washington:*

GENTLEMEN: Your letter of the 23d instant, relative to the claim of Antonio Pelletier against the Republic of Hayti, has been received. In reply, I have to inform you that after careful consideration this Department has found no reason to dissent from the opinion expressed by Mr. Seward in regard to the case in his instruction to Mr. Whidden, United States minister to Hayti, of the 30th of November, 1863. That instruction is on page 56 of the document printed by order of the House of Representatives, to which you refer. Furthermore, it is understood to be customary to at least suspend the prosecution of any claim on a foreign Government when either House of Congress shall have called for the papers with a view to consideration of the subject. This Department is not aware that the House of Representatives has reached any result in this matter.

I am, etc.,

J. C. B. DAVIS,
Acting Secretary.

The claimant's next application was to the Senate. His case was, on January 6, 1874, referred to the Senate Committee on Foreign Relations. On June 9, 1874, Mr. McCreery presented from that committee a unanimous report, a copy of which is annexed, taking, though with greater elaboration, the same ground as Mr. Seward. From this report I shall have occasion to make several citations.

The claimant then applied once more to the House of Representatives, and on January 11, 1878, a further memorial and documents from him were presented, and were followed by a resolution of that body declining to offer any recommendation as to his claim.

On January 22, 1878, Pelletier again appeared before this Department with a series of *ex parte* statements which were referred to Mr. O'Connor, then examiner of claims and Solicitor of the Department. Mr. O'Connor made two reports, one on February 19, 1878, and the other on March 29, 1878, in the latter of which he maintained that on the claimant's case, as exhibited in the proof submitted by him to the Department, there was ground of a call on Hayti for redress. Instructions to this effect were sent by Mr. Evarts, Secretary of State, to Mr. Langston, then minister to Hayti, who made this call, asking for an arbitration, and concluding as follows:

"I am instructed, then, should your Government desire to make no further answer to the justice of the claim of Captain Pelletier, to propose to it a prompt and impartial arbitration of the matter, and in default of such arrangement I am instructed further to state that the Government of the United States will require its satisfaction."

Under this pressure the Government of Hayti, which had at first peremptorily refused to arbitrate, ultimately consented to an arbitration; and an agreement for this purpose was entered into on May 24, 1884, between Mr. Frelinghuysen, Secretary of State, and Mr. Preston, minister for Hayti. This agreement, however, never was submitted to the Senate, and hence never became a law of the land. Consequently, as will hereafter be noticed more fully, it vested in the arbitrator no distinctively judicial prerogatives.

Under this agreement the honorable William Strong, for a long time a distinguished member of the Supreme Court of the United States, was appointed arbitrator. The sessions of the arbitration began on November 10, 1884, and continued until April 27, 1885. During these sessions much documentary testimony was submitted, witnesses sworn and examined, and evidence received or rejected by the arbitrator, and arguments on both sides presented. An award was made by the arbitrator on June 20, 1885, a copy of which, and of the prior proceedings of the arbitration, is annexed. Not being at the time, nor for more than a year afterwards, acquainted with the merits of the case, and having been in noways concerned in the negotiations which preceded it, I confined myself to the reporting to the Executive Mansion the fact of the filing of this award. This fact was duly noticed in the President's annual message of December, 1885. Not long after the delivery of this message I was infor-

mally advised that there were serious difficulties in the way of the compliance by Hayti with the award. Not only was the disordered condition of her finances an obstacle, but the arbitration, it was alleged, was consented to by her at a time when such consent seemed the only escape from threatened difficulties with the United States, while the claim was one which she could not, now that the facts were fully developed, submit to without both national ruin and national disgrace. In explanation of the apparent tardiness by which the full presentation of these facts were marked, it may be mentioned that by the burning of the Haytian archives some years after the events in litigation many of the official documents in Pelletier's as well as in Lazare's case were destroyed, and that in both cases it is only recently that the circumstances on which they rest have been fully brought out.

On November 18, 1886, the Haytian Government filed in this Department a general remonstrance against the execution of the award. This remonstrance made it incumbent on me to enter into a careful examination of the records of the case, so far as they exhibit the merits of the claim. The results of this examination I now proceed to state.

In the autumn of 1860 the bark *William*, condemned at Key West as a slaver, was purchased from the marshal by a person named Packer, acting, it is alleged, for Pelletier, the claimant. The vessel was taken to Mobile, where some repairs were put on her and an American register obtained for her in the name of Edward Lee Launde or Edward de Launa, which were among the disguises assumed by Emile Delaunay, a resident New Orleans, who appears to have owned most of the property on board the bark, and who paid for her repairs and insurance without consulting Pelletier. He was, as the evidence shows, not merely the nominal but the real owner. This is the conclusion adopted by Judge Strong, who, in his award, after calling attention to the conflicting statements of Pelletier as to the ownership of the vessel, denies him any right to claim damages for its seizure and confiscation as hereafter detailed.

The vessel cleared in the latter part of October, 1860, for Carthagena, New Granada, with a cargo consisting, as declared by manifest, solely of lumber and ship bread, but which the claimant states also to have included a large amount of specie, more than two kegs of powder, and a great number of pistols and guns. The crew was composed of fourteen men besides the claimant. The seamen were foreigners, and are described by the claimant as "rowdies and high-binders." Carthagena was reached in the latter part of November. There a part of the cargo was sold and gold-dust, it is claimed, was purchased. A revolution then in progress having, according to Pelletier's statement, prevent the sale of the rest of the cargo, the bark cleared for Rio Hacha, a port about 100 miles east north-east from Carthagena on the coast of New Granada, having taken on board at least one seaman, a colored refugee named Bina, and Juan Cortez and family. Cortez, who had some freight with him, was to be taken as a passenger to Rio Hacha. Instead, however, of sailing for that port, Pelletier, driven, as he alleges, by adverse winds and currents, sailed in a northwesterly direction, not stopping until he reached Georgetown, a port on the island of Grand Cayman, 700 miles away. There Cortez, who was evidently anxious and alarmed at being carried so far from his destination, gave up his freight at a valuation of $1,000, from which $500 was deducted for services rendered him. On December 24, 1860, the vessel cleared for Port au Prince, Hayti. No satisfactory explanation is given by Pelletier of the abandonment of his original design of going to Rio Hacha.

At Port au Prince, which the vessel reached in January, 1861, the rest of the cargo of lumber was sold; but before it was delivered, Bina, the colored refugee, and several of the crew who had been imprisoned by the Haytian authorities at Pellitier's instance, denounced the latter to those authorities as a slave-trader.

Very naturally and reasonably—to quote Judge Strong's words—

"the police boarded the vessel and made a partial search. They found arms and ammunition on board, an unusual number of handcuffs, * * * and they found a large number of water-casks. * * * All these things are acknowledged accompaniments of slave-trading. * * * In view of the accusation of Bina and the imprisoned sailors and of the results of the search, as well as of his [Pelletier's] application to Maximilian for laborers to go to Navassa, the Haytian authorities evidently had strong suspicions, and I think with much reason, that the bark was a slaver out on an illegitimate cruise."

Still, after a short delay, they released the vessel, and at Pelletier's request, gave her a clearance for New Orleans. Instead, however, of sailing westward in the shortest and most desirable course for New Orleans, Pelletier turned northward and beat "against fresh breezes and swift currents" through the Windward Passage to the north side of Hayti. Then he put into Man-of-War Bay, in the island of Grand Inagua, to obtain, as he alleges, more ballast. The vessel drifted on a reef, so it was said, and broke her rudder fastenings; but instead of having them repaired there, Pelletier lashed the rudder with chains and endeavored to make La Plata, a port in San Domingo, in the opposite direction from New Orleans. He soon appeared off the

north coast of Hayti. There he raised the French flag, and passing Cape Haytien, where there was a good harbor open to commerce, he "entered," says Judge Strong, "Fort Liberté, an obscure port of Hayti, not open to commerce, and only about 20 miles from Cape Haytien, mistaking it, as he says, for the harbor of La Plata in San Domingo. I am unable to see how his entrance into Fort Liberté could have been due to any such mistake. The distance from Cape Haytien was too short, only about 20 miles. La Plata is nearly 100 miles east. The approaches to the two ports, as described in the sailing directions, are notably unlike, and as the land all the way from Cape Haytien must have been in sight, he must have known he was far from La Plata."

Continuing his statement, Judge Strong says:

"At Fort Liberté he floated a French flag, never an American; proclaimed his vessel to be the *Guillaume Tell*, from Havana, bound to Havre; ordered his men to speak only the French language, and asserted that his own name was Jules Letellier. He even caused a letter to be written to the French consul repeating these false statements, signed Jules Letellier. The excuse given for this attempted deception is that when, on entering the port, he saw the Haytian flag he was terrified, remembering his trouble at Port au Prince. I think that is a very insufficient excuse. There was no cause for any such scare, and it is difficult to believe that it existed. The bark had been given a clearance from Port au Prince, and if she was in distress that accounted fully for her being again in a Haytian port for repairs.

"The falsehoods mentioned are not all he told. He said he had been at Guadaloupe; had been obliged to throw part of his cargo overboard, and that he had been aground on those banks. False statements when attempts to mislead very naturally awaken the suspicion of those to whom they are made, and they are in some measure evidence of guilt. Pelletier's attempted deception was soon discovered by the French consul and the Haytian authorities, and his arrest and the seizure of the bark followed.

"In view of the facts thus mentioned, which I think are established, I can hardly escape from the conviction that the voyage of the bark *William* was an illegal voyage; that its paramount purpose was to obtain a cargo of negroes, either by purchase or kidnapping, and bring them into slavery in the State of Louisiana, and that the load of lumber and the profession of a purpose to go for a cargo of guano were mere covers to conceal the true character of the enterprise. In my opinion it is beyond doubt that had the bark been captured and brought into an American port, when she was seized at Fort Liberté, she would have been condemned by the United States courts as an intended slaver. And I think the Haytian authorities had such reasons for suspecting, even believing, that she was a slaver, with evil designs against their people; that they were justified in seizing her in one of their ports, and arresting the master, at least for examination. If the uncontradicted testimony of Mr. Moses is to be believed, the voyage was concocted between Delauray and Pelletier; the bark was procured for illicit use; it was manned and supplied suitably for such a purpose, and its subsequent conduct down to hovering along the coast and entering an obscure and private harbor of Hayti, under false colors, when a better one was easily accessible, are all consistent with such a purpose.

"The suspicious circumstances begin at the beginning. The transfer of the title to Delauray, as stated by Pelletier, in order to obtain registry at New Orleans; the registry at Mobile, in the name of Lee Launde, or Edward De Launa, or Edward Lee Launa; the taking powder, pistols, and guns in quantities on board without mentioning them in the manifest; the loading of about one-third of the lumber on deck when the hold was more than sufficient for it all; the assumption of a false name by the mate; the character of the crew, all foreigners and roughs; the obviously fallacious pretense that a cargo of guano was sought; the concealing the name of the ship, and false representations respecting her nationality, the port from which she sailed, and her destination; the change of the name of the master; the unusual number of manacles on board, the large number of water casks, including barrels capable of holding water, all speak with one voice. They all tend in the same direction, and collectively they almost force to the conclusion that the voyage was illicit, and that slave-trading was its object. Add to these the fact that Pelletier had applied to a Haytian to obtain 50 men and some women (blacks, of course) to assist him in obtaining guano, and I can not avoid thinking the Haytian Government, though all these facts may not have been known at the time, had ample reason for suspecting, if not believing, that the bark was a slaver, and that the design of Pelletier was to obtain a cargo of blacks from their country. Even the representatives of foreign Governments then present in Hayti unanimously expressed to the Government their opinion that Pelletier had been guilty of piracy, and that the Government was authorized to put in force against him judicial proceedings. And Mr. Lewis, commercial agent of the United States, joined Mr. Byron, consul-general and acting chargé d'affaires of Great Britain, in asking that the captain and bark, then under arrest, should not be set at liberty." (Award in Pelletier's case, pp. 14–16.)

The following statements to the same effect are taken from Mr. McCreery's report of June 9, 1874:

"[Senate Report No. 425, Forty-third Congress, first session.]

"Mr. MCCREERY submitted the following report:

"[To accompany bill S. 255.]

"The Committee on Foreign Relations have had under consideration the bill, memorial, and papers in the case of Antonio Pelletier, and report:

"That the memorialist claims the interposition of this Government in the way of a demand upon the Haytian authorities for indemnity for the loss of the bark *William* and cargo, as well as for other pecuniary losses sustained by reason of his wrongful imprisonment on that island. That vessel was condemned and sold, by the judgment of the Haytian courts, as a slaver, and Pelletier and most of his crew were imprisoned as pirates.

"The purpose of Pelletier, in making this purchase and embarking on this voyage, is so remarkable that we feel constrained to transcribe it in his own language. He says: 'Being at that time rich and prosperous, I designed to visit several ports, where I had formerly navigated when poor, and where I had friends who I believed would rejoice at my prosperity, and among whom I wished at any rate to exhibit the evidences of my success.'

"This is sufficiently disinterested, and may be a weakness too common among men who are alike happily situated; but it is somewhat surprising that one seeking to make an ostentatious display should go forth on a second-hand slaver, with a crew of 'rowdies and high-binders,' as he describes some of his sailors on this remarkable voyage. Though partially concealed under the vanity of the exhibition, there was still a lurking desire that the profits of commercial enterprise should cover at least a portion of the expenditures, and pitch pine lumber and guano were the commodities selected for the outward and homeward bound vessel. If the odor of these articles in southern climes should be annoying, it would at least be a comforting assurance to his 'friends' that though rich he was not proud, and would also put them more at their ease in his presence. What we fail to comprehend in human action is generally ascribed to the eccentricities of genius, and this expedition, with its apparent absurdities, may possibly find refuge under that convenient phrase.

"Now, if Pelletier intended to go to Hayti, he went at least 500 miles out of his way to reach the island of Grand Cayman, and on leaving Grand Cayman he might have taken Cortez to Jamaica, as these islands are almost in a line with Hayti. The indisposition of Madam Cortez could scarcely have been an obstacle, as Pelletier left Grand Cayman one evening and she embarked on Eden's schooner the next morning.

"On the way from Grand Cayman to Port-au-Prince, in Hayti, he spent six days in the island of Cuba, where he had no business whatever, but kindly called that a woman and a man on board might receive medical attention. There are few captains of water-craft who would submit to such delay for such a purpose. If it could be supposed for a moment that he was going to Hayti with the intention of kidnapping her citizens, of which he was afterward charged and convicted in her courts, then a short sojourn on the island of Cuba might not have been entirely destitute of commercial advantages.

"The bark *William* arrived at Port-au-Prince after the middle of January, 1861, and it was not long until Pelletier procured the arrest and imprisonment of five of his disorderly crew. About this time Binar, the negro passenger, who probably imagined that he was in possession of important secrets, called on Pelletier, and after an unsatisfactory interview, wrote to him to provide for his maintenance, and demanding $100 immediately, threatening if it was not sent to make it cost him a larger sum, and that he would not wait longer than 12 o'clock for an answer. In the conversation preceding this letter Pelletier had expostulated with Binar, telling him what he had done for him on account of his family—that he had paid a portion of his debts at Carthagena and brought him out of the country where he was in danger without charge; and besides that he had been 'gossiping.'

"Whatever part Binar was expected to take in subsequent events, it was evident that Pelletier expected no gossiping. Exasperated at Pelletier's failure to advance the required sum, Binar denounced him to the authorities as a slaver, and the Government attorney, with the military commander and a body of armed police, boarded the *William*, to satisfy themselves as to the truth or falsity of Binar's accusation. They found handcuffs, water-casks, arms, and munitions in such quantities as to convince them of the fact charged. Pelletier, who was on shore, instructed his mate that in case the police returned to spread the American flag over the side-ladder and forbid their coming on board. Notwithstanding, the commander led his posse up the ladder, tramping on and tearing the flag. Before the search Pelletier had been en-

deavoring to employ a few women and fifty men to go to another island to assist in loading his vessel with guano.

"The Haytians had a suspicion that the real object was to kidnap and transport them into slavery. They were the descendants of slaves and had probably not inherited the most favorable opinions of the peculiar institution. However that may be, your committee believe that the facts warranted the search, and that the flag was and should have been no protection under the circumstances.

"Pelletier was not arrested, as might have been anticipated, but after a stay of about six weeks was permitted to depart in company with the Haytian war-steamer *Geffrard*, which was ordered to convey him for a distance of 200 miles from their shores.

"The Haytian authorities may have believed that they were forever free from Pelletier and the bark *William*, but in this they were mistaken. In a few weeks afterward, and about the 1st day of April, he entered the harbor of Fort Liberté under an assumed name, announcing that he was in command of the French vessel, the *Guillaume Tell*, bound from Havana to Havre, with the French flag flying at his masthead. He put himself in communication with the commercial agent of France, representing that his vessel was in great distress. He was treated with unusual civilities by the commander of the post, and enjoyed perfect quiet until one of his sailors, Miranda by name, escaped from his vessel. Believing that Miranda would denounce him to the authorities as a pirate, he got under way in the night-time and attempted to leave the port, but his vessel got aground. On the next day the vice-consul of France arrived, and, discovering the fraud which had been practiced upon him, ordered the arrest of Pelletier.

"A few days afterward he was taken to Cape Haytien, and from that place he was transported to Port-au-Prince. Before instituting legal proceedings against Pelletier the secretary of state for foreign affairs addressed to the commercial agents of the leading powers of Europe residing in the city of Port-au-Prince inquiries as to jurisdiction; and from the consulates of England, France, Denmark, Spain, Hanover, Italy, Prussia, and Sweden received unanimous opinions that the Haytian Government was fully authorized to use against Pelletier all judicial proceedings which comport with the crime of piracy. Pelletier's case underwent a protracted investigation before the highest courts of Hayti, and he was adjudged to be worthy of death, but that judgment was afterward modified to imprisonment for five years. He chose not to be represented by counsel and to answer no questions, and we make no criticism on his course, as it may have been the part of wisdom. The learned counsel who represented the memorialist strenuously contended that the courts of Hayti had no jurisdiction; but Pelletier speaks of the bay which he entered both as a 'port' and 'harbor,' and if that Government has no jurisdiction of her own ports and harbors, her citizens may be said to hold their lives, their persons, and their property at the mercy of any corsair who may choose to deprive them of either.

"The paper which Pelletier has filed as proof of his citizenship neither looks nor reads like any naturalization paper we have ever seen before. The law contemplates two, but he seems to have completed the job at a single step. On the face of the paper, the word 'duplicate' is written, which is a commercial phrase, never used, as we believe, in this country in the attestation of judicial proceedings.

"A careful examination of the facts induces us to adopt the opinion of Hon. William H. Seward, as embodied in his dispatch No. 36, to Benjamin F. Whidden, esq.: 'The conclusion reached is that the proof of the citizenship of that person is not sufficient to warrant an interposition in his behalf. But allowing the reverse to be the fact, his conduct in Hayti and on its coasts is conceived to have afforded the reasonable ground of suspicion against him on the part of the authorities of that Republic, which led to his arrest, trial, and conviction, in regular course of law, with which result it is not deemed expedient to interfere.'"

The conclusions which Judge Strong reached were:

(1) That Pelletier was entitled to no damages for the seizure and confiscation of his ship; but

(2) That he was entitled to damages for imprisonment and other injuries inflicted by Hayti as a punishment for piracy and attempted slave-trading. The damages under this latter cause of action he assessed at $57,250.

I have, in the first place, to express my concurrence with the conclusion reached by both Judge Strong and the Senate committee, that the claimant is not entitled to damages for the seizure and confiscation of his vessel.

As I am constrained, however, to come, on the question of Hayti's jurisdiction to try Pelletier for the offenses in question, to a conclusion in direct conflict with that reached by the learned arbitrator, it is proper that I should give in full that part of his award which states the reasons for his decision. It is as follows:

"Nor was there anything done by him in the ports of Hayti that amounted to piracy recognized as such by the law of nations. As I have said, I do not care to inquire what the law of Hayti defining piracy may have been. It is another law which is to be the rule of decision in this case; so it is stipulated in the protocol. The false

personation by Pelletier at Fort Liberté, the change of the name of the bark, the unwarranted use of the French flag, the false assertions respecting the port of clearance and the port of destination, and the other deceptions practiced there, censurable and wicked as they were, were still not *acts* of piracy, nor was Pelletier's inquiry of Maximilian at Port-au-Prince whether he could obtain men and women from Hayti to load his bark with guano at the Guano Islands an act of piracy, though reasonably awakening suspicions that his intent was slave kidnaping. Nor was his later project (if he entertained it) of giving a ball on his vessel at Port Liberté and carrying off those invited, unexecuted and unattempted as it was, an *act* of piracy, or even of slave-trading. At most these were evil intentions not carried out. There was in truth no overt act of piracy, amounting to piracy as understood in the law of nations, or of slave-trading, and none was charged. There was, therefore, in my judgment, plainly no jurisdiction in the Haytian courts over the bark or over the master. It follows that, having suffered in consequence of the unauthorized and wrongful assumption of jurisdiction by those courts to try and punish him, the Republic of Hayti may justly be required to make reparation to Pelletier for the wrongs he has suffered."

Now I do not maintain that there was an overt act of either piracy or slave trading consummated by Pelletier in the territorial waters of Hayti. I do, however, take the following positions, which, if accepted, sustain Haytian jurisdiction in their relation:

(1) Pelletier visited Hayti in 1861 for the purpose of abducting and enslaving Haytian citizens, and when in Haytian territorial waters made such preparations for carrying on this plan as would have ended, had it not been for his arrest, in such abduction and enslaving.

(2) Such action on his part in Haytian waters constituted, both by our common law and by the French law in force in Hayti, a criminal attempt, subject to public prosecution.

(3) The crime of attempt, thus stated, was within Haytian jurisdiction.

(4) The trial was, as far as we can learn, decorous and fair; and the punishment ultimately imposed was, in view of the atrocity of the offense, singularly lenient.

(1) That Pelletier was a slave-trader, and that his visit to Hayti was for the purpose of abducting and enslaving Haytians, is the conclusion adopted not merely by the Haytian courts, but by the Senate Committee on Foreign Relations in 1874, and by Judge Strong in 1885. By no other tribunals were the facts in the case, on both sides, examined in detail; and in considering the proceedings before Judge Strong we have the advantage of a full report, covering nearly two thousand printed pages, of all the testimony taken. After a careful study of this testimony I feel it my duty to state that the conclusion that Pelletier's visit to Hayti was for the purpose of abducting and enslaving Haytians is established beyond reasonable doubt, and I have also to report, differing in this respect from Judge Strong, and concurring with the Senate committee and with the Haytian courts, that this plan was carried out in Haytian territorial waters to such an extent that it would have been consummated had it not been for Pelletier's arrest by Haytian officers.

The grounds on which I rest this conclusion are as follows:

Mr. G. Eustis Hubbard, United States commercial agent at Cape Haytien, in an official dispatch to this Department, dated April 13, 1861, at a time when the circumstances into which it was his duty to inquire were fresh, made the following statements:

"From all the reports and evidences which I can collect, it would appear that the bark *William*, after a very roundabout and apparently illegitimate voyage on the Spanish Main and among the West India Islands, arrived on the 21st of January last in Port-au-Prince, where the master entered his vessel as coming from New Orleans, although he could show no regular clearance from that city. This irregularity was passed over, and the vessel duly entered in the custom-house at Port-au-Prince. There she was suspected of being a slaver, which suspicion was substantiated by the written evidence of several of her crew and passengers, and the proofs were so strong that the authorities of Port-au-Prince visited and searched the vessel, but, contrary to law and usage, without having advised the United States commercial agent of the facts and their proceedings. There were found on board 20 pairs handcuffs, 12 six-barrel revolvers, 4 rifles, 1 pistol-revolver with poignard attached, and 2 kegs of powder, certainly a very large amount of arms and ammunition for a vessel in a legal trade; and in the hold a large number of beams, cross-bars and plank, water-casks (the report is for more than one hundred of the latter), and a large quantity of provisions. * * *

"On his arrival at Fort Liberté the master reported his vessel to be the *Guillaume Tell*, of and from Havre to Havana, and that his own name was Jules Letellier, and stated that he had got aground on the Silver Keys, and wished to engage a number of workmen to go over there with him and save a portion of his cargo, which he had thrown overboard there to lighten his vessel. The next day (April 1) he wrote a letter in the French language to the French vice-consul at this city, stating that his

rudder was broken, and that he would arrange it as soon as possible, and proceed to this port with his vessel to put himself under his protection. A translated copy of this letter is herewith inclosed. It would appear that on his arrival in Fort Liberté the master of the vessel did his utmost to put himself on a good footing with the authorities and people there, and one day invited a number of persons on board to dinner, treating them with great politeness; and that the inhabitants of that town had not the slightest suspicion about the vessel until the 3d of April, when one of the sailors escaped on shore, and made his declaration that she was the American bark *William*, of New Orleans, Capt. A. Pelletier, and that the intention of the master was to kidnap a number of Haytians and sell them into slavery. * * *

"In my opinion the entire movements of the bark *William* about this island have been highly suspicious, and I have no doubt but that the intention of Captain Pelletier was to induce a number of Haytians to go on board of his vessel, under contract or otherwise, and then make his escape with them and sell them into slavery. The project is most hardy and daring, and it is difficult to understand its conception at the present advanced age. It is very possible, however, that he would have succeeded in his nefarious design had not the vessel already had suspicion fixed upon her in Port-au-Prince; indeed, my doubts about the legality of the vessel's proceedings were so great that, had she escaped from Fort Liberté, I should at once have written to St. Thomas, Aspinwall, and Havana, requesting the American consuls of those places to lay the facts before the commander of any foreign man-of-war in port, so that the vessel might have been apprehended and her real intention discovered.

"It is possible that the vessel may be brought to this port, and the captain and crew escorted here for trial. I would therefore most respectfully ask information from the Government what course I am to take if the vessel is afterwards given up and part of the crew released after examination, the latter of which will probably be the case. It is an undoubted fact that these men are composed of the refuse of all nations, and that they are not on a legal voyage, although provided with American protection." (Pelletier Record, pages 1099, 1101, 1103, 1104.)

On February 22, 1885, Mr. Hubbard, then commercial agent at Porto Rico, was examined under interrogatories in the issue then pending before Judge Strong. In the course of this examination Mr. Hubbard made the following statement:

"I had absolutely no hostile feeling towards Pelletier at the time when I wrote to the honorable Secretary of State the letter of which Exhibit A is a copy, unless a feeling of indignation and horror that any man could stain his soul by such a crime as that of which he was suspected could be construed as a hostile feeling. The intensely suspicious circumstances connected with the case, and particularly the fact that the man had acted as a French subject, commanding a French vessel, until he was compelled to declare himself a naturalized citizen of the United States, commanding an American vessel, led me to consider it my official duty not to interfere with the proceedings of the Haytian Government in any way without express authority and instructions from the Department of State; but I remember very distinctly to have felt greatly relieved when the case was taken out of my jurisdiction, the master of the vessel taken to Port-au-Prince for trial, and the vessel conveyed there to be adjudged.

"Later on, either from private statements, reports, or conversations, or reports or statements by the public prints—I am absolutely unable to-day to say which, because I do not remember—and from logical reasoning deduced from the actions of the master in Port-au-Prince in January and February, 1861, and afterwards in Fort Liberté, the following inferences were plainly formed in my mind:

"That it was the intention of the master of the bark *William* to get possession of about fifty able-bodied negroes in the West Indies and to kidnap them into slavery. That having been unsuccessful in engaging them in Port-au-Prince to work on a supposed guano island, he made his mind up to proceed to some small port closed to foreign commerce, where he could conduct his plans with more facility.

"That he passed by the port of Cape Haytien without entering, because he supposed that his proceedings in Port-au-Prince would have been known there.

"That previous to and on arrival at Fort Liberté, being himself a Frenchman, he pretended to be a French captain, commanding a French vessel, believing that thereby he would gain more readily the sympathies of the people there.

"That he falsely represented his vessel to be disabled, to endeavor to get the people he required to go with him to the spot where he pretended to have met with the disaster.

"That failing in the attempt to engage the people as wreckers, he, as a last resort, intended to invite a large party on board to an entertainment, and while on board to ply them with liquor, probably drugged liquor, reducing them to insensibility, and then slip his vessel out of port to sea. He had already given one entertainment on board, in which he treated the guests with great courtesy; once the vessel at sea, he would have put the people into irons in their insensible state, and have kept them in irons until he arrived at the destination.

"That it was not his intention to sell those negroes, but to land them at the mouth of the Mississippi River, on Ship Island, where this man and a relative, I believe to have heard, his brother or brother-in-law, had either there or near by a plantation, and to work them on that plantation as slaves.

"That this nefarious, horrible scheme, beyond almost human comprehension in the advanced age in which it was attempted, was planned at the time when the Southern States had begun to secede; when, in the winter of 1860-'61, every Southerner knew that war must inevitably ensue between the North and the South; and when in the judgment of its planners a number of negroes could be soon landed in the extreme South, certainly without interference from the Government of the United States, and probably with perfect impunity from the State or local authorities.

"And having formed those inferences, it has always been my belief, from that day to this, that the Haytian Government ought to have executed the man as a pirate, and confiscated his vessel and property beyond redemption." (Pelletier Record, pp. 1118-19-20.)

As has been already stated, the judicial records of the proceedings in the Haytian trial of Pelletier have been destroyed by fire, and with them were destroyed the depositions taken during that trial. It so happens, however, that in the Haytian official newspaper, Le Moniteur Haitien, was published, on August 10, 1861, the official statement of the case of the prosecution against Pelletier and his associates. This statement, as it is an official recapitulation of the testimony collected according to French and Haytian practice, at the preliminary hearings of the case, gives us adequate proof of such testimony, and enables us, in connection with other proof, and with the subsequent judgment of the courts, to infer what was the evidence offered on trial. From the statement in question the following passages are extracted:

"Pursuant to a declaration of Mr. Baina to police headquarters, five sailors of the *William*, kept under arrest by Captain Pelletier, who was afraid they should make known his infamous plans of slave trade and piracy, were questioned by the local authorities, and testified concerning the intrigues of Captain Pelletier from Carthagena to Grand Cayman, from that port to Cienfuegos, and from Cienfuegos here. In consequence of the declaration of Baina and of the five sailors, Carlo Ciscornia, Juan Poux, Antonio Lovos, William Smith, and Pablo Rebantes, the commissioner of the Government, the governor, and other officers went on board the *William* and ascertained the presence of 20 pair of handcuffs, 4 Colt's rifles, 12 revolvers, 2 kegs of gunpowder, a great quantity of empty barrels, a very large quantity of stores, a large number of woolen blankets, and a twin-deck in course of construction. This, together with the declaration of Vil Maximilien, a Haytian citizen, to whom Captain Pelletier had applied in order to obtain fifty men and six women he desired to engage, as he said to Maximilien, to get guano; also the intrigues of Captain Pelletier, and the means of intimidation he resorted to in order to escape our investigations, complaining to the American consul of the officers who had inspected his ship, and, as he falsely said to the consul, had trampled upon the American flag. All these facts concur to prove in an evident manner that the object of Captain Pelletier, after the partial failure of his vast scheme of slave trade and piracy, was to make up for his loss by means of a certain number of men he intended to take away from us. If Captain Pelletier has been allowed to leave Port-au-Prince after all these facts it is not because of a want of proof to establish his guilt, but because the Government, in its wisdom, rather than detain Pelletier and his ship, preferred to relinquish the culprit to the vigilance of philanthropic nations whose vessels scour the sea with the object of bringing to prompt punishment this class of ruffians, and to Divine justice, whose manifestation was not slow. The Government allowed Captain Pelletier to sail, and ordered our dispatch-boat, the *Geffrard*, to follow the track of the slave-trader ship. During the voyage the accused Pelletier conceived the idea of capturing the *Geffrard*. He had shots and fuses made by the accused, Henri Millet, formerly an engineer on board of our dispatch-boat, and who had charge of taking the powder-room of the *Geffrard* as the aim of his firing; five men were sent on board, with the object of exploring the man-of-war, under pretense of asking the commander of the *Geffrard* to fix the chronometers of the *William* that were out of order. The accused, although they deny, with the exception of Miranda, the only informer, that Captain Pelletier had the idea of capturing the *Geffrard*, have, nevertheless, been unanimous in declaring that shots had been manufactured by Henri Millet, and that a deputation had been sent on board the Haytian vessel by the accused Pelletier. The attitude assumed by Commander Chassaing and his crew, the energetic summons of instantly leaving the ship, and the difficulty, not to say impossibility, of carrying into effect his daring scheme, compelled Captain Pelletier to abandon it.

"He, however, took his revenge by continually changing his course, so as to oblige, as he said to his crew, the *Geffrard* to burn her coal. When the *Geffrard* left the slave-trader ship near the Mole, Captain Pelletier tacked about for several days in the channel, abandoning the New Orleans route, the port he had been cleared for when leaving Port-au-Prince, and commencing to execute his projects at piracy in our

seas. He had told Miranda, the mate of the *William*, that in order to indemnify himself of the 40,000 francs he had spent at Port-au-Prince he wanted to take from our shores and our settlements 150 men he intended to sell as slaves at Havana; and when Miranda observed that, the Haytians being free and civilized, it would be impossible for him to kidnap them, the accused answered, '*We shall kill some of them, and the others will allow themselves to be carried away.*' Miranda likewise declares that Captain Pelletier had also decided to make himself master of those of our coastwise ships he might find laden with coffee and merchandise. To this end he continued tacking about for so long in sight of Mole, that he went to the Grand Inagua, from there to Cayes des Caiques, and opposite the Cap, from whence he hastily retreated, under French colors, having recognized the port pilot.

"Captain Pelletier, having failed to accomplish his intended acts of piracy in the neighborhood of Mole, made for the northeastern coast of the island, always with the same object in view. He arrived at Fort Liberté and hoisted again the French colors. Coming into port, he commanded the crew to call him Jules *Letellier*; to name the ship *Guillaume Tell*, from Havre, coming from Havana; to say he had just suffered damages at sea, and had left part of his cargo at Bank d'Argent. Having said so, he ordered the carpenter to take away the board bearing the real name of the ship.

"However, the authorities at Fort Liberté went on board; the captain, to deceive them better, received the officers with great affability. He told them that his mast, his chronometers, his rudder, were out of order; that he was just coming from Bank d'Argent, where he had left part of his cargo, and that he wanted about fifty men to help him to take it away. He declared that the name of the ship was *Guillaume*, from Havre, coming from Havana, and that he had put into harbor in order to make repairs. An official report was drawn up; the accused Pelletier signed it with his own hand Jules Letellier.

"Pelletier did not content himself with asking for fifty men; he contemplated giving a ball on board with the intention of weighing anchor and leaving with the young men and women of Fort Liberté he should have invited. His projects were in the stage of requests for men and of invitation, when Miranda, the boatswain, made his escape at night and informed the authorities at Fort Liberté against the pirate captain. The general in command summoned the accused Pelletier to come ashore with his ship's papers. He stubbornly refused, and wrote a rather bold letter to the general, in order to intimidate him and find the opportunity of making good his escape.

"However, the night when Miranda ran away and the following day were filled with anguish for Captain Pelletier. Himself, with the accused Urbain Casting and four men, armed with daggers and revolvers, went ashore, intending to seize Miranda, dead or alive, if possible, so true it is that he was in dread of his escape." (Pelletier Record, pp. 979, 980, 981, 982.)

According to an official statement made in Le Moniteur Haitien of April 20, 1861 (Pelletier Record, page 973), and not controverted in the testimony in the case, Pelletier and his associates in the *William* fired with revolvers on the boats sent out by the Haytian authorities for his arrest, but the arresting party, after sustaining the fire, compelled a surrender.

(2) It is now to be considered whether the acts in question, committed as they were in Haytian territorial waters, constituted an attempt at slave-trading. In answering this question it is important to remember that both by our own common law and by the French law a punishable attempt is an intended, unfinished crime. It requires four constituents: First, intent; secondly, incompleteness; thirdly, apparent adaptation of means to end; and fourthly, such progress as to justify the inference that it would be consummated unless interrupted by circumstances independent of the will of the attemptor. Nowhere are these distinctions laid down more authoritatively than by Rossi, Ortolan, and Lelièvre, when commenting on Article I of the French Penal Code, which declares that "*toute tentative de crime * * * est considérée comme le crime même.*"

I cite these high authorities in French jurisprudence because it is important to show that the Haytian courts, when laying down the law in this respect, did so in accordance with the law accepted in Hayti as part of the jurisprudence of France. But I do not cite the numerous cases in which the same law had been laid down in England and the United States. It is enough now to say that it is an accepted principle in our jurisprudence that an attempt, as thus defined, is as indictable in our courts as is the consummated crime of which it was intended to be a part, and that under the indictment for the consummated crime, there may be now, both in England and in most of our States, a conviction of the attempt. While it is not indictable, for instance, to buy a box of matches, it is indictable to carry a match to a hay-rack for the purpose of igniting it, a purpose which is only prevented by a police officer stepping in. While it is not indictable, also, to have in possession materials for skeleton keys, it is indictable to carry skeleton keys manufactured from such material to a house which it is designed to enter, though the intent be frustrated by the owner's watchfulness. It is not indictable, also, to own poison, but it is indictable know-

ingly to place it where it is likely to destroy human life unless removed by some extraneous agency. In cases of this class there can be convictions of attempt in any jurisdiction in which the final application of the preparations to the object takes place.

After a careful examination of the evidence in this case, I have come to the conclusion that Pelletier's action in the territorial waters of Hayti constitutes an attempt at slave-trading, viewing attempt in the sense given above. There is no question as to Pelletier's attempt; there is no question that the crime was left unaccomplished; there is no question that this failure of completion was owing to the forcible interference of the Haytian authorities. There is only one other condition to be considered, that of the adaptation of means to end. And as to this point I have no doubt. I can conceive of no means more fully adapted to carry out his atrocious purpose than those brought by him into operation in the secluded harbor of Fort Liberté. There, in waters not visited by other shipping by which he might be watched, or guarded by armed cruisers which could search his vessel on the first suspicious sign, and in close proximity to a rural population of negroes whose race simplicity and credulousness were likely to be increased by their isolation, he, as we may infer from the evidence, a veteran slave-kidnapper, took a vessel which in prior cruises had shown her adaptation to slave-trading, and at once put a false French name on her stern, and assumed a false French name for himself, so as to do away with any suspicion connecting him with the former outrage at Port-au-Prince. He had several devices ready by which he could inveigle on board due quota from that population. He had a guano island to talk about, for which he wanted laborers, male and female, though he had not a single implement on board to dig out and prepare the guano on that island, if ever it should be reached. He had some other work to do on some other island for which he required help. He was to give a ball, to which a number of Haytians, male and female, sufficient to make up his cargo, were to be invited; and in order to make the invitation appear more considerate, and the expected entertainment more festive, as well as to throw a cloak over his infamous antecedents, his own name and that of his ship, as has been said, were changed to names more distinctively French, and his men, mostly French, were ordered to talk French. "Choice liquors" in abundance also were at hand, so that the victims, after the dance, could be sufficiently stupefied so as to make their subjugation more easy. Then, whatever were the means by which the requisite number of Haytians were to be enticed on board, every precaution were taken for stifling their cries, for securing their persons, and, if their resistance could not be otherwise overcome, for taking their lives. Handcuffs enough there were for the ring-leaders, and in numbers so great as to be incapable of explanation in any other way. There was the material for the re-erection of the old slave-deck, under which the captives were to be compressed. There were the "revolvers" and other fire-arms with which the crew, a body of infamous desperadoes, expecting to share in the spoil, were to be armed, and there was the capacity of that crew for the use of such weapons, as shown by the volleys they fired at the Haytian barges which sought their arrest. Had a vessel with hot shot taken its place in those tranquil waters before the hamlets in which that ignorant and confiding people were gathered, had the guns been loaded for the purpose of destroying the homes and lives of that people, had gunners standing at their guns been arrested at the moment before the expected discharge, while the crime intended would have been less execrable than that designed by Pelletier, it could not have been more subject to Haytian jurisdiction. For by Pelletier there was then placed in those territorial waters of Hayti to operate on that Haytian shore a mechanism of atrocity adjusted with peculiar skill to the consummation of what I believe to be a crime among the worst known to our laws, because it combines abduction, torture, enslavement, assassination, coupled with the infliction of a curse heavier than all others, both on the people from whom the victims are torn and the people by whom they are received. It is impossible for me to hold that such an attempt was not within the jurisdiction of Hayti, and it seems a mockery to assert that the guilty parties are to elude Haytian jurisdiction on the pretense that anchoring a slave ship in Haytian waters, with every contrivance to entrap and enslave Haytian citizens, is not disturbing the tranquillity of those waters, even though, on the discovery of the conspiracy, on the eve of its consummation, the slaver, in seeking to escape, fired on its pursuers. Such firing was part of one and the same outrage. I can conceive of no more flagrant disturbance of the tranquillity of territorial waters than these facts disclose.

The view here maintained of the jurisdiction of the sovereign of territorial waters of offenses committed in such waters, when of a character calculated to disturb the peace of the port, is sustained in the case of Mali *v.* Keeper of Jail, decided this week by the Supreme Court of the United States. From the opinion in this case of Chief-Justice Waite, which I am permitted to cite in advance of publication, occurs the following:

"It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade, it subjects itself to the law

of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief-Justice Marshall in The Exchange, 7 Cranch, 144, it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the Government to degradation, if such * * * merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country. United States *v.* Diekeman, 92 U. S., 520; 1 Phillimore's Int. Law, 3d ed., 483, sec. cccli; Twiss's Law of Nations in Time of Peace, 229, § 159; Creasy's Int. Law, 167, § 176; Halleck's Int. Law, 1st ed., 171. And the English judges have uniformly recognized the rights of the courts of the country of which the port is part to punish crimes committed by one foreigner on another in a foreign merchant ship. Regina *v.* Cunningham, Bell C. C., 72; S. C., 8 Cox C. C., 104; Regina *v.* Keyn, 11 Cox C. C., 198, 204, S. C., L. R., 1 C. C., 161, 165; Regina *v.* Keyn, 13 Cox C. C., 403, 486, 525; S. C., 2 Ex. Div., 63, 161, 213. As the owner has voluntarily taken his vessel for his own private purposes to a place within the dominion of a Government other than his own, and from which he seeks protection during his stay, he owes that Government such allegiance for the time being as is due for the protection to which he becomes entitled.

"From experience, however, it was found long ago that it would be beneficial to commerce if the local Government would abstain from interfering with the internal discipline of the ship and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local Government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment if the local tribunals see fit to assert their authority."

But it may be said that the punishment inflicted by Hayti on Pelletier was cruel, transcending to this extent her jurisdiction; and that for this reason and to this extent his claim should be sustained. On this point it is important to keep in mind the following summary given by the learned arbitrator:

"The court building and the records of judicial proceedings at Port-au-Prince have been destroyed by fire, since 1861, but official reports of the trial of Pelletier and the others indicted, attested and signed by the judges, and published at the time in the Government official journal, are before me. I think them entitled to credit. They reveal a very different conduct of the judicial proceedings anterior to and during the trial from that testified to by him. Waiving for the present consideration of the question whether the Haytian courts had jurisdiction, to which I shall return hereafter, I can discover in those proceedings, including the trial, no satisfactory evidence that they were oppressive or unfair, or that they were not conducted temperately, and according to the ordinary course of criminal trials. There are statements of Pelletier to the contrary, but I think them unsustained." (Award, pp. 19, 20.)

In this opinion I concur, and I have further to state that, in view of the atrocity of Pelletier's crime, I regard the punishment inflicted on him as singularly lenient. And in any view this question is one, not of jurisdiction, but of due administration of justice, as to which, for the reasons above given, Pelletier has no ground for complaint.

I have entered on the question of jurisdiction at large, because it is important for the peace and security of nations that this question should now be determined by the Government of the United States.

By the law of nations, it must be remembered, all sovereign states are to be treated as equals. There is no distinction between strong states and weak; the weak are to have assigned to them the same territorial sanctities as the strong enjoy. There is a good reason for this. Were it not so, weak states would be the objects of rapine, which would not only disgrace civilization, but would destroy the security of the seas, by breeding hordes of marauders and buccaneers, who would find their spoil in communities which have no adequate power of self-defense. And there are peculiarly weighty reasons why the Government of the United States should lift a resolute hand to prevent such rapine and spoliation when attempted by persons carrying her flag, outcasts as they may be, and flung aside as that flag may be by them whenever, as in the present case, this may subserve their nefarious purposes. The United States has proclaimed herself the protector of this Western World, in which she is by far the strongest power, from the intrusion of European sovereignties. She can point with proud satisfaction to the fact that over and over again has she declared, and declared effectively, that serious indeed would be the consequences if European hostile foot should, without just cause, tread those states in the New World

which have emancipated themselves from European control. She has announced that she would cherish, as it becomes her, the territorial rights of the feeblest of these states, regarding them not merely as in the eye of the law equal to even the greatest of nationalities, but, in view of her distinctive policy, as entitled to be regarded by her as the objects of a peculiarly gracious care. I feel bound to say that if we should sanction by reprisals in Hayti the ruthless invasion of her territory and insult to her sovereignty which the facts now before us disclose, if we approve by solemn executive action and Congressional assent that invasion, it will be difficult for us hereafter to assert that in the New World, of whose rights we are the peculiar guardians, these rights have never been invaded by ourselves.

But, waiving this momentous issue, this claim, I do now assert, is one which, from its character, no civilized Government can press. I am glad to find that this question is virtually reserved by the learned and distinguished arbitrator, and that his award is to be regarded as made subject to the ruling of the Department thereon.

"The question"—

So he is reported to have said—

"whether the United States Government ought to have made a reclamation in his [Pelletier's] behalf, is another question outside of this case. If reclamation has been made, then it becomes a question of legal right." (Record, p. 1781.)

I am now constrained to inquire whether the learned arbitrator may not have erred in deeming himself so restricted by the provisions of the protocol under which he sat. By its terms he was required to decide the questions submitted to him "according to the rules of international law existing at the time of the transactions complained of." This, in my judgment, was not intended in any way to limit the scope of his inquiries into the merits of the cases before him, but merely to insure the investigation of those merits upon principles of international law contemporaneous with the alleged wrongs, undoubtedly the true test of Hayti's liability. If this be the true construction of the protocol, then I am unable to see why the fact that the Government of the United States had made a reclamation in Pelletier's behalf excluded consideration of the question whether that Government "ought to have made a reclamation in his behalf." It would seem that the question of "legal right" was vitally connected with the question whether a reclamation ought to have been made; for both these questions depended for their solution on the application of the rules of international law to the facts of the case. Those facts were to be ascertained by the arbitrator. The Department of State, in submitting the claim to arbitration, had acted on a prima facie case; and one of the expressed objects of the submission was that there might be a full investigation of the facts. In agreeing to such an investigation, it would seem to be implied that the Department of State did not desire that its previous action on *ex parte* information should be regarded as a prejudgment in any respect of the case submitted.

Was not the reply very properly made by one of the counsel for Hayti, to whom the learned arbitor's remark was addressed?

"These questions were left by the two Governments to your honor to pass upon after the evidence on both sides was submitted to you; therefore Pelletier did not acquire any legal right prior to this hearing." (Record, p. 1781.)

That the learned arbitrator deemed himself restricted by the terms of the protocol may also be inferred from the following passage in his opinion:

"Nor was there anything done by him [Pelletier] in the ports of Hayti that amounted to piracy, recognized as such by the law of nations. As I have said, I do not care to inquire what the law of Hayti defining piracy may have been. *It is another law which is to be the rule of decision in this case, so it is stipulated in the protocol.*"

In line with the above citation, we may notice a passage on page 1779 of the Record. Counsel for Hayti submitted the following proposition:

"And I submit, further, that if the court had no jurisdiction over the facts that transpired at Grand Cayman, according to the principles of international law, it did have jurisdiction over the acts of Pelletier along-side the coast of Hayti."

To this the learned arbitrator replied:

"If the acts of Pelletier constituted piracy under international law the courts of Hayti had a right to try and condemn him, and if they made a mistake in the evidence that is an immaterial matter. If it was not piracy under international law then another question arises. The question whether it was piracy under the Haytian statute is not questioned in this case."

If the question whether Pelletier's conduct was piracy under the Haytian statute was not doubted it is conceived that there was nothing in the protocol which excluded the consideration of that question.

The learned arbitrator declared:

"In my opinion it is beyond doubt that had the bark been captured and brought into an American port, when she was seized at Fort Liberté, she would have been condemned by the United States courts as an intended slaver."

Now, if the bark, when she entered the harbor of Fort Liberté, within the unquestioned territorial jurisdiction of Hayti, loaded with the implements of her nefarious

errand, and as the evidence led the arbitrator to conclude, intending there to consummate her unlawful enterprise, could have been condemned by the courts of the United States as an intended slaver, why could not the Haytian courts condemn her and try and imprison her commander on the same ground, if, as is not questioned, Haytian law made provision therefor. It matters not what the Haytian law may have called the offense, whether it described it as piracy, or as attempted piracy, or as attempted slave-trading, or whether as is the case, it punished attempted slave-trading within Haytian jurisdiction as piracy. The protocol, it would seem, did not restrict the learned arbitrator to the consideration of the question whether Pelletier was guilty of piracy as defined by the law of nations. It merely provided that his claim should be decided "according to the rules of international law existing at the time of the transactions complained of." This, it is conceived, did not mean that the arbitrator was to be restricted to the decision of the question whether Pelletier was guilty of the offenses of which he was convicted, as defined by international law, but only that in deciding the question of his trial and imprisonment, and of the condemnation of his vessel, the arbitrator was to accord to Pelletier the rights to which in 1861 he was by international law entitled, and to determine whether any of those rights were violated by Hayti.

If, as I believe, this construction of the protocol is correct, it is not seen that the learned arbitrator was precluded from inquiring whether Pelletier was guilty of piracy by Haytian law and properly convicted of that offense by the Haytian court. It was a rule of international law in 1861, and is a rule of that law now, that offenses committed in the territorial jurisdiction of a nation may be tried and punished there, according to the definitions and penalties of its municipal law, which becomes for the particular purpose the international law of the case. It matters not what the offense may be termed, if it appear that a violation of the municipal law was committed and punished.

The municipal law of Hayti is not alone in defining the slave trade as piracy. It is so denominated by the laws of the United States (Revised Statutes, sec. 5376), and is punishable with death; and if the Government of the United States, like that of Hayti, were to make attempts at slave-trading equivalent to the consummated act and equally punishable therewith, it is not supposed that the rules of international law would thereby be violated.

I can not presume that the Government of the United States, by stipulating for the decision of the Pelletier claim according to the rules of international law existing in 1861, intended to deny to Hayti the right at that time to execute within her territorial jurisdiction her laws against slave-trading or piracy therein attempted, and I am compelled to declare that had such been this Government's expressed intention I could not recommend that it should now be executed, in the light of the facts developed in the arbitration, especially as the arbitrator expressly reserved the question of the rightfulness of the reclamation for the consideration and decision of the Executive.

The duty of the Executive to refuse to enforce an award which, notwithstanding the unimpeachable character, as in the present case, of the arbitrator, turns out to have been inequitable or unconscionable, has been maintained in repeated rulings of this Department, and is sanctioned by the Supreme Court of the United States. In Frelinghuysen *v.* Key, 110 U. S., 63, the question arose on an award, not, as in the present case, under an informal agreement, but under a treaty. Yet even of a treaty award Chief Justice Waite said:

"International arbitration must always proceed on the principles of national honor and integrity. Claims presented and evidence submitted to such a tribunal must necessarily bear the impress of the entire good faith of the Government from which they come, and it is not to be presumed that any Government will for a moment allow itself knowingly to be made the instrument of wrong in any such proceeding. No technical rules of pleading as applied in municipal courts ought ever to be allowed to stand in the way of the national power to do what is right under all the circumstances. Every citizen who asks the intervention of his own Government against another for the redress of his personal grievance must necessarily subject himself and his claim to these requirements of international comity."

The views thus expressed are in entire accordance with the position taken by my predecessors whenever the functions of the Executive in questions of this class have been discussed. This position is thus summed up by Mr. Frelinghuysen in a letter to Mr. Suydam, dated September 25, 1882:

"It may be here observed that this Government exercises a broad discretion in determining what claims it will diplomatically present against other nations. It has not lent, and will not lend, its influence in favor of fraudulent claims. And when in behalf of an individual this Government demands of another power payment of money, it should not close its doors against an investigation into the question whether the apparent title of the claimant to the money is valid, or, because of his own fraud, is void. Were the case reversed this Government would contend for that right. Any other doctrine must impair the dignity and imperil the rights of those who have honestly obtained American citizenship."

In a subsequent letter of Mr. Frelinghuysen the distinctions are expressed as follows:

"The claims presented to the French commission are not private claims but governmental claims, growing out of injuries to private citizens or their property, inflicted by the Government against which they are presented. As between the United States and the citizens, the claim may be in some sense regarded as private; but when the claim is taken up and passed diplomatically, it is as against the foreign Government a national claim.

"Over such claims the prosecuting Government has full control; it may, as a matter of pure right, refuse to present them at all; it may surrender them or compromise them without consulting the claimants. Several instances where this has been done will occur to you, notably the case of the so-called French spoliation claims. The rights of the citizen for diplomatic redress are as against his own, not the foreign Government." (Mr. Frelinghuysen, Secretary of State, to Messrs. Mullan and King, February 11, 1884, MSS. Domestic Letters.)

The following are additional illustrations of the exercise of the power here asserted:

The awards under the treaty with Mexico of 1848 were set aside by act of Congress in the Atocha case, and by the courts in the Gardiner case (13 Stat., 595; 16 Stat., 633). Two of the awards under the Chinese claims treaty of 1858 were reopened in behalf of rejected claimants (15 Stat., 440; 20 Stat., 171). The Secretary of State, in the case of the *Caroline*, returned to Brazil, against the claimant's protest, money to be paid him under a diplomatic settlement. (See Senate Rep. No. 1376, Fortieth Congress, first session.)

The precedents in this Department therefore fully sustain the principle stated by Chief-Justice Waite, that—

"As between the United States and the claimants, the honesty of the claim is always open to inquiry for the purpose of fair dealing with the Government against which, through the United States, a claim has been made." (Frelinghuysen *v.* Key, 110 U. S., 63.)

Assuming Pelletier's naturalization as a citizen of the United States, the question reserved by the arbitrator of his right, being a tortfeasor, to claim compensation for the consequences of his tort, must be denied. Still more strongly must this view be held when, in order to consummate the tort, he threw off the name in which he claims to have been naturalized, and assumed one more distinctively French, erasing from the stern of his ship the name William, under which she was registered, and putting in its place that of the *Guillaume Tell*.

On the general question of turpitude of cause of action as barring the present claim, I am now prepared to give an emphatic, and, I trust, final decision. Even were we to concede that these outrages in Haytian waters were not within Haytian jurisdiction, I do now affirm that the claim of Pelletier against Hayti, on the facts exhibited, must be dropped, and dropped peremptorily and immediately by the Government of the United States. "The principle of public policy," said Lord Mansfield, in Holman *v.* Johnston, Cowper's Rep., 343, "is this: *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act," *Ex turpi causa non oritur actio;* by innumerable rulings under the Roman common law, as held by nations holding Latin traditions, and under the common law as held in England and the United States, has this principle been applied. The *lex fori* determines the question of turpitude; and nowhere, and with better reason, has the slave-trade been stamped with such an infamy and turpitude as in England and the United States.

It may be said that the question is in this Department *res adjudicata.* If it were, I would not have the slightest hesitation in making the report I now make, that the claim is one which can not now be pressed by the United States, either as a matter of honor or as a matter of law. But the case is not *res adjudicata.* By Mr. Seward the claim, as we have seen, was peremptorily rejected, and his action in this case was affirmed during the Secretaryship of Mr. Fish.

From Mr. Evarts, it is true, instructions emanated directing its presentation to Hayti, with the suggestion of arbitration, and by Mr. Langston, then minister at Hayti, this demand was urged, as has been seen, in terms that almost compelled submission. Mr. Evarts's instructions, however, were based on reports from the examiner of claims, now on file in this Department; and these reports rest exclusively on the prima facie case presented by the claimant, the case of Hayti, in reply not, from the nature of things, being then before the Department. Mr. Blaine and Mr. Frelinghuysen took matters as they found them, the case of Hayti not then having been heard.

Action of this class can no more be regarded as *res adjudicata* than can the preliminary binding over of a defendant, on the bare case of the prosecution, be regarded as *res adjudicata* when the case, both sides being in court, comes on for trial. Now for the first time has Pelletier's claim, together with Hayti's reply, appeared for ad-

judication in this Department; and with this full case before me, and with this very question reserved by the learned arbitrator who has made the award, I report that, in my judgment, after carefully reviewing the proofs, the claim, for the reasons I have stated above, can not be entertained by the United States. And I may add that in this particular case my opinion is sustained by the report of the Senate committee, by whom both sides were heard, and, on the question of disturbance of port tranquility, by numerous adjudications of this Department.

It may be finally urged that the award in the present case is conclusive and can not be disturbed. But this proposition can not be maintained. No matter how solemn and how authoritative may be a judgment, it is subject to be set aside by the consent of the parties. To the awards of international commissions, were the award in this case to be considered as such, this position applies with peculiar force, since, as is elsewhere noticed in this report, it is a settled principle of international law that no sovereignty can in honor press an unjust or mistaken award even though made by a judicial international tribunal invested with the power of swearing witnesses and receiving or rejecting testimony. But the award before me is not that of a judicial international commission, invested with such powers.

To constitute such a tribunal, either a treaty, duly approved by the Senate so as to be the law of the land, or an enabling statute, is necessary. The judicial and the executive departments are distinct, and unless by a treaty or an act of the legislature, in subordination to the Constitution, the functions of the former, so far as concerns the determination of litigated issues of fact, can not be vested in the latter. The Department of State, therefore, can not, either through its own officers or a commission appointed by it, take and mold sworn testimony in order to determine litigated issues of fact. Hence the conclusions of an international commission, sanctioned solely by the executive department of the Government, are to be regarded, to adopt the language of the Supreme Court, as an award "which would have bound nobody and would have been at most a friendly recommendation." (Miller, J., Great West. Ins. Co. *v.* W. S., 112 U. S., 197.)

It does not cure the proceedings in the present case that the distinguished gentleman who acted as arbitrator, administered oaths to witnesses, issued commissions, and determined as to what questions were to be put to witnesses, in this way shaping the testimony produced. In the opinion of this Department these proceedings, so far as they were matters of distinctively judicial prerogative, were *ultra vires*, and so was the judgment entered, so far as it partook of a distinctively judicial type.

In taking this position I am in no way impeaching the rights of the Executive, either through the Secretary of State or through agents appointed by him, to negotiate the settlements of private claims with foreign powers. Such negotiations may be likened to the conferences, in matters of private litigation, of parties through their counsel or through referees, to settle, on the basis of affidavits or voluntary statements of the parties, the matter in dispute.

Informal conferences of this class have been found, and will be found hereafter, of great use. But not being in the shape of a treaty they do not, in the United States, have the effect of a law investing the officers in question with the judicial power of taking and limiting testimony and deciding judicially on the questions submitted to them. Hence the awards of such tribunals, being inchoate and merely recommendatory, are to be regarded as less obligatory than are awards made under treaties. And as awards under treaties when the arbitrator had judicial powers, and when the witnesses testifying could be held criminally responsible for false testimony, will not be enforced if shown to be unconscionable and unjust, *a fortiori* is this the rule with awards in cases in which the arbitrator had no judicial powers, and when the oaths administered were nullities.

In view of the position taken by Hayti, as exhibited in the records of this case, it becomes now incumbent on the Government of the United States to determine whether it will enfore the payment by Hayti of this award.

Aside from the exhausted condition of her treasury, which would preclude voluntary payment at present, it is not to be expected that any nation, viewing this case as Hayti does, could make such payment except when forced to do so by the application of a superior force. Hayti is a Republic in which not merely the Government but the great body of the population are of negro descent. Pelletier was a notorious slave-trader, and the money awarded to him in this case was for an imprisonment imposed on him in Hayti for an attempt to abduct Haytian citizens, and sell them as slaves. To pay this award to Pelletier would be not merely to recognize the position that Hayti had no jurisdiction of an attempt in her own territorial waters to abduct and enslave her own citizens, but that the person making such an attempt is to receive a large indemnity for the punishment, in itself by no means excessive, inflicted on him for the crime.

Were the positions reversed; were it to appear that a foreign slave-trader had appeared in one of our ports and had sought to obtain fraudulent possession of colored citizens of the United States for the purpose of reducing them into slavery; were, in

case of the conviction of such a miscreant in our courts, his Government to call upon us to pay a large indemnity for the punishment to which he had been subjected, the answer of the people of the United States, of whatsoever race, would be one of prompt and resolute refusal, no matter how serious might be the consequences. What the United States would do under such circumstances is the peculiar right of Hayti. To Hayti it is not merely a question of the sovereignty over her own territory, but that of her power to protect from enslavement the race by which that territory is almost entirely peopled. Voluntary payment of this award by Hayti we therefore can not look for. Whether there is to be compulsion applied in the shape of reprisals to enforce payment it is the constitutional prerogative of Congress to determine. But I do not hesitate to say that, in my judgment, the claim of Pelletier is one which this Government should not press on Hayti, either by persuasion or by force, and I come to this conclusion, first, because Hayti had jurisdiction to inflict on him the very punishment of which he complains, such punishment being in no way excessive in view of the heinousness of the offense, and, secondly, because his cause is of itself so saturated with turpitude and infamy that on it no action, judicial or diplomatic, can be based.

II.—Lazare Case.

The facts of this case may be stated as follows:

Pursuant to instructions of inquiry issued by this Department on September 18, 1876, the following dispatch was sent to this Department by Mr. Bassett, then our minister to Hayti:

Mr. Bassett to Mr. Evarts.

No. 495.] Legation of the United States,
Port-au-Prince, Hayti, April 24, 1877.

Sir: In compliance with the Department's instructions No. 283 of the 18th of September, 1876, which only reached me here toward the end of January last, I have the honor to send herewith several inclosures, and to submit some observations bearing upon the claim preferred upon this Government by Mr. A. H. Lazare, in consequence of an alleged breach of a contract which he made for the establishment of a national bank in this country.

Inclosure A is an authentic translation of the contract, which was signed September 1, 1874, and its modifications, which were signed May 11, 1875. (For this inclosure see Record Lazare Case, pages 1*, 15*.)

There can be no reasonable doubt of the correctness of the pieces covered by inclosure A.

Inclosure B is a translation accepted by Mr. Lazare as true and correct, of his correspondence with the authorities of this Government during the months of August, September, and October, 1875, as it appeared in different numbers of the official journal, Le Moniteur Haitien, covering that period. (This correspondence is printed in full in the record of the Lazare case.) I think that all the letters and documents covered by inclosure B are correct, except that I have some doubt whether Mr. Lazare actually wrote and caused to be delivered to the then minister of finance, commerce, and foreign affairs, the closing letter which therein appears, dated October 18, 1876. I have not been able to find any traces of such letter either in the columns of Le Moniteur or in any department of the Government. There was evidently other correspondence on the same subject between the officials of this Government and Mr. Lazare, which he has not judged it best to reproduce; but perhaps he did not think it possessed a sufficient bearing upon the claim to be reproduced in connection therewith.

Upon the receipt of the Department's No. 283, I requested Mr. Lazare to favor me with any written statement which he might be pleased to submit in relation to his claim. And near the end of February last he made out and delivered to me a statement in that regard, which, as it may be presumed to embody what Mr. Lazare has to offer in support of his claim, I send herewith inclosed and marked C. It is in Mr. Lazare's own style and language. I shall, with your permission, presently take the liberty to refer to it somewhat more in detail.

These three accompanying inclosures together furnish the facts, allegations, and arguments upon which Mr. Lazare bases his claim. I respectfully refer you to them for full information on that phase of the subject, and would request that all due weight and force be given to them as they stand.

Mr. Lazare, who habitually appeared frank and open with us, spent the several weeks of July, August, and September, 1874, and of April and May, 1876, during which he was in the country, as an agreeable guest at my house, and I had, therefore, an opportunity of knowing the steps taken by him at those times in reference to the bank. I had also other opportunities of knowing all the important facts in the case

as they occurred. In view of the information contained in the inclosures, and otherwise within my knowledge, I propose, in obedience to Department's instruction No. 283, to offer some observations relative to the claim preferred by Mr. Lazare.

Let me say, then, at the outset, that according to the best of my knowledge and belief, Mr. Lazare acted in perfect good faith and with commendable energy in his persevering endeavors to carry out his part of the contract.

Shortly after the signing of the contract, he put the Government in communication with responsible parties for the erection of the buildings, which were by them completed in due time. Thereafter he went via New York to Europe, where he is presumed to have succeeded in securing conditionally a guarantee for a good portion of the bank's capital which he was to furnish. But finding some modifications of the original contract desirable in order to obtain for it the favor which he wished to secure for it in Europe, he returned here in April, 1875, had the modifications agreed upon and accepted, and hastened back to Europe in May, 1875. Arriving there he found that the firm (that of Robert Benson & Co., London) with whom he had made his first negotiations had become insolvent. Thereupon he diligently and energetically sought to and did open negotiations with other firms, but none that all his energy could discover was, it seems, willing to go farther than simply to give letters of credit to him as president of the national bank of Hayti, which was not yet in function. Such letters of credit he succeeded in obtaining from different firms in Europe to the amount of nearly a million of dollars. But they were neither the money which he had engaged to deposit in the vaults of the bank, nor even immediately or at Mr. Lazare's will convertible into that money.

But they were the best that he could or did obtain, and he returned here with his family in August, 1875, in the full hope no doubt, that he would be able to persuade the Government here to allow him to go outside the provisions of the contract to open the bank, with these letters which he might then make available. Well acquainted as I am with the bad faith which characterized the Domingue Government, and willing as I might therefore be to accept any allegations of Mr. Lazare in that regard, I must nevertheless do Domingue and Rameau the justice to say that I believe, without giving them any particular good motives in the matter even, that they ardently desired to have the bank established, and that up to the time that they learned of Mr. Lazare's failure to obtain the money in Europe they went as far in favoring Mr. Lazare to the end of opening the bank as they considered the popular sentiment would sustain them. I know that they at first counted very much upon Mr. Lazare's success. They appeared to think that with the indorsement of their Government he could command almost unlimited credit abroad, and might thus be of service to them.

But there was no mistaking the fact that the contract demanded from Mr. Lazare the depositing in the vaults of the bank of $1,000,000 in specie on or before the 1st day of September, 1875. (See Articles 24 and 31 of the contract, and see also the modifications.) In case this difficult and, as it was regarded, all-important condition was not complied with, the bank could not, according to the contract, be opened, and in case the bank and the warehouse were not both "in full operation" at the date named, the contract was to become null and void, and the Government was to be free to act as it pleased. (Article 24.)

The Government becoming fully acquainted with the fact of Mr. Lazare's inability to obtain in Europe for the bank anything more than the letters of credit, wrote him on the 27th of August (inclosure B), evidently in response to a request which he had made, according to him the time to the 15th of the following October for the opening of the bank, and warning him that if he were not ready at that date to carry out his part of the contract it would be declared null and void.

It does not appear by what right conferred in the contract either the Government or Mr. Lazare, or both together, could change the date positively fixed in the contract and reaffirmed in the modifications. But under the then existing circumstances, the adjournment might appear like a favor to Mr. Lazare, although I think that no steps which could then have been taken under the contract would have enabled him to obtain $1,000,000 in specie to be deposited in this country.

But, briefly, the 15th of October came, and Mr. Lazare's inability to pay into the vaults of the bank the $1,000,000 in coin was known to be in no way changed, while the Government, aided by foreign merchants, declared that it had deposited its $500,000 metallic money, according to the contract, which it thereupon declared to be null and void. (Inclosure B.)

Mr. Lazare was now urged to write a letter in the nature of a protest to the Government. Whether or not he actually did write and cause to be delivered such a letter (see the last letter in inclosure B), the Government, two days before the date given to the one which Mr. Lazare claims to have written to "reserve his rights" in the matter of the contract, did publish in the official journal of October 16, 1875 (inclosure D), a similar reservation of its rights as against Mr. Lazare, and I know that Mr. Lazare did refuse the importunities of his friends in that regard, still hoping that by preserving his supposed excellent relations with Domingue and Rameau, he might

secure from them a sum of money for his labors and outlays in behalf of the bank. In and according to this hope he shaped his bearing and conduct, and in this hope he remained here nearly six months, making frequent and almost daily calls upon Rameau and other Government officials. There were friends here who thought that he should have pursued a different course, one which they seem to consider would have been more manly on his part. At all events it is within my knowledge that Mr. Lazare, in response to urgent requests, did, in the sense already referred to, receive Government bonds to the amount of about $10,000, the appointment to be Haytien consul-general at New York, and promises of other contracts with this Government.

All these he readily accepted, and it was only after Domingue's overthrow and after he was notified by the Haytian minister at Washington that the provisional Government which succeeded Domingue's would not recognize the validity of any agreements made between the Domingue Government and himself, that Mr. Lazare brought forward his reclamations of the alleged breach of the bank contract; for his allegations in inclosure C to the effect that he made out and submitted to me that reclamation before he presented it at Washington, toward the end of August last, is certainly not correct.

In stating the basis of his reclamation (inclosure C) Mr. Lazare claims, in substance, to have received injuries from this Government.

(1) In that he was prevented from availing himself of the columns of the official journal to make public in that way certain information in reference to the bank, and was prevented by Government authority from printing the bank statutes.

(2) In that the Government in contracting the loan in Paris during the year 1875 contravened Article 14 of his contract, relative to the bank.

(3) In that the Government did not pay a greater portion of the cost of the bank and warehouse buildings.

(4) In that the Government, in spite of being obliged by the spirit and letter of the contract to begin paying its part of the capital before he commenced paying in his part of the capital, insisted on his part being paid in simultaneously with its performance of the same act.

(5) In that, having at an expense of time, money, personal exertion, and credit fulfilled his part of the contract up to the time when the Government, without good reason, declared that instrument null and void, the Government having during that time made breaches to the contract, is not released from its obligations to him up to that point.

He therefore, in virtue of Articles 18 and 19 of the contract, demands (1) that there be claimed from the Government of Hayti for him an indemnity of $500,000, and (2) that the Government (I presume he means the Government of Hayti) "name an arbitrator to decide on the damages and interest to the same which are due to him."

Such I understand to be in brief the basis of Mr. Lazare's claim. If I have in any way misstated it, I can be easily corrected by reference to the accompanying inclosure.

His first point I pass by as forming by itself no adequate basis for a reclamation. If that point be correctly stated, as I presume it to some extent may be, it is only another illustration of the bad faith which characterized the Domingue Government, and of which Mr. Lazare was fully amply forewarned by myself and others.

He invokes the provisions of Article 14 of the contract to show that the Government, by contracting the loan in Paris in 1875, broke its engagements with him, whereas it was certainly Mr. Lazare's privilege and his duty to know, when he assented to the Article 14, the public fact that a part of the revenue was, and for many years had already been engaged to cover and secure the French debt. I make no doubt but that the course which the loan took in Europe, the discussions and exposures of the bad faith of this Government which it called forth, did work unfavorably to Mr. Lazare in his efforts to obtain there the capital which he had engaged to furnish for the bank. But does that constitute a case of *force majeure?*

In the matter for the cost attending the erection of the buildings for the bank and the warehouse, I understand that it was Heuvelman, Haven & Co. who contracted with the Government, not without Mr. Lazare's knowledge and consent. Certainly an item to that effect figures in Heuvelman, Haven & Co.'s claims upon this Government.

I find nothing in the contract or its modifications which supports Mr. Lazare's statement that the Government was bound to begin paying in its share of the capital before he began the same proceedings, notwithstanding Article 30, which Mr. Lazare evidently invokes.

There is no doubt but that Mr. Lazare faithfully endeavored to carry out his part of the contract, or that in those endeavors he expended considerable sums of money. It is equally certain that he did not finally succeed in obtaining the $1,000,000 in the money which he had engaged to deposit in the bank according to Article 31 of the contract. The plain fact is that Mr. Lazare bound himself, as other men everywhere bind themselves to obligations for them not feasible, to fulfill certain conditions

which, notwithstanding his intimations in inclosure C to the contrary, he was positively unable at last to carry out. He does not pretend to have possessed capital himself in his own name.

In his statement he also maintains that the Government was not able to, and did not, carry out its engagement to deposit $500,000 specie into the vaults of the bank. But the *procès verbal* (see inclosure B) signed by several foreign merchants resident here, among them the head of a large American firm, distinctly states that that sum was duly deposited in the bank "in execution of the contract." And inclosure E, which is an extract from the official journal of October 16, 1875, confirms the statement made in the *procès verbal*.

It is necessary to add, however, that the common speech and notoriety at the time were to the effect that only less than half of the $500,000 was in fact deposited in specie, the greater portion of that sum being in drafts of foreign merchants doing business here. At the time I believed this rumor to be correct. But, contrary to the presumption which Mr. Lazare makes on this point, I think that the Government could at that time have commanded the required sum in specie, and I base this opinion upon the statements to this effect volunteered to me by merchants who could themselves have furnished the amount.

The opinion to which these facts relative to the whole matter force me is that Mr. Lazare's claim as he states it is not altogether well founded, and that certainly there is nothing in it which would justify the interposition of our Government.

The Department can not be unaware of my views, so often expressed in these dispatches, to the effect that many of our citizens who have entered into transactions with this Government have been, and some of them are still sufferers from the bad faith, evasion, and delay which have characterized and seem to some extent at least still to characterize the Government of Hayti in regard to its engagements. I do not wish to be understood in this dispatch as endeavoring to claim any virtue or good motives for the Domingue and Rameau Government or for the present administration in any of its dealings with Mr. Lazare. I would have much preferred not to have been constrained by facts to write in what might by any possibility seem to be an unfavorable view of that gentleman's interests as he conceives them.

Mr. Lazare asks for an arbitration. That is generally regarded as a friendly proceeding, I believe, and there ought perhaps to be no objection to it. But I must explain to you that while I shall of course be guided entirely by your instruction in this and every other view of the case, it becomes my duty to state that the unfriendly sentiment and feeling in Government circles here toward Mr. Lazare are such that they could not be immediately or easily overcome by any personal influence in those circles. I think that the allegations which have created this inimical feeling toward Mr. Lazare are not altogether well founded. They refer to his alleged unbecoming intimacy with Domingue and Rameau and partly to his asserted correspondence and fellowship with the avowed enemies of the present Government. While declaring again my lack of full belief in the justice of these allegations, I desire also to remark that, in my opinion, any mere feelings or prejudices which this Government may have in reference to Mr. Lazare, and whatever course prudence might for the moment dictate in regard to them, they ought not to be allowed to enter as serious and permanent element into the consideration of any rights that belong to Mr. Lazare.

I am, etc.,

EBENEZER D. BASSETT.

Accompanying Mr. Bassett's dispatch, above given, is a statement from Mr. Lazare, which was deposited by Mr. Lazare with Mr. Bassett as a basis of Mr. Lazare's claim against Hayti. This statement, with the dispatch verifying it, now on the files of the Department, contains, after a recapitulation of the contract between him and Hayti and of its modifications, the following summary of facts on which the claim rests:

"The position and the duties of each of the parties being thus defined, it only remained for them to execute them; the Government without caring for the engagement it had contracted with Mr. Lazare, first broke the contract, and infringed it in its most vital parts.

"In wrongfully suppressing the names of the local directors in the official paper of the Government, *Le Moniteur*, when the official announcement of the formation of the company was therein made; likewise in refusing to insert and to publish in the same paper the notice given by Mr. A. H. Lazare to insert in its columns the notice of the sale of the four thousand shares reserved for Hayti, and finally the illegal order given by the Government to prevent the printing of the statutes of the bank.

"The foregoing illegal, summary, and arbitrary acts on the part of the Government greatly impeded the success of the enterprise, and for which Mr. A. H. Lazare holds it entirely responsible.

"In disposing in favor of the loan in France of part of the custom duties affected to cover the advances which the bank was obliged to make in order to pay the expenses

of the budget of the Republic, and to pay the subventions granted to Mr. Lazare, and that the totality of these duties guarantied the extraordinary expenses which the bank was obliged to advance.

"In not paying a greater portion of the accounts and bills for materials furnished for the bank and warehouse at Port-au-Prince, which it had engaged to pay.

"It is very evident that in the contract passed between Mr. A. H. Lazare and the Government of Hayti, it is clearly shown, both in the spirit and to the letter, that the Government *had to commence first paying* in the vaults of the bank its share of funds, and that only after this having been accomplished the obligation arose for Mr. Lazare to make his deposit of funds.

"Now, on August 27, 1875, the secretary of finance and of commerce wrote to Mr. A. H. Lazare, announcing to him that the council of secretaries of state, in its sitting of that date, taking into consideration the difficulties which he has had to contend with and the necessity in which he was placed to realize the letter of credit of which he was the bearer, the council granted him a delay of forty-five days for the working of the bank, beginning from the 1st of September next, date which had been fixed by the contract for this operation.

"Mr. A. H. Lazare, who, on his side, knew the embarrassments of the Government and *the material impossibility* in which it was placed to deposit its share of funds in the vaults of the bank, according to the contract passed between the two parties, answered, the 11th of September, 1875, that in view of the importance of the communication which had been made to him by the secretary of commerce, who had placed him (Mr. Lazare) in the necessity of first seeing the vice-president and coming to an understanding with him, he had been obliged to leave a few days pass without acknowledging the receipt of his letter; that nevertheless, as a friend of the Government, he was disposed to admit the postponement of the opening of the bank to the 15th of October, *because he fully understood the situation of the Government*, but that he hoped that the Government would give him its aid, instead of counteracting his plans and annulling his negotiations which he had made in behalf of the bank.

"That in answer to this letter the secretary of finance and commerce announced to Mr. A. H. Lazare that, according to the text of the contract passed with him, there could not be admitted any case of *major force*, inasmuch as regarded the capital of the bank, and that if passed the delay of forty-five days, Mr. A. H. Lazare did not fulfill his part, the Government would consider by full right the contract as null and void.

"That things remained in this state till the 14th of October, 1875, on which date the secretary of finance and commerce made known to Mr. Lazare that the Government of Hayti, being ready to deposit its share in the vaults of the bank, desired to know if he, A. H. Lazare, was equally prepared in what regarded his part.

"That Mr. A. H. Lazare, who was fully aware that the Government was not prepared, and that even if it were prepared, knew very well that nothing could be done without his presence, confined himself, in answering the secretary of finance, that as soon as the Government would have made its deposit, he would conform himself to the conditions which he had already made known to the vice-president of the council.

"That by his letter, in answer to the preceding one, the secretary of finance made known to Mr. A. H. Lazare that the Government had reason to be astonished at his proposition, which referred to the paying of a part in drafts, instead of paying in metallic specie, and that he was again authorized to declare to Mr. A. H. Lazare that in default of the punctual execution of his part of the contract on the 15th of October instant, it would remain null and void.

"That in consequence a commission was named by the Government (without the knowledge and without notifying Mr. Lazare) in order to verify that the date of the 15th of October, 1875, the Government had paid in, in the vaults of bank, the sum of $500,000 as its part of the capital, and that Mr. A. H. Lazare had neither previously nor during the course of the 15th day of the month of October made any deposit.

"That in the written exposition (*procès verbal*) drawn up on the aforesaid date by the commission, it was made known to Mr. Lazare, whom the Government informed, that in default of his having deposited his funds in the vaults of the bank, the contract passed between the parties became null and void.

"That in answer Mr. A. H. Lazare [informed] the Government that in the official paper the 17th he noted on the one hand, that according to the act of September 1, 1874, passed between the Government and himself, the Government had deposited in the National Bank, in presence of a commission named to that effect, *in specie of gold and silver*, the sum of $500,000, its part of the capital, according to the modifications made the 11th of May, 1875, while the written exposition (*procès verbal*) of the act of depositing, of which a copy had been made known to him, does not in any way mention the *kind or kinds* of specie in which the payment had been made, and that it was of public notoriety that of the sum of $500,000 *deposited* the 15th of October, only $235,500 *consisted in metallic funds*, the remainder consisting in drafts and other papers furnished on the very spot in order to show that $500,000 *had been deposited*, when the contract *expressly mentions that only specie in gold and silver shall be deposited.*

"That he, Mr. Lazare, reserved to himself the right to bring forward, whenever needed, the causes, independent of his will, brought on by the *faults* and the wrongful acts of the *Government*.

"That besides the right did not belong to either of the contracting parties *to declare* that they annulled the contract; that a contract can only legally be declared annulled by the consent of *the two parties or by a competent tribunal*.

"The contract thus annihilated, differences occurred between the Government and Mr. Lazare to such a degree that the Government refused violently, and with threats, the arbitration proposed by the said Mr. Lazare, in face of the persistence of the Government to cover this infraction by the definitive execution. Mr. Lazare, basing himself on the violent and arbitrary refusal which had been made to him in answer to his request, *in order to arbitrate the position*, took such measures as that position required in order to guarantee his interests and his person, without nevertheless alienating, in any way, his rights, so as to again claim them at the proper time.

"Mr. Lazare then prepared a report of his claim against the Government, which he handed to the United States minister resident at Port-au-Prince in order to claim his rights, as Mr. Lazare could not see any other way to obtain justice; but later the Government recognizing its wrongs and promising to pay this claim, no further steps were taken in the matter for the time being.

"The events of the revolution supervening, Mr. Lazare left for the United States, where, a few days later, he was informed of the downfall of the late Government. On the 29th of April, 1876, the Haytian minister at Washington notified him of the fact that instructions had been received by him from the provincial Government of Hayti to advise Mr. Lazare that the aforesaid Government did [not ?] recognize the validity of the contracts which had existed with Mr. Lazare and the last administration.

"On this account Mr. Lazare left for Washington, and submitted his claim to his Government, and a letter of the honorable Secretary of State was immediately forwarded, with the necessary instructions, to the United States minister resident at Port-au-Prince to occupy himself at once with the present claim. * * *."

The statement closes with the following demands:

"That there be claimed of the Government of Hayti $500,000 which rightfully belong to him, owing to the annihilation of the contract, and paid to him without other form and without delay.

"That the Government *name an arbitrator* to decide on the damages and interest which are due him, owing to the infraction made to the contract.

"In making his reserves generally whatever, and particularly, as regards that of six per centum interest annually to date from the claim for $500,000.

"A. H. LAZARE."

On May 28, 1884, a potocol was signed by Mr. Frelinghuysen, as Secretary of State, and Mr. Preston, minister for Hayti, by which Mr. Lazare's claim, with that of Mr. Pelletier, was referred to the Hon. William Strong, as arbitrator, for adjudication. This protocol, as already referred to in my report in Pelletier's case, provides that (Article III)—

"The said arbitrator shall receive and examine all papers and evidence relating to said claims which may be presented to him on behalf of either Government.

"If, in presence of such papers and evidence so laid before him, the said arbitrator shall request further evidence, whether documentary or by testimony given under oath before him or before any person duly commissioned to that end, the two Governments, or either of them, engage to procure and furnish such further evidence, by all means within their power, and all pertinent papers on file with either Government shall be accessible to the said arbitrator.

"Both Governments may be represented before said arbitrator by counsel, who may submit briefs, and may also be heard orally if so desired by the arbitrator."

It also provides that (Article VI)—

"The high contracting parties will pay equally the expenses of the arbitration hereby provided; and they agree to accept the decision of said arbitrator, in each of said cases, as final and binding, and to give to such decision full effect and force, in good faith, and without unnecessary delay or any reservation or evasion whatsoever."

The protocol, as has been stated above in my report in Pelletier's case, was never submitted to the Senate; but the arbitrator entered on his duties, and was attended during the proceedings in Lazare's case by Mr Phillips, the Solicitor-General, by Messrs. Thomson and Ashton, counsel on behalf of the claimant, and by Messrs. de Chambrun and Boutwell, counsel for Hayti. After a series of hearings, in which much testimony under oath was taken, evidence admitted or rejected under objection, and several documents received, the arbitrator, on June 20, 1885, found that the sum of one hundred and seventeen thousand dollars ($117,000), with interest from November 1, 1875, was due to Mr. Lazare from Hayti.

How far the award in the present case is to be regarded as invested with legal force has been already considered by me in the discussion of the Pelletier case. So far as concerns the right of the arbitrator to take testimony under oath, to reject or admit testimony offered against the objections of the opposing party, to issue commissions, and to assume, in general, judicial authority, the exceptions taken to the arbitrator's action in the Pelletier case apply equally to his action in the Lazare case now before me.

Waiving, however, this question of the binding force of the action of the arbitrator, I proceed to take up the case on its merits.

The evidence which we have in this view to consider consists:

(1) Of the documents with which this part of my report opens, and which were not laid before the arbitrator.

(2) Of the proof, oral and written, taken by the arbitrator, which is given in the printed volume hereto attached.

(3) Of what is called the after-discovered evidence, placed at the end of said volume.

At the outset it is a matter of importance to consider what is the relative weight to be attached to these particular parcels of evidence. In this comparison it is essential to weigh the circumstances under which Mr. Bassett's dispatch was written.

He was at the time the diplomatic representative of the United States, residing at Port au Prince, the scene of the transactions under investigation. He was on terms of intimacy with Mr. Lazare, who was for some time an inmate of his house, and to whose attractive social qualities, as well as to his activity in pressing his case, the dispatch does full justice. Nor can Mr. Bassett be charged with any particular partiality for Hayti. On the contrary, he censures the general policy and conduct of the Haytian Government in terms which, had this dispatch seen the light, an event which was not to have been warded against by him, it would have involved him in difficulties which would have made his stay at Hayti unendurable. It is impossible to read his dispatch, I think, without seeing that he tried to do justice in his narrative of the facts, and that if he leaned either way in his partialities it was towards Mr. Lazare. The paper is singularly able and lucid; it bears, as I have just said, what I believe to be marks of fairness; and it was written while the events were fresh in Mr. Bassett's memory, while Mr. Lazare was still on the spot, and while the Haytian archives, which shortly afterwards were burned, were at hand to correct him in case of his falling into error. He was, in addition, a high officer of the Government, acting under specific instructions from the Department, making a communication, material errors in which, as coming from a person cognizant of the facts and acting under oath as an official investigator, would not only have been open to immediate correction as above mentioned, but would, upon exposure, have subjected him to severe censure if not to immediate recall. But no attempt was afterwards made to traverse the facts stated by him, however much his conclusions may have been dissented from. I must therefore hold that these statements, all other considerations being in equipoise, are to be regarded as more likely to be accurate than are conflicting statements made by Mr. Lazare, or those speaking for him, eight years subsequently, after the destruction of the Haytian archives and after the effect on memory of so long an efflux of time, aided by strong personal intesest.

I think the same should be said of Mr. Lazare's statement made in February, 1877, to Mr. Bassett, when compared with the statement of Mr. Lazare's counsel in January, 1885, and with Mr. Lazare's subsequent testimony before the arbitrator. Mr. Lazare, when he handed to Mr. Bassett this statement of February, 1877, knew that Mr. Bassett was able to detect and comment on any errors of fact it might contain, and he knew also that the Haytian archives were at hand to verify his statements. When he made up his case for his counsel, in 1885, he addressed an auditory who had no such means of revision. Mr. Bassett's dispatch and his own statement of February, 1877, appear to have been forgotten, and his own mind had been affected by the lapse of eight years, aided by that unconscious effect of strong interest in the distortion of past events to which I have already adverted. Nor is it to be forgotten that Mr. Lazare's statement of February, 1877, is the only one signed by him. Those of October, 1877, and January, 1885, were made by his counsel simply as a third party. His statements before the arbitrator were oral, and were, to say the least, made in a way which would not impose on him any subsequent penal responsibility. In this view I must hold that Mr. Lazare's statement of February, 1877, should prevail in cases where, all other things being equal, it conflicts with the statement and evidence of 1885. And, as I shall proceed to show, the conflict between this prior statement and the subsequent one of 1885, taken in connection with the after-discovered evidence hereto annexed, is so material as to destroy Mr. Lazare's case for damages based on breach of contract.

ANALYSIS OF EVIDENCE.

I. According to the statement of Mr. Lazare's counsel, of January 15, 1885 (page 9), "On May 22, 1875, the organization of the bank was duly certified by the Gov-

ernment at the head of the Government newspaper," this being put forward as a proof that the contract was officially ratified by Hayti. In the statement of February, 1877, failure of such ratification is complained of by Mr. Lazare, it being asserted that the Government failed to give satisfactory notice, in the official paper, of the concession, and issued "an illegal order to prevent printing the statutes of the bank."

II. In the statement of January 15, 1885, is the following:

"That when Mr. Lazare was in Paris he found that three grants of the same duties had already been made by the Haytian Government to their creditors. * * * These constituted a flagrant breach of the contract." (Pages 13, 14.)

That these "grants" were prior to the "contract;" that they were matters of public notoriety, and that Mr. Lazare had notice of them when entering into the contract is asserted by Mr. Bassett in the dispatch above given, written when the events were fresh, and when he was in constant intercourse with Mr. Lazare. In the statement of Mr. Lazare's counsel, of October 23, 1877, it is not pretended that Mr. Lazare was ignorant of these negotiations, but only that this alleged breach of good faith by Hayti was discovered in Europe by others. Mr. Lazare's testimony on this point is not inconsistent with prior knowledge on his part of the precedent hypothecations. Even waiving Mr. de Chambrun's affidavit as to the effect of Mr. Peters's conversation on this point with Mr. Lazare in 1874, it would seem that either Mr. Lazare must, at the time of the contract, have known, as Mr. Bassett asserts, of the prior partial incumbrances, or was so bound to have known of them that he can not set up his ignorance now as an excuse for his failure to perform his engagements. Mr. Lazare, even in his latest statements, does not pretend that there were any false assertions made to him by Hayti in this relation, nor can he complain of any suppression of a matter as to which, if he was ignorant, he was bound to inquire. For myself, it is impossible for me to do otherwise than hold that he was cognizant of these prior hypothecations. No doubt their discovery in London and Paris in 1875 may have prevented him from obtaining the loans he desired. But for this he, not Hayti, was responsible.

III. By the statement of January 15, 1885 (page 14)—

"Mr. Lazare made his arrangements for the transmission of funds from Europe to Hayti in amount sufficient to enable him to supply his proportion of capital to the bank in case Rameau should continue to act in good faith with him in regard thereto."

According to the statement of October 23, 1877, he negotiated, when in London, for the full amount of $1,000,000 from "the Consolidated Bank, Messrs. Kerfoot, Sears, and others."

In his testimony before Judge Strong, Mr. Lazare says:

"I made some further negotiations, after some time with the houses of Kerford & Co., of Liverpool, and with Sears & Co., of London, and with the Hazlewood Brothers, of London." (Page 49.)

But as a matter of fact Mr. Lazare did not obtain any reliable engagements for the furtherance of his plans, nor, if he had obtained promises from Messrs. "Sears & Co." and "Hazlewood Bros.," would such promises have been of any marketable value. What he obtained was, at the utmost, not bills convertible at the time into cash to start the bank, but simply credits, to avail the bank *when it was started with adequate capital;* and, as the after-discovered evidence shows, even as to this, in the case of Kerford & Co., the only reliable firm with whom he dealt, this credit was not to be used in sums above £5,000, unless provided for by prior deposits. In examining the notes of the arbitration, I was struck with the fact that the alleged bills of exchange, which are set up as constituting an equivalent to the "metallic currency" Mr. Lazare was to contribute to the bank, were not only not exhibited at the hearing either in original or in verified copy, but that there was no extrinsic proof that such bills ever existed. So far as a negation can be proved, the negation that there were no such bills is proved by the after-discovered evidence.

But I do not rest on this. In Mr. Lazare's statement of February, 1877, above noticed, which I must again refer to as giving a statement of the transactions as they appeared to him at the time, he never claimed to have made a legal tender of such drafts to the Haytian Government in fulfillment of his part of the contract. If not so tendered, he was, unless he can excuse himself, in default; and, being in such default, he can not, on this ground, maintain an action against Hayti for a breach of non-performance of the contract. It is also material to observe that when, as will be seen in a future page, Mr. Lazare was notified by the Government of Hayti not merely of its readiness "to deposit its share in the vaults of the bank," but of its desire "to know if he was equally prepared," and when, as we have a right to infer from his statement, from Mr. Bassett's dispatch, and from the notice of October 14, 1875, hereafter quoted, he was duly informed of the meeting on the 15th of October to verify such deposits, he refused to attend, one of the reasons he gives being his "belief that nothing could be done without his presence." It is difficult to avoid the conclusion that Mr. Lazare refused to attend, not merely because he did not choose to give the Government the opportunity of making good its deposit, should he except to its form,

but because he was without the means of complying with his own stipulations. His refusal to attend when informed that he was called upon to prove his competency to comply with his contract is an additional circumstance to show that he was not so competent. And after so refusing, and the Government acting on such refusal, I submit that as a matter of law he can not subsequently set up such competency.

IV. In the statement of January 15, 1885, it is alleged that the Haytian agents in Paris, in June and July, 1875, showed hostility to the bank, and consequently "bankers having correspondents in Hayti informed Mr. Lazare that he was being duped," and "that the shipment of specie to Hayti at that time would be idle as well as dangerous. * * * *Mr. Lazare in Paris met with a practical and absolute breach of his contract on the part of Rameau.*" (Italics in printed statement, page 13.)

There is no allegation whatever of such "hostility" in the statement of February, 1887, nor is there any proof beyond Mr. Lazare's remarks to this effect ten years after the transaction closed. And this coincides with Mr. Bassett's statement that the Haytian Government did its best to sustain Mr. Lazare's plans for obtaining funds for the starting of the bank. Nor can this allegation of failure through Haytian intrigues in Europe be made consistent with the allegation of success in Europe of obtaining the desired loans.

V. According to the statement of January 15, 1885, Mr. Lazare "secured, while in Europe, and at considerable expense, the services of a gentleman prominent as a practical banker to work out the detailed operations of the bank, and brought him with him, together with competent assistants. He arrived with his family and business retinue about the 1st of August, 1875" (page 14). This is controverted, so far as concerns the "considerable expense" incurred by securing the services of "a gentleman prominent as a practical banker," by the affidavit of Mr. Fesser, the "practical banker" in question, which avers that all he received was a draft on Kerferd & Co. for £500, which draft was protested for non-payment. Mr. Fesser, therefore, withdrew from the arrangement.

VI. By the statement of January 15, 1885 (page 16):

"After the completion of the bank building there were two keys procured which could open the door and procure entrance. One of these was kept by Mr. Lazare and the other by the Government. About September 1, 1875, the Government obtained from Mr. Lazare the key which he kept, thus obtaining absolute possession of the bank, to the exclusion of Mr. Lazare."

Not only is no pretense of this kind set up by Mr. Lazare in his statement of February, 1877, but he gives us to infer that he had free access to the bank, and that an absence from the bank on his part was not coerced, but was to further purposes of his own.

VII. The statement of January 15, 1885 (page 16), declares, when speaking of the meeting proposed by the Government on October 15 for the making of its deposit and the production of his, that—

"On the said 15th October, 1875, some boxes in which soap had originally been packed, were taken into the bank building, but *Mr. Lazare having had no notice to attend and having no key for access*, the proceedings were entirely *ex parte*. Mr. Lazare knew nothing about what was going on in the premises until the official statement was made that the Haytian Government abrogated the contract."

In the statement of February, 1877, we have the following:

"The Government having extended to Mr. Lazare a delay of forty-five days for the working of the bank, beginning from the 1st of September, which was accepted by Mr. Lazare, the Government informed Mr. Lazare that 'if passed the delay of forty-five days, Mr. A. H. Lazare did not fulfill his part, the Government would consider by full right the contract null and void.' On October 14, 1875, the *Government notified Mr. Lazare* that 'being ready to deposit its share in the vaults of the bank, [it] desired to know if he was equally prepared in what regarded his part. That Mr. Lazare, *who was fully aware that the Government was not prepared, and that even if it were prepared, knew very well that nothing could be done without his presence, confined himself in answering the secretary of finance that as soon as the Government would have made its deposit he would conform himself to the conditions which he had already made known, etc.*'"

I beg also to call attention to another letter of the same secretary of October 14, 1875, to Mr. Lazare, which is given among the papers which are part of the claimant's case, and which contains the following passage:

"Therefore, sir, I am authorized to declare again, and expressly to you, that unless you punctually perform your part of the contract at the specified date, that is to say, to-morrow, October 15 instant, said contract shall become null and void."

After reviewing all the facts as above given, I must hold as to this vital question that Mr. Lazare had due notice of the proposed deposit by the Government; and that he deliberately refused to attend the meeting, in order to subserve purposes of his own.

VIII. In the statement of January 15, 1885, it is said (page 2) that Mr. Lazare was—"in June, 1874, president of the West India Steamship Company, whose steamers plied

between New York and Port au Prince, in Hayti, and other points in the West Indies. At the same time he was managing director of the Indiana and Illinois Central Railway Company. He had large personal interest in these companies, and his time and attention were absorbed in their management."

In his testimony he says he was, when he left for Hayti, "managing director" of the railroad at a salary of $6,000; and that he had a salary as president of the steamship company of "about $4,000, I think," which salary, however, it is stated on page 44, he had never received. It appears, however, from the testimony of the president of the railroad in question, that Mr. Lazare was not "managing director" of the road, but that he was, by agreement, to perform such services as should be required of him as agent, at a salary not over $500 per month; but that in 1874 and 1875 he rendered no services to the road, and that he received no payments of any kind from the road in those years. The road became insolvent in 1874, when foreclosure proceedings were instituted against it. The steamship company, also, in which he was interested, "afterwards," according to the claimant's counsel (final argument, page 17), "came to grief." That Mr. Lazare was himself at the time insolvent may be inferred from the record of the judgments against him; nor is there anything to rebut this inference in the letters, produced by Mr. Lazare's counsel from two gentlemen of respectability, as to Mr. Lazare's character.

Aside from the fact that these letters are merely declarations of third parties, they do not purport to come from business men familiar with Mr. Lazare's business transactions. The conclusion which may be drawn from the testimony as a whole is, that when he went to Hayti he was insolvent and out of employment, seeking a new field of enterprise in place of those he had been compelled to abandon.

IX. It remains to notice the alleged letter of Mr. Lazare to the secretary of finance of October 18, 1875, produced before the arbitrator and incorporated by Mr. Lazare in his statement given to Mr. Bassett in February, 1877. This letter may be fairly designated as apocryphal, and I think that from its inconsistency with Mr. Lazare's conduct at the time of its alleged date that date is shown to be a mistake. It is sufficient, however, in order to throw doubt on this letter to quote the following statement as to it from Mr. Bassett, in his official report above cited:

"I have some doubt whether Mr. Lazare actually wrote and caused to be delivered to the then minister of finance, commerce, and foreign affairs the closing letter which therein appears, dated October 18, 1875. I have not been able to find any traces of such a letter either in the columns of Le Moniteur or in any of the Government offices."

This, it must be remembered, was before the destruction of the Haytian archives.

On the facts I have to report as follows:

There is no satisfactory evidence that the Haytian Government interfered with Mr. Lazare's obtaining funds in Europe to start the bank. On the contrary, we have to infer from the evidence that it was deeply interested in Mr. Lazare's success, and did, therefore, all it could to further his movements.

There is no evidence of any diversion by the Haytian Government, subsequent to the contract, of revenues which were to have gone to the bank. Whatever hypothecation of such revenues existed took place by public acts before the contracts, of which acts, if it be possible to suppose Mr. Lazare was ignorant at the time of making the contract, he was bound to have taken notice.

There is no evidence that the Haytian Government did not, substantially, as hereafter explained, comply with its engagements in depositing on October 15, 1875, $500,000 in metallic currency in the vaults of the National Bank. The certificate of the parties called by the Government to witness this deposit merely states, it is true, that the deposit of $500,000 was "duly" made, according to the contract, but the official notice of the Government, published the day after, states that it was made in "gold and silver," and no contradiction of this, if we except the alleged letter of October 18, 1875, was made by Mr. Lazare until February, 1877. We must remember that the persons certifying that the deposit was duly made, and acquiescing in the Government's statement of the next day that it was made in "gold and silver," comprised, according to Mr. Bassett's statement, several foreign merchants of Port-au-Prince, embracing the head of a large American firm, all of them spoken of by Mr. Bassett as men of high respectability. It may, however, have been, as suggested by Mr. Bassett, that while a large proportion, amounting to nearly one-half of the deposit in question, was "in gold or silver," a part was in specie or bullion drafts from merchants acting as bankers in Port-au-Prince, who were represented on the commission, and who, according to Mr. Bassett, were abundantly able to supply the bullion at call. I do not propose to say how far such a deposit, if it were so shown to have been made, fulfills the stipulations of the contract. I am inclined to think that if these merchants said, "Here is an order for the bullion; it will be given if you send for it," they being fully capable of honoring the order, this was a sufficient fulfillment of the stipulation. But I am at all events prepared to say that Mr. Lazare, by willfully, for the purpose, as he tells us, of defeating the action of the Government, refusing to attend the examination by the commission, can not now dispute their

conclusion that the deposit was "duly" made, or the report of the Government that the deposit was in "gold and silver." If he intended to hold that an order by a banker for gold was not to be treated as gold, he should have made the objection at the time, when it could have been met and obviated. After refusing to attend and inspect the payment, his refusal not being negligent or coerced, but deliberate, he can not take the exception now.

So far from it appearing that Mr. Lazare was ready on October 15, 1875, to perform his part of the contract, the evidence, taking it altogether, shows that he had no means for such performance, and that his failure in this respect was not induced by any action on the part of Hayti of which he had not notice or ought not to have taken notice at the time when he entered into the contract.

It may be that the Haytian Government, after substantially complying, as I hold it did, with the contract by this deposit, was bound not to rescind, but, by the contract, to propose to arbitrate. But Mr. Lazare can not take this ground now. As a matter of fact, I have no doubt that he ratified the rescission of the contract. He remained at Port-au-Prince for six months after he was notified of the rescission, treating with the Haytian Government in a way which can only be explained on the hypothesis that he regarded the contract as at an end. There is not a paper produced by him showing that he asked for an arbitration. But he certainly did ask for favors inconsistent with the idea that he had a claim on Hayti for anything more than expenses incurred by him as her agent. He obtained a grant of $10,000 in Haytian bonds and an appointment as Haytian consul in New York. His attitude towards Hayti at that time, as depicted by Mr. Bassett, is that of a man who says, "I have failed to get the funds I promised; the thing is at an end; do something for me."

The claim for enormous damages, made after the fall of the Rameau government, and after the consulship at New York was at an end, may be inferred to be an afterthought. The contract, I hold, was rescinded by Hayti on October 16, 1875, and this rescission was ratified by Mr. Lazare. At the utmost, all he could claim after this was his expenses and salary as Haytian agent. It was probably to recompense him for his losses in this respect that the $10,000 Haytian bonds and the New York consulship were given him. If there were promises made to him of larger sums, these promises were gratuitous or dependent on future services (such as the palace building) which he never rendered. At all events, the only claim he can now ask this Government to aid him in recovering is that for services rendered in his agency in excess of the payment made to him as above stated.

In coming to this conclusion I have the approval of Mr. Justice Strong, the arbitrator by whom the award was made, and to whose great legal ability, wide experience, and unblemished integrity I am glad to pay tribute. In a letter, dated February 18, 1886, to Mr. Preston, the Haytian minister, a copy of which is annexed, Judge Strong states that the after-discovered evidence "was of such a character that it would materially have affected my decision had it been presented to me pending the hearing of the case, and before my powers under the protocol had ceased." This was before either Judge Strong or myself was aware of Mr. Bassett's dispatch of April 24, 1877, and of Mr. Lazare's statement of February of the same year with which this report opens. When a copy of Mr. Bassett's dispatch, together with a memorandum of Mr. Lazare's statement as to his notice of the deposit, was subsequently given to Judge Strong, he made, on June 23, 1886, an oral statement to the Department as follows:

"In view of these documents, which were not exhibited to me, I am clearly of the opinion that the award ought to be opened; that the Government can not afford to press a claim not clearly founded in honesty; that if these documents had been presented to me, together with the other affidavits presented to me on the motion to open the award, they would have made a vast difference in the award which I did make.

"These papers tend to show that the only fault of Hayti was the failure to propose arbitration instead of at once declaring the contract void, the contract having stated that differences should be referred to arbitrators. That not having been done, resort may be had to law to recover such injuries as the claimant may have sustained; under the circumstances it would seem to me that he could only claim for expenses necessarily incurred by him."

I can not but feel that the honor of the United States is eminently concerned in treating this award as opened, and in this Judge Strong concurs. The dispatch of Mr. Bassett, and the statement of Mr. Lazare of February, 1877, above noticed, are, for the reasons I have given, fatal, in my judgment, to the award. The counsel for Hayti are not to blame for not producing them. We have an affidavit that they were ignorant of them, and their ignorance is easily explained. The papers were not printed among our annual reports on our foreign relations. The archives of Hayti, which might have given a clew to these papers, had been burned. The counsel for Hayti had no access to our records; and on their applying to inspect the records bearing on this case, I declined to grant this request, on the ground that only papers specifically designated could be inspected, and such designation the counsel could

not give. We could not have expected the counsel for the claimant to produce documents so destructive of their case, though it should not escape observation that they produced subsequent papers in which the documents not produced are noticed. But it was the duty of the counsel for the United States to have produced these documents; and if through inadvertence, which no doubt was the cause of the omission, the documents were withheld, the United States can not do otherwise than decline to enforce the award. An award which the arbitrator declares he would never have made, had the whole record been before him, can not be the basis of hostile action by the United States.

I have considered this claim heretofore on the supposition that it is one as to which, if it be proved, the Government of the United States ought to intervene. But, even in case of such proof being made, intervention on our part, beyond the tendering of good offices, would be a departure from our settled policy. We have repeatedly held that even when reputable capitalists ventured their funds in the bonds of a foreign Government we would not intervene in their behalf. But even merits such as these the present claimant can not set up. He went to Hayti as an insolvent, nor did he put any capital whatsoever in the bank, the failure to establish which on the part of the Haytian Government is the injury of which he complains. He must, or ought to, have seen that the scheme was a wild speculation, which had no chance of success. It does not appear that of the 8,000 shares of the bank to be subscribed outside of the Government subscription a single share was taken in Hayti or abroad, and it is hardly possible to conceive that any European capitalist of respectability would have ventured his funds in such an enterprise, damaged as it was by the monetary character of Hayti in foreign markets. Mr. Lazare can not be supposed to have expected success in such a scheme unless we attribute to him such recklessness as would preclude him from maintaining such a suit as the present; and whether he went into the movement knowing it was hopeless, or in wild ignorance of the elements with which he was to deal, he is not entitled to claim our aid. But even if he were, all the aid we could give would be our good offices. The claim, even supposing it is well founded, is based on a speculation in Hayti into which Mr. Lazare voluntarily entered.

It remains to notice the position that a re-examination of the merits of this case is precluded by the announcement of the President, in his annual message of 1885, that the arbitration had closed and a final award been given. But such an announcement no more precludes such a re-examination than an announcement of the close of the late Mexican Commission precluded a re-examination of the Weil and La Abra cases, or an entry of a judgment by a court precludes the hearing of a motion to open such a judgment on proof of fraud or mistake. I must repeat in this connection the position with which this report opened, that, essential as it is that the intercourse between nations should be marked by the highest honor as well as honesty, the moment that the Government of the United States discovers that a claim it makes on a foreign Government can not be honorably and honestly pressed, that moment, no matter what may be the period of the procedure, that claim should be dropped.

Respectfully submitted.

T. F. BAYARD.

DEPARTMENT OF STATE,
Washington, January 20, 1887.

List of inclosures.

No. 1.—Record in Pelletier case, 2 vols.
No. 2.—Record in Lazare case, 1 vol.
No. 3.—After-discovered evidence in Lazare case.
No. 4.—Mr. Strong to Mr. Preston, February 18, 1886.

[Inclosure 3 to inclosure in No. 74.]

In the matter of A. H. Lazare against the Republic of Hayti.

NEWLY-DISCOVERED EVIDENCE.

Affidavit marked No. 1.

I, Allen Hammond, of No. 7 Tower Chambers, in the city of Liverpool, in the county of Lancaster, in England, merchant's manager, do solemnly and sincerely declare as follows:

(1) I am of the age of 37 years and upwards.

(2) I was, during the whole of the years 1875 and 1876, and am now, principal employé in the firm of Messrs. George B. Kerferd & Co., of the said city of Liverpool, merchants.

(3) On the 9th day of August, 1875, the said firm wrote to Mr. A. H. Lazare (who is therein described as president of the National Bank of Hayti) the letter of which a true copy is hereunto annexed and is marked with the letter A.

(4) I have compared the said copy letter with the press copy thereof, which was made from the original letter, and which is on pages 73 to 75 of letter-book No. 91 of the said firm of George B. Kerferd & Co.

(5) No bills were drawn and no transactions took place under or pursuant to the said letter, the only transactions between the said Mr. A. H. Lazare and the said firm of George B. Kerferd & Co. being those which are set out or referred to in the two exhibits marked, respectively, B and C, which are also annexed hereto, and which are true copies of or extracts from the account-current books, Nos. 20 and 27, respectively, of the said Messrs. George B. Kerferd & Co.

(6) The balance of £56 5s. 11d., which stood to the credit of the said Mr. A. H. Lazare in the books of the said Messrs. George B. Kerferd & Co., as appears by the said account-current, under date of the 30th of June, 1876, was remitted by the said firm to the said Mr. A. H. Lazare, who was then at 71 Broadway, New York, by bill of exchange on Messrs. Brown Brothers & Co., of New York City, on July 29, 1876, as appears by the copy letter, which is also hereunto annexed, and is marked D, and which is a true copy of a letter which was written and sent by the said firm of George B. Kerferd & Co. to said Mr. A. H. Lazare on said last-mentioned date.

(7) I have carefully examined all the said exhibits hereunto annexed, with the press copies of the originals thereof, which appear in the press-copy books of the said firm of George B. Kerferd & Co., and have also compared the said Exhibits B and C with the ledger of the said firm, so as to satisfy myself of their accuracy.

(8) It is within my own knowledge that the said two letters, the said two accounts, and also the said bill, were duly forwarded to the said Mr. A. H. Lazare.

And I make this solemn declaration conscientiously, believing the same to be true, and by virtue of the provisions of the statutory declaration act of 1835.

A. HAMMOND.

Signed and declared by the said Allen Hammond, at the city of Liverpool, in the county of Lancaster, in England, this 10th day of July, 1885, before me.

GEORGE LAYTON, [SEAL.]
Notary Public, Liverpool, and a Commissioner to administer Oaths in the Supreme Court of Judicature in England.

I, the undersigned, vice and deputy consul and *ex-officio* notary public of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come, that George Layton, before whom the annexed statutory declaration of Allen Hammond has been made and subscribed, and whose signature and official seal are appended to the attestation thereof, is a notary public of England, duly admitted and sworn, and that to his acts as such notary full faith and credit are due.

Given under my hand and seal of office, at Liverpool, this 10th day July, and year of our Lord 1885.

[SEAL.] W. P. PAULL,
Vice and Deputy United States Consul, ex-officio Notary Public.

Nous, soussigné, consul de la République d'Haïti à Liverpool, certifions sincères et véritables les signatures de Monsieur Allen Hammond, employé principal de la maison George B. Kerferd & Co., de Liverpool; de Monsieur George Layton, notaire public, exerçant à Liverpool; et de Monsieur W. P. Paull, vice et député consul de la République des États-Unis de l'Amérique.

Liverpool, ce 10 juillet 1885.

Le consul:

[SEAL.] W. E. ROBERTS.

A.

[George B. Kerferd & Co., Direccion Telegrafica, Kerferd, Liverpool, book 91, pages 73–75.]

LIVERPOOL, *August* 9, 1875

A. H. LAZARE, Esq.,
President of the National Bank of Hayti, Port-au-Prince:

DEAR SIR: We have much pleasure in confirming the agreement entered into by our Mr. George B. Kerferd, on our behalf, with the National Bank of Hayti, of which you are president, under date of 29th July ultimo, said agreement being as follows:

We engage to open the National Bank of Hayti a credit of £50,000, say £50,000 to be drawn in bills at 30 or 90 days' sight, and payable in London. The conditions under which said credit is granted are: That we shall never be required to accept

bills for a larger amount than £5,000, unless we receive bills of exchange, specie, bill of lading, or other security representing the full value of such drafts as the bank may draw against us. Should the bank at any time draw upon us, making use of the above credit of £5,000, without having funds or security in our hands to meet such bills as may be drawn, you engage to remit to us, by the mail steamer leaving your port next after that which conveys such bills, either produce, specie, or bills of exchange representing the full value of your drafts on us; so soon as you shall have remitted us sufficient produce or specie to cover the amount of the bill drawn against us, then you shall again be at liberty to draw further bills of exchange against us to the full amount of the open credit of £5,000 above mentioned, always engaging to cover such amount as may be drawn by remittance made to us by the following steamer. At all times you shall be at liberty to draw to the full extent of the entire credit of £50,000 by sending us (by the same steamer which shall bring the advice of the draft), say, bills of lading, specie, or good bills of exchange on London, Paris, or Havre.

All goods or specie consigned to our care shall be covered from marine risk by our open insurance policy, we engaging to have at all times a clear undeclared balance of £20,000 to cover the value of your consignments.

For working the business of the bank, as above indicated, we will charge a commission of one-half per cent. for accepting bills drawn upon us, and one-half per cent. on all bills of exchange sent us for collection in payment of our advances or acceptances. We will also charge the usual commission and brokerage on all sale of produce or specie, as also on all purchases of goods.

We trust that the above terms may prove satisfactory and enable you to do a large business with us to mutual advantage. We on our part shall always use every endeavor to give you entire satisfaction, and we certainly believe that our experience in this kind of business will enable us to obtain every advantage for the benefit of your bank and its constituents.

We are, dear sir, yours truly,

GEO. B. KERFERD & CO.

This is the exhibit marked A, referred to in the annexed declaration of Allen Hammond, made before me this 10th day of July, 1885.

GEORGE LAYTON,
Notary Public, Liverpool, and a Commissioner, etc.

B.

[Book 26, fo. 242.]

A. H. Lazare, esq., in account-current with George B. Kerferd & Co., Liverpool.

1875.				1875.			
July 30.	Cash in London, p. Sharps & Wilkins.	£500	00 0	July 30 (154)	£10	11	0
Aug. 9.	Our inv. of A.H.L., 1 box T. p. Hatian.	3	8 6	Aug. 9 (144)		1	2
Sep. 17.	Our note of charges, 1 c. saddlery, p. bb diel	1	7 0	Sep. 17 (105)			3
Dec. 31.	Postage	1	10				
	Interest to balance					3	7 0
						13	19 5
	Balance	497	10 6				
		1,003	7 0				

CR.

1875.						
Sept. 20.	His check on Consolidated Bank	£1,000	0 0	Sept. 20 (102)	£13	19 5
Dec. 31.	Balance of interest at 5 per cent	3	7 0			
		1,003	7 0			19 5
	Balance	497	10 6			

Liverpool, 31 December, 1875.

Pp. GEO. B. KERFERD & CO.,
D. DE HARRONDO.

This is the exhibit marked B, referred to in the annexed declaration of Allen Hammond, made before me this 10th day of July, 1885.

GEORGE LAYTON,
Notary Public, Liverpool, and a Commissioner, etc.

C.

[Book 27, fo. 80.]

A. H. Lazare, in account-current with George B. Kerferd & Co., Liverpool.

1876.	Dr.				1876.				
Feb'y 1.	Paid draft of G. S. Cheesemen..	£25	0	0	Feb. 1.	(150)....	£0	10	3
Mar. 10.	Our invoice p. "Jamaican	391	4	6	March 10.	(112) ...	5	19	11
May 22.	Remitted Mrs. Thirza Harte, London	30	4	6	May 22.	(39)		3	2
June 3.	Postages.								
June 3.	Interest to balance						5	14	11
	Balance.....	56	5	11					
		503	5	5			12	8	3
1875.	Cr.				1875.				
Dec. 31.	Balance of account	£497	10	6	Dec. 31.	(182).....£12	8	3	
Dec. 31.	Balance of interest at 5	5	14	11					
		503	5	5			12	8	3
	Balance	56	5	11					

E. & O. E.
Liverpool, 30 June, 1876.

Geo. B. Kerferd & Co.

This is the exhibit marked C, referred to in the annexed declaration of Allen Hammond, made before me this 10th day of July, 1885.

George Layton,
Notary Public, Liverpool, and a Commissioner, etc.

D.

[Book 94, page 12. Geo. B. Kerferd & Co., Direccion Telegrafica, Kerferd, Liverpool.]

Liverpool, *July* 29, 1876.

A. H. Lazare, Esq.,
71 *Broadway, New York, P. O. Box* 5126:

Dear Sir: We beg to inclose a copy of your account-current to the 30th ultimo, showing a balance in your favor of £56.5.11, in settlement of which please find herewith first of exchange on Messrs. Brown Brothers & Co., New York.

Kindly acknowledge receipt of same to yours, truly,

Pp. Geo. B. Kerferd & Co.,
D. de Harrondo.

Draft account-current.

This is the exhibit marked D, referred to in the annexed declaration of Allen Hammond, made before me this 10th day of July, 1885.

George Layton,
Notary Public, Liverpool, and a Commissioner, etc.

Affidavit marked No. 2.

I, Francis Fesser, gentleman, of 32 Cambridge Gardens, Notting Hill, in the county of Middlesex, do hereby, under oath, and at the request of M. Stephen Preston, Haytian minister to Her Britannic Majesty, make the following statement:

In July or August, 1875, Mr. A. H. Lazare came to me and proposed that I should take the position of manager of a bank which he was about to establish in Hayti. I was then a manager of the Anglo-Peruvian bank, limited, in London. I accepted, and executed an agreement with him to that effect before M. Villevaliex, chargé d'affaires for the Republic of Hayti in London. It was a condition of this agreement that I was to receive £1,000 sterling before leaving England. A. H. Lazare handed me his

draft at short sight for £500 on Messrs Kerferd & Co., of Liverpool, and told me that the balance would be paid me later on. He then embarked for Hayti. I saw him off at Southampton. I was to follow him a month later. The day after Lazare's departure I sent the draft by post to Messrs Kerferd & Co., of Liverpool, for acceptance. They returned me the draft in the ordinary course of post, telling me that they refused acceptance. I then sent the draft to another firm of Liverpool to get it protested. I went with the protested draft to M. Villevaliex and drew up a protest withdrawing my agreement to undertake the management of the Haytian bank, on the ground that it was conditional on my receiving £1,000 in advance, and that this condition had not been fulfilled. I also wrote to Lazare, telling him what had occurred, and holding him responsible for breach of contract. I have received no reply to that letter, neither did I ever receive any intimation from Messrs. Kerferd & Co. or any one else that Mr. Lazare did not wish me to go out to Hayti.

F. FESSER.

Sworn at 36 Moorgate street, in the city of London, this 13th day of July, 1885, before me,

T. F. CHORLEY,
A commissioner to administer oaths in the supreme court of judicature in England.

[Consulate-general of the United States of America for Great Britain and Ireland at London.]

I, Thomas M. Waller, consul-general and notary public *ex officio* of the United States of America at London, England, do hereby make known and certify to all whom it may concern that Thomas F. Chorley, before whom the annexed affidavit of Francis was made, as appears by his signature thereto, is a commissioner to administer oaths in the supreme court of judicature in England, practicing in the city of London, duly commissioned and authorized to receive affidavits, and that to all acts by him so done full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed my seal of office at London aforesaid, this 14th day of July, in the year of our Lord one thousand eight hundred and eighty-five.

THOMAS M. WALLER,
Consul-General.

Deposition marked B.

On this 16th day of July, 1885, before me, Lyman B. Dunnell, referee duly appointed by the order of the supreme court, dated July 15, 1885, to take the deposition of Henry B. Hammond, appeared the said Hammond, who, being by me duly sworn, did depose and say:

Q. What position did you occupy in the years 1874 and 1875 in the Indiana and Illinois Central Railroad Company?—A. President.

Q. During that time did the said company have any contract with A. H. Lazare in regard to services to be rendered by him to the company?—A. Nothing, except an agreement of settlement with Lazare in regard to certain matters pending between him and the railroad company, dated May 3, 1872, the ninth clause of which is as follows, to wit:

"Ninth. And said A. H. Lazare further agrees that during the construction of said road, and up to the completion of the same, which completion is to be certified by the chief engineer, and such certificate to be final, if directed by said railway company he will render unto them and perform any and all services of any kind and nature whatsoever, and at any place, and shall not require for said services as he shall perform a larger salary than at and after the rate of $500 per month."

Then of what the company should do, in the fourth clause of the same contract, there is as follows:

"To pay to said A. H. Lazare at and after the rate of $500 per month from the 3d day of May, 1871, until the date of this contract, for services rendered by him to said company, and to pay to the said A. H. Lazare at and after the rate aforesaid for such services as he may hereafter be required by said company in accordance with the provisions of this agreement hereinbefore contained and more particularly set forth in section 9."

Q. During the years 1874 and 1875, what services, if any, did Lazare render to the company?—A. Not any; the foreclosure proceedings were commenced in 1874, and the deed for the sale of the property thereunder was made in August, 1875. The decree was dated in the May previous.

Q. Was Lazare managing director during any part of the years 1874 and 1875?—A. No; he was not managing director. He was a director in 1884, until about October, I think; not after that.

Q. Did the company recognize any claim made by Lazare for services during that period?—A. No, sir; nor did the company pay him for any such services.

Q. Did the company ever require the said Lazare to perform any services after the date of the agreement of 1872 (May 3)?—A. I think not.

H. B. HAMMOND.

Subscribed and sworn to before me this 16th day of July, 1885.

L. B. BUNNELL,
Referee.

Affidavit marked No. 4.

In the matter of the claim of A. H. Lazare against the Republic of Hayti.

CITY AND COUNTY OF NEW YORK, *ss:*

CHARLES ADOLPHE DE CHAMBRUN, being first duly sworn, deposes and says:

(1) That he is the general counsel for the Republic of Hayti in the United States, and that the Hon. George S. Boutwell and deponent are counsel for the Republic of Hayti in the matter of the claim of A. H. Lazare.

(2) That for the purpose of ascertaining what was the commercial standing of the three English firms mentioned by said Lazare in his evidence, on oath, before the arbitrator in the above-named case, he called on August Belmont & Co., bankers, of this city; that in their office he saw Mr. Walter Lutgen, one of the partners of said firm, then managing it in the absence of Mr. August Belmont; that he asked him to furnish him (deponent) whatever trustworthy information his firm might have on the subject of the commercial standing in the year 1875, as merchants or bankers, of Geo. B. Kerferd & Co., of Liverpool, England; of Sears & Co., of London, England; and of Hazlewood Brothers, of same city.

That thereupon said managing partner of said firm of August Belmont & Co., presented to him several printed quarto volumes, one of which was entitled, Liverpool Commercial List, for 1875, published by Leyd & Co., of England, and another volume, printed in same form and published by same publishers, entitled, London Commercial List, also for 1875.

(3) That deponent, being so informed of the trustworthy character given to the information so published by August Belmont & Co., proceeded to investigate the subject-matter of his inquiry, assisted by said Mr. Walter Lutgen.

That he found at the beginning of both volumes the following explanation of the way firms were rated:

"A and 1, one, may be accepted as the highest ranks.
"1¼, 1½, 1¾ as high, undoubted standing; very good.
"2, 2¼, 2½ as good in gradations.
"3, 3¼, 3½ as of lesser standing.
"3¾, 4 as small or doubtful.
"4¾, 5 as cases of fraud, the latter figure indicating sham firms."

That a second explanation, marked Creditor A, is given to very conservative creditors to the following effect:

A and 1, 1, 1¼ good for any amount.
1½, say for 3,000 to 5,000 pounds.
1¾, say for 1,500 to 3,000 pounds.
2, say for 1,000 to 1,500 pounds.
2¼, say for 300 to 1,000 pounds, and so on.

(4) That deponent, assisted as aforesaid, found in the commercial list of Liverpool for 1875 the firm of George B. Kerferd & Co., which was rated at 1¼, 1½.

That deponent asked said Mr. Walter Lutgen how he would rate the standing of said firm, and he answered that it was undoubted, and might be, according to creditor list A, from 3,000 to 5,000 pounds.

(5) That deponent having examined, in the same manner hereinabove stated, the London commercial list for 1875, he found only one firm, Sears & Co., which was rated 2¼, which, according to the explanations given in said volumes and restated by Mr. Walter Lutgen, might be rated, according to the creditor A list, from 300 to 1,000 pounds.

(6) As for the firm of Hazelwood Bros., it was not found in said commercial list, which, as deponent was then informed, was proof that said firm had no standing at all.

CHARLES ADOLPHE DE CHAMBRUN.

Sworn to before me this 21st day of July, 1885.

THEO. CLARKSON,
Notary Public, New York County.

Affidavit marked No. 5.

CITY AND COUNTY OF NEW YORK, *ss:*

In the matter of the claim of A. H. Lazare against the Republic of Hayti.

Charles Adolphe de Chambrun, being first duly sworn, deposes and says:

(1) That he is the general counsel of the Republic of Hayti in the United States, and that Hon. George S. Boutwell and deponent are counsel for the said Republic in the matter of the claim of A. H. Lazare.

(2) That he has received information from England, which he regards as entirely trustworthy, from which it appears that Sears & Co., of London, and Hazlewood Brothers, also of London, failed long ago; that the utmost efforts are being made to discover the whereabouts of the members of said firms or of any of them; but that said efforts had not yet been successful at the time the latest mails received here were forwarded from England.

(3) That F. Fesser, mentioned by Lazare in his evidence, has been found, and that deponent is informed that he made an affidavit, which, according to news received by cable by deponent, was mailed in London to deponent's address early last week.

(4) That on information and belief deponent states that F. Fesser has declared that the draft given him by Lazare, on George B. Kerferd & Co., was at three days' sight, and that it was protested for want of funds.

(5) That as soon as said affidavit is received it will be submitted to the honorable William Strong, arbitrator.

(6) That deponent is earnestly and actively engaged, jointly with others, in further investigating said claim in Hayti, in Europe, and in this country, and from preliminary information already obtained, deponent believes it to be founded on fraudulent representations.

(7) That deponent, reposing confidence in the character of the claimant in this case, which he had ground to suspect during the progress of the hearing before his honor William Strong, arbitrator, trusted his statements, and that it was on or about June 20, 1885, that this deponent received the first information that led him to suspect that the statements made by Lazare were not true, and thereupon deponent proceeded, jointly with other persons, to investigate the whole matter.

CHARLES ADOLPHE DE CHAMBRUN.

Sworn to before me this 21st day of July, 1885.

THEO. CLARKSON,
Notary Public, New York County.

Certified search, marked No. 6.

The clerk of the city and county of New York will please search his office for judgment and decrees, and also for transcript judgments from the superior court, judgments from the court of common pleas, judgments from other courts, against Adolphe H. Lazare, from January 1, 1874, to December 31, 1885, and certify the result for

GEO. J. SCHERMERHORN,
206 *Broadway, New York.*

Marine, 1874, Mch. 25. Adolph H. Lazare, ads. Eugenia Winter, $168.28. Wise and Jackson, att'ys.

Marine, 1875, Mch. 12. Same ads. David Irwin & Timothy N. Bristol, as executor, &c., $511.04. S. D. Sprague, att'y.

Supreme, 1875, Ap'l 10. Same ads. Burton W. Harrison, $1,067.68. Charles T. Drunnell, att'y.

Marine, 1875, Aug. 24. Same ads. Victor Prevost, $155.38. Harrison & De La Hare, atty's.

Marine, 1875, Aug. 24. Same ads. Same, $184.71. Same att'ys.

Supreme, 1876, Mch. 23. Same ads. John Rooney, $2,727.79. John Taylor, att'y.

Marine, 1876, May 4. Same ads. Elise Magnin, David J. Magnin, and Jaques Guedin, $1,187.09. Hugh W. Trenor, att'y.

Marine, 1878, Feb. 26. Adolphe H. Lazare ads. Ernest Lean, $561.00. A. Gilhooly, att'y.

Marine, 1878, Mch. 18. Adolphe H. Lazare ads. Lysander W. Lawrence, $141.69. James H. Monk, att'y.

Marine, 1878, Ap'l 17. Same ads. William King, $479.39. M. C. Miller, att'y.

Supreme, 1878, July 3d. Same and another ads. Henrietta P. Sprague, administratrix, &c., of John H. Sprague, dec'd, costs, $172.47. John N. Whiting, att'y.

1st jud. dist., 1878, Sept. 25. A. H. Lazare ads. William J. A. Fuller, as assignee, &c., $27.15.

Marine, 1879, May 26. Same ads. Abraham Lent, $1,114.51. Forbes & Sage, att'ys.

Supreme, 1879, Nov. 1. Adolph H. Lazare ads. Allston Wilson, $658.56. Stearns & Curtis, att'ys.

Marine, 1879, Oct. 7, Dec. 3. Same ads. The Charter Oak Life Insurance Company, of Hartford, Connecticut, $469.40. Joseph C. Jackson, att'y.

6th jud. dist., 1880, Feb. 7. Arthur H. Lazare (Arthur being fictitious, as defendant's Christian name is unknown to plaintiff) ads. James R. Amidown, $62.90.

Supreme, 1880, Ap'l 7. Adolph H. Lazare ads. Ernest Lean, $158.07. J. M. Guiteau, att'y.

6th jud. dist., 1880, May 15. Same ads. Ernest J. Thierry, $80.44.

Supreme, 1860, Dec. 2. Adolph H. Lazare ads. Mary E. Budd, as ex'x, etc., of Charles A. Budd, deceased, $259.98. Jas. Brooks Dill, att'y. Atkinson. None other found for the period.

July 16, 1885, 9 a. m.

PATRICK KEENAN,
Clerk.

Affidavit marked No. 7.

CITY AND COUNTY OF NEW YORK, *ss:*

Thomas M. Wheeler, being duly sworn, says that he is an attorney at law, practicing in the city of New York; that he has examined the judgment rolls in the various judgments against Adolphe H. Lazare in the cases hereinafter specified, and from such examination finds the facts to be as hereinafter stated.

That when it is stated that an inquest is taken, it means that when the cause was called for trial that the defendant did not appear.

Eugenia Winter *v.* Adolphe H. Lazare. Inquest work and material for ladies' bonnets, between 23 Sept., 1873, and 1 October, 1873.

David Irwin and Timothy H. Bristol, as executors of will of Hugh B. Jackson, *v.* Same. Inquest, groceries and cigars, between 12 July, 1873, and Jan. 12, 1874.

Burton W. Harrison *v.* Same. Default, services as attorney between June 1 and July 10, 1874, said services being about a proposed contract for and the proposed issue of a Government loan for the Government of the Republic of Hayti.

Victor Prevost *v.* Same. Default, promissory note, dated New York, June 20, 1874, at 60 days after date.

Victor Prevost *v.* Same. Default, promissory note, dated New York, June 20, 1874, at 60 days after date.

John Rooney *v.* Same. Judgment by referee for money loaned Nov. 8, 1873, $75; Nov. 22, 1873, $125; Dec. 6, 1873, $370; Feb'y 25, 1874, $100; March 17, 1874, $92; July 18, 1874, $49.50; July 22, 1874, $440; Oct. and Nov., 1874, $62.

Elize Magnin and others *v.* Same. Default, promissory note, dated New York, October 9, 1874, at two months.

Ernest Lean *v.* Same. Default, three causes of action. 1st account stated October 5, 1876, balance due $404; 2d, work, labor, and services as a butler and servant from August 1, 1876, to M'ch 1, 1877, at $27 per month; 3d, services of Celina Lean, wife of plaintiff, for work, labor, and services as servant from August 1, 1876, to March 1, 1877, at $18 per month.

Lysander W. Lawrence *v.* Same. Default, goods, wares, and merchandise between 8th Sept., 1876, and 22 Sept., 1876.

William King *v.* Same. Default, goods, wares, and merchandise, prior to June 1, 1873.

Abraham Lent *v.* Same. Default, clothes made and repaired between 25 Sept., 1872, and 21 May, 1874.

Allston Wilson *v.* Same. Default bill of exchange dated August 28, 1878, at Jacmel, Hayti, by Adrian H. Lazare on Adolphe H. Lazare, 60 days after sight, for $850, and accepted by him.

Charter Oak Life Insurance Co. *v.* Same. Default rent of office, 57 Broadway, from May 1, 1877, to May 1, 1878, at $500 year; $91.66 paid on account.

Ernest Lean *v.* Same. Default promissory note dated Jan. 29, 1879, at 90 days.

Mary E. Budd, as executrix, *v.* Same. Default offered judgment services between April 1, 1870, and Nov., 1886.

THOMAS M. WHEELER.

Sworn to before me this 22d day of July, 1885.

THEO. CLARKSON,
Notary Public, New York County.

[Inclosure 4 to inclosure in No. 74.]

Mr. Strong to Mr. Preston.

WASHINGTON, *February* 18, 1886.

DEAR SIR: I have the honor to acknowledge the receipt of your letter from Paris dated January 24, 1886, in which you propose to me several inquiries relative to the claim of A. H. Lazare against the Government of Hayti. These inquiries I think I may, without impropriety, answer.

My award, as sole arbitrator of that claim, was made on the 13th day of June, 1885, and filed in the State Department within two or three days afterwards. I then left the city, with my family, for the summer. Very soon thereafter I was followed to the Catskill Mountains, where I was sojourning, and an application was there made to me on bahalf of the Government of Hayti to open the award and allow a rehearing, because of newly discovered evidence, which, it was alleged, it had been impossible to obtain earlier. I appointed a day for hearing the application, and at the time appointed I heard an argument by Mr. De Chambrun in support of it, and by the counsel of Mr. Lazare against it.

Affidavits and much other evidence, obtained from England after the award, evidence which I thought would have been pertinent to the case, and very material had it been known and presented before the award was made, were exhibited to me. After a full hearing of the counsel, and after examining the new evidence exhibited, I felt constrained to refuse the application, solely for the reason that in my judgment my power over the award was at an end when it had passed from my hands and had been filed in the State Department. I gave no written opinion, but I stated verbally to the counsel that such was my reason for declining to attempt to open the award and allow a rehearing.

I may add that, in my judgment, the newly-discovered evidence exhibited and submitted to me, at the application for a rehearing, was not merely cumulative. It was much more; and it was of such a character that it would materially have affected my decision had it been presented to me pending the hearing of the case and before my powers under the protocol had ceased.

I am, etc.,

W. STRONG.

No. 386.

Mr. Thompson to Mr. Bayard.

No. 136.] LEGATION OF THE UNITED STATES,
Port-au-Prince, Hayti, May 16, 1887. (Received June 7.)

SIR: I have the honor to inclose herein that portion of the message of President Salomon to the national assembly relating to foreign relations as applies to the United States Government, which was published in Le Moniteur of the 12th instant. You will observe that President Salomon speaks in favor of "l'emploi des procédés amiables, de médiation et d'arbitrage."

I am, sir,

JOHN E. W. THOMPSON.

[Inclosure in No. 136.—Translation.]

Extract from Message of President Salomon.

SENATORS, DEPUTIES: I feel a sentiment of real satisfaction in announcing to you that our country has had cause to be proud of the good will and justice of a great and powerful nation.

You will remember that the Pelletier and Lazare claims, the first amounting to $2,466,480 as you will see by the document annexed to this exposition, was submitted to the arbitration of the Hon. Judge W. Strong, of the United States of America.

The arbitrator's decision allowed to Pelletier the sum of $57,250 and to Lazare that of $195,225 including interest.

The three first heads of the Pelletier claim (confiscation of the vessel, of the gold and silver found on board, damages done to his trade and to his property) had been set aside, and the condemnation bore only on his imprisonment, pronounced by a court which, according to the arbitrator was not competent to judge. The decision recognized, however, the truth of the facts brought against Pelletier and the infamy attached to the crime he was accused of.

By order of my Government our advocates undertook to ask a revision of the two judgments, that relative to Lazare, having granted damages to a contractor who had failed in his engagements.

The cause of Hayti was just and was sustained with skill, and the impartial spirit of the Hon. Thomas F. Bayard, Secretary of the Department of State, dictated to him to range himself on our side, and to decide the definitive and immediate rejection of these two claims,

Here is the conclusion of his report to the Senate, approved by the President of the United States:

"But I do not hesitate to say that in my judgment the claim of Pelletier is one which this Government should not press on Hayti, either by persuasion or by force, and I come to this conclusion, first, because Hayti had jurisdiction to inflict on him the very punishment of which he complains, such punishment being in no way excessive in view of the heinousness of the offense; and, secondly, because his cause is of itself so saturated with turpitude and infamy that on it no action, judicial or diplomatic, can be based."

After having shown the unjust foundation of the Lazare claim from the fact that he had failed in his engagement in not having furnished the funds that he had promised, the honorable Secretary of the Department of State adds: "The claim, even supposing it is well founded, is based on a speculation in Hayti into which Mr. Lazare voluntarily entered."

It remained to examine the possibility of a new examination of the merits of these claims after the formal declaration of the President of the United States, who in his annual message for 1885 announced the conclusion of the arbitration and the decision rendered.

The Hon. Thomas F. Bayard saw no impropriety in this, relying on precedents, which in such matters govern all things; he showed that the decree could be revised, and did not admit, whatever might be the state of a question, that they could ever support a claim founded on fraud or error.

"The intercourse between nations [he says] should be marked by the highest honor as well as honesty. The moment that the Government of the United States discovers that a claim it makes on a foreign Government can not be honorably and honestly pressed, that moment, no matter what may be the period of the procedure, that claim should be dropped."

Before such arguments one must bow; they do honor to the statesman who has so well expressed them, who condemns the violent proceedings of force, although he is strong, and who in surrounding himself with the sole principles of right and justice has assured the triumph of our cause.

To-day we are disengaged from all responsibilities, and we have nothing to pay to Pelletier or Lazare.

I would like to see in the hands of every Haytian the report of the Hon. Thomas F. Bayard. The theories that he has perpetuated are above all praise. The declaration of the sovereignty and equality of States appears in every letter. The weak, he says, are to have assigned to them the same territorial sanctities as the strong enjoy. There is good reason for this. Were it not so, weak states would be the objects of rapine, which would not only disgrace civilization, but would destroy the security of the seas by breeding hordes of marauders and buccaneers, who would find their spoil in communities which have no adequate power of self-defense.

It is this protection that the United States Government guaranties to the countries of America freed from European domination by virtue of a doctrine justly celebrated with them.

I stop with these citations; the Department has given order for the translation and printing of a large number of copies of this remarkable report, of which I have tried to make a short analysis.

In noticing this, for us so satisfactory result produced by arbitration, the more so from having been indirect and coming from a revision of a judgment of this kind, how can we refrain from applauding a thought so happy that has animated many members of several European and American parliaments in proposing to their Governments to open negotiations to the effect of developing, determining, generalizing, and assuring for the settlements of international disputes, the employment of amiable proceedings of mediation and arbitration?

How often have we tried to have recourse to it for the settlement of our disputes, without seeing our efforts crowned with success?

The Department continues the discussion with the great republic of Van Bokkelen's widow, Evan Williams, and Isabella Fournier's claim.

I think it useless to repeat what has already been so fully exposed on this subject in our various collections of diplomatic documents, but I must say here, that we may hope for all before such brilliant justice as has been rendered to us by the Government of the United States of America.

CORRESPONDENCE WITH THE LEGATION OF HAYTI AT WASHINGTON.

No. 387.

Mr. Preston to Mr. Bayard.

[Translation.]

LEGATION OF HAYTI.

Washington, November 18, 1886. (Received November 19.)

SIR: The undersigned, minister plenipotentiary and envoy extraordinary of the Republic of Hayti to the United States, begs leave of the honorable Secretary of State of the United States to call his attention to the matter of the claim of Antonio Pelletier against the Government of Hayti and of the award thereon.

It would be a useless task to present here the lengthy and somewhat involved history of the claim.

The undersigned will confine himself to stating that on the 30th of November, 1863, the Hon. W. H. Seward, then Secretary of State of the United States, decided that "it was not deemed expedient to interfere on behalf of claimant." (See Antonio Pelletier's record, vol. 1, pp. 121, 122), and that on January 6, 1874, a bill "to authorize the President of the United States to request the Republic of Hayti to indemnify Antonio Pelletier" was introduced in the Senate of the United States; the bill was read twice, and referred to the Committee on Foreign Relations, who, on the 9th of June following, presented an adverse report, through the Hon. Mr. McCreery, and thereupon the consideration of the bill was indefinitely postponed. The undersigned begs leave to attach to this note a copy of the bill and of the report.*

It was about three years after the Senate had thus expressed its opinion about this claim that the Hon. William M. Evarts, then Secretary of State of the United States, instructed Mr. John M. Langston, then minister to Hayti, to present it to the Government of the undersigned (12th of April, 1878; see record of Pelletier's case, pp. 309 *et seq.*) This action on the part of the United States led to somewhat protracted negotiations, which culminated in the protocol of the 28th of May, 1884.

It was agreed that the claim of Antonio Pelletier, together with that of A. H. Lazare, be referred to the arbitration of the Hon. William Strong. In regard to the true intent and meaning of said protocol, the undersigned entertains the hope that his views are in full accord with those of the Hon. Thomas F. Bayard, whose fairness and high sense of justice are well known to the undersigned.

Besides, he will take the liberty to refer to a decision of that high tribunal whose rulings have so much influence on the progress of international law throughout the civilized world. The Supreme Court of the

* Not published.

United States have recently held that "*without the treaty the award would have bound nobody, and would have been at most a friendly recommendation.*"

"By virtue of the treaty it became a most solemn and important international obligation, whereby Great Britain became bound as much as a nation can be bound to pay the amount of the award, and at the same time became freed and discharged from any further liability on account of any claims of that class." (Great Western Insurance Company *vs.* The United States, 112 U. S., pp. 197–198.)

In presenting these views to the Secretary of State of the United States the undersigned does not intend to raise the question of the validity, or to discuss the effects, of the protocol entered upon on the 28th of May, 1884, between the Hon. Frederick T. Frelinghuysen and himself, but he concurs in what he has been led to regard as the opinion of the Hon. Thomas F. Bayard, that said protocol can not come within the description of the solemn international compacts referred to in the above-quoted decision of the Supreme Court of the United States. On the other hand, the printed records of the proceedings in the matter of the claim of Pelletier *vs.* Hayti, which cover nearly two thousand pages, show the informality of the proceedings, since they are not certified by any one, and not even signed by the clerk of the arbitration. But taking for granted that said proceedings are correctly reported, the undersigned begs leave to state that, in his judgment, the case of Pelletier against the Government of the undersigned discloses a state of facts so conflicting with the best established precedents of the Department of State, as to place it among those cases about which the Supreme Court has said with much emphasis in Frelinghuysen *vs.* Key, that "as between the United States and the claimant, the honesty of the claim is always open to inquiry for the purposes of fair dealing with the government against which through the United States a claim has been made." (See 110 U., S. pp. 75, 76.)

The undersigned believes that the claim of Pelletier comes within the scope of this proposition. Indeed, the whole correspondence on the part of the Department of State of the United States in relation to this claim assumes that the voyage of the bark *William* was lawful; that all the charges preferred against the master, the crew, and the ship were groundless; and that, therefore, there was no ground for the prosecution of Pelletier and of his associates; in other words, the good faith and honest purposes of claimant were fully asserted. But in the light of the facts proved in the course of the arbitration and set forth in the award of the Hon. Wm. Strong, it appears that Pelletier, as master of the bark *William*, was engaged in a slave-trade expedition, and that in the opinion of the arbitrator "it is beyond doubt that had the bark been captured and brought into an American port when she was seized at Fort Liberté she would have been condemned by the United States courts as an intended slaver; and I think the Haytian authorities had such reasons for suspecting, even believing, that she was a slaver, with evil designs against their people, that they were justified in seizing her in one of their ports, and arresting her master at least for examination."

According to the arbitrator this conclusion was reached upon the following grounds:

1st. Pelletier was guilty of the crime of fitting out the bark *William* at Mobile in the autumn of 1860 for a slave-trading expedition, in violation of the laws of the United States.

2d. He prosecuted that undertaking among the islands of the Caribbean Sea and alongside the coast and in the territorial waters of Hayti until he was arrested at Fort Liberté in April, 1861.

3d. He was tried by the judicial authorities of Hayti, and by due process of law according to the institutions of that country, upon the charge of an "attempt at piracy and slave trading upon the coast of Hayti."

It is true that upon the question of jurisdiction the arbitrator held "that by the law of nations the authorities of Hayti had no jurisdiction of the person of Pelletier," and *upon this sole ground* an award of $57,250 was made on behalf of claimant; the undersigned begs leave to suggest that this award ought not to be collected by the Department of State, and for the following reasons:

(*a*) A demand for the payment of such an award would be inconsistent with the legislation prohibiting the slave trade, that has governed the United States for over three-quarters of a century.

(*b*) Under the constant jurisprudence of the Department of State no claimant shown to be guilty of a tort or torts in connection with the subject-matter of a claim is entitled to the interposition of this Government in his favor.

(*c*) The award discloses the further fact that Pelletier was also guilty of various offenses within the territorial waters of Hayti over which Hayti had most unquestionably jurisdiction. Those offenses are set forth as follows by the honorable arbitrator:

"At Fort Liberté he floated a French flag, never an American; proclaimed his vessel to be the *Guillaume Tell*, from Havana, bound to Havre, and asserted that his own name was Jules Letellier. He even caused a letter to be written to the French Consul, repeating these false statements, signed Jules Letellier (see award, p. 7; also authorities cited in brief for defendant Government,) Pelletier's record, pp. 1786–87–88).

It appears further in the proceedings before the arbitrator that the Hon. William Strong did not feel authorized to pass upon the questions raised here by the undersigned. This is established by the following reference among others:

Mr. DE CHAMBRUN. Can Pelletier, who stands convicted by the evidence produced before your honor of criminal acts committed at Fort Liberté, recover upon an action founded on tort?

The ARBITRATOR. The question whether the United States Government ought to have made a reclamation is another question outside of this case. If reclamation has been made then it becomes a question of legal right. (Pelletier's Record, p. 1781.)

Thus it was not upon the principle of international justice raised by the prosecution of this claim that the arbitrator undertook to pass; he confined himself to the legal, not to say technical, questions growing out of the reference to his arbitration.

Therefore, it is left to the Governments which made the agreement of May 28, 1884, to consider and to determine the following points:

The demand made by the United States on Hayti on behalf of the claim of Antonio Pelletier rested upon the ground that the voyage of the bark *William* was lawful; but the general presumption of innocence and the repeated declarations of Pelletier were reversed or disproved by positive evidence of guilt furnished to the arbitrator; and, therefore, the undersigned is satisfied that no award made on behalf of Pelletier will be collected by the interposition of the United States.

The undersigned avails, &c.

STEPHEN PRESTON.

ITALY.

No. 388.

Mr. Bayard to Mr. Stallo.

No. 55.] WASHINGTON, *April* 1, 1887.

SIR: The President, by and with the advice and consent of the Senate, has ratified the "convention and final protocol for the protection of industrial property," concluded at Paris, France, March 20, 1883, and also the protocol signed at Rome, on the 11th May, 1886, supplementary thereto, and I transmit with this, under separate cover, the protocol of May 11, 1886, for exchange or deposit.

Should the act of exchange or deposit in this case be deemed to require a formal full power, you will advise this Department.

I am, etc.,

T. F. BAYARD.

No. 389.

Mr. Bayard to Mr. Stallo.

No. 60.] DEPARTMENT OF STATE,
Washington, April 27, 1887.

SIR: I herewith inclose a copy of a dispatch from Mr. Philip Carroll (No. 148, March 31, 1887), our consul at Palermo, stating that the department of finance at Rome, with which he had corresponded on the subject, had refused to accord free entry to some flags sent him officially by this Department.

In such cases it would be more proper, and probably more successful in the end, if the consulates would refer such questions through the consul-general to the legation, which could then bring the matter before the foreign office and obtain a decision applicable in future cases. This, moreover, would be in accordance with the practice of this Government under our Treasury regulations, which provide:

SEC. 367. Free entry of articles sent by a foreign Government for its use to an agent in this country will, in proper cases, be granted on (like) application made through the Department of State. When it shall appear to the satisfaction of the collector and the naval officer, if there is one, that packages contain only official forms sent by a foreign Government for the use of its consular or other officers in this country, the same may be admitted to entry on a written application therefor from the officer for whose use they are intended.

Such articles as national flags, shields, and official stationery would always be proper articles to make such application for, in distinction from wearing apparel, wines, cigars, or other articles, for the personal use of the consuls.

From the correspondence of Mr. Carroll with the Italian finance department it would appear that the apparel and furniture of consuls are

admitted free on their arrival in Italy, but no mention is made of insignia of office or official stationery, which are allowed to enter free by some Governments. Germany has informed us that she prefers reciprocal duties to reciprocal exemption for official consular supplies such as are admitted free by us, but makes an exception in favor of flags, escutcheons, and other emblems of authority. Austria, in response to our inquiry as to what she was disposed to do as regards a shield for a consulate, regretted that under her customs laws, which could only be altered by legislative action, exemption from customs dues could not be granted to foreign consuls, either for articles for their personal use or for those required for their official duties. You will thus see that there is no universal rule of free entry.

Your dispatch No. 47, of the 16th of March, 1886, on this subject appears to relate to purely personal supplies of household articles for the consul at Naples, and the application for their free entry to the foreign office was refused on the ground that there was no reciprocity for such articles on the part of the United States.

The present case, however, appears to be different, and you are therefore instructed to bring the case to the attention of the foreign office, and while not claiming as a right the exemption of the flags in question, you will explain that such articles are the property of this Government, and continue to be so as much as naval stores sent to foreign ports to which free entry is usually accorded.

You will state that it is the practice of this Government to accord free entry to articles sent by foreign governments to this country for the official use of consuls, on application, in case of doubt, to the Department of State, through their respective legations, and ask if the Italian Government would be able and willing to accord the same privilege for official flags, insignia, and supplies sent to our consuls in Italy, and, if so, what form of application would be necessary for this purpose.

In the case of some foreign Governments this Department notifies our minister there of the prospective arrival of the article, and directs him to apply for their free entry in advance of their arrival. This system, which has been found to save delay and to work well, might be suggested by you.

You are requested to notify the consul at Palermo of the purport of the reply received from the foreign office, and likewise to report it to this Department.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 60.]

Mr. Carroll to Mr. Porter.

No. 148.] CONSULATE OF THE UNITED STATES,
Palermo, Italy, March 31, 1887.

SIR: Referring to my dispatch No. 147, in which I requested to be supplied with certain flags, I have the honor to say, that in anticipation of their receipt at an early day I addressed a communication to the department of finance at Rome, with a view of inducing them to issue an order for the free entry of the same, quoting the portion pertinent to the action of the Government of the United States of paragraph 421 of the Consular Regulations of 1881 in similar cases, or when dealing with consuls of a foreign government.

In this connection I beg to inclose herein a copy and translation of the correspondence in question, from the latter of which it will be seen the director-general of

finance quotes the Italian decrees or tariff as to foreign consuls, and expresses regret that he has not the power to authorize the director of customs to extend the exemption referred to therein.

The duty on articles forwarded by the Department may not amount to much, but it is impossible to comply with certain requirements of the customs, among which is the invoice of the goods or articles and their valuation, thus rendering it difficult to gain possession of them.

The matter is respectfully submitted to the Department, in conformity with the paragraph referred to, for such, if any, action as it may deem proper.

I am, sir, etc.,

PHILIP CARROLL.

[Inclosure 2 in No. 60.]

Mr. Carroll to the minister of finance.

CONSULATE OF THE UNITED STATES,
Palermo, March 21, 1887.

SIR: I have the honor to submit for the information and consideration of your excellency the following extract from paragraph 421 of the Consular Regulations of the United States of 1881, page 142:

"It is customary for this Government to admit free of duties and charges at its custom-houses all articles for the official use of the consular offices of foreign states when similar privileges are granted to its officers. * * *"

In this connection I beg to say that upon two occasions when the Government sent supplies to this consulate for its official use the collector here levied duties and charges thereon, at first requiring the valuation or price list thereof, with which it was manifestly and obviously impossible to comply. It is understood, however, that the collector had no other alternative in the absence of instructions from Rome.

The duty on the articles being small, insignificant, indeed, compared with the trouble in becoming possessed of them, consequent upon the requirements referred to, I did not report the matter at the time to the Department of State at Washington, as required. Now, however, as I am anticipating the receipt of certain articles from the Government for official use, it has occurred to me to refer the matter to your excellency, in the belief that Italy, whose actions are so generally generous and courteous to American officials, will willingly reciprocate the privilege granted to Italian consuls in the United States in the matter under consideration.

I am, etc.,

PHILIP CARROLL.

[Inclosure 3 in No. 60.—Translation.]

Mr. Costerier to Mr. Carroll.

MINISTRY OF FINANCE,
Rome, March 25, 1887.

In reply to your dispatch of the 21st instant, I have the honor to inform you that the existing customs tariff does not exempt articles of stationery, etc., from duty, which may be forwarded or furnished by foreign Governments to their respective consuls in Italy.

The exemption of duty on articles to foreign consuls is limited to wearing apparel and furniture, required upon their entering and leaving Italy, as per article 20 of the preliminary decrees, as follows:

"The wearing apparel and furniture belonging to foreign consuls upon entering and leaving are free, provided the same courtesy shall be extended to Italian consuls on the part of their respective Governments.

"This exemption does not extend to or include articles of daily consumption, such as colonial goods, wines, liquors, private effects, etc."

I am therefore sorry I have not the power to authorize the director of customs to extend the exemption allowed by the article above quoted.

With perfect consideration,

COSTERIER,
Director-General.

No. 390.

Mr. Stallo to Mr. Bayard.

[Extract.]

No. 130.] LEGATION OF THE UNITED STATES,
Rome, May 6, 1887. (Received May 24.)

SIR: I have the honor to report that I have received the protocol of May 11, 1886, of the Union for the Protection of Industrial Property.

According to a resolution adopted by the international conference of the Union for the Protection of Industrial Property (see minutes of the session of May 11, 1886, page 170), the additional articles adopted by said conference were to be ratified and the ratifications were to be exchanged at Rome within a year. In conformity with this resolution, a meeting of the diplomatic representatives of the several States forming part of the union was to have been called by the Italian minister of foreign affairs before the 11th of May of the present year. But the minister now informs me that unforeseen difficulties have arisen, several of the contracting States declining for the moment to ratify the articles above mentioned, for reasons which will be stated at length in a circular shortly to be addressed by the Italian foreign office to the several parties concerned, and that for this reason the meeting will have to be adjourned for some months at least.

I have, etc., J. B. STALLO.

No. 391.

Mr. Stallo to Mr. Bayard.

No. 133.] LEGATION OF THE UNITED STATES,
Rome, June 1, 1887. (Received June 14.)

SIR: I have the honor to report that I have just received from the Italian minister of foreign affairs a note informing me that the ratification of the additional articles adopted by the international convention for the protection of industrial property has been postponed in consequence of unforeseen disagreements between some of the contracting parties, and that the conference of the diplomatic representatives of the several states adhering to the Union can not take place until answers have been received to certain questions which are about to be addressed to the Governments of said states.

The minister also informs me that he has communicated the details on this subject to the Italian minister at Washington.

I have, etc., J. B. STALLO.

No. 392.

Mr. Stallo to Mr. Bayard.

[Extract.]

No. 137.] LEGATION OF THE UNITED STATES,
Rome, June 28, 1887. (Received July 11.)

SIR: The difficulties which prevented the meeting of the representatives of the several states at Rome at the time appointed by the last conference* have not yet been removed; and I was informed a few days

* Industrial Property Conference.

ago, upon inquiry at the foreign office, that the meeting may not take place for some months to come. Whenever it takes place I shall, of course, attend it, and shall deposit the protocol in question and do whatever else is necessary to give full effect to the intentions of the President and Senate.

I have, etc.,

J. B. STALLO.

No. 393.

Mr. Bayard to Mr. Stallo.

No. 67.] DEPARTMENT OF STATE,
Washington, July 6, 1887.

SIR: I inclose herewith copy of a dispatch dated June 1 last, from Consul-General Alden, touching the obstacles encountered by citizens of the United States desiring to be married in Italy, growing out of the refusal of the authorities there to perform the ceremony without an official certificate from a consul of the United States that no objection exists to the projected marriage under the laws of the American domicile of the parties.

The case to which the above-mentioned dispatch of the consul-general refers was reported in his No. 139, of the 4th of May last, copy of which is also inclosed. It appears from this dispatch that a Miss ————, from Boston, Mass., but for a long time resident in Rome, desired to be married there, and that the authorities refused to permit the ceremony to be performed without an official certificate from the consul-general that "there is nothing in the laws or customs of the United States that would render the marriage invalid," and the consul-general requested that he should be authorized by telegraph to give such a certificate. To this request the Department replied by telegraph as follows:

Certificate suggested by you inadmissible. There is no general law or custom in United States respecting marriage, and consuls can not certify officially as to State laws. No objection to your examination as expert.

In reply to this the consul-general informs the Department that there is no provision in the Italian law for his examination as an expert; that the authorities require a certificate of "*nulla osta*" from a consular authority; and that as the Department has forbidden the general issue of official certificates by consuls of American status and domiciliary law of American citizens in respect to marriage, it will be impossible for any American citizen hereafter to be married in Italy, unless the Italian law is changed or the order of the Department modified.

In view of so serious a complication, it is important to know precisely what are the requirements of the Italian law in respect to the subject under consideration.

As the Department is informed, there is not any express provision of Italian law that requires a consular certificate in marriage cases. There must be proof of the capacity of the parties under their personal law, and the certificate of a consul is accepted as sufficient proof, so far as the celebration of the marriage is concerned, of the non-existence of any obstacle to the marriage under that law. But the Department had not supposed that the consular certificate was the only proof admitted for that purpose, and that the personal law of foreigners in respect to marriage could not be proved in the same way as any other matter of foreign law.

I will thank you to make inquiry concerning this question and report thereon to the Department. And I herewith inclose for your information, and in explanation of the views of the Department on the general subject of the issuance by ministers and consuls of the United States of official certificates as to the law in this country respecting marriage, copies of certain correspondence which has lately taken place.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 67.]

Mr. Alden to Mr. Porter.

No. 139.] CONSULATE-GENERAL OF THE UNITED STATES,
Rome, May 4, 1887.

SIR: Miss ———, formerly of Boston, Mass., and for a long time a resident of Rome, desire to be married here. According to Italian law she can not be married without a certificate from me that "there is nothing in the laws and customs of the United States" that would render such marriage illegal.

I am morally satisfied that I can truthfully issue such certificate.

Referring to the circular from the Department dated February 8, 1887, which forbids me to issue such certificate "without the special authority" of the Department, I respectfully ask that such authority may be given to me.

Owing to illness in Miss ———'s family it is desirable that her marriage may take place immediately. May I, therefore, venture to ask that the Department will kindly telegraph to me, at my expense, a reply authorizing (or forbidding) me to issue the certificate.

I am, etc., WILLIAM L. ALDEN.

[Inclosure 2 in No. 67.]

Mr. Porter to Mr. Alden.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 20, 1887.

ALDEN, *Consul, Rome:*

Certificate suggested by you inadmissible. There is no general law or custom in the United States respecting marriage, and consuls can not certify officially as to State law. No objection to your examination as expert.

PORTER.

[Inclosure 3 in No. 67.]

Mr. Alden to Mr. Porter.

No. 143.] CONSULATE-GENERAL OF THE UNITED STATES,
Rome, June 1, 1887.

SIR: I have the honor to acknowledge the receipt from the Department of State of a telegram in reply to my dispatch No. 139, dated May 4, 1887. In said telegram I am informed that the granting of the certificate of "*nulla osta*," referred to in my dispatch No. 139, is inadmissible.

Since receiving the telegram I have twice seen the Italian authorities. They inform me that as the Italian law provides that no foreigner can be married in Italy without a certificate of "*nulla osta*," and that as the Department of State has forbidden me to issue such certificate, it will henceforth be impossible for any American citizen to be married in Italy, unless the Italian law or the order of the Department should be modified.

I may add that there is no provision by which my "examination as an expert" could take the place of the usual consular certificates. Thanking the Department for its telegram,

I am, sir, WM. L. ALDEN.

No. 394.

Mr. Stallo to Mr. Bayard.

No. 148.] LEGATION OF THE UNITED STATES,
Rome, July 29, 1887. (Received August 13.)

SIR: On the 10th of May, 1887, I received your instruction No. 60, dated April 27, inclosing a copy of a dispatch from Mr. Carroll, our consul at Palermo, relating to the refusal of the Italian Government to accord free entry to some flags sent him officially by the Department.

In compliance with your instructions, I brought the matter to the attention of the foreign office immediately after the receipt of your letter, and was informed that by reason of the recent changes in the foreign office, and also by reason of the fact that the whole subject of Italian customs and import duties would soon be under debate in the Italian Parliament, nothing definite could be done for the time being, but that the matter would be favorably considered at the proper time. Since then the health of Mr. Depretis, minister of foreign affairs, has been such that it has been impossible to hold any extended discussion with him, but there is now hope that during the month of August he will be sufficiently restored to resume the active discharge of his duties.

As I expect to be in Stradella (Mr. Depretis's place of residence) during the last half of the month of August, I shall take occasion to wait upon him there, if he is able to receive me, and call his attention to the subject again. It is not improbable, however, that nothing definite will be determined in the matter until there has been another council of the ministers after Mr. Depretis's return to Rome in October or November. I shall, of course, report at the proper time.

I have, etc.,

J. B. STALLO.

No. 395.

Mr. Stallo to Mr. Bayard.

No. 149.] LEGATION OF THE UNITED STATES,
Rome, July 30, 1887. (Received August 13.)

SIR: I have the honor to acknowledge the receipt of your communication of the 6th instant, inclosing copies of a dispatch from Consul-General Alden to Governor Porter, Governor Porter's reply thereto, and of copies of circular and other letters addressed to various diplomatic and consular officers of the United States at various times by the Department.

Long before the receipt of your communication I had occasion to examine the questions therein discussed, and found that the Italian law (section 103 of the civil code) not only did not require the consular certificate which our consuls have been in the habit of issuing, but in terms required the certificate of "the competent authority of the place where the foreigner intending to contract marriage here is domiciled" to the effect that there is no legal obstacle to the marriage in question. I called the attention of several Italian lawyers, who came to consult me in behalf of American ladies about to contract marriage in Italy, to the clear terms of the law, and told them that the Italian practice of substituting consular certificates for the certificates called for by

the law was founded on a total misapprehension of the relation of consular officers of the United States to the several States whose legislation and judicial action determined the matters to be covered by the certificates. One of these lawyers has recently brought the question before the courts, and it has been decided that in lieu of the former consular certificate the Italian authorities must receive the certificate of the competent officer of the state where the party desiring to be married is domiciled, and, if there be no officer charged with the duty of issuing such a certificate, or, if the highest executive officer of the state refuse, on the ground of incompetency, to issue or cause to be issued such certificate, a certified copy of the law of the state may be received instead. And I have no doubt that, if necessary, the courts will go further and decide that proof of the law on the subject of marriages in any American state may be made by experts or in any other manner in which matters of foreign law are usually proved.

It is, perhaps, not improper to add that the reasons assigned by the Department for its recent action seem to me conclusive, and that the practice, hitherto prevalent in several European states of issuing consular certificates as to the state of the law in any given American State was an abuse which it was eminently proper to abolish.

I have, etc.,

J. B. STALLO.

No. 396.

Mr. Bayard to Mr. Stallo.

No. 74.] DEPARTMENT OF STATE,
Washington, August 20, 1887.

SIR: I am glad to learn by your No. 148 that the request of the Department for the free entry of the consular property to which it refers will doubtless receive favorable consideration at a near date.

I am, etc.,

T. F. BAYARD.

No. 397.

Mr. Bayard to Mr. Stallo.

No. 78.] DEPARTMENT OF STATE,
Washington, October 22, 1887.

SIR: Referring to your No. 149, of the 30th of July last, in which you informed the Department that the law of Italy in relation to the marriage of foreigners in that country requires as evidence of the capacity of the parties—not a consular certificate—but either a certificate of the competent authority of the state in which the foreigner proposing to marry in Italy is domiciled, or else a certified copy of the law of such domicile, I inclose herewith, for your information, a copy of a dispatch just received from the consul-general at Rome, in which it is stated that the civil tribunal there has lately decided the proper evidence of matrimonial capacity of foriegners to be such as you describe.

It is supposed that this is the decision to which your dispatch referred, and which, as you say, fully sustains the views of this Department as to the impropriety of consular and diplomatic officers of the United States issuing such certificates in relation to matrimonial capacity as are inhibited by the recent order of the Department.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 78.]

Mr. Alden to Mr. Porter.

No. 168.] CONSULATE-GENERAL OF THE UNITED STATES,
Rome, September 27, 1887. (Received October 17.)

SIR: I have the honor to acknowledge the receipt from the Department of State of an instruction numbered 43 and dated July 6, 1887, inclosing a copy of a letter dated July 1, 1887, from the Hon. T. F. Bayard, Secretary of State, to the Hon. E. D. Hayden, showing the Department's views as to the issuance by consular officers of certificates of matrimonial status.

Referring to my dispatch No. 143, dated June 1, 1887, I beg to say that although for many years it has been the custom of the Italian authorities to require the consular certificate if "*nulla osta*" as a condition precedent to marriage of an American citizen in Italy, and although the chief officer of the "*stato civile*"—the bureau of the Roman municipal government having charge of the matters relating to marriages—repeatedly assured me that the Italian law required the issuance of such certificate of "nulla osta" "by a consular officer," and that he therefore had no discretion in the matter and could not waive the requirement of such certificate; and although the same statement was, as I am informed, repeatedly made by the officer of the *stato civile* to several American citizens during the past winter and spring, it has now been decided by the civil tribunal of Rome that as section 103 of the Italian civil code specifies that as a condition precedent to the marriage of an American citizen in Italy such citizen must present a certificate of "nulla osta" from the "competent authority of the place where the foreigner intending to contract marriage here (*i. e.*, in Italy) is domiciled," the *stato civile* has been mistaken in its claim that a consul is "the competent authority" referred to in the civil code, and that an American or other foreigner, desiring to be married in Italy, must present a consular certificate of "nulla osta." As no court will sustain a rule adopted by any municipal authority which rule is in conflict with the civil code, it follows that the rule of the *stato civile*, which has hitherto required a consular certificate of "*nulla osta*," can no longer be enforced here.

The civil tribunal has further decided that when an American citizen desires to be married in Italy, such citizens must furnish a certificate of "*nulla osta*" from the proper officer of the State where such citizen is domiciled; and that in case no such certificate can be procured, either because there is no state officer whose province it is to issue such certificates or because the chief executive officer of such state declines to issue such certificate on the ground that he is not legally competent to do so, then a certified copy of the laws of such state relating to the matter in hand may be accepted by the *stato civile* in place of a certificate of "*nulla osta*."

I am, etc.,

WILLIAM L. ALDEN.

No. 398.

Mr. Bayard to Mr. Stallo.

No. 81.] DEPARTMENT OF STATE,
Washington, November 7, 1887.

SIR: I transmit for your information a copy of a letter of 31st January last, to Mr. Patrick Dwyer, touching the suggested presentation of a memorial from creditors of Archbishop Purcell to His Holiness the Pope.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 81.]

Mr. Bayard to Mr. Dwyer.

DEPARTMENT OF STATE,
Washington, January 31, 1887.

SIR: I have to acknowledge your letter of the 23d instant, inquiring, by a series of interrogatories (twelve in number), whether it is compatible with his official duty for the United States minister to Italy to present to His Holiness the Pope and Cardinal Simeoni a memorial from the creditors of Archbishop Purcell and transmit the reply thereto, or whether the minister can be instructed by this Department to do so personally or through an agent.

To these questions I reply: This Government, when seeking redress for citizens of the United States from residents in Italy, is limited to diplomatic appeals to the King of Italy, either through its minister at Rome or His Majesty's minister at Washington. It can not address the Pope personally, and a minister to a foreign country can only communicate officially with persons living under its sovereignty through the channels of customary international intercourse.

It is not consistent with the public service for one of our foreign ministers to press on the tribunals, ecclesiastical or lay, of the Government to which he is accredited, the collection of private debts. The foreign minister, in seeking redress under his Government's instructions for injuries to his country or its citizens, must alone address the sovereign to whom he is accredited; and what the minister can not be instructed to do officially he can not be authorized to do in his private capacity, either personally or through an agent.

Very respectfully, yours,

T. F. BAYARD.

CORRESPONDENCE WITH THE LEGATION OF ITALY AT WASHINGTON.

No. 399.

Mr. Ferrara to Mr. Bayard.

[Pro Memoria, January 4, 1887.]

In October last Frank Feol, a seaman on board the Italian bark *Salomone*, was arrested at the demand of the Italian consular agent in Savannah, Ga. While in jail he introduced a writ against the master of the bark for payment of his wages. The master alleged before a justice of the peace that under the existing treaty the only competent authority in the case was the Italian consular agent, both the parties being Italian subjects. The consular agent confirmed the allegation of the master, but the justice of the peace required the clerk of the district court to issue an admiralty process against the said vessel under section 4547 of the United States Revised Statutes. The judge of the court being absent, the clerk declined to do so on account of the court's want of jurisdiction. Therefore a libel was filed against the clerk for his refusal and the court rendered the inclosed sentence, which is not in conformity with the provisions contained in the first article of the "convention supplementary to the consular convention of May 8, 1878, between the Kingdom of Italy and the United States of America."

The interpretation which the said article has always received is also explained by the inclosed note of the district attorney of New York under September 4, 1882.

It is therefore desirable that the said sentence of the district court should be properly corrected, in order to prevent any unlawful interpretation of the before-mentioned consular compact.

WASHINGTON, *January* 4, 1887.

[Inclosure 1.]

Mr. Kean to Mr. Di Revel.

DISTRICT ATTORNEY'S OFFICE,
City and County of New York, September 4, 1882.

DEAR SIR: Absence from the city has prevented my acknowledgment of the receipt of your communication of the 25th and 29th ultimo, covering a request for the surrender into your custody of Valentine Lauro, at that time confined in the city prison charged with assault on Michael Romano, under the Italian flag, on board the Italian bark *La Maria*, in conformity with the provisions of Article XI of the convention between His Majesty the King of Italy and the Government of the United States, proclaimed in September, 1878.

I have now the honor to inform you that upon the receipt of your letter of the 29th ultimo an investigation into the circumstances of the case was made by this office, and thereupon the magistrate, by whom said Lauro was committed, was advised that, under the provisions of the said convention, the courts of this State were without jurisdiction over the offense, and that consequently the grievance ought to be surrendered into the custody of the consul-general of Italy, as required by the treaty. This, I suppose, has already been done.

Regretting the unavoidable delay of this response to your official communication, I am, etc.,

JOHN M. KEAN,
District Attorney City and County of New York.

[Inclosure 2.]

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia, ss:

I, Marion Erwin, clerk of the district court of the United States of America for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true copy of its respective original, now on file and remaining of record in my office, to wit: The opinion of the court in case of Frank Feol *v.* the bark *Salomone* and Marion Erwin, clerk of the district court, rendered December 7, 1886.

In witness whereof, I have caused the seal of the said court to be hereunto affixed at the city of Savannah, in the southern district of Georgia, this 14th day of December, in the year of our Lord one thousand eight hundred and eighty-six, and of the independence of the United States the one hundred and eleventh.

[SEAL.] MARION ERWIN,
Clerk.

[Inclosure 3.]

In the district court of the United States, southern district of Georgia, eastern division. Frank Feol *v.* the bark *Salomone*, and Marion Erwin, clerk of the district court. In admiralty, seamen's wages. Rule against the clerk.

Henry McAlpin for the rule, Denmark & Adams contra.

(1) If the clerk of the district court issue process under a standing admiralty rule of the court he cannot be regarded as a trespasser, even though the court had no jurisdiction in the premises.

(2) Under the treaty between the United States and the Kingdom of Italy, stipulating that consuls-general, consuls, vice-consuls, and consular agents shall have exclusive charge * * * and shall alone take cognizance of questions of whatever kind that may arise both at sea and in port between the captain, officers, and seamen without exception, and especially of those relating to wages and the fulfillment of agreements reciprocally made, a justice of the peace has no power under sections 4546 and 4547 of the Revised Statutes of the United States to compel the clerk to issue admiralty process against an Italian ship for the wages of a seaman thereon.

(3) When the master of an Italian vessel in one of the ports of the United States is guilty of a barbarous and malicious assault upon a seaman on such vessel, he is not protected by the terms of the consular compact above quoted, and the district court may, in its discretion, take jurisdiction of the case for the protection of the seaman and the redress of his wrongs.

Speer, J.

This is a rule sought against the clerk of this court by Henry McAlpin as proctor for Frank Feol.

It appears from the petition filed and the answer of the clerk thereto that Feol was a seaman on the Italian bark *Salomone*. On the 15th day of September last he made an affidavit before McNaughton, a justice of the peace, alleging an assault upon him, made by Francisco Grasso, the master of the bark, while she was lying at the wharf in the harbor of Savannah. The affidavit was intended to be in accordance with sections 4546 and 4547 of the Revised Statutes of the United States, to compel the payment of the wages due affiant, and to obtain his discharge. It does not appear from these sections that they embraced the subject of the discharge of the seaman, but they relate simply to his claim for wages. A summons was issued by the justice, directed to the master and owner of the vessel, commanding them to appear before him, to show cause why process of attachment should not issue.

A copy of the summons was served personally on the master of the bark by the constable of Justice McNaughton's court, but the master treated the summons and the justice's court with great indifference, and indeed refused altogether to appear, whereupon the justice issued his certificate to the clerk of the district court in accordance with section 4547 R. S.

[The certificate.]

OFFICE OF M. NAUGHTON,
Justice of the Peace, 17th day of September, 1886.

SAVANNAH,
Chatham County, Georgia:

The master against whom the within summons issued neglects to appear, and I certify to the clerk of the district court of the United States for the eastern division of the southern district of Georgia that there is sufficient cause of complaint whereon to found admiralty process against said vessel.

In witness whereof I have hereunto set my official signature and seal of office, this 17th day of September, 1886.

[SEAL.]

MCNAUGHTON,
N. P. and Ex. O. J. P., C. C., Ga.

On the 18th day of September the seaman also filed his libel in this court and prayed process for the recovery of his wages. He made no claim for compensation for the assault, nor did he ask to be discharged.

The clerk declined to issue process either on the certificate of the magistrate or upon the libel. The reason he assigns for this refusal was his knowledge of the want of jurisdiction by the court of a difference of this character between the master and seaman of an Italian vessel, both Italian subjects. He answers that he was aware that under the treaty between the United States and Italy this jurisdiction had been surrendered by the Government of this country. The article of the consular compact ratified between the United States and Italy on the 18th of September, 1887, is as follows:

"ARTICLE XI. Consuls-general, consuls, vice-consuls, and consular agents shall have exclusive charge of the internal order on board of the merchant vessels of their nation, and shall alone take cognizance of questions of whatever kind that may arise, both at sea and in port, between the captain, officers, and seamen, without exception, and especially of those relating to wages and the fulfillments of agreements reciprocally made. The courts, or Federal, State, or municipal authorities in the United States, and the tribunals or authorities in Italy shall not under any pretext interfere in such questions, but they shall lend aid to consular officers, when the latter shall request it, in order to find out, arrest and imprison any person belonging to the crew whom they may think proper to place in custody. These persons shall be arrested at the sole demand of the consular officers, made in writing to the courts, or Federal, State, or municipal authorities in the United States, or to the competent court or authority in Italy, such demands being supported by an official extract from the register of the vessel and from the crew list, and they shall be detained during the stay of the vessel in port, at the disposal of the consular officers. They shall be released at the 'written request of the said officer, and the expenses of the arrest and detention shall be paid by the consular officer.'"

A protest signed by the master and the Italian consul at the port of Savannah was tendered to the clerk, and his attention was therein called to the provisions of the consular compact, and it was therein insisted that he should issue no process in the premises.

The master also stated that he appeared before Justice McNaughton and called his attention to the consular compact between the Government of the United States and the Kingdom of Italy. The great names appended thereto, viz, Baron Alberto and William Maxwell Evarts, had no terrors for his honor, Justice McNaughton; he discredited the treaty and refused to attach any importance to it. The clerk regarded it as controlling him in his action, and declines to issue the admiralty process of the court.

For this refusal it was sought to make him liable. If the clerk had issued the process sought by the seaman upon the libel filed in this court he could not, in the opinion of the court, have been regarded as a trespasser. It is true that he is merely a ministerial officer, but there is a standing admiralty rule of this court, having the effect of an order of direction to the clerk, to wit, Admiralty rule No. 1:

* * * * * * *

"In all suits *in rem*, or *in personam*, attachment, or warrant of arrest and monition, may issue without a judge's order, immediately upon the filing of the libel and the usual stipulation for costs in the clerk's office, except in suits *in personam* requiring bail, when the claim of the libellant amounts to more than five hundred dollars, upon an ascertained demand appearing upon the face of the libel, or is for uncertain or unliquidated damages. In such excepted cases a judge's order authorizing bail process and fixing the amount of the bail will be required."

So far as the proceeding under the libel is concerned, the clerk would have been protected by this rule had he issued process.

So far as the certificate of the justice of the peace is concerned, the action of the clerk was entirely justifiable. The order proceeding to an officer of the court from an inferior jurisdiction must depend for its validity upon the power of the court issuing it.

The justice of the peace in the presence of the treaty stipulations had no power to interfere in the difference between the Italian master and seaman of an Italian vessel. The treaty was paramount law, and should have been respected by him. His sole power under the statute related to the wages of the seaman, and that by the treaty is clearly remitted to the Italian consul.

It was to avoid interference of precisely this character with the navigators of both nations that the compact between the Kingdom of Italy and the United States was made.

The court has no disposition to lessen the importance of the functions attaching to the office of justice of the peace. They are stated with some elaboration of detail in the case of Bendheim Bros. & Co. *v.* Baldwin, 73 Ga., p. 594, Mr. Justice Blandford delivering the opinion of the court, and on this subject of State politics the decision of the highest appellate tribunal of the State may be regarded as binding on the courts of the United States, although the excellent opinion of their court of appeals is scarcely just to the dignified metropolitan justiciary, of which Justice McNaughton is a member.

It is true, however, the certain functions are occasionally improperly exercised by justices of the peace, as, for example, a justice would improvidentially issue a warrant for the arrest and imprisonment of seamen under section 4080 of the Revised Statutes. This power belongs to a judge of a court of record of the United States, or to a commissioner of that court. Besides, it is the duty of all courts, from motives of justice and reciprocal policy, and for the advancement of commerce, to interfere as little as may be between the master and seamen of foreign vessels trading in ports of the United States. The certificate of the justice in this case, directed to the clerk, was a nullity, and the clerk very properly paid no attention to it.

The only remaining question is, Should the clerk have issued process under the libel?

It is now settled that the district court of the United States, unless restricted by some treaty stipulations, may, in the exercise of its discretion, assume jurisdiction of a claim for wages against a foreign vessel, and also where it is provided by treaty stipulations that the consuls, vice-consuls, etc., of a nation shall have the right as such to sit as judges and arbiters upon such differences as may arise between the captain and crews. Without the interference of the local authorities "it is held that the district court was not thereby debarred from exercising its authority in a case where there was no consul or other such officer within the territorial jurisdiction of the court." (The *Amalia*, 3d Federal Reporter, p. 652.)

It appears, therefore, that notwithstanding the treaty there are occasions when the courts should take jurisdiction of suits prosecuted by foreign seamen against foreign vessels. Such cases are, however, of rare occurrence.

In the case cited by counsel for the rule, reported in the New York Daily Register of March 13, 1875, decided by Judge Joachim in the marine court of New York city, where a suit to recover for an assault and battery committed on board the vessel was entertained, it was held that the injury complained of was a difference of a nature to disturb the public peace and order in port or on shore, and the treaty vesting jurisdiction in the German consul excepted cases of that character.

The language of the treaty under consideration, to wit, "Consuls, etc., shall alone take cognizance of questions of whatever kind that may arise, both at sea and in port, between the captain, officers, and seamen, without exception, and especially of those relating to wages and the fulfillment of agreements reciprocally made," suggests the inquiry: Do the questions contemplated by this clause of the treaty include such a tort as an unjustifiable assault by the master upon the seaman on board ship, an as-

sault which would indicate settled hostility and probable repetition while in port? I am inclined to think they do not. Must we not construe the treaty to include questions of a similar character to those enumerated *ejusdem generis*?

The treaty, it seems, does not include a criminal assault upon the seamen within the territorial jurisdiction of the court as a matter of exclusive consular jurisdiction, and in that humane protection which courts have always extended over the seaman, a denial of jurisdiction in the admiralty court is held to be a matter of too serious import to be rested on implication. (Weiberg, Castenus *v.* brig *St. Oloa*, 1st Peters' Admiralty Decisions, 433.)

It is perhaps fortunate, therefore, for the legality of the clerk's action that the libel filed in this court contained no prayer for the injury occasioned by the assault, and no prayer for a discharge on account of such assault, and did not otherwise comply with the admiralty rule cited.

Since it contained a prayer for wages only, a matter of which by virtue of the terms of the treaty the Italian consul had exclusive jurisdiction, the rule must be discharged.

No. 400.

Mr. Bayard to Mr. Ferrara.

DEPARTMENT OF STATE,
Washington, January 10, 1887.

SIR: Your memorial of the 4th instant, stating that Judge Speer, of the United States district court for the southern district of Georgia, had delivered an opinion contrary to the terms of the treaty between the United States and Italy, of the 8th of May, 1878, and suggesting that the opinion of the court should be properly corrected in order to prevent any unlawful interpretation of the treaty above mentioned, has been read by the Department.

It appears from the papers accompanying your memorial that a sailor on an Italian vessel in the port of Savannah, Ga., swore out a warrant before a justice of the peace of that city against the captain of the vessel for an assault committed on board thereof.

The captain refused to recognize the warrant on the ground that the justice of the peace had no jurisdiction in the premises, whereupon that magistrate called upon the clerk of the United States district court to issue a warrant of arrest under sections 4546 and 4547 of the Revised Statutes. This the clerk refused to do because of the provisions of the treaty of 1878, and the justice of the peace then applied to the United States district judge for a rule against the clerk to show cause why the warrant should not be issued. When this application was heard, the judge discharged the rule on the ground that in the view of the provisions of Article XI of the treaty above mentioned the justice of the peace had no jurisdiction of the case, as it was within the exclusive jurisdiction of the Italian consul.

From this review of the facts it appears that jurisdiction of the consul under the treaty was fully sustained by the district court, and this decision brought the dispute to an end.

The ground, however, of your memorial is, that Judge Speer, in the course of his decision, expressed an opinion—which you do not regard as correct—that in a certain supposititious case the jurisdiction of the Italian consul might not have been exclusive. You suggest that this opinion should be corrected.

It has already been observed that the case in which this opinion was expressed has been brought to an end by a decision in the consul's favor of the only question at issue, and it would, therefore, be immaterial

to discuss an opinion that may have been intimated on a question not decided.

But were the case otherwise, this Department would have no authority to revise or correct the court's opinion, or in any way interfere with the judicial proceedings. Under the Constitution of the United States the judicial and executive functions are distinct, and are vested in separate departments of Government, and in judicial cases involving treaty questions provision has been made by Congress for an appeal from inferior courts to the Supreme Court of the United States, where persons are held in custody in violation of a treaty, or where a decision adverse thereto has been rendered.

In this connection I may refer you to correspondence published on pages 9–31 of the volume of Foreign Relations for 1883.

Accept, etc.,

T. F. BAYARD.

No. 401.

Mr. Bayard to Baron de Fava.

DEPARTMENT OF STATE,
Washington, April 22, 1887.

BARON: I have the honor to transmit to you, at the instance of the Secretary of the Treasury, eleven copies of a circular of March 24, 1887, described below.

Accept, etc.,

T. F. BAYARD.

[Inclosure.]

CIRCULAR PROHIBITING THE IMPORTATION OF FOREIGN LABORERS UNDER CONTRACT.

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., March 24, 1887.

To Collectors of Customs, Commissioners of Immigration, and others:

The following is a copy of the original act of Congress prohibiting the importation of foreign laborers under contract, approved February 26, 1885, to which is appended a copy of the act amendatory thereof, approved February 23, 1887, charging the Secretary of the Treasury with the duty of executing the provisions of both acts:

ORIGINAL ACT.

AN ACT to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.

SEC. 2. That all contracts or agreements, express or implied, parol or special, which may hereafter be made by and between any person, company, partnership, or corporation, and any foreigner or foreigners, alien or aliens, to perform labor or service or

having reference to the performance of labor or service by any person in the United States, its Territories, or the District of Columbia previous to the migration or importation of the person or persons whose labor or service is contracted for into the United States, shall be utterly void and of no effect.

SEC. 3. That for every violation of any of the provisions of section one of this act the person, partnership, company, or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any alien or aliens, foreigner or foreigners, into the United States, its Territories, or the District of Columbia, to perform labor service of any kind under contract or agreement, express or implied, parol or special, with such alien or aliens, foreigner or foreigners, previous to becoming residents or citizens of the United States, shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States or by any person who shall first bring his action therefor including any such alien or foreigner who may be a party to any such contract or agreement, as debts of like amount are now recovered in the circuit courts of the United States; the proceeds to be paid into the Treasury of the United States; and separate suits may be brought for each alien or foreigner being a party to such contract or agreement aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit at the expense of the United States.

SEC. 4. That the master of any vessel who shall knowingly bring within the United States on any such vessel, and land, or permit to be landed, from any foreign port or place, any alien laborer, mechanic, or artisan who, previous to embarkation on such vessel, had entered into contract or agreement, parol or special, express or implied, to perform labor or service in the United States, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such alien laborer, mechanic, or artisan so brought as aforesaid, and may also be imprisoned for a term not exceeding six months.

SEC. 5. That nothing in this act shall be so construed as to prevent any citizen or subject of any foreign country temporarily residing in the United States, either in private or official capacity, from engaging, under contract or otherwise, persons not residents or citizens of the United States to act as private secretaries, servants, or domestics for such foreigner temporarily residing in the United States as aforesaid; nor shall this act be so construed as to prevent any person or persons, partnership, or corporation from engaging, under contract or agreement, skilled workmen in foreign countries to perform labor in the United States in or upon any new industry not at present established in the United States: *Provided*, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants: *Provided*, That nothing in this act shall be construed as prohibiting any individual from assisting any member of his family or any relative or personal friend to migrate from any foreign country to the United States for the purpose of settlement here.

SEC. 6. That all laws or parts of laws conflicting herewith be, and the same are hereby, repealed.

Approved, February 26, 1885.

AMENDATORY ACT.

AN ACT to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, the Territories, and the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia, approved February twenty-sixth, eighteen hundred and eighty-five, and to provide for the enforcement thereof, be amended by adding the following:

"SEC. 6. That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act, and for that purpose he shall have power to enter into contracts with such State commission, board, or officers as may be designated for that purpose by the governor of any State to take charge of the local affairs of immigration in the ports within said State, under the rules and regulations to be prescribed by said Secretary; and it shall be the duty of such State commission, board, or officers so designated to examine into the condition of passengers arriving at the ports within such State in any ship or vessel, and for that purpose all or any of such commissioners or officers, or such other person or persons as they shall appoint, shall be authorized to go on board of and through any such ship or vessel; and if in such examination there shall be found among such passengers any person included in the prohibition in this act they shall report the same in writing to the collector of such port, and such person shall not be permitted to land.

"SEC. 7. That the Secretary of the Treasury shall establish such regulations and rules, and issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this act; and he shall prescribe all forms of bonds, entries, and other papers to be used under and in the enforcement of the various provisions of this act.

"SEC. 8. That all persons included in the prohibition in this act, upon arrival, shall be sent back to the nations to which they belong and from whence they came. The Secretary of the Treasury may designate the State board of charities of any State in which such board shall exist by law, or any commission in any State, or any person or persons in any State, whose duty it shall be to execute the provisions of this section and shall be entitled to reasonable compensation therefor to be fixed by regulation prescribed by the Secretary of the Treasury. The Secretary of the Treasury shall prescribe regulations for the return of the aforesaid persons to the countries from whence they came, and shall furnish instructions to the board, commission, or persons charged with the execution of the provisions of this section as to the time of procedure in respect thereto, and may change such instructions from time to time. The expense of such return of the aforesaid persons not permitted to land shall be borne by the owners of the vessels in which they came. And any vessel refusing to pay such expenses shall not thereafter be permitted to land at or clear from any port of the United States. And such expenses shall be a lien on said vessel. That the necessary expense in the execution of this act for the present fiscal year shall be paid out of any money in the Treasury not otherwise appropriated.

"SEC. 9. That all acts and parts of acts inconsistent with this act are hereby repealed.

"SEC. 10. That this act shall take effect at the expiration of thirty days after its passage."

Approved, February 23, 1887.

EXAMINATION.

Under the provisions of section 8 of said amendatory act, approved February 23, 1887, the collectors of customs at the ports of the United States shall, on the arrival of vessels from foreign countries, cause them to be examined by residents of the port who may be in the customs service, in order to ascertain what persons are alien immigrants on such vessels and are forbidden to land within the provisions of sections 4 and 5 of the act approved February 26, 1885.

TABULAR STATEMENT.

The persons making this examination shall make out a tabular statment of the alien immigrants forbidden to land as being under contract to labor before arrival; shall specify in such statement as far as may be possible the following particulars in regard to each person: The country, and town or city of birth; the sex, the age, and place of destination in this country; the name or names of the persons or firms by whom as aliens they were engaged to labor, and the State and place of business of persons so engaging such immigrants. This tabular statement (which is also to embrace the name of the vessel and master and date of her arrival) collectors of customs will forward weekly to the Treasury Department, retaining a duplicate thereof; and if no prohibited alien immigrants are found, collectors will return the tabular statements with the names of the vessels and the masters. Collectors of customs or the persons designated by them for this purpose will exercise the same fidelity of examination now required of them by section 9 of "the Passenger Act, 1882," in the examination of passengers for other purposes.

RETURN OF PROHIBITED IMMIGRANTS.

Whenever alien contract immigrants forbidden to land are discovered on board a vessel, collectors will use their discretion and utmost vigilance to prevent the landing of such immigrants and to secure their return to the countries whence they came by the vessel of their arrival.

REPORT OF CONTRACT OFFENDERS AND OFFENDING VESSELS AND MASTERS.

Upon ascertaining the names of the persons or firms instrumental in engaging or introducing into this country contract immigrants prohibited from landing as above described, collectors will report the names of such persons or firms to the United States attorney for the judicial district embracing their respective ports, and, so far as may be, will also report their places of business and residences; and they shall also report the names of the vessels bringing such contract immigrants and the names of their masters,

suggesting the instituting of such prosecutions as may be required under sections 3 and 4 or other provisions of the original prohibitory statute. And especially if there be any refusal to return the contract immigrants herein mentioned, collectors will promptly institute the proceedings indicated in section 8 of the act of February 23, 1887.

Commissioners of immigration now acting as such at any port of the United States are requested to aid collectors of customs, and those persons designated by collectors for the service required by the foregoing statutes, so far as may be possible within the scope of their legitimate duties.

C. S. FAIRCHILD,
Acting Secretary.

No. 402.

Baron Fava to Mr. Bayard.

[Translation.]

LEGATION OF ITALY,
Washington, April 22, 1887. (Received April 23.)

MR. SECRETARY OF STATE:

By your note dated to-day you were good enough to transmit me eleven copies of the circular of the honorable the Secretary of the Treasury, dated March 24 last, "prohibiting the importation of foreign laborers under contract."

I am under great obligations for the transmission of this document, which I have hastened to transmit to my Government, and I have the honor to offer to your excellency, and, through your kind intermediation, to the honorable Mr. Fairchild my thanks.

Accept, etc., FAVA.

No. 403.

Baron Fava to Mr. Bayard.

[Translation.]

ITALIAN LEGATION,
Washington, May 1, 1887. (Received May 2.)

MR. SECRETARY OF STATE:

By a cablegram dated to-day the Royal Government instructs me, and I have the honor to notify your excellency, that, in consequence of the state of war which exists with Abyssinia, the general commanding our forces of occupation at Massana has established a blockade of the coast from Amphylla to the point opposite to the Island of Dufnein, and that the prize court will eventually sit at Massana.

Be pleased to accept, etc., FAVA.

No. 404.

Mr. Bayard to Baron Fava.

DEPARTMENT OF STATE,
Washington, May 3, 1887.

BARON: I have the honor to acknowledge the receipt of your note of the 1st instant, announcing that Italy, now at war with Abyssinia, has established a blockade of the coast of that power from Amphylla

to a point opposite the Island of Dufnein, and that the prize court will eventually sit at Massana.

Publicity is given to the announcement to the end that all whom it may concern may take cognizance of such effective blockade as may be maintained upon the coast in question by the naval forces of Italy.

Accept, etc.,

T. F. BAYARD.

No. 405.

Mr. Ferrara to Mr. Bayard.

[Translation.]

LEGATION OF ITALY,
Washington, July 18, 1887. (Received July 18.)

MR. SECRETARY OF STATE:

In virtue of several proclamations issued by the President, the last of which bears date of the 22d of April last, and has reference to the ports of the Netherlands and to certain ports in the East Indies, the collection of tonnage dues has been suspended as regards merchant vessels, whatever may be their nationality, coming from the ports designated in the aforesaid proclamations, provided that the countries to which such vessels belong do not levy upon American merchant vessels higher duties than they do upon their own.

The Government of the King has just informed me that, in the ports of Italy, United States vessels and their cargoes, as well as those sailing under any other flag, are required to pay only the same duties and imposts as Italian vessels, and it instructs me, at the same time, to take the necessary steps to the end that Italian merchant vessels may enjoy the benefits granted by the proclamations aforesaid.

I consequently have the honor to beg your excellency to be pleased to cause the necessary measures to be taken in order that Italian vessels coming from the ports mentioned in the proclamations referred to may be freely allowed to enter the ports of the United States without being subjected to the payment of tonnage dues.

Thanking you in advance for your kind compliance with this my request, I avail myself, etc.,

E. FERRARA.

No. 406.

Mr. Bayard to Mr. Ferrara.

DEPARTMENT OF STATE,
Washington, July 26, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 18th instant, in which you refer to the proclamation of the President, of the 22d April last, under section 11 of the shipping act of June 19, 1886, suspending the collection of tonnage dues on vessels entering our ports from those of the Netherlands in Europe and from certain Dutch East Indian ports, and say, that "in the ports of Italy, United States vessels

and their named cargoes, as well as those sailing under any other flag, are required to pay only the same duties and imposts as Italian vessels," which facts, your Government understands, entitle Italian vessels coming from said-named Dutch ports to the benefits of the proclamation.

The proviso in the proclamation, excluding certain vessels from the benefits, reads as follows:

Provided, That there shall be excluded from the benefits of the suspension hereby declared and proclaimed, the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes are in excess of the fees, dues, or duties imposed on the vessels of such foreign country, or their cargoes, or of the fees, dues, or duties imposed on the vessels of the country in which are the ports mentioned in this proclamation, or the cargoes of such vessels.

While the facts given in your note may place Italian vessels from said Dutch ports outside of the above proviso, the actual statement does not precisely meet the terms of the proviso. It is, you will perceive, not only requisite that the country whose vessels seek to enjoy the privilege stated in the proclamation should not discriminate in its ports in favor of its own vessels as against vessels of the United States, but also that it should not discriminate in its ports against vessels of the United States, and in favor of the vessels of the country in which the ports named in the proclamation may be situate.

If, therefore, Italy makes no discrimination of any sort, such as described in the proclamation, against American vessels, the Department would be glad of an express statement, such as might be suggested by the terms of the proviso.

The Department will, however, transmit a copy of your note to the Treasury, with the request that if no such discrimination as that described in the proclamation is made by Italy, Italian vessels may be permitted to enjoy the benefits of the proclamation, when coming from the ports therein designated.

Accept, etc.,

T. F. BAYARD.

No. 407.

Mr. Ferrara to Mr. Bayard.

[Translation.]

LEGATION OF ITALY,
Washington, July 27, 1887. (Received July 28.]

Mr. SECRETARY OF STATE:

In reply to your excellency's note of yesterday I have the honor to advise you that, according to the information received from my Government, United States vessels and their cargoes are not obliged to pay any discriminating duty in the ports of Italy, either as compared with Italian vessels, those of the Netherlands, or those of any other country.

I beg your excellency to be pleased to bring the foregoing to the notice of the Treasury Department, and to request that Department to take the necessary measures in order that Italian merchant vessels may be allowed to enjoy the advantages granted by the President's proclamation of the 22d of April last, and by the other proclamations pre-

viously issued by the President of the United States in pursuance of Article XIV of the act of March 26, 1884.

Begging you to be pleased to acquaint me, as speedily as possible, with the decision reached by the Treasury Department in regard to this matter, I offer you, Mr. Secretary of State, my warmest thanks, and I avail, etc.

E. FERRARA.

No. 408.

Mr. Bayard to Count de Foresta.

DEPARTMENT OF STATE,
Washington, August 23, 1887.

COUNT: I have the honor to acknowledge the receipt of Mr. Ferrara's note of the 27th ultimo, stating that United States vessels and their cargoes are not obliged to pay any discriminating duty in the ports of Italy, either as compared with Italian vessels, those of the Netherlands, or those of any other country. I communicated the facts to the Treasury and have received a letter from that Department informing me that Italian vessels coming from the ports named in the President's proclamation of April 22d last, of which I inclose copy,* will be admitted in the United States under the terms of that proclamation.

Accept, etc.,

T. F. BAYARD.

* Printed page 907, *infra*.

JAPAN.

No. 409.

Mr. Hubbard to Mr. Bayard.

[Extract.]

No. 259.] LEGATION OF THE UNITED STATES,
Tokio, December 10, 1886. (Received January 3, 1887.)

SIR: As a supplement to my former dispatches advising the Department of State from time to time of the progress and fatal results of the recent cholera epidemic in Japan, I have the honor herewith to transmit the latest statistics, translated from the Japanese Official Gazette, giving a complete summary to date of the number of cases and deaths which have occurred in this country since the outbreak of the plague in the present year. The rate of mortality is almost unprecedented, and well calculated to awaken our own authorities at home to the utmost vigilance in guarding against the importation and introduction of the disease to the United States from infected countries.

Since forwarding my No. 232 I have had interviews with several eminent medical gentlemen long resident in Japan. They express the fear, as indicated in my last dispatch on this subject, that cholera here, as in India, will probably eventually become epidemic, as it has been for several consecutive years past declared to have been epidemic.

I have, etc.,

RICHARD B. HUBBARD.

[Inclosure in No. 259.]

Since the outbreak of the cholera in Japan this year, to the 6th instant, the following number of cases and deaths have occurred:

	Number of cases.	Deaths.
Tokyo-fu	12,034	8,259
Kyoto	3,205	2,481
Osaka	20,538	15,821
Kanagawa prefecture	5,952	3,743
Hiogo prefecture	6,701	5,119
Nagasaki prefecture	2,383	1,518
Niigata prefecture	9,102	5,154
Saitama prefecture	961	528
Chiba prefecture	3,464	2,152
Ibaraki prefecture	868	539
Gumma prefecture	313	211
Tochigi prefecture	559	285
Miye prefecture	1,419	1,066
Aichi prefecture	1,128	8,278
Shizuoka prefecture	629	184
Yamanashi prefecture	1,156	589
Shiga prefecture	414	248
Gifu prefecture	338	202

	Number of cases.	Deaths.
Nagano prefecture	4,267	2,168
Miyagi prefecture	1,317	868
Fukushima prefecture	249	149
Iwate prefecture	482	312
Aomori prefecture	5,778	2,655
Yamagata prefecture	2,225	1,441
Akita prefecture	4,917	2,461
Fukui prefecture	6,665	4,819
Ishikawa prefecture	4,214	3,094
Toyama prefecture	16,224	10,003
Tottori prefecture	790	488
Shimane prefecture	1,743	1,001
Okayama prefecture	2,705	1,702
Hiroshima prefecture	7,590	5,298
Yamaguchi prefecture	3,679	2,235
Wakayama prefecture	3,072	2,180
Tokushima prefecture	938	588
Yehime prefecture	5,311	3,183
Kochi prefecture	1,853	1,253
Fukuoka prefectnre	1,646	1,045
Oita prefecture	1,499	888
Saga prefecture	1,216	739
Kumamoto prefecture	571	272
Miyasaki prefecture	22	16
Kagoshima prefecture	38	16
Okinawa-ken	926	662
Hokkaido		
The Sapporo division	929	652
The Hakodate division	1,894	1,347
The Nemuro division	6	3
Total	153,930	100,492

No. 410.

Mr. Hubbard to Mr. Bayard.

[Extract.]

No. 264.] LEGATION OF THE UNITED STATES,
Tokio, December 20, 1886. (Received January 15, 1887.)

SIR: In the Commercial Relations of the United States, 1884–1885, published by Department of State, I have the honor to acknowledge the compliment implied in the publication of extracts from a paper prepared by me on the subject of our trade relations with Japan, dated November 23, 1885, and the publication in full of my report on the foreign trade of Japan, dated April 22, 1886.

I refer to these papers now in connection with the inclosed copy of an editorial leader from the largely circulated and influential daily Japanese newspaper, the Chōya Shimbun.

The British press, the Mail and Herald, saw proper to take umbrage at the unpalatable facts and figures which were given in these trade reports, evidently and only because they showed, other things being equal, that the "balance of trade," so long in favor of England and against the United States, ought to be reversed, or rather that the exports from the United States to Japan should increase, so as to bear some sort of reasonable proportion to the immense export trade of Japan to the United States.

I have, etc.,

RICHARD B. HUBBARD.

[Inclosure in No. 264.—Translated and abridged from the Chōya Shimbun.]

America and Japan.

It is literally true that the name of "American citizen" is an invisible passport in any part of Japan. A monument of gratitude to America stands erected in the hearts of 37,000,000 Japanese. Moreover, it is certain that America will be the future market of this country, and therefore every obstacle in the way of the commercial prosperity of our two nations should be removed. Not only on account of our historical relations and old-time friendship, but also because of her geographical position, is America the country to which the eyes of our countrymen naturally turn. Taking the size, population, and rapid development of the United States into consideration, it is not too much to say that it will be the world's future center of civilization. There is everything in America to excite our interest in commerce with her. We welcome her merchants and manufacturers here, and shall be happy to see them compete successfully with other nationalities. If American traders take up this matter with courage and an enterprising spirit they will certainly be the rivals of England or any other nation.

Minister Hubbard, in his trade reports, appears to find fault with Americans for not being keen enough in the pursuit of tradal advantages. But while he does this, it is plain that he regrets that Japan does not deal with his country in a more friendly spirit. His implied reproaches are not without reason.

Our Government is endeavoring to follow Germany in the field of politics, military affairs, and engineering. England and France have long since been the recipients of the Government's favors, while the foreign advisers of our administration are taken chiefly from these three countries. We know not what secret motives the Government may have in so doing, but the Japanese people are far fonder of America than of any other nation.

Our Government may possibly be not so warmly attached to that country, yet the people are. Of course there is no reason to suppose that our Government has anything but a friendly feeling for the United States.

What surprises us most in this connection is the Japan Mail's critique of Minister Hubbard's trade report. The editor of that journal deems it ridiculous to suppose that international commerce is in any way a matter of friendship. Friendship and commerce are undoubtedly two different matters, yet international good-will has everything to do with the development of trade. Without taking recourse to the sword, America is trying to make prosperous her commerce with the Orient, and the attempt is one of which any country might be proud. Our relations with England, France, and Germany may be compared with the friendship of *samuari* in feudal times. At any moment they might quarrel and come to blows. But America's pact with us is like that of Japanese merchants under the feudal régime. There was no fear of their fighting with each other.

Minister Hubbard states that America levies no duty on tea and silk, which are imported annually to the value of 11,000,000 yen.

In reply, the Mail says that America imposes no tax on these articles, because there is no danger of her ever competing with Japan in this direction. America's kindness in this respect, continues the Mail, is apparent and not real. At any rate it is a great boon to Japan. Again, the Mail states that America enforces a protective tariff system, and that articles manufactured under such a system are necessarily very high-priced. This is a most narrow view. It is not true that everything is dear under the protective tariff. Some things are cheap, while others command a high figure. And so far as Japan is concerned, the cheaper products will find their way hither, though those that are dear may not go beyond the limits of the home market. In brief, the critique of the Mail is mere abuse, and does not lessen the value of Minister Hubbard's trade reports.

No. 411.

Mr. Hubbard to Mr. Bayard.

No. 274.] LEGATION OF THE UNITED STATES,
Tokio, January 17, 1887. (Received February 12.)

SIR: On receipt of the recent message of the President of the United States, communicated to the two Houses of Congress at the beginning of the second session of the Forty-ninth Congress, I transmitted a copy of the same to his excellency Count Inouye, His Imperial Japanese

Majesty's minister for foreign affairs, respectfully calling his attention to that portion of the message especially relating to Japan.

I have pleasure in inclosing copies of my note to the foreign minister conveying the said message and his reply thereto, respectfully directing your attention to his grateful acknowledgment of the earnest and consistent friendship of the United States towards Japan, as expressed by the President.

I have, etc.,

RICHARD B. HUBBARD.

[Inclosure 1 in No. 274.]

Mr. Hubbard to Count Inouye.

LEGATION OF THE UNITED STATES,
Tokio, Japan, January 7, 1887.

COUNT: I have the honor and pleasure herewith to transmit to your excellency the following extract from the recent annual message of the President of the United States of America to the Congress at the opening session on the first Monday in December last. Referring to the relation of my Government with your excellency's Government, under the head of "Foreign relations" the President was pleased to say to Congress as follows: "The Japanese treaty.—The question of a general revision of the treaties of Japan is again under discussion at Tokio. As the first to open relations with that Empire, and as the nation in most direct commercial relation with Japan, the United States have lost no opportunity to testify their consistent friendship by supporting its just claims and independence among nations. A treaty of extradition between the United States and Japan, the first concluded by that Empire, has been lately proclaimed." These words of the Chief Magistrate of a republic of sixty millions at the moment when the treaty powers are considering the necessary revision of the treaties which have remained comparatively unchanged for a third of a century and for over a decade of years since Japan by express stipulation had a right to demand such revision, are the expression of the popular will and sincere friendship of my countrymen toward your Empire.

I need not assure your excellency and His Imperial Majesty that the assurances officially announced by the President of the United States on such an important occasion find a hearty response and approval by the minister of that Government accredited to this court.

I avail myself, etc.,

RICHARD B. HUBBARD.

[Inclosure 2 in No. 274.—Translation.]

Count Inouye to Mr. Hubbard.

DEPARTMENT OF FOREIGN AFFAIRS,
Tokio, 10 day, 1st month, 20 year of Meiji.

SIR: I have the honor to acknowledge the receipt of your excellency's dispatch No. 150, of the 7th instant, in which you have been so kind as to communicate to me the official text of the message of the President of the United States with reference to the question of the revision of the treaties between Japan and the western powers. It will afford me great satisfaction to report the tenor of your excellency's dispatch to my august sovereign, and I am confident that His Majesty will receive with pleasure this renewed evidence of the good-will and friendly feelings of the United States Government.

I am glad to be able to seize this opportunity to express to your excellency personally also my acknowledgments for the manner in which you have, both during the labors of the conference and in your official relations with this department, contributed to carry into effect the friendly and enlightened policy which has always distinguished the relations of the United States with this Empire.

I avail, etc.,

COUNT INOUYE KAORU.

No. 412.

Mr. Hubbard to Mr. Bayard.

No. 282.] LEGATION OF THE UNITED STATES,
Tokio, January 29, 1887. (Received February 2$.)

SIR: In connection with the trade of the United States with Japan, about which a good deal has been written officially as well as unofficially of late, I have the honor to transmit herewith a leading article from the Japan Daily Gazette, commenting on the admitted fact of the recent increased trade between our two countries. The significant portion of the Gazette's article is the embodied quotation (being a translation) from a native journal—the Tokyo Keizai Zasshi—suggesting a reciprocity convention, mutually abolishing import duties on petroleum and manufactured silk.

I merely direct attention to this proposed policy to show what the native press of Japan (which, like the press in America, largely reflects public sentiment) are thinking and saying on the subject of our trade relations. As to "raw materials," the *quid pro quo* argument for reciprocity might be practicable if the exchange of products was of even value. As it is, we already admit over sixteen million dollars' worth of "raw silk" duty free, while Japan only buys *in toto* from our people a little over two millions, two-thirds of which is kerosene—on which duty is paid.

I have, etc.,

RICHARD B. HUBBARD.

[Inclosure in No. 282—From the Japan Gazette, Yokohama, January 26, 1887.]

The rapidity with which Japanese trade with the United States is increasing, and the future importance of the American market to Japanese industries, are highly appreciated by the Japanese people, who have lately shown much energy in promoting commercial relations with their great neighbor. In the latest issue of the Tokyo Keizai Zasshi a suggestion of a reciprocal nature is made, which, if adopted, is thought would be the means of further increasing the import and export trade with the United States. Japan is urged to ask America to abolish the import duty on silk manufactures entering the country from Japan, but in doing so the latter is first to show her good-will by exempting kerosene oil from the payment of duty altogether. This latter step is to be taken in order to induce the United States Government to concede to Japan's desire by way of reciprocity. It says: The exportation of our manufactured silk goods to the United States has made marked progress of late; and it is a notable fact that the activity that now prevails at Ashikaga, Kiribu, Nishijin, and other weaving districts is mainly attributable to the increasing exportation of silk stuffs produced there. Our Government must not, therefore, miss the opportunity thus presented for cementing our commercial relations with America. The policy of the United States of imposing protective duties on imported European goods, which are of excellent quality, may, in a manner, be reasonable, though peculiar in the abstract, but no one can discover the reason why protective duties should be imposed on goods imported from an infant country like Japan. America can, in fact, produce better articles than Japan. Japanese-made handkerchiefs and neck-ties, for example, are only imitations of American goods, and as Japanese artisans have but imperfect skill, their manufactures are naturally inferior in brilliancy and color to American-made goods. It is strange, therefore, that a country commanding superior skill should impose protective duties on inferior goods produced in another country. America, however, already allows our raw silk and tea to be imported without the payment of duty, and we must, in consequence, do something in return for the favor the United States will confer by exempting Japanese silk stuffs from the present import duty of 50 per cent. This can be best done by abolishing the duty on kerosene oil. This oil now constitutes one of the imported articles most generally used; therefore, by allowing it to be imported free of duty the people of Japan will be able to procure it at a reduced price, and will feel as grateful as if an article of food had been relieved from a Government tax. We need hardly say that the

benefits to be derived from the step suggested will be enjoyed by both Americans and Japanese. The Government should, therefore, propose to the United States Government that as we are willing to abolish the duty on keresene oil imported from their country, they ought to reciprocate and abolish all duties on Japanese manufactured silks entering America. If the negotiations succeed in bringing about this end no small benefit will result to the two countries. Japan is a silk-producing country, and thoughtful people hope Ashikaga, Kiribu, or Noshijin will be the future Manchester or Lyons of Japan. Hitherto the fluctuation in prices and the consequent disturbances in the market have prevented the development of the silk industry, but now matters have changed; the economical affairs of the country are in good order, and the industry has commenced to improve. It is therefore gratifying in the extreme to see at this juncture the exportation of manufactured silk goods increasing; and if the duty of 50 per cent. on this class of articles imported into America be abolished, a great impetus will be given and the future prosperity of the Japanese industry secured. The import duty in America does not, however, give so much trouble as the tedious formalities attending the levying of the tax, which are indeed almost unendurable to Japanese merchants, who often lose good opportunities of disposing of their goods by the delay occasioned. Moreover, if the United States wishes to stand as a commercial country in the world she had better count Japan as one of the producing districts supplying her market. Tokio freely admits raw and manufactured silk from Maebashi, Fukushima, etc., considering those places as the producing districts for her market, from which latter she distributes the goods throughout the Empire. The United States should be to Japan what Tokio is to Maebashi, Fukushima, etc. From the above observations it is needless to say that little consideration is required to perceive the mistake the United States Government makes in levying protective duties on Japanese imported goods.

No. 413.

Mr. Hubbard to Mr. Bayard.

[Extract.]

No. 302.] LEGATION OF THE UNITED STATES,
Tokio, March 8, 1887. (Received March 31.)

SIR: I have the honor to inclose herewith two clippings from the Japan Daily Mail, a British newspaper, being comments of said newspaper on two editorials from leading native (Japan) daily journals.

I have forwarded this clipping from the Anglo-Japanese press as an index of what Englishmen regard here as a turning point in trade relations which have hitherto been largely monopolized by their countrymen. In the same connection, as bearing on the question of cultivating more speedy transportation between Japan and the United States, I call your attention also respectfully to what an influential native commercial daily says in relation thereto. The Nippon Yusen Kaisha, to which allusion is made, is the great steamship company of Japan, whose bonds are all guaranteed by the Japanese Government, and which owns more than a hundred ships.

I have, etc.,

RICHARD HUBBARD.

[Inclosure 1 in No. 302.—Clipping from Japan Daily Mail.]

The Mainichi Shimbun recommends the promoters of Japanese railways to intrust the work of construction to American engineers. Public attention has been strongly directed of late to railway enterprise. Lines from Kobe to Shimonoseki, from the north to the south of Kiushiu from Tokio to Hachioji, and between places in other localities are projected. The idea that this industry must of necessity be left to officialdom, an idea long maintained, has been abandoned, and capitalists everywhere throughout the

Empire are hastening to invest their money in iron roads. But the question of construction is still a difficulty. Most people think that the only feasible course is to enlist the services of the railway department. The Mainichi Shimbun, however, strongly condemns this plan. On the score of delay alone, if for no other reason, such a burden should not be placed on official shoulders. Better employ American engineers, says our contemporary, plenty of whom would be quite willing to undertake the work. Certainly Japan can not do better than procure scientific assistance from America, but we hope that for work of this sort Englishmen may have a fair show. Japan owes almost everything she knows about railways to England. She has paid for the knowledge, it is true, but except on the principle that variety is charming, a principle which she seems not unlikely to get the discredit of obeying too implicity, we do not see why she should go back on her old love.

[Inclosure 2 in No. 302.—Clipping from Japan Daily Mail.]

The Keizai Zasshi publishes a note in which it points out that, while Japan and the United States of America are such near neighbors, geographically, the actual commercial routes are unnecessarily long, the commodities passing between the two countries being mostly carried by way of the Suez Canal. Our contemporary recommends the Nippon Yusen Kaisha to open communication on the Pacific between this country and America.

No. 414.

Mr. Hubbard to Mr. Bayard.

[Extract.]

No. 346.] LEGATION OF THE UNITED STATES,
Tokio, June 2, 1887. (Received June 27.)

SIR: I transmit herewith the annual return of the foreign trade of the Empire of Japan for 1886. The total value of Japan's export trade for the year was 48,870,471 yen, and the total value of her import trade for the same period was 32,168,432 yen, being a total of import and export trade for year of 81,038,903 yen, which is an increase of 16,601,510 yen over the total trade of 1885. The excess of export over import trade for the year under consideration was 16,702,039 yen.

The following table shows a comparative statement of the total export and import trade for 1885 and 1886 between Japan and some of the principal commercial countries. The values in this table as well as all values in this dispatch are expressed in Japanese yen.

Countries.	1885.	1886.	Gain.
	Yen.	*Yen.*	*Yen.*
United States and Canada	18, 340, 052	23, 347, 202	5, 007, 150
France	8, 065, 777	10, 963. 815	2, 898, 036
China	13, 418, 518	16, 718, 758	3, 300, 240
Great Britain	14, 827, 399	16, 898, 603	2, 071, 204
Germany	2, 129, 585	3, 178, 117	1, 048, 532
Corea	469, 114	1, 392, 763	923, 649
East Indies and Siam	3, 889, 047	4, 210, 462	321, 415
Australia	355, 556	550, 379	191, 823

Exports from Japan to some of the principal commercial countries for 1885 *and* 1886.

Countries.	1885.	1886.	Gain.
	Yen.	*Yen.*	*Yen.*
United States and Canada	15, 613, 868	19, 988, 216	4, 374, 348
France	6, 735, 911	9, 632, 902	2, 896, 991
Great Britain	2, 411, 978	4, 195, 355	1, 783, 377
Germany	493, 333	864, 458	371, 125
East Indies and Siam	492, 083	649, 143	157, 060
Italy	120, 593	181, 200	60, 607
China	7, 655, 468	9, 594, 907	1, 939, 439
Australia	284, 235	469, 914	185, 679
Corea	229, 600	829, 316	599, 716
Russia	246, 291	231, 695	—14, 596
Austria	24, 607	156, 315	131, 708

Imports into Japan for 1885 *and* 1886 *from some of the principal commercial countries.*

Countries.	1885.	1886.	Gain.
	Yen.	*Yen.*	*Yen.*
Great Britain	12, 415, 421	12, 703, 248	287, 827
China	5, 763, 050	7, 123, 851	1, 360, 801
East Indies and Siam	3, 396, 964	3, 561, 319	164, 355
United States and Canada	2, 726, 184	3, 358, 986	632, 802
Germany	1, 655, 652	2, 313, 659	648, 007
France	1, 329, 866	1, 330, 913	1, 047
Corea	239, 514	563, 447	323, 933
Belgium	317, 682	507, 908	190, 226
Switzerland	306, 254	263, 446	—42, 808
Italy	95, 998	119, 557	23 559
Australia	71, 321	80, 465	9, 144

Of Japan's nearly 49,000,000 yen in value of exports it is interesting to note that the following twenty-seven articles form over 45,000,000 yen:

Articles.	Value.	Articles.	Value.
	Yen.		*Yen.*
Silk, all kinds	21, 070, 636	Fans	195, 144
Tea, all kinds	7, 723, 320	Matches	378, 017
Rice	3, 300, 599	Screens	193, 124
Coal, including for ship use	2, 208, 548	Bamboo ware	191, 271
Fish, including shell-fish	1, 819, 905	Bronzes	193, 231
Porcelain	1, 002, 384	Hides and skins	216, 852
Copper	2, 130, 880	Wheat	231, 078
Camphor	928, 027	Mushrooms	437, 397
Lacquered ware	589, 169	Kanten	392, 604
Sea-weed	598, 414	Bêche de mer	196, 425
Straw ware	179, 618	Peppermint oil	63, 206
Cotton piece goods	229, 665	Sulphur	72, 938
Tobacco	126, 612	Antimony	154, 318
Rags	175, 718		

The foregoing list includes only Japanese productions and manufactures. Re-exported foreign commodities have been omitted from it.

Of the 32,000,000 yen of Japan's import from foreign countries, the following twenty-eight articles compose over 30,000,000 yen.

Articles.	Value.	Articles.	Value.
	Yen.		*Yen.*
Wools, woolen yarns, blankets, buntings, and other woolen goods	3,565,871	Iron—pig, bar, railroad plate, and sheet	206,579
Kerosene oil	2,358,497	Steel and steel ware	2,079,233
Sugar	5,557,012	Other metal manufactures	568,511
Cotton yarns	5,905,457	Raw cotton	618,429
Hair, horns, hides, etc	1,061,799	Flour	99,156
Shirtings, white and gray	1,145,253	Provisions, including butter, hams, bacon, and condensed milk	361,800
Victoria lawns, T-cloths, and other cotton goods	1,223,326	Books and pencils	169,480
Tobacco	93,098	Paper, all kinds	196,230
Wines and liquors	488,551	Clocks	88,589
Cannons, muskets, etc	374,491	Locomotives, and parts of	90,089
Medicines and chemicals	979,894	Watches	165,774
Dyes and paints	653,207	Hats, caps, etc	122,213
Glass and glassware	249,047	Machinery—mining, pumping, paper making, etc	459,584
Grain and seeds	103,146		
Iron nails	456,499		

The principal imports from the United States to Japan for 1886.

Articles.	Value.	Articles.	Value.
	Yen.		*Yen.*
Kerosene oil	2,358,497	Mercury	44,875
Leather	149,852	Cotton duck	22,789
Flour	97,454	Tobacco	29,316
Provisions	60,553	Watches and fittings	18,255
Condensed milk	57,102	Drugs, medicines, and chemicals	50,642
Books	53,230	Lead pencils	43,655
Clocks	81,331	Iron, and manufactures of	16,130

I beg to call your attention to the interesting fact that while the aggregate value of imports from the United States into Japan increased in 1886 over 1885 632,802 yen, the gain on kerosene alone was 690,776 over 1885, the falling off being in such imports as leather, clocks, watches, etc., and several other articles, as a comparison of the tables of the years 1885 and 1886 respectively indicates. The total imports from the United States for 1885, 2,726,184, while for 1886 the imports have increased to 3,083,601. These figures speak for themselves, indicating the fact that while the balance of trade against the United States has not been decreased, American exports to Japan have increased in 1886 over 1885 more than half a million in value, to wit, 632,802. The demand, per contra, in America for Japanese productions has increased largely over 1885, the Japanese exports to America in 1885 being more than 15,000,000, while for 1886 it has swelled to over 19,000,000. We buy of Japan more than Great Britain does by 15,792,861; than France by 10,355,314; and than Germany by 19,123,758. The United States should and can sell more largely to Japan than now of the varied products of our soil—wheat, flour, etc., and the manufactures of our mills and the fabrics of our looms. The absolute cost of production and manufacture, the vast advantage in the distance of transportation by sea, should enable our people to place their goods in the Eastern markets at as low prices (certainly for the same grade of goods) as French, English, or German manufacturers. Your commercial statistics of the trade relations between China and the United States show the gratifying fact that American "piece goods" and cotton and woolen fabrics have found a ready and annually increasing demand in China. Why not in Japan, with her 38,000,000 of consumers, as well? I have had the honor to direct your attention to the fact heretofore

that, so far as concerns materials for railway construction and bridges and locomotives, etc. (and even our iron and steel rails can enter into competition with English and German rails if our people will only submit to smaller profits, as the latter do in their shipments hither), we can successfully compete with our European rivals.

I have, etc.,

RICHARD B. HUBBARD.

P. S.—I have omitted in the foregoing dispatch to call attention to the fact that the Japanese customs returns, herewith inclosed, speak of the "United States and Canada" as one; and that "East Indies and Siam" are put together. This is confusing, but as to the relative proportion of English and American trade it does not practically alter the status. "British India," as the Department is aware, is only a part of the "East Indies," while Siam no more belongs to Great Britain than Canada does to the United States.

No. 415.

Mr. Hubbard to Mr. Bayard.

[Extract.]

No. 347.] LEGATION OF THE UNITED STATES,
Tokio, June 2, 1887. (Received June 27.)

SIR: I beg to inclose herewith a leading editorial (as translated) from the Jiji Shimpo, in the bold and impartial spirit which always characterizes that eminent Japanese journal. Its well-known friendship for the United States is prominently expressed in this leader. I call your attention expressly to the clipping herewith transmitted.

I have, etc.,

RICHARD B. HUBBARD

[Inclosure in No. 347.—Translated from the Jiji Shimpo.]

The Kiushiu Railway Company.

The Kiushiu Railway Company, of which so much has been said recently, is reported to have received private intimation of the granting of sanction for the commencement of the work of construction. The formal and official charter will, we learn, be granted in a few days, and, meantime, we are informed that the company has already sent to Germany for rails and other material. We are glad to think that the project has advanced to such a point as the facts we have given indicate; but if it be actually the case that the order for materials has been sent, not to England or to the United States, but to Germany, then we for our own part must enter our protest against such a course being adopted. Even in the event of the rumor being false, we can not now, in view of the circulation which it has received, afford to disregard it. In international intercourse we ought to make no distinction between one of our treaty friends and another. England, France, Germany, the United States, ought to be the same to us from this point of view, but commercially speaking matters are very different. Under no circumstances should the conditions of our relation as a state to another country be permitted to influence our commercial and business methods. We do not forget that the Kiushiu Railway Company will be in receipt for a time of a subsidy from the Government, but practically it is a private concern, and as such its interest palpably demands that the work of construction and the maintenance of the line should be accomplished at the least possible cost consistent with efficiency and durability. We are, therefore, at a loss to fathom the reason why the orders for material should go to

Germany instead of England or the United States. That England is the first country in the world in the matter of iron working, that the rails she produces are the best, and that the rolling plant (locomotives and carriages) of the United States are unsurpassed, are facts with which we became acquainted years ago, and which everybody now knows; but we can not call to mind that we have heard German rails or carriages or wagons spoken of in such high terms as would at all warrant the sending there of the Kiushiu Railway Company's order. All the rails thus far used in Japan are English, of which an immense quantity has been imported since the commencement of railway construction in this country.

From the time of leaving the place of manufacture in England till the rails were actually laid here they were subjected to more or less rough treatment, but it must be noted that they have never suffered injury or been impaired in the slightest degree, and now after years of service their durability has been demonstrated in a surprising way. It has been specially noticed that traffic on the English rails gives rise to very little deterioration for a long time. We are credibly informed that the German rails are far inferior to them in these respects. So in the matter of carriage construction. In this branch the products of the American workshops stand pre-eminent. English-made carriages might possibly be placed in the same rank so far as durability and general quality of workmanship are concerned, but certainly German work is utterly unworthy of a position beside these high-class manufactures. With all these considerations before us we are quite at a loss to understand why the Kiushiu Railway Company should have ordered their material from Germany. It might in such a case as this be advisable for certain purposes to purchase material as cheaply as possible irrespective of quality. In this light we could almost understand the object of the Kiushiu Railway Company; but as a matter of fact the German products do not possess the recommendation of cheapness. It is well known that German rails and German rolling plant generally are not cheaper—but the reverse—than those of England and the United States. For example, when the supply of American rails falls short, whence does the great proportion of the material necessary to meet the demand come? Why, from England; and similarly where cars are wanted for England, the resources of American workshops are drawn upon. If German material is so cheap, is it not strange that there should be no instance of its purchase for either England or the United States? Englishmen are employed everywhere on the continent in railway works; English manufacturers sell rails, cars, and other plant to the railway companies of Europe, which, whether German, French, Russian, or Austrian, have all selected the lines of Great Britain as their model. Not only is there no instance in which German rails have been sent abroad, but we have never heard that outside Germany, Germans have been employed in any important railway undertaking.

Another point should not be lost sight of, namely, that a connection has been established between Japan and the manufacturers of England and America, whence we have chiefly obtained our material, and it is only natural to suppose that we will be able to make better terms comparatively than if we were merely purchasing in any market that offered.

It seems now that the Kiushiu Railroad Company have seen fit to ignore the advantages which the past experience of Japan has created, and to give their orders to a country with which hitherto we have had a bare commercial connection. The company will be in the position of a customer who demands a style of article for which the seller has not hitherto had a demand, and the consequence of this must be that the latter will have to charge well to recoup himself for the expense of producing that which will strain his resources and methods.

It is because of the conclusion that is borne in upon us by these considerations that we touch upon the subject. The Kiushiu railway has nothing to do with us or we with the Kiushiu railway; and it might be suggested that we ought to mind our own business and allow the company to follow its own bent in ordering its material. But on behalf of a section of the public, and bearing in mind the extent to which railway construction is connected with the interests of this Empire, we must express our views on the action reported to have been taken by the company. If in this case both buyer and seller were natives of Japan, we should have nothing to say, because the price of the article simply changes hands and does not leave the country. But here we have a transaction with foreigners in which every *sen* misspent means so much of a loss to the nation. The Kiushiu Railway Company is going to Germany for dear material unsuited to its wants, and the amount of money that is spent in this operation will represent just so much of a national loss. If the company is not interested in the bearing which this question has on the interests of the country, then we have nothing more to say. But if its shareholders and directors are really men of patriotism and loyalty, then we earnestly suggest to them that they should at once cancel the order and send instead to England or America—to the former for rails and to the latter for rolling plant and engineers, if these are required—and thus show that they are animated by the high motives which ought to influence them.

Public opinion was for some time divided in the west as to the standard of width or gauge that should be adopted for railways. One party strongly advocated the claims of the narrow gauge, while another as firmly put forward the merits of the broad gauge. At the present day it may be said that opinion generally is on the side of the latter. People did not at first understand the principles which ought to govern railway construction in this respect. Probably in deciding as to the width of the axles of their carriages, they could not dismiss from their minds the ideas associated with the ordinary vehicles which preceded railways. The requirements of industry and commerce were not then so extensive, and military and other considerations did not present themselves so forcibly as they do now, so that really at first narrow-gauge railways were deemed sufficient. But with the advance of civilization it was found that the narrow gauge was unequal to the demands made upon it, and thus the adoption of the broad gauge came about. The advocates of the narrow gauge seem to urge that the broad gauge entails more expense proportionately than the other. Naturally the latter will not necessitate the employment of so much material, and less land will be required for the railway; but for that matter the question of difference in the extent of ground taken up is really unimportant, and no one need attempt to contend that the cost of a 6-foot gauge would necessarily be double that of a 3-foot one. Among the advantages of the broad-gauge system may be enumerated comparative immunity from accidents, for the greater width will make the trains more stable; increased speed, for the greater stability will permit of the employment of larger wheels and more power; and greater safety in the transport of heavy material, such, for example, as guns, etc., that it might be necessary to carry in time of emergency. Almost all countries have now adopted the broad gauge. In the United States the width is fixed at 4 feet 8 inches, and in the Australian colonies at 5 feet, while strangely enough the Japanese Government has adopted, and in the private railway regulations followed, a 3-foot 6-inch gauge. We do not suppose that the Government officials are unacquainted with the state of matters as we have now presented it, but we presume the view taken is that as the railways now in existence in Japan are all narrow gauge, all lines to be laid in the future should be of the same width, uniformity in this respect being of great importance. If this be the view entertained, it might still be pointed out that the Kiushiu railway, from the position of the country through which it will run, ought to be of broad gauge. The line which it is proposed to run through the Sanyodo will terminate on one side, while the Kiushiu road will terminate on the other side of the strait of Shimonoseki, which, because of its width and of the currents which occur there, can not be spanned by a bridge. The Kiushiu line is therefore an isolated undertaking, and the weight of evidence points in favor of constructing it without reference to any of the other railways in Japan. Unless the Government have really good reasons for following the narrow gauge, we are strongly of opinion that the new line should be constructed in accordance with the principles now observed in all civilized countries.

CORRESPONDENCE WITH THE LEGATION OF JAPAN AT WASHINGTON.

No. 416.

[Telegram.—Received August 9, 1887.]

Count Inouye to Mr. Kuki.

MINISTER KUKI: Inform the honorable Secretary of State that a careful examination to which the draft of the jurisdictional convention was submitted by the imperial cabinet showed the necessity of essential modifications and additional interpretations.

Particular exception was taken to the stipulation of Article V by which the Japanese codification had to be submitted to the approbation of foreign powers.

Although the wording of the article is not expressed in these words, the cabinet assumes from subsequent debates that this was meant. The cabinet in this respect is of opinion that it would be in conformity with our national dignity, if the laws were completed in the first instance,

because this would prove that submission was unnecessary by authorization of the Japanese Government. Therefore, declared on the 29th ultimo the adjournment of the conference *sine die* until the Japanese Government be able to show the results of codification. Explain to the honorable Secretary of State that while regretting this interruption of the conference our object is not to relinquish the work of progress, but, on the contrary, to pursue it in a manner compatible with our national dignity.

COUNT INOUYE.

No. 417.

Mr. Bayard to Mr. Kuki.

DEPARTMENT OF STATE,
Washington, August 18, 1887.

SIR: I have the honor to acknowledge the communication by you, through the medium of Assistant Secretary Porter, to whom you handed it on the 9th instant, of a copy of an undated telegram addressed to you by his excellency Count Inouye, minister for foreign affairs of His Majesty the Emperor of Japan, relative to the discussion, which had taken place in the conference of treaty-revision at Tokio, in regard to the draft of the jurisdictional convention submitted by the imperial cabinet, and announcing the adjournment of the conference, on the 29th ultimo, *sine die*, until the Japanese Government shall be enabled to present the results of the necessary preliminary codification of the laws of Japan.

I receive his excellency's declaration that, while regretting this interruption of the conference, it is not the purpose of the Government of Japan to relinquish the work of progress, but on the contrary to pursue it in a manner compatible with the national dignity.

It is trusted that a speedy and satisfactory result may be reached, which, while affording to foreign residents in the Empire the fullest assurance that their national rights will be upheld, will also subserve the purpose of establishing Japan's administrative autonomy.

Accept, etc.,

T. F. BAYARD.

LIBERIA.

No. 418.

Mr. Taylor to Mr. Bayard.

No. 6.] LEGATION OF THE UNITED STATES,
Monrovia, June 2, 1887. (Received July 12.)

SIR: The biennial election of officers for "this Republic" took place on the second Tuesday in May last past. The following officers were elected: Hon. H. R. W. Johnson, President; Hon. J. M. Thompson, Vice-President. This is the third term for these officers. I learn that unusual excitement prevailed during the campaign; that all the voters of the Republic voted and the Republican party led by Mr. Gibson attempted in every way to prove to the voters that the best interest of the Republic would be subserved by the election of the Republican nominees. The Whigs, however, won the day.

The entire vote of this Republic is only 2,475. In discussing Liberia's future, I shall have the honor to refer to these figures again.

I am, sir, etc.,

CHAS. H. J. TAYLOR.

MEXICO.

No. 419.

Mr. Bayard to Mr. Manning.

No. 19.] DEPARTMENT OF STATE,
Washington, November 23, 1886.

SIR: I send herewith for your information a letter addressed to me by Messrs. F. Alexandre & Sons, of New York, complaining of a discrimination in the form of an alleged rebate of 2 per cent. of custom duties in favor of the importers of goods into Mexico from the United States, by the recently established Spanish transatlantic line of steamers.

The matter had been previously brought to the attention of the Department. From what could then be learned it did not appear that a discriminating favor of 2 per cent. rebate of duties was to be accorded to *the goods* for the benefit of the importers thereof; but that the company was to be paid a sum equivalent to 2 per cent. of the duties collectable on the foreign goods carried in its steamers to Mexican ports, such payment being in part satisfaction of the subsidy stipulated under its contract of August 21, 1886, with the Government of Mexico. The extracts from that contract furnished to me by Messrs. Alexandre & Sons seem to bear out this understanding of the arrangement Indeed any other is incompatible with the proviso of Article 9, that the company is to receive no payment on account of customs duties unless the total duties collected upon goods imported by its steamers shall amount to at least $50,000 each trip.

Nevertheless it is distinctly averred that there is practically a discrimination of 2 per cent. in the duties collected from the importers by that line, as appears from the letters addressed to Messrs. F. Alexandre & Sons by such houses as Maitland, Phelps & Co., H. Marquardt & Co., and M. Echeverria & Co.

It is desired that you will ascertain the precise nature of the arrangement made by Mexico with the Spanish line in respect of the 2 per cent. of customs duties; and if it shall appear that there is, in fact, a discrimination, and that less duties are levied and collected by the Mexican treasury from the importers of the merchandise carried by the Spanish line, you will take an early occasion to impress upon Señor Mariscal the unfriendly character of a measure which strikes directly at the American carrying trade with Mexico.

It is not a question of right under treaty or international law, but of the necessary effect of measures which, whether inimically designed or not, are distinctly hostile in their operation to the shipping interests of the United States. The Government of Mexico cannot fail to be aware of the earnest desire of the United States to increase friendly and intimate relationship with that Republic.

By the provisions of the shipping acts of 1884 and 1886 marked favors in the interest of neighborhood have been shown. For instance, all ves-

sels bringing goods from Mexican ports, under whatever flag, are entitled to a considerable reduction of tonnage dues in our ports. It was not intended, and could scarcely be permitted, that this neighborly step on our part should be made use of to injure, if not destroy, the carrying trade of the United States, and exclude it from sharing in the enlarged intercourse which our legislation has created. It would be most unfortunate were our efforts toward impartial traffic with our neighbors to prove a failure and demand legislative change.

If such a conviction were to be forced upon the national legislature, it could not fail injuriously to affect the many opportunities which are continually presenting themselves for the development of our neighborly relations with Mexico. An adverse impression once created is not easily dispelled, and no one can be more interested in preventing any erroneous conception in this regard than the statesman in whose hands the foreign intercourse of Mexico rests, for Señor Mariscal has long resided in the United States and knows their true feeling toward Mexico.

I trust, therefore, you will receive from Señor Mariscal satisfactory explanation in relation to the subject.

For your further information copies of Messrs. Alexandre's first letter to me on the subject and of my reply of November 10 are inclosed. You will probably find the full text of the Spanish transatlantic contract in the official journal of Mexico.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 19.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *November* 4, 1886.

SIR: We beg to call your attention that the discrimination by the Mexican Government on goods imported into Mexican Gulf ports of Progreso and Vera Cruz against American and other flags, but in favor of a certain line of steamers sailing from New York every ten days to above ports, is causing ours and other American vessels great injury.

The discrimination amounts to 2 per cent. less duty ex Spanish steamers. Are we not right in thinking that we may expect some relief from our Government in this question? If you desire it, we will go on to see you on this.

Respectfully,

F. ALEXANDRE & SONS.

[Inclosure 2 in No. 19.]

Mr. Bayard to Messrs. Alexandre & Sons.

DEPARTMENT OF STATE,
Washington, November 10, 1886.

GENTLEMEN: I have received your letter of the 4th instant in relation to an alleged discrimination by the Mexican Government on goods imported into the Mexican Gulf ports of Progreso and Vera Cruz, against American and other flags, and in favor of a certain Spanish line of steamers sailing from New York.

In the absence of more definite information than that contained in your letter and of a copy of the concession which has been made by the Mexican Goverment to the Spanish line in question, the Department is unable to give an opinion upon the question whether the favor shown to that line involves discrimination against the flag of the United States, and is of such a character as to call for representations to the Mexican Government.

It is believed that governments whose other resources are severely taxed or not immediately available in order to pay for special services rendered by a steamship company in the transportation of the mails and of troops and government property,

not infrequently resort to the expedient of mortgaging the customs revenues in part satisfaction of the stipulated compensation, the purpose being to do this in such a manner as to favor a line of steamers which happens to carry a certain flag, without in fact committing any flag discrimination.

Upon the case in question, however, the Department, as at present advised, is unable to express an opinion.

I am, etc.,

T. F. BAYARD.

[Inclosure 3 in No. 19.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *November* 18, 1886.

SIR: We duly received your favor of 10th instant, in relation to the 2 per cent. discrimination in duties by Mexico at the ports of Progreso and Vera Cruz on goods imported ex Spanish line steamers, and consequently acting to the prejudice of goods ex American vessels.

We imagine from your minister at Mexico and consuls at Vera Cruz and at Progreso you will have received evidence confirming our letter of the 4th instant, but in case you have not received it, we beg to hand you clipping of Havana Boletin Comercial, wherein you will find principal points as to the discrimination complained of, viz, Articles 3 and 9.

Also, we beg to hand you letters addressed us from the well-known houses here, and shippers to Mexico, of Messrs. Maitland, Phelps & Co., Messrs. H. Marquardt & Co., Messrs. M. Echeverria & Co., confirming our statements, and showing the great injury American vessels suffer now in trade to Mexico, and particularly our line of American steamships.

In view of the situation we and other American interests are suffering from, may we not expect some relief from our Government?

Respectfully,

F. ALEXANDRE & SONS.

[Inclosure 4 in No. 19.—Translation.—From the Boletin Comercial.]

THE CONTRACT WITH THE TRANSATLANTIC COMPANY.

Among the documents of an official character published by the Government of Mexico, we find in the Mexican press the contract concluded on the 21st of August between the ministry of public works of that Republic and the Spanish Transatlantic Company.

The following are its principal bases:

ARTICLE 1. The Spanish Transatlantic Company binds itself to cause to arrive at Vera Cruz, after touching at Progreso, three times a month, its steamers, which, coming from Europe, run to Havana periodically, thus putting the Mexican Republic in direct communication with all the ports of the five quarters of the globe, with which its diverse lines at present ply. Its first voyage from Europe shall take place in the first ten days of October next, and the first voyage from the United States in the first ten days of November next, or sooner if practicable.

ART. 2. The company binds itself to establish a line from Havana to New York, in close connection with the steamers coming from Europe, so as to combine with the service between New York, Progreso, and Vera Cruz, as it is already combined in the other ports, making likewise three voyages monthly.

ART. 3. In order to develop the commerce of the Mexican Republic, it will pay to the Spanish Transatlantic Company, in the custom-houses of Vera Cruz and Progreso, by the importers, 2 per cent. of the customs duties levied upon their goods, this amount being discounted from the subvention which the company is to receive from those custom-houses.

* * * * * * *

ART. 6. During the existence of this present contract the tariffs for freight and passengers shall be as follows:

A. The maximum between New York, Havana, Progreso, and Vera Cruz shall be 10 per cent. less than that fixed by the company of F. Alexandre & Sons, as approved by the Federal Government.

B. For the other lines the maximum shall be the same as the last tariffs issued by the Mexican Transatlantic Company, but those of the Spanish Transatlantic Company shall be adhered to if they be found more favorable.

C. National goods exported shall enjoy a reduction of freightage to the amount of 30 per cent. of the incoming freight tariffs to which the foregoing paragraph relates.

D. National goods exported in the extra steamers, of which paragraph A of Article 9 speaks, shall enjoy a reduction of freightage to the amount of 40 per cent. of the aforesaid tariff of incoming freight.

E. Minerals and marbles exported in the said steamers are to have a reduction of 50 per cent. from the aforesaid tariff of incoming freight.

F. When the Government permits the vessels of this line to carry national goods from Vera Cruz to the Peninsula of Yucatan such goods shall be regarded as if exported for the collection of freightage.

ART. 8. The company will give notice, from time to time, of its tariffs, and always whenever any change shall be made therein, with the understanding that whenever the change shall be an increase—but in no case, however, in excess of the provisions of paragraphs A and B of Article 5 of this contract—it shall not take effect until two months after being published.

ART. 9. The Government will subvention the company with the sum of *five thousand pesos fuertes* in Mexican silver for each round trip made by its vessels between Havana, Progreso, and Vera Cruz, in connection with its lines, and with 2 per cent. of the customs duties levied upon the goods carried in its steamers; provided that such duties shall amount to at least $50,000 on each voyage.

[Inclosure 5 in No. 19.]

Messrs. Maitland, Phelps & Co. to Messrs. F. Alexandre & Sons.

NEW YORK, *November* 13, 1886.

DEAR SIRS: In reply to your favor of the 12th instant we beg leave to say that we have received instructions to ship goods to Vera Cruz by the Spanish steamers on account of the reduction of 2 per cent. in the duties on goods imported into Mexico by that line.

We are, etc.,

MAITLAND, PHELPS & CO.

[Inclosure 6 in No. 19.]

Messrs. Marquardt & Co. to Messrs. Alexandre & Sons.

NEW YORK, *November* 13, 1886.

DEAR SIRS: We beg to inform you, in reply to your solicitations for freight by your line of steamers for Vera Cruz (Mexico), that we have positive order from our correspondents in Mexico to ship only by the steamers of the new Spanish line called the "Compañia Transatlantic a Española."

Below we give you extract from letters of our friends in Mexico giving their reason for insisting on shipment per Spanish steamers.

We are, etc.,

H. MARQUARDT & CO.

October 1, 1886, Messrs. F. Formento and Co., Sens., Vera Cruz, write: "All our orders we request you to ship in Spanish steamers, as such goods are entitled to a rebate of 2 per cent. on duties of importation."

October 8, 1886, Messrs. Zaldo Hermanos & Co., Vera Cruz, write: "We wish all our goods to come by the new Spanish steamer line, formerly the 'Lopez Company, because we enjoy the benefit of 2 per cent. on duties of importation."

[Inclosure 7 in No. 19.]

Messrs. Echeverria & Co. to Messrs. Alexandre & Sons.

NEW YORK, *November* 13, 1886.

DEAR SIRS: Complying with your request, we send you the following translation of extract of letter of October last from one of our friends in Mexico City, referring to order for goods therewith:

"These goods I wish shipped by Spanish steamer, on account of rebate of 2 per cent. differential duty; but if freight by the Alexandre line is cheaper by more than that

difference, you will proceed accordingly; though I presume the Spanish line has fixed its tariff, if not lower, at least on a level with Alexandre's. The latter has collected from our merchants 2½ cents per pound through to Mexico; but if the freight be not fixed *through* to this place, we have to pay the forwarding and at the rate of $45 per ton from Vera Cruz."

Yours, very truly,

M. ECHEVERRIA & Co.

No. 420.

Mr. Manning to Mr. Bayard.

No. 25.] LEGATION OF THE UNITED STATES,
Mexico, November 30, 1886. (Received December 8.)

SIR: Under your instruction* No. 18 of 20th instant, relative to a notice to Americans published by this legation in August last, I addressed a note to Mr. Mariscal setting forth the position of the United States Government with regard to the doctrine of involuntary change of allegiance, as embodied in Article I, Chapter V, of the Mexican Law of Foreigners, and herewith inclosed I transmit copy of my note to Mr. Mariscal.

In this connection I deem it proper to inclose a circular letter issued by this legation to the consular officers of the United States in Mexico under date of the 4th ultimo.

I am, etc.,

TH. C. MANNING.

[Inclosure 1 in No. 25.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, November 30, 1886.

SIR: Referring to the provisions of Article I of Chapter V of the Law of Foreigners, which was published by your excellency's Government in the Diario Oficial of June 7, 1886, I have the honor to say, under instructions from my own Government, that the United States, while claiming for aliens within its jurisdiction and freely conceding to its citizens in other jurisdictions the right of expatriation, has always maintained that the transfer of allegiance must be by a distinctly voluntary act, and that the loss of citizenship cannot be imposed as a penalty, nor a new *national status* forced as a favor by one Government upon a citizen of another.

Not only is this believed to be the generally recognized rule of international law, but it is pertinent to notice that it was accepted and acted upon by the mixed commission under the convention of July 4, 1868, between the United States and Mexico. The first umpire of the commission, Dr. Francis Lieber, held, and the commissioners subsequently followed his decision, that a law of Mexico declaring every purchaser of land in that country a Mexican citizen, unless he expressed a desire not to become so, did not operate to change, against their will, the *national status* of citizens of the United States who had purchased land in Mexico, but who had omitted in so doing to disclaim an intention to transfer their allegiance.

The advertised notice to Americans and the circular letters to United States consuls in Mexico from this legation can not be interpreted as an admission by this legation of the defensibleness on generally-accepted principles of international intercourse, of legislative decrees changing the national status of foreigners without their consent. Americans were notified that unless they did certain things they would "be considered by the Mexican Government as Mexican citizens." This, it is to be observed, does not assert or imply that this legation acceded to the position of your excellency's Government. But, in order to avoid any question of this kind hereafter, I take this occasion to make known to the Government of Mexico through your excellency that

* Printed p. 723, For. Rels. 1886.

the Government of the United States does not regard the publication of the notice above referred to as admitting the doctrine of involuntary change of allegiance, or that the same can be held conclusive upon our citizens, and that it is constrained to withhold its assent from that doctrine as embraced in Article I, Chapter V, of the law referred to.

I am, etc.,

TH. C. MANNING.

[Inclosure 2 in No. 25.—Circular letter.]

LEGATION OF THE UNITED STATES,
Mexico, October 4, 1886.

To the Consular Officers of the United States in Mexico:

SIRS: I have to request that you will at once, and in the most effective manner, notify all Americans within your consular district that in conformity with Article I, Chapter V, of Law on Foreigners, of June, 1886, foreigners who may have acquired real estate or have had children born to them within the Republic will be considered by the Mexican Government Mexican citizens, unless they officially declare their intention to retain their own nationality, and to that effect obtain from the department of foreign affairs a certificate of nationality on or before December 4, 1886.

Said certificates may be obtained for Americans through the legation of the United States in this city. Applications for same must be accompanied by $1 for the necessary revenue stamps and 25 cents for return postage, you collecting the same sum (25 cents) for your postage.

No oath, declaration, nor personal description need accompany the petition, but you should be satisfied that the applicant is an American citizen.

I am, sir, etc.,

HENRY R. JACKSON.

No. 421.

Mr. Bayard to Mr. Manning.

No. 23.] DEPARTMENT OF STATE,
Washington, December 2, 1886.

SIR: I inclose herewith copies of a letter and accompanying papers from the Secretary of War, in relation to the loss of certain Government property by troops of the United States, in January last, while engaged in the pursuit of hostile Chiricahua Indians in Mexican territory, under express conventions between the United States and Mexico permitting such pursuit.

It appears that on the 12th of January last, while encamped in Sonora, Mexico, Lieutenant Maus, of the First United States Infantry, then commanding the expedition from the United States against the hostile Indians, was called away from his camp by the cries of his interpreter, who had gone after some stock which had previously been captured by the American troops from the hostile Chiricahuas. On approaching the place whence the cries proceeded, which was at some distance from the camp, Lieutenant Maus discovered his interpreter in the company of a party of Mexican troops, about fifty in number, who, at first professing to be friendly, presently began to demand of Lieutenant Maus a portion of the stock belonging to the United States and in the custody of his command, and upon his refusing to comply assumed a threatening manner. He offered them some of the captured stock, but they would not accept it, demanding mules instead.

While this parley was in progress, the detention of Lieutenant Maus (which you will find fully detailed in the body and inclosures of my No. 148,* of March 20 last, to Mr. Jackson) became known to his scouts, and produced great excitement among them, which was doubtless quickened and intensified by the fact that previously, on the same day, Captain Crawford, while in command of the same expedition, had received a mortal wound at the hand of Mexican troops, the same troops, indeed, that were now detaining Lieutenant Maus and clamoring for a portion of his stock. Momentarily apprehensive lest a fight might begin, Lieutenant Maus, acting for the best interests of his command, which was not at the moment prepared for a conflict of arms, delivered into the hands of the Mexican troops 6 mules, 4 aparejos complete, 6 halters and straps, 6 blankets, 2 saddles, 2 bridles and 2 mantas, all of which, it is not doubted, the Mexican Government will return to the Government of the United States, or make compensation for, together with reasonable indemnification for the loss suffered by the United States in being deprived of the use of the property in question since the time of its delivery to the Mexican troops.

The value of this property is estimated at $1,500 and the damage resulting from its loss at $500.

You will present the case herein set forth to the Mexican Government, and ask for the return of the property described, or compensation therefor upon the terms above stated.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 23.]

Mr. Endicott to Mr. Bayard.

WAR DEPARTMENT,
Washington City, October 25, 1886.

SIR: I have the honor to inclose for such action as you may deem proper a copy of the proceedings of a board of survey, convened at Fort Bowie, Ariz., by Field Orders No. 46, headquarters Department of Arizona, in the field, dated May 13, 1886, to examine and fix the responsibility for certain quartermaster's stores, for which Second Lieut. J. M. Neall, Fourth Cavalry, was responsible, and which were reported lost and abandoned during the recent operations against the hostile Chiricahua Indians.

Your attention is invited to the recommendation of the board that the Mexican Government should be held responsible for 6 mules, 4 aparejos, 6 halters and straps, 6 blankets, 2 saddles, 2 bridles, and 2 mantas, delivered to the commander of some Mexican troops by First Lieut. M. P. Maus, First Infantry, on January 12, 1886. The board is of opinion that in giving up this property Lieutenant Maus acted, according to his judgment, for the best interests of his command at the time, and for the public good, and that the Mexican Government should be called upon to return this property or pay to the United States its value, which is estimated at $1,500; also, the money value of the damage sustained by the United States in thus being deprived of the use of these animals and articles of public property since that time, estimated at $500, making a total of $2,000.

Very respectfully, your obedient servant,

WM. C. ENDICOTT.

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*Published p. 575 Foreign Relations, 1886.

[Inclosure 2 in No. 23.]

Proceedings of a board of survey convened at Fort Bowie, Ariz., by virtue of the following order.

HEADQUARTERS DEPARTMENT OF ARIZONA,
IN THE FIELD,
Fort Bowie, Ariz., May 13, 1886.

[Field Orders No. 46.]

* * * * * * *

(4) A board of survey, to consist of First Lieut. W. E. Wilder, Fourth Cavalry; First Lieut. P. R. Egan, assistant surgeon; Second Lieut. W. P. Richardson, Eighth Infantry, is appointed to meet at Fort Bowie, Ariz., at 10 o'clock a. m., to-morrow, the 14th instant, or as soon thereafter as practicable, to examine into, report upon, and fix the responsibility for certain articles of quartermaster's stores, for which Second Lieut. J. M. Neall, Fourth Cavalry, is responsible; and which are reported as having been lost and abandoned during the recent field operations against the hostile Chiricahuas.

By command of Brigadier-General Miles.

WILLIAM A. THOMPSON,
Captain Fourth Cavalry, A. A. A. G.

FORT BOWIE, ARIZ., *June* 22, 1886.

The board met at 10 o'clock a. m., to-day, pursuant to the above order.

Present, all the members.

The board then proceeded to an examination of the evidence adduced by the responsible officer, Lieutenant Neall, and hereto appended in the form of affidavits and certificates.

Henry Daly, a packmaster in the service of the United States, makes affidavit that on or about the 12th day of January, 1886, he was serving with his train in an expedition against hostile Chiricahua Apaches in Sonora, Mexico; that some trouble ensued between the United States forces and some Mexican troops; that to compromise this matter he was ordered by the commanding officer of his expedition, First Lieut. M. P. Maus, First Infantry, to turn over to the Mexican commander 6 mules, 4 aparejos complete, 6 halters and straps, 6 blankets, packs, 2 saddles, 2 bridles, and 2 mantas, all of this the property of the United States, and for which Second Lieut. J. M. Neall, Fourth Cavalry, is responsible. Deponent states that no blame can attach to himself or to the responsible officer for the loss of above-mentioned property.

(Affidavit appended, marked E.)

Lieutenant Maus, First Infantry, certifies that on the 12th of January, 1886, he was camped in Mexico, after an engagement with Mexican troops, which had resulted in mortally wounding Captain Crawford, Third Cavalry, and others; that while he was engaged in making litters to carry the wounded he was called away from camp by the cries of Concepcion, his interpreter, who had gone after some stock, previously captured from the Chiricahuas; that he was farther drawn away from his camp by the invitation of some Mexicans whom he found with Concepcion, and who assured him that they were entirely friendly. When Lieutenant Maus was some distance from camp, the manner of the Mexicans, about fifty in number, became very threatening and they began to make demands upon him for a portion of his stock. He offered them some of the captured stock, but they would not accept it, demanding mules instead.

Lieutenant Maus further certifies that he could show no authority for his presence in that country, and thinks the Mexicans were only prevented through fear from treating him as an outlaw; that his detention by the Mexicans caused great excitement among his scouts, and that he momentarily expected a fight to begin; that under these circumstances, considering the nature of the country he was in, and his limited supply of ammunition, he deemed it prudent and for the best interests of his command that he give up to the Mexicans the animals they demanded.

He therefore delivered into their hands 6 mules and some articles belonging to them, which would otherwise have been abandoned. These animals and articles of public property are now in the hands of the Mexican Government. Lieutenant Maus certifies that he took receipt for these stores, which receipt is now on file at department headquarters.

(Certificate appended, marked I.)

The board, after a careful consideration of the evidence furnished, is of the opinion that the Mexican Government should be held responsible for 6 mules, 4 aparejos complete, 6 halters and straps, 6 blankets, pack, 2 saddles, 2 bridles, and 2 mantas, delivered into the hands of some of its troops by First Lieut. M. P. Maus, on the 12th day of January, 1886.

The board is of opinion that in thus giving up this property Lieutenant Maus acted, according to his judgment, for the best interests of his command at the time, and for the public good; and that the Mexican Government should be called upon to return this property, or pay to the United States its money value, which is estimated at $1,500; also the money value of the damage sustained by the United States being thus deprived of the use of these animals and articles of public property since that time, estimated at $500, making a total of $2,000.

The board recommends that Second Lieut. J. M. Neall, Fourth Cavalry, A. A. Q. M., Fort Bowie, Ariz., be relieved from responsibility for all the above, and that he be authorized to drop from his returns 17 mules, 7 aparejos, 10 halters and 6 halter-straps, 8 blankets, pack, 2 coronas, 2 cinches, 2 saddles, 2 bridles, 181 mantas, and 5 wagon-covers.

W. E. WILDER,
First Lieut. Fourth Cavalry, President.
P. R. EGAN,
First Lieut. and Asst. Surg. U. S. A., Member.
W. P. RICHARDSON,
Second Lieut. Eighth Infantry, Recorder.

HEADQUARTERS DEPARTMENT OF ARIZONA,
Vilcox, Ariz., July 27, 1886.

Approved:

NELSON A. MILES,
Brigadier-General Commanding.

HEADQUARTERS DIVISION OF THE PACIFIC,
Presidio of S. F., Cal., August 7, 1886.

Approved:

O. O. HOWARD,
Major-General Commanding Division.

WAR DEPARTMENT, *October* 23, 1886.

Approved:
By order of the Secretary of War.

JOHN TWEEDALE, *Chief Clerk.*

E.

TERRITORY OF ARIZONA,
Post of Fort Bowie, ss:

Personally appeared before me, the undersigned authority, Henry Daly, a packmaster in the service of the United States, who, being duly sworn according to law, deposes and says that on or about the 12th day of January, 1886, he was serving with his train in an expedition against hostile Chiricahua Apaches in Sonora, Mexico; that some trouble ensued between the United States forces and some Mexican troops; that to compromise this trouble he was ordered by the commanding officer of his expedition, First Lieut. M. P. Maus, First Infantry, to turn over to the Mexican commander 6 mules, 4 aparejos complete, 6 halters and straps, 6 blankets, pack, 2 saddles, 2 bridles, and 2 mantas, all of this the property of the United States, and for which Second Lieut. J. M. Neall, Fourth Cavalry, A. A. Q. M., is responsible. Deponent further states that no blame can attach to himself or the officer responsible for the above proceeding which occasioned the loss of the above-mentioned property to the Government.

HENRY DALY,
Packmaster.

Sworn to and subscribed before me this 17th day of April, 1886, at Fort Bowie, Ariz.
W. P. RICHARDSON,
Second Lieut. Eighth Infantry, J. A. G. C. M.

I certify that par. 1752, A. R., 1881, has been complied with.
J. M. NEALL,
Second Lieut. Fourth Cavalry, A. A. Q. M.

I.

[Telegram.]

FORT APACHE, ARIZ., *April* 22, 1886.

To Lieutenant Faison (Recorder Board of Survey), Fort Bowie, Ariz.:

I certify that on the 12th of January, 1886, I was camped in Mexico after an engagement with the Mexican troops, which had resulted in mortally wounding Captain Crawford, Third Cavalry, and others, one scout being so badly wounded as to be

helpless. I was obliged to move and necessarily carry Captain Crawford and the one scout by hand on litters. I was engaged in helping to make the litters, when my attention was called to loud cries from the interpreter, Concepcion, who had gone over to a hill for some of our captured stock taken the previous day, when the hostile camp of Apache Indians was attacked. I went out to see what was the matter. Besides, Concepcion was calling for me. I was the only one in camp who could talk Spanish. On approaching near I saw Concepcion with a number of Mexicans on a hill. He told me to come along, they only wished to talk about some horses that they wanted for their wounded. Besides, the Mexicans told me all were friendly, and to come up. I did so. Among these Mexicans I saw a sergeant, one Santana Perez, who upon the death of their officers, killed the previous day, was left in command. When I reached him it was raining hard, and a few yards away was a large rock. I was asked to get under for shelter. I now found that I was surrounded by about fifty Mexicans. They then said they wanted animals to carry their wounded away. I said I would loan them six of the captured animals, telling them that they would not come for them when I had sent them before. Their manner was now threatening and angry. I told them I would go and send the animals to them. They refused to let me go, and when I protested and started, detained me. I saw myself at the mercy of these people, and sent Concepcion to bring over six of the captured animals I had intended to loan them before. When brought, they refused to accept them, as the Indians had selected the worst. They now became angry, and my presence in the country was decided unlawful, and I began to see I was apparently looked upon by these people as a marauder. I could show no authority for my presence, and as these people appeared ignorant and prejudiced I am of opinion that only fear prevented them from dealing with me as an outlaw.

The excitement among the scouts at this detention of Concepcion and myself was now very noticeable, as they distrusted as well as feared these people. They made many demands and said they wanted serviceable animals. My attention was called to the scouts, who were shaking their fists, stripping, and getting among the rocks. I told them I was unable to do any more, and of course I could not control my men while they kept me where I was. They denounced the scouts, and became more excited as they saw clearly trouble would come, and each moment I expected shots to be fired.

My presence was now most necessary with my command. Another fight in our worn-out condition, with the one belt of ammunition which had been used in the two fights, and was largely exhausted, our rations nearly out, and in a country so difficult that we could hardly move with our present wounded, besides the hostiles near, and the scouts disgusted that no protection was given them by their uniform of the United States from this persistent persecution, the situation was critical. I again told them the necessity of my release, and they then stated I might go, provided I would let them have six of my mules. This I promised, they agreeing to receipt for them. I went back to my camp and got six of my animals and sent them over with some of the articles belonging to them, that, if not sent, would have to be abandoned. I demanded the release of Concepcion, whom, it seemed, was detained in their camp until I had sent the animals as a guaranty that I fulfilled my word. The scouts, upon his release, became quiet again. A copy of the receipt for this property is on file at department headquarters, Fort Bowie. This property is in the possession of the Mexican Government, and if not returned must be the fault of the Government in not demanding its return. In my action in giving over these animals I was guided by the interests of my command and the public good, for my absence from it for even a few minutes longer may have so precipitated matters that the command would have been unable to return to the United States.

MAUS,
Lieutenant.

No. 422.

Mr. Manning to Mr. Bayard.

No. 28.] LEGATION OF UNITED STATES,
Mexico, December 3, 1886. (Received December 11.)

SIR: Referring to my No. 25, of 30th ultimo, with inclosures, relative to the position of the United States Government with regard to the doctrine of involuntary change of allegiance, as embodied in Article 1, Chapter V, of the Mexican Law of Foreigners, I have the honor to trans-

mit herewith copy and translation of Mr. Mariscal's reply of 1st instant (see Inclosure No. 1 in my No. 25) upon that subject, in which he says:

In reply, I have the honor to say to your excellency that I have noted all that you are pleased to state to me regarding this matter; but I can not nor should not discuss with your legation the right which Mexico has to issue laws that emanate directly from the provisions of its constitution, unless some practical case arises to give occasion to such debate. Your excellency will, therefore, not be surprised that on this occasion I leave unanswered your arguments against Article 1, Chapter V, of the law referred to.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 28.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, December 1, 1886.

Mr. MINISTER: I have the honor to acknowledge receipt of your excellency's note dated yesterday, in which you are pleased to inform me, under instructions from your Government, and with reference to Article 1 of Chapter V of the law of foreigners and of naturalization, of May 28 of the current year, that the United States, while claiming for aliens within its jurisdiction and conceding to American citizens in other jurisdictions the right of expatriation, has always maintained that the transfer of allegiance should be by a distinctly voluntary act; and that the loss of citizenship can not be imposed as a penalty nor a new national status forced as a favor by one Government upon the citizens of another.

In this connection your excellency sees fit to state that the notice given by your legation to the United States consuls and to American citizens to the effect that the latter would be considered by the Mexican Government as Mexican citizens unless they complied with certain legal requisites can not be interpreted as an admission of the right of Mexico to change by legislative decrees the national status of foreigners without their consent.

In reply, I have the honor to say to your excellency that I have noted all that you are pleased to state to me regarding this matter; but can not or should not discuss with your legation the right which Mexico has to issue laws that emanate directly from the provisions of its constitution, unless some practical case arises to give occasion to such debate. Your excellency will, therefore, not be surprised that on this occasion I leave unanswered your arguments against Article 1, Chapter V, of the law referred to.

I renew, etc.,

IGNO. MARISCAL.

No. 423.

Mr. Manning to Mr. Bayard.

No. 29.] LEGATION OF THE UNITED STATES,
Mexico, December 6, 1886. (Received December 15.)

SIR: I have the honor to acknowledge your No. 19, of 23d ultimo, with inclosures, relative to the complaint of Messrs. F. Alexandre & Sons of an alleged discrimination by the Mexican Government in favor of the Spanish Transatlantic Company, in a rebate of 2 per cent. customs duties, accorded that line, to the detriment of Messrs. Alexandre's line of steamers.

It is apparent, as observed by you, that the 2 per cent. rebate of duties is not accorded to the goods for the benefit of the importers thereof, but that the Spanish company is to be paid a sum equivalent to that rebate collectable on the foreign goods carried in its steamers to Mexican ports, which payment is to be in part satisfaction of the subvention

granted by the Mexican Government in its contract of August 1, 1886. But it is equally apparent that while this advantage given to the Spanish steamers is not put in the form of a discrimination, it amounts to one practically.

I shall at once ascertain from Señor Mariscal what is the construction put by his Government upon the contract with the Spanish company, and what is the action of his Government under that contract; but I presume I shall receive for answer that, so far as the Mexican Government is concerned, it is not a discrimination, either in form or substance, but that they do actually collect the whole of the duties that are properly chargeable upon the goods, and that the owners of the steamers, by a private arrangement with shippers, return to them 2 per cent. of the duties they have paid. Should such be the answer of Señor Mariscal, I do not see what relief can be afforded the complainants in this case, but that shall not prevent me from using every effort in my power for their relief.

I inclose to you a copy of a note I have just written to Señor Mariscal upon the subject.

I am, etc., TH. C. MANNING.

[Inclosure in No. 29.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, December 6, 1886.

SIR: Mr. Bayard, under date of 23d ultimo, has transmitted me a complaint of Messrs. F. Alexandre & Sons, of New York, of a discrimination they allege to be made by the Government of Mexico in favor of the recently established Spanish line of transatlantic steamers, this discrimination being in form of a rebate of 2 per cent. of customs duties in favor of the importers of goods into Mexico through that line. Of course such discrimination operates greatly to the detriment of the Alexandre line of steamers, and if it continues to be made would greatly injure, if not entirely destroy, the carrying trade now existing between the United States and Mexico. The communication of Mr. Bayard is accompanied by certain letters addressed by prominent merchants in New York, confirming the complaint of Messrs. Alexandre, in one of which Maitland, Phelps & Co. write "We have received instructions to ship goods to Vera Cruz by the Spanish steamer on account of the reduction of 2 per cent. in the duties on goods imported into Mexico on that line."

Another letter, from Marquardt & Co. to Messrs. Alexandre, says, "We have positive orders from our correspondents in Mexico to ship by the steamers of the new Spanish line;" and then proceeds to give extracts from two letters, of two several firms of Vera Cruz, both of which direct all shipments to them to be made by the Spanish line, because such shipments are entitled to a rebate of 2 per cent. on duties of imporations.

Your excellency will therefore perceive that whether or not the discrimination is intended to be made by the Mexican Government in favor of this Spanish line of steamers, practically it is made, and the Spanish line enjoys the benefit of it as much as if it were directed by law or were stipulated in the contract of last August.

Your excellency can not fail to perceive the unfriendly character of such discrimination, which strikes directly a most damaging blow at the American carrying trade to Mexico, and shippers, as well as all other practical men, will not be the less aggrieved by it, whether this discrimination is inimically designed or not. By the provisions of the shipping acts of 1884 and 1886 marked favors have been given to Mexico at the promptings of neighborhood. For instance, all vessels bringing goods from Mexican ports, under whatever flag, are entitled to a considerable reduction of tonnage dues in our own ports. If the impression were made upon the Government and people of the United States that any act had been done by the Government of Mexico which would greatly injure the carrying trade of the United States with your country, and which should inevitably exclude the United States from sharing in the enlarged intercourse which our legislation created, it would be a serious calamity; for such a conviction could not fail to affect injuriously the opportunities which are continually presenting themselves for the devolopment of our neighborly relations

with Mexico. Your excellency's long residence in the United States enables you to realize vividly how much public opinion affects legislation there, and how difficult it is to dispel impressions when once made, even though they are wholly erroneous.

Trusting, therefore, that your excellency will give me all the information you have upon this question, in order that it may be speedily transmitted to my Government, and that the impressions of shippers and other business men touching this discrimination alleged by Messrs. Alexandre to be made may be dispelled, I beg to renew to your excellency, etc.,

TH. C. MANNING.

No. 424.

Mr. Manning to Mr. Bayard.

No. 34.] LEGATION OF THE UNITED STATES,
Mexico, December 11, 1886. (Received December 20.)

SIR: I have the honor to acknowledge receipt of your No. 23, of 2d instant, relative to the loss of certain Government property by troops of the United States, in January last, while engaged in the pursuit of hostile Chiricahua Indians in Mexican territory, and to inclose copy of a note I addressed to Mr. Mariscal, under your instructions, setting forth the case, and asking that the property be returned, or that $2,000, its value and the damages resulting from its loss, be paid to the Government of the United States.

I am, etc., TH. C. MANNING.

[Inclosure in No. 34.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, December 11, 1886.

SIR: Under instructions from my Government I have the honor to invite your excellency's attention to a loss of certain Federal property by troops of the United States while engaged in the pursuit of hostile Chiricahua Indians in Mexican territory. It appears that on 12th of January last, while encamped in Sonora, Mexico, Lieutenant Maus, of the First United States Infantry, then commanding the expedition from the United States against the hostile Indians, was called away from his camp by the cries of his interpreter, who had gone after some stock which had previously been captured by the American troops from the hostile Chiricahuas. On approaching the place whence the cries proceeded, which was at some distance from the camp, Lieutenant Maus discovered his interpreter in the company of a party of Mexican troops, about fifty in number, who, at first professing to be friendly, presently began to demand of Lieutenant Maus a portion of the stock belonging to the United States and in the custody of his command, and upon his refusing to comply assumed a threatening manner. He offered some of the captured stock, but they would not accept it, demanding mules instead. While this parley was in progress the detention of Lieutenant Maus became known to his scouts and produced great excitement among them. Momentarily apprehensive lest a fight might begin, Lieutenant Maus, acting for the public good, delivered into the hands of the Mexican troops six mules, four aparejos complete, six halters and straps, six blankets, two saddles, two bridles, and two mantas, for all of which he took a receipt from the commander of the Mexican forces.

I am directed to ask that your excellency's Government will return the above-mentioned property to the Government of the United States or make compensation therefor, together with reasonable indemnification for the loss suffered by the United States in being deprived of the use of the property in question since the time of its delivery to the Mexican troops. The value of this property is estimated at $1,500, and the damage resulting from its loss at $500, or $2,000 United States currency.

While expressing the hope that your excellency's Government will appreciate the justice of this claim, and that the property in question will be returned, or $2,000, its value and damages, be transmitted to the United States Government, I beg to renew, etc.,

TH. C. MANNING.

No. 425.

Mr. Manning to Mr. Bayard.

No. 35.] LEGATION OF THE UNITED STATES,
Mexico, December 11, 1886. (Received December 20.)

SIR: I had an interview yesterday with Mr. Mariscal, for the purpose of urging upon him an extension of the time within which Americans may declare their intention to retain their nationality.

By the law of May 28, 1886, foreigners who have bought real estate in Mexico, and those who have had children born to them in Mexico, and who failed in the deed of sale or in the act of baptism to declare their intention to retain their nationality, become *ipso facto* Mexicans, and six months are allowed by the law from its promulgation for such declaration of intention to be made. The law was promulgated June 6. The time expired on 6th of present month.

I began by calling Mr. Mariscal's attention to the fact that I had already denied in the most emphatic manner the right or power of the Mexican Government to convert an American into a Mexican citizen of its own accord and by its sole act and without the consent or volition of the American, and that denial, made, as I then stated, under express instructions from my Government, was accompanied by the declaration that the notice given by this legation and by our consuls to Americans resident in Mexico to declare their nationality under the law of May, 1886, must not be construed as an admission of the right of Mexico to change by legislation the national status of American citizens.

I then called his excellency's attention to the fact that the time prescribed by the law within which Americans might make their declaration expired four days ago, and in that short time numerous applications had been made by Americans for permission to make their declaration, which had not been presented because of the construction put on the law by the Mexican Government that the time had expired. I expressed to Mr. Mariscal my belief that these applications would continue to come in, and I desired, therefore, that some mode should be adopted by which these later applicants should be relieved as were the earlier.

In this connection I begged Mr. Mariscal to note the fact that the delay of these later applicants was not from perverseness, or negligence, or indifference, but was caused by his Government; for the law of May, 1886, recited that regulations for its execution would be made and issued (C. V., Art. 3), and Americans, in either of the categories mentioned in the law and who desired to take advantage of it, naturally waited for the Government to issue the regulations so that they might conform to its wishes. None were ever issued. Time was slipping by and three months were already gone when the foreign legations and consuls advised their countrymen to make their "declaration of nationality," and so the whole six months expired before all had time to comply with this advice or direction. To be told now that the door was shut and no more applications to preserve nationality could be received, when the Mexican Government's failure to do what it had promised to do in the text of the law was the cause of the delay to make those applications, would not be listened to by any Government. Here I pressed upon his excellency's attention how inequitable it was that his Government, after putting those later applicants *in duriori casu* than the others by its own act or failure to act, should now refuse to grant them relief, and I said this relief should be immediate, if possible, be-

cause some case would arise when the question would come up squarely. Some one of these numerous Americans who had not made his declaration would very likely have litigation or trouble of some kind and when his nationality became an issue the Mexican Government would claim that he was a Mexican because he had not made this declaration under the law of May, and he would claim that he was an American in spite of the law of May, and most assuredly his Government will support him in that claim and will maintain it.

Mr. Mariscal listened to me with the close and courteous attention characteristic of him, and observed that the law of May could be changed only by legislation, and that the extension of time could only be made in that way. I reminded him that Congress was in session. He said that he admitted the force of my observations and would give the subject his serious attention, and while he could not now say what would be done, he said something should be done to arrest future trouble or any complication which would be equally disagreeable to both Governments.

He then intimated that the number of these Americans who had been shut out might be very few, and asked if I had any idea how many there were.

I, in turn, asked his excellency if his Government periodically took a census wherein the resident foreigners were classified, as my Government did, because that was the only source from which I could get the information that would enable me to answer his question. He said his Government had never taken such a census. Besides, I said, if there were only one of my countrymen thus shut out, he was entitled to relief as he was not at fault.

And with mutual expressions of esteem the conversation here ended, the minister again expressing his determination to give the matter his careful and instant attention.

I am, sir, etc.,

T. C. MANNING.

No. 426.

Mr. Manning to Mr. Bayard.

No. 36.] LEGATION OF THE UNITED STATES,
Mexico, December 15, 1886. (Received December 23.)

SIR: I have the honor to inclose herewith copy and translation of the answer of Mr. Mariscal to my note of the 6th instant, transmitting to him the complaint of Messrs. F. Alexandre & Sons concerning the rebate of 2 per cent. of duties granted by the Government of Mexico in favor of goods imported by the ships of the Spanish Transatlantic Mail Steamship Company. You will see that Mr. Mariscal says that a like franchise might have been obtained by any other company of any other nationality under like circumstances.

I respectfully await your further instructions upon this matter.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 36.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, December 11, 1886.

Mr. MINISTER: I have the honor to acknowledge the receipt of your excellency's note of the 6th instant, in which you are pleased to inform me that the Secretary of State, Mr. Bayard, had transmitted to your excellency a complaint presented by Messrs. F. Alexandre & Sons, of New York, regarding a rebate of 2 per cent. of duties granted by the Government of Mexico in favor of goods imported by the ships of the Spanish Transatlantic Mail Steamship Company.

Having carefully considered all that your excellency states to me with regard to this matter, I should advise you that the rebate was granted to the said company only in the form of a subvention, which the executive could grant, in accordance with the laws, for services stipulated in the respective contract; and that a like franchise might have been obtained by any other company of any nationality under like circumstances. No similar or more advantageous offers being made, the Government of Mexico decided, after some time, to accept the offer made by the said Spanish company.

In this connection, I renew to your excellency, etc.,

IGNO. MARISCAL.

No. 427.

Mr. Bayard to Mr. Manning.

No. 29.] DEPARTMENT OF STATE,
Washington, December 16, 1886.

SIR: I have received your No. 25, of the 30th ultimo, touching the Mexican law as to foreigners, and have to approve your note to Mr. Mariscal, of that date, relative to the position of this Government respecting the doctrine of involuntary change of allegiance as embodied in Article I, Chapter V, of the Mexican law in question.

I am, etc.,

T. F. BAYARD.

No. 428.

Mr. Bayard to Mr. Manning.

No. 33.] DEPARTMENT OF STATE,
Washington, December 28, 1886.

SIR: I have received your dispatch No. 36, of the 15th instant, relative to the discrimination in Mexico in favor of Spanish vessels.

I have forwarded a copy of Mr. Mariscal's note to yourself of the 11th instant to Messrs. Alexandre & Sons for their information, and have called attention to the statement of Mr. Mariscal that "the rebate was granted to the said company only in the form of a subvention for services stipulated in the respective contract."

I then continued as follows: "Neither in this reply, nor in the extract from the contracts heretofore exhibited to the Department, does it anywhere appear that the rebate in question is in favor of the importers

of dutiable goods. Without possessing the full text of the Mexican contract with the Spanish Transatlantic Company, the Department is unable to form an opinion upon the merits of the complaint."

I am, etc,

T. F. BAYARD.

No. 429.

Mr. Bayard to Mr. Manning.

No. 40.] DEPARTMENT OF STATE,
Washington, January 18, 1887.

SIR: In reply to your No. 35, of the 11th ultimo, I have to say that the Department approves your representations to Mr. Mariscal, the Mexican minister for foreign affairs, in relation to the law of Mexico in respect to the rights of foreigners.

I am, etc.,

T. F. BAYARD.

No. 430.

Mr. Bayard to Mr. Manning.

No. 47.] DEPARTMENT OF STATE,
Washington, February 10, 1887.

SIR: I inclose for your information, in connection with previous correspondence, a copy of a letter from Messrs. Alexandre & Sons, dated New York, the 18th ultimo, with its accompaniments, relative to the rebate of 2 per cent. of customs duties said to be granted by the Government of Mexico on the goods imported at Progreso and Vera Cruz in vessels of the Spanish Transatlantic Company. Messrs. Alexandre & Sons contend that this action of Mexico is a manifest discrimination against American vessels, and ruinous to their carrying trade.

These papers afford the Department an insight of the situation, but at the same time all doubts are not dispelled as to the interpretation placed upon the contract with Mexico, which gives rise to the present complaint. Therefore a particular reference to two articles of the contract, viz, 3 and 9, to ascertain their relationship to each other becomes necessary.

Article 3 reads as follows:

In order to promote the commerce of the Mexican Republic, the Spanish Transatlantic Company shall pay at the custom-house of Vera Cruz and that of Progreso, for importers, 2 per cent. of the customs duties payable on their goods, this amount being deducted from the subsidy to be received by the company through said custom-houses.

Article 9 says:

The Government shall grant a subsidy of $5,000, in Mexican silver, to the Spanish Transatlantic Company for each round trip by its vessels between Havana, Progreso, and Vera Cruz, in connection with its lines; it shall also grant to the company 2 per cent. of the customs duties payable on the goods carried by its steamers, provided that such duties amount for the trip to the sum of at least $50,000.

The question to be considered is, does Article 3 amount to an unconditional bounty of 2 per cent. of the duties in favor of importers by the Spanish transatlantic line, in addition to the subsidy of 2 per cent. granted by Article 9, under its expressed condition, to the company; or is the company to pay "*for importers*" the duty of 2 per cent., as required by Article 3, out of the $5,000 subsidy in any event on each round trip, and in case the trips do not yield at least $50,000 of customs duties, so that the additional 2 per cent. granted by Article 9 can be claimed, is the line to receive its $5,000, less the deduction of 2 per cent. paid "for importers?"

In order that the Department may be in a position to treat the question understandingly, it is desired that you address yourself to Mr. Mariscal, in continuation of your previous inquiries, and especially in view of this instruction and the information now before you, and ask to be given the official interpretation placed upon the concession to the Spanish transatlantic line by the Mexican Government, as well as any other facts which will enable the Department to arrive at a correct and just conclusion, and which he may be willing to furnish.

One other point may illustrate the confusion that appears to surround the subject. Does the 2 per cent. of customs duties which Article 3 says the steamship company shall pay "*for importers*" apply to importers in Mexico? Ordinarily this would seem to be the correct interpretation, but according to a letter from Messrs. G. Amsinck & Co., transmitted hither by Messrs. Alexandre & Sons, the shippers of goods from this country enjoy the privilege *for importers*, when forwarding their merchandise by the Spanish Transatlantic Company's vessels. The phrase "*shall pay for importers*" (*pagara por los importadores*) is vague. If the company is to pay under any circumstances 2 per cent. for the benefit of the importers and run its chance of reimbursement, if the duties collected on a single cargo exceed $50,000, it is not easy to evolve the idea of a *subsidy* to the company for which Mr. Mariscal contends. A *bounty* to importers appears to be involved, and this would imply a discrimination, as to the goods, not within the usual limits of a maritime subsidy and at variance with international comity.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 47.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *January* 18, 1887.

SIR: We are in receipt of your favor of 28th ultimo, from which we withdrew translation of Mr. Mariscal's reply of 11th ultimo to Mr. Manning's letter of 6th ultimo on the subject of the 2 per cent. rebate of duties granted by the Mexican Government on goods imported into the ports of Progreso and Vera Cruz.

We note your remarks that in your opinion the facts, so far as presented to you, do not present the appearance that the rebate in customs is in favor of the importers of dutiable goods. To this we beg to differ, as the extracts of the contract of the Spanish line with the Mexican Government, and the letters of some of our principal exporters here to Mexico (which we sent you on November 18) show conclusively that such rebate is enjoyed by dutiable goods imported by said Spanish line.

The Mexican Government may call this rebate what it pleases, or, as they do, "in the form of a subvention," but we think the practical deduction is that the rebate is clearly a discrimination against American vessels and railways, easily proven already by shippers refusing to ship by our American steamers on account of enjoying 2 per cent. less duties on their goods by the Spanish line.

We imagine your Department can obtain through the American minister at Mexico an official copy of the contract, but to expedite this matter, we beg to hand you in-

closed herewith copy of the contract, as taken by us from the Diario Official of Mexico (which please preserve and, if possible, return to us, as it is the only copy we have).

Every week we see a continual increase in the business of the Spanish line, and consequently the same decrease in ours. If this continues much longer, we see no alternative but that we will be forced to suspend our line to Mexico.

As a strong proof of our assertions, and the manifest injury to American vessels, we beg to hand you letter of 17th instant from those very important merchants in this city Messrs. G. Amsinck & Co., who advise us that they can not ship goods to Vera Cruz by our line on account of the discriminating duty of 2 per cent. enjoyed by the Spanish line.

As therein stated, you will notice that on December 22 last, by our steamer *City of Puebla*, we engaged from them a lot of 16 cases calicoes, and to secure it we carried it at 50 per cent. less freight than the rate charged by the Spanish line; and yet you will notice by the claim sent in by them that even that was $13.30 more than what the goods would have cost them if sent by Spanish line, showing that American vessels must take off 78 per cent. of what Spanish line obtains. Now, if this is not discrimination we fail to see it. With all these facts at hand we think we have a right to ask if this state of affairs is to continue. We suggest that we may have an interview with you at your convenience.

Your early reply will oblige,

Yours, truly,

F. ALEXANDRE & SONS.

[Inclosure 2 in No. 47.]

Messrs. Amsinck & Co. to Messrs. Alexandre & Sons.

NEW YORK, *January* 17, 1887.

GENTLEMEN: We beg to hand you the inclosed memorandum, received from the consignee of the sixteen cases dry goods shipped by us to Vera Cruz per *City of Puebla*, on December 22, whereby you will see that despite your concession of 50 per cent. on the rate of freight to meet the 2 per cent. rebate on the duties granted by the Mexican Government on goods shipped by the Spanish flag, there is yet a charge of $13.30 made to us, for which we expect you to hand us your check, the said rebate on the duties amounting to 75 per cent. the amount of the freight, instead of the 50 per cent. you allowed us on the supposition that it would suffice to counterbalance it. As our instructions are to ship by the flag that obtains the reduction of 2 per cent. on the duties, we are obliged, to our regret, to discontinue shipping to Mexico by your line, unless you reduce your rates of freight to about one-fourth the amount charged by the Spanish line, the 2 per cent. rebate on the duties by the latter amounting to fully 75 per cent. of the freight charges.

Yours, truly,

G. AMSINCK & CO.

[Inclosure 3 in No. 47.—Translation.]

Debit note. Messrs. G. Amsinck & Co., in account with Frou & Co.

Difference in the shipping of sixteen cases prints:	
Freight per Spanish line	$56.23
Freight per American line	28.56
Difference value, New York	27.67
Exchange, 28 per cent	7.55
Mexican value	35.22
Duties:	
30,603 yards, $\frac{24}{25}$ = 17,414 ms., at 15 cents	2,612.10
Duties of flag, 2 per cent	52.24
Mexican value	35.22
Difference Mexican value	17.02
Value in New York, at 28 per cent	13.30

MEXICO, *January* 5, 1887.

[Inclosure 4 in No. 47.]

DEPARTMENT OF PUBLIC WORKS, FIRST SECTION.

Contract concluded between the Citizen-General Carlos Pacheco, secretary of public works, colonization, industry, and commerce of the United States of Mexico, representing the Executive of the Union, and the Spanish Transatlantic Company, represented by Mr. Carlos Calderon, for the establishment of lines of steamers between the United States of Mexico, the United States of America, and Europe.

OBLIGATIONS OF THE COMPANY.

ARTICLE 1. The Spanish Transatlantic Company binds itself to cause those of its steamers which sail from Europe to Havana to make regular trips to Vera Cruz, stopping at Progreso, three times a month, thus putting the Mexican Republic in direct communication with all the ports of the five parts of the world where its different lines now touch, its first trip from Europe to be made during the first ten days of October next, and its first trip from the United States during the first ten days of November next, or sooner if the company shall prefer.

ART. 2. The company binds itself to establish a line from Havana to New York, making sure connection with steamers coming from Europe, so that connection may be made between New York, Progreso, and Vera Cruz, as also with the other ports, three trips to be made each month.

ART. 3. In order to promote the commerce of the Mexican Republic, the Spanish Transatlantic Company shall pay at the custom-house at Vera Cruz and that of Progreso, for importers, 2 per cent. of the customs duties payable on their goods, this amount being deducted from the subsidy to be received by the company through said custom-houses.

ART. 4. Public and official communications sent by the Mexican Republic, and communications of the same character addressed to the governmental authorities of the Republic, from any port in which the mail steamers of the Spanish Transatlantic Company may stop, shall be carried by them without their receiving any compensation for this service while the filling of the mail-bags and the distribution of their contents shall be under their charge.

(A) The captains of these mail steamers shall collect the correspondence of the respective post-offices, shall keep it in the form in which they receive it, and shall deliver it at the post-office to which it is addressed. They shall take charge of registered correspondence in their own name, signing a receipt therefor at the sending office, and delivering it in the port of its destination with the same formality.

(B) When the Government shall see fit, it shall send its correspondence to Havana and New York by a special messenger, the company binding itself to provide him with quarters in the first cabin, without receiving any compensation therefor, it being understood that the cabin assigned to him shall possess all the conveniences required by the service, that he shall have it all to himself, and that he shall have his meals at the same table with the officers, both at sea and on land.

ART. 5. The company shall give lodging and board, both at sea and in port, at the officers' table, to an apprentice to the Mexican merchant service, on all the mail steamers of their different lines, until, in the opinion of the proper captain, each one of them is able to pass an examination as third mate for navigation in all waters.

(A) These apprentices shall be in all respects subject to the special regulations for those of their class, of the company, copies of which shall be sent to the supreme Government for its information.

(B) The company shall also have charge of the instruction of these apprentices, the Mexican Government being obliged to pay nothing more than the salary allowed them for performing their other duties.

ART. 6. While the present contract is in force, the rates for carrying freight and passengers shall be as follows:

(A) The maximum rate between New York, Havana, Progreso, and Vera Cruz shall be 10 per cent. less than those now charged by the line of F. Alexandre & Sons, which have been approved by the Federal Government.

(B) For other lines the maximum shall be that of the last rates established by the Mexican Transatlantic Company, but those of the Spanish Transatlantic Company shall be charged if they are more favorable.

(C) On domestic products that are exported a reduction shall be made in the freight of 30 per cent. below the rates for importation mentioned in the foregoing paragraph.

(D) On minerals and marble, when exported, there shall be a reduction in freight of 30 per cent. below the same rates for importation.

(E) On domestic goods exported in the extra vessels mentioned in paragraph A, Article 9, a reduction in freight shall be made of 40 per cent. below the same import rates.

(F) On minerals and marble exported in the same vessels, there shall be a reduction of 50 per cent. below the same rates for importation.

(G) When the Government permits the steamers of this line to carry Mexican goods from Vera Cruz to the peninsula of Yucatan, such goods shall be considered as exports, as regards the payment of freight.

(H) Public functionaries and civil and military officers, when traveling on official business, shall pay, by the New York line, one-third of the price of the passage according to the table of rates, and by the other lines of the company one-half of the price of passage according to the same table.

(I) For troops conveyed by the company from Vera Cruz to Yucatan, and *vice versa*, the Government shall pay one-fourth less than it now pays to the line of F. Alexandre & Sons.

(J) On freight belonging to the Federal Government, one-third of the schedule rates shall be paid on all the company's lines.

ART. 7. Orders relative to the goods referred to in the last three paragraphs shall be issued by the proper governmental department to the company's agent at this capital.

ART. 8. The company shall, at stated times, furnish information to the Government concerning its rates, and whenever any change shall be made therein, it being understood that when an increase in the rates is made, without exceeding in any case the exceptions made in paragraphs A and B, of Article 5, of this contract, such increase shall not take effect in less than two months after it has been publicly announced.

OBLIGATIONS OF THE GOVERNMENT.

ART. 9. The Government shall grant a subsidy of $5,000 in Mexican silver to the Spanish Transatlantic Company, for each round trip made by its vessels between Havana, Progreso, and Vera Cruz, in connection with its lines; it shall also grant to the company 2 per cent. of the customs duties payable on the goods carried by its steamers, provided that such duties amount for the trip to the sum of at least $50,000.

(A) Such extra vessels as the company may see fit to send to Progreso and Vera Cruz shall receive as a subsidy only the 2 per cent. mentioned in the concluding portion of the foregoing article, and they shall be obliged to carry exports of all kinds, according to the provisions of paragraphs E and F of the fifth article of this contract, provided that the duties payable on the goods imported by these vessels amount to the sum of at least $25,000.

(B) All these steamers, together with such as the company may use for transportation of coal, shall be exempt, in the ports of the Republic in which they may touch, from the established duties, excepting pilotage.

(C) The subsidy, together with the official freights and pasages, shall be liquidated and paid every month by the custom-house at Vera Cruz to the agent of the company.

If in any month the balance in its favor shall not be paid to it, it shall have the right to carry merchandise on its own account, and the duties payable thereon shall be credited to it.

ART. 10. If the company shall desire to establish a dock-yard for building and repairing vessels, it shall apply to the war department for its approval; and when that approval is granted, the said department shall cede to it, on the coast, public lands suitable for such dock-yard. In this case the company shall furnish a list of the articles which it needs for the construction of the said dock-yard, so that the treasury department, and that of public works, after making such restrictions and limitations as they may think proper, may permit the free importation of said articles.

If it shall not establish the dock-yard the company shall pay the usual duties on the goods that it shall have imported for that purpose.

ART. 11. Vessels belonging to the nation shall be repaired at the dock-yard mentioned in the foregoing article at cost prices.

ART. 12. Whenever the aforesaid company may think proper to keep a pontoon anchored in the port of Vera Cruz, as a place of deposit for Mexican articles of export useful for the needs of the company's steamers, and also as a place of deposit for coal, it shall be freely allowed to do so by the Government, and the treasury department shall issue such orders as it may think proper for the protection of the revenue, which orders shall be faithfully obeyed by the company.

FINES.

ART. 14. In case of the failure of any vessel to make one of its regular trips, the company shall lose the subsidy which it would otherwise receive for such trip. It shall, moreover, be liable to a fine of $1,000.

(A) A delay of more than three and less than six days in reaching Vera Cruz shall render the company liable to a fine of $100 per day, and if the delay amounts to more than six and less than ten days, the company shall lose one-half the subsidy.

(B) These fines shall always be deducted from the subsidies payable by the custom-house at Vera Cruz, and shall be imposed by the proper governmental department only.

(C) Cases of *vis major*, when proper proof thereof is furnished, shall be excepted.

DURATION OF THE CONTRACT.

ART. 15. This contract shall last for five years, but if no formal notice of a desire for the cessation of its effects be given before the expiration of the fourth year it shall be understood to be extended for five years longer, and thus successively for periods of five years unless formal notice of a desire for the cessation of its effects be given before the expiration of the fourth year of each period.

SECURITY.

ART. 16. On the first day of October next, or sooner, if the company shall prefer, the latter shall make in the general treasury of the Federation a deposit of $50,000, in recognized bonds of the public debt, which amount it shall forfeit for the benefit of the nation in any of the cases entailing forfeiture hereinafter provided for.

TRANSFER OF THIS CONCESSION.

ART. 17. This contract shall not be transferred to any company or individual without the previous approval of the Government of Mexico.

ART. 18. If the transfer shall be made to any foreign Government or to any agent of such Government, such transfer shall be wholly null and void, in addition to which the company shall forfeit any sums that it may be entitled to collect from the Government; it shall also forfeit its dock-yard, its pontoon, any goods that it may have in the Republic, and its depository.

CASES ENTAILING FORFEITURE.

ART. 19. This contract shall be forfeited—

(A) If trips by the European line shall not be commenced during the first ten days of October next.

(B) If trips by the United States line shall not be commenced during the first ten days of November next.

(C) If three consecutive trips shall not be made in a month, or nine, not consecutive, in a year, between the ports of Havana and Vera Cruz, and likewise from New York to Havana.

(D) In case of the transfer of this contract to a company or individual without the previous consent of the Government.

ART. 20. The forfeiture shall be declared by the Executive after an audience with the company, to which a term of two months shall be granted, to enable it to state such grounds as it may have in its favor, before the declaration of the forfeiture.

ART. 21. Fortuitous cases, or those of *vis major* and quarantine, of which proper proof is presented, shall be excepted.

SUNDRY CLAUSES.

ART. 22. The Spanish Transatlantic Company shall be duly represented at this capital by an attorney.

ART. 23. Differences growing out of a failure to abide by the clauses of this contract, on the part of either of the contracting parties, shall be decided by the courts of the Republic.

PROVISIONAL ARTICLES.

One-half of the expense of the stamps required by this contract shall be defrayed by each of the contracting parties.

City of Mexico, August 21, 1886.

CARLOS PACHECO,
(Flourish.)

For the Spanish Transatlantic Company:

CARLOS CALDERON,
(Flourish.)

No. 431.

Mr. Manning to Mr. Bayard.

No. 69.] LEGATION OF THE UNITED STATES,
Mexico, February 19, 1887. (Received March 1.)

SIR: Upon receipt of your No. 47, of the 10th instant, relative to the complaint of Messrs. F. Alexandre & Sons, of New York, I addressed a note to Sr. Mariscal, copy of which I have the honor herewith to inclose, and trust that my presentation of the matter will meet your approval.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 69.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, February 19, 1887.

SIR: In connection with my note of December 6, last, I would most earnestly call your excellency's attention to the complaint of Messrs. Alexandre & Sons, of New York, touching the rebate of 2 per cent. of customs duties granted by the Government of Mexico on goods imported at Progreso and Vera Cruz, in vessels of the Spanish Transatlantic Steamship Company, alleged to be to the detriment of the complainants.

My note, as you will recall, stated that Messrs. Alexandre held that this procedure manifestly discriminated against American vessels, and further urged that, whether intentionally or not, a discrimination existed in favor of the Spanish steamers, which was not in accord with the uniformly friendly policy of the United States, as shown, for instance, by the provisions of the shipping acts of 1884 and 1886, when marked favors were shown to Mexico at the promptings of neighborhood.

Your excellency's esteemed reply to my note, to the effect that the rebate was granted only in the form of a subvention, and that a like franchise in like circumstances might have been obtained by any other company, has not, I am free to confess, satisfied my Government, whose doubts have not been altogether dispelled as to the interpretation placed upon the contract of the Spanish company with Mexico.

The relationship of Articles 3 and 9 of that contract seem confused. By reference to Article 3 your excellency will observe that—

"In order to promote the commerce of the Mexican Republic, the Spanish Transatlantic Company shall pay, at the custom-house of Vera Cruz and that of Progreso for importers, 2 per cent. of the customs duties payable on their goods, this amount being deducted from the subsidy to be received by the company through said custom-house."

On the other hand, Article 9 specifies that—

"The Government shall grant a subsidy of $5,000 in Mexican silver to the Spanish Transatlantic Company for each round trip by its vessels between Havana, Progreso, and Vera Cruz, in connection with its lines. It shall also grant to the company 2 per cent. of the customs duties payable on the goods carried by its steamers, provided that such duties amount, for the trip, to the sum of at least $50,000."

Your excellency will note that distinct interpretations may be given to the above contract stipulations. Article 3 may amount to an unconditional bounty of 2 per cent. of the duties in favor of importers by that company's steamers in addition to the subsidy of 2 per cent. granted by Article 9, under its expresss condition to the company, or the company may be called upon to pay for importers the duty of 2 per cent., as required by Article 3, out of the $5,000 subsidy, in any event, on each round trip; with an additional contingency that, in case the round trips do not yield at least $50,000 of duties, so that the additional 2 per cent. granted by Article 9 can be claimed, the line may receive its $5,000, less the deduction of 2 per cent. for importers.

There is another point serving to illustrate the confusion that clouds the subject. That is, whether the 2 per cent. of customs duties, which Article 3 says the steamship company shall pay "for importers," applies to importers in Mexico. Ordinarily this would appear to be the correct interpretation, but according to a letter received from one of the leading houses in New York City, at the office of Messrs. Alexandre & Sons, the shippers of goods from the United States enjoy the privilege "for importers" when forwarding their merchandise by the Spanish steamers.

In order that the United States Government may be in a position to treat this question understandingly, I am instructed, in connection with my previous correspondence, to request that your excellency will kindly furnish me with the true interpretation placed by the Mexican Government upon the contract of the Spanish Transatlantic Steamship Company, as well as any other facts which may, in your judgment, conduce to correct and just conclusions on this matter.

I beg to protest to your excellency, etc.,

TH. C. MANNING.

No. 432.

Mr. Manning to Mr. Bayard.

No. 72.] LEGATION OF THE UNITED STATES,
Mexico, February 24, 1887. (Received March 4.)

SIR: Referring to my No. 69, of 19th instant, relative to the complaint of Messrs. F. Alexandre & Sons, of New York, I beg to inclose herewith Mr. Mariscal's reply, from which it will be seen that "I (he) have referred the matter to the department of public works, in order that the same may furnish me the information and data referred to" by me.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 72.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, February 21, 1887.

MR. MINISTER: I have the honor to reply to your excellency's note of the 19th instant relative to the complaint of Messrs. F. Alexandre & Sons, of New York, touching the rebate of 2 per cent. of the customs duties granted by the Government of Mexico to the Spanish Transatlantic Steamship Company, and advise you that I have referred the matter to the department of public works, in order that the same may furnish me the information and data referred to by your excellency.

I have, etc.,

IGNO. MARISCAL.

No. 433.

Mr. Manning to Mr. Bayard.

No. 76.] LEGATION OF THE UNITED STATES,
Mexico, February 28, 1887. (Received March 31.)

SIR: Referring to my No. 34, of December 11 last, with inclosures, relative to the loss of certain Government property by troops of the United States in January, 1886, while engaged in the pursuit of hostile Chiricahua Indians in Mexican territory, I have the honor to inclose herewith copy and translation of Mr. Mariscal's reply upon that subject.

You will perceive "that 5 mules, 4 sets of harness, 6 halters, 5 blankets, 2 saddles, 2 bridles, 2 cotton blankets, and 2 leading-ropes are at the disposal of the war department" (of Mexico).

Mr. Mariscal further says:

I beg to ask your excellency, to whom shall be delivered the 5 mules and the other property specified, as also the amount estimated by the United States Government to be the value of the mule and blanket lacking; with the understanding that the $500 demanded for damages sustained, as specified in the note to which I have the honor to reply, shall, without entering into a discussion as to the amount stated, be paid by the Government of Mexico to the person appointed therefor?

I am, etc.,

T. C. MANNING.

[Inclosure 1 in No. 76.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, February 28, 1887.

Mr. MINISTER: In due time I had the honor to receive your excellency's note of December 11 last, in which you were pleased to request the return of 6 mules and other property delivered in January, 1886, by Lieutenant Maus, U. S. Army, to Chihuahua State forces, or else the payment of $2,000, the estimated value of the property lost and the damage sustained.

Having advised the Government of Chihuahua touching this demand, and requesting information relative thereto, I am informed, as your excellency will see by the accompanying copy, that 5 mules, 4 sets of harness, 6 halters, 5 blankets, 2 saddles, 2 bridles, 2 guangoches (cotton blankets), and 2 leading-ropes are at the disposal of the war department, there lacking of the property given up by Lieutenant Maus 1 mule, which died, and a blanket, which was lost.

In view of this I beg to ask your excellency to whom shall be delivered the 5 mules and the other property specified, as also the amount estimated by the United States Government to be the value of the mule and blanket lacking; with the understanding that the $500 demanded for damages sustained, as specified in the note to which I have the honor to reply, shall, without entering into a discussion as to the amount stated, be paid by the Government of Mexico to the person appointed therefor.

I have, etc.,

IGNO. MARISCAL.

[Inclosure 2 in No. 76.—Translation.]

Mr. Escudero to Mr. Mariscal.

Mexican Republic.

[Department of war and marine, first section, second desk. No. 33710.]

In a telegram yesterday the governor of the State of Chihuahua advised me:

"By direction of the minister of foreign affairs I place at your disposition 5 mules, 4 sets of harness, 6 halters, 5 sweat blankets, 2 Texan saddles, 2 bridles, 2 cotton blankets, and 2 leading-ropes, which, with 1 mule that died and a blanket lost, were delivered by Lieutenant Maus, U. S. Army, to the officer of the section, Santa Ana Perez, who a year ago was in conflict with Apaches."

Which I have the honor to advise you, begging that you will inform me to whom the mules and property referred to shall be delivered.

Liberty and constitution.

Mexico, February 24, 1887.

IGNACIO M. ESCUDERO,
Sub-Secretary ad interim.

By order of Secretary.

No. 434.

Mr. Bayard to Mr. Manning.

[Telegram.]

DEPARTMENT OF STATE,
Washington, March 7, 1887.

It is reported by telegraph from Nogales that certain Mexican soldiers have rescued by force prisoners who were held under arrest by officials of the Territory of Arizona. The Department is informed by Mr. Romero that his Government wishes to prevent any complications from arising between Mexico and the United States.

Mexico should at once restore the rescued prisoners to the United States jurisdiction, and should either inflict prompt punishment on the Mexicans who effected the rescue or deliver them up to the United States.

No. 435.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *March* 8, 1887. (Received March 9.)

Assurance has been given me by Mr. Mariscal that directions have been issued by the Government of Mexico for the instant return to the American authorities of the persons taken from their custody by the Mexicans, and that those who effected the rescue shall be punished.

No. 436.

Mr. Manning to Mr. Bayard.

No. 82.] LEGATION OF THE UNITED STATES,
Mexico, March 8, 1887. (Received March 16.)

SIR: I received last night your dispatch of the 7th instant, relative to the rescue of prisoners who were in custody of American officials on United States territory, near Nogales, on the 3d instant, and I called on Mr. Mariscal this morning and communicated to him the contents of the same.

In reply to your dispatch I sent you this forenoon a telegram.

I requested Mr. Mariscal that prompt measures be taken for the immediate delivery of the rescued prisoners to the American authorities from whose custody they had been taken, and also that the rescuers might be promptly and rigorously punished.

Mr. Mariscal, in reply, informed me that the Government had already been advised of the affair, and that orders had been issued for the delivery of the prisoners to the American jurisdiction. He also said the minister for war had ordered the arrest of Lieutenant Gutierrez, who seems to have been the instigator of the trouble and who led the Mexican soldiers in their attack. Governor Torres, of Sonora, acted very promptly in redressing this outrage on the spot, and Mr. Mariscal assures me that his Government will follow it up, and will punish the Mexican officers and soldiers who were engaged therein.

It gives me great pleasure to call your attention to the promptitude with which the Mexican Government has acted and to the thorough good feeling displayed by it.

I am, etc.,

T. C. MANNING.

No. 437.

Mr. Manning to Mr. Bayard.

No. 84.] LEGATION OF THE UNITED STATES,
Mexico, March 9, 1887. (Received March 17.)

SIR: Mr. Mariscal requested an interview with me to-day, which was had at 12 noon. He showed me a dispatch received from Mr. Romero, at Washington, dated yesterday, stating that you had given the Mexi-

can Government the option to deliver the offenders at Nogales to the American authorities for punishment, or for the Mexican Government itself to inflict adequate punishment. He said the President was deeply sensible of the kind feeling and moderation displayed by you in giving this alternative, and that the President had determined to follow the latter course, and would punish the perpetrators of the outrage promptly and adequately.

I said, as the Mexican Government had determined to avail itself of this option, I presumed it would feel the more incumbent to make the punishment so severe that the United States would have no reason to complain, and I added that this was a good opportunity to punish such an offense as this so rigorously as to act as a deterrent to others in the future.

Mr. Mariscal replied that the course the Mexican Government would take in the matter, he felt assured, would be entirely satisfactory to the United States Government.

He then recounted to me the actual occurrence, which is slightly different from that supposed by you, and is as follows:

A street in Nogales separates the territories of the two nations. A Lieutenant Gutierrez committed some offense on the American side, and was arrested and held in custody by the American authorities. His superior officer, Colonel Arvizu, took his soldiers across the line and effected the release of Gutierrez, who made his escape, and is not yet apprehended. Mr. Mariscal says that the Government is on his track, and will catch and punish him, and a greater punishment will be inflicted upon the colonel, who is really the most guilty party in the affair.

On leaving, Mr. Mariscal repeated his sense of your kindness and forbearance, and said his Government accepted it as a renewed proof of the cordial and friendly feeling of the United States to Mexico. He was pleased to add that he had spoken to me with entire frankness and unreserve, as I had requested him to do when such difficulties arose, and he felt that they could be better and more promptly settled in a personal interview than through the slow forms usual to diplomacy.

I am, etc.,

T. C. MANNING.

No. 438.

Mr. Manning to Mr. Bayard.

No. 87.] LEGATION OF THE UNITED STATES,
Mexico, March 12, 1887. (Received March 21.)

SIR: In connection with my No. 84, of the 9th instant, I have the honor to inclose herewith translation of a note from Mr. Mariscal, dated the 11th instant, touching the troubles at Nogales. You will observe, that he says the fugitive, Lieutenant Gutierrez, has been captured by the Mexican authorities, and will be rigorously punished by them, and also all others who are responsible for the affair. The "all others" means Colonel Arvizu, who Mr. Mariscal personally assured me should be punished so promptly and severely as to discourage in others the rash conduct of which he has been guilty.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 87.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, March 11, 1887.

SIR: I have the honor to reply to your excellency's esteemed note of the 8th instant, relative to the spontaneity displayed by the Mexican Government in the arrest and punishment of the participators in the disturbance which lately occurred at Nogales, Arizona Territory.

It gratifies me very highly that your excellency should have so courteously recognized the spontaneity to which I refer. Still, as in said note, you are pleased to manifest your satisfaction, not only at the measures taken for the punishment of those who rescued the prisoners, but also for the steps tended obviously to deliver those prisoners to the Arizona authorities, I find myself obliged to place in writing what I had the honor to state in the interviews we held, and which is as follows:

During the first interview I said that my Government would do all that was possible to punish in an exemplary manner the guilty parties and give full satisfaction to the Government of the United States. In consequence of this statement, your excellency addressed me the note, to which I have the honor to reply.

Moved by its contents, and having also received on that afternoon a telegram from Mr. Romero to the effect that Hon. Mr. Bayard had informed him that the difficulty could be arranged either by Mexico returning the prisoners, which it was by no means obliged to do, or punishing them itself, I took the liberty of summoning your excellency to a second interview. I therein corrected the mistaken idea you seemed to hold, reminding you that my offer was that prompt and due justice would be administered, and the Government of the United States be satisfied. I added that such a promise did not involve the return of the prisoners (or rather prisoner, for there was but one), and that I was also highly pleased to learn that Mr. Bayard should view with satisfaction and an elevated judgment, worthy of praise, the practicability of terminating the matter without extraditing a Mexican, a process involving many difficulties. Among other things, I referred to the fact that all the guilty parties could not be tried in the absence of some of them, and I especially alluded to the irritation, even though unfounded, which that extradition would cause in the Mexican town upon the frontier as contrasted with the spirit of conciliation and harmony which should be cultivated.

It has appeared advisable to me to thus chronicle these occurrences, especially as in that second interview your excellency did not question the accuracy of my asserts ons.

I should add that the efforts of the Mexican authorities to arrest the fugutive Gutierrez have been happily successful, and that person is now in jail; also that the Government of the United States may rest assured that Gutierrez, as well as all others who are responsible for the annoying affair I allude to, will be rigorously punished.

I renew, etc.,

IGNO. MARISCAL.

No. 439.

Mr. Bayard to Mr. Manning.

[Telegram.]

DEPARTMENT OF STATE, *March* 17, 1887.

Your No. 84 has just reached this Department. The purport of my telegram of March 7 last has not been understood.

Whether the persons rescued are or are not Mexicans, nothing can satisfy the Government of the United States except the delivery to its authorities of the prisoners who were forcibly taken from the Arizona officials.

The alternative offered in my telegram before mentioned only concerned the Mexicans who effected the rescue.

No. 440.

Mr. Bayard to Mr. Manning.

No. 65.] DEPARTMENT OF STATE,
Washington, March 19, 1887.

SIR: Your dispatch No. 84, of the 9th instant, in relation to the recent occurrence at Nogales, Arizona Territory, indicates that a serious misapprehension has in some way arisen as to the position of the United States Government touching the course which is expected of the Mexican authorities in the premises.

My telegram of the 7th instant to you, and your reply of the 8th, show the distinct formulation of the demand of this Government that Mexico should at once restore the rescued prisoners to the United States jurisdiction, and should either inflict prompt punishment on the Mexicans who effected the rescue or deliver them up to the United States, and the prompt and frank acceptance of this proposition by Señor Mariscal.

Owing, as would appear, to a telegraphic report from Señor Romero, dated the 8th instant, Señor Mariscal, on the 9th, sought an interview with you, and made statements which imply an impression in his mind that this Government had altered its position in a most important particular. As you report, after having been shown the minister's telegram, Señor Romero states that I "had given the Mexican Government the option to deliver *the offenders* at Nogales to the American authorities for punishment, or for the Mexican Government itself to inflict adequate punishment." Señor Mariscal's observations to you exhibit the impression this report created in his mind, when he declared "that the President had determined to follow the latter course and would punish the perpetrators of the outrage promptly and adequately," and that Lieutenant Gutierrez, who, as Señor Mariscal explained, had been arrested on the American side and rescued by the Mexican soldiery, was not yet apprehended, but that the Mexican Government "is on his track and will catch *and punish* him."

No such option was created or tendered by me to the Mexican Government as to the punishment of the prisoner or prisoners who had been rescued from the jurisdiction of the United States authorities. Having in mind the provision of our extradition treaty, which relieves either party from the obligation to extradite its own citizens, I refrained from formal demand for the surrender of those Mexican soldiers who had invaded our territory and forcibly rescued a prisoner there in legal custody, and intimated that if Mexico did not herself assert the right she claims in respect of punishing her own citizens, the extradition of the rescuers might reasonably be expected. As to the prisoners rescued from the custody of the United States officials in Arizona, no such alternative was contemplated or suggested by me. Armed invasion of our territory and rescue of a prisoner from our lawful jurisdiction could confer upon the rescued person no asylum in Mexico, nor bring him within the formalities of extradition. It becomes, under such circumstances, the simple international duty of the Mexican Government to undo the wrong committed by its own soldiery, by restoring the rescued prisoners to the jurisdiction from which they had been wrongfully taken; and the obligation to do so was cheerfully admitted by the Mexican Government on the 8th instant, before Señor Mariscal received the apparently misleading telegram of Señor Romero.

It doubtless occurred to you, on hearing Señor Mariscal's declaration, reported in your No. 84, that an abrupt and unaccountable change was supposed to have taken place in the position of this Government. Your familiarity with questions of international jurisdiction must have suggested to you that the case of the rescued prisoners stood on a very different basis from that of his rescuers, and that even were no obviously graver difficulties in the way, there might be question whether the offense for which he had been taken into custody in the United States were justiciable in Mexico, or comprised in the treaty schedule of extraditable offenses. The promptness with which this Department has applied the corrective will, however, prevent any difficulty arising from your apparent assent to Señor Mariscal's changed position without question.

I have written to Señor Romero correcting the misapprehension under which he, or Señor Mariscal, or perhaps both, appear to have labored, and with the same object I sent you late in the afternoon of the 17th instant a telegram.

I am, etc.,

T. F. BAYARD.

No. 441.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *March* 21, 1887.

BAYARD, *Secretary of State, Washington:*

Your dispatch reached me at Puebla; correction made to-day.

MANNING.

No. 442.

Mr. Manning to Mr. Bayard.

No. 93.] LEGATION OF THE UNITED STATES,
Mexico, March 21, 1887. (Received March 30.)

SIR: Referring to your telegram of the 17th instant, touching the troubles at Nogales, which reached me while I was at Puebla for a few days, I have to-day addressed Mr. Mariscal the inclosed communication, informing him that the United States Government could not be satisfied with anything less than the return to its jurisdiction of the prisoners who had been rescued from the custody of the American authorities at Nogales, whether such prisoners were Mexicans or Americans. I have informed Mr. Mariscal that no other settlement had been originally entertained or proposed by yourself, either to Señor Romero at Washington or in your telegram to me, and that the misconception arose from the fact that there was an option suggested, but it applied alone to the Mexican rescuers, and that these might either be punished by the Mexican Government or delivered to the American authorities.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 93.]

Mr. Manning to Mr. Mariscal.

MEXICO, *March* 21, 1887.

SIR: Referring to my note of the 8th instant concerning the forcible rescue of a prisoner or prisoners held by the American authorities at Nogales, I beg to acquaint your excellency that I have received a dispatch from my Government apprising me that its wishes in respect to the settlement of this unhappy affair have been in some sort misinterpreted. Whether this misunderstanding was produced by my misreading Mr. Bayard's dispatch or by Señor Romero's misconception of Mr. Bayard's verbal statement does not much matter now. The misconception is in relation to the disposition to be made of the rescued prisoners. While the Government of the United States recognizes with great satisfaction the prompt and ready offer of the Mexican Government to redress the outrage perpetrated upon the American authorities by the rash act of Mexican military officers, and has entire confidence in the declaration of the Mexican Government that the offending officers shall be properly punished, still my Government does not think it compatible with its dignity to be satisfied with less than the return to its jurisdiction of the prisoners thus rescued, whether they be Mexicans or Americans. This is simply the restoration of the *status quo* at the time the outrage was committed.

But while my Government relies implicitly upon the good will of the Mexican Government which will prompt it to accede to this request, I am instructed to say that it does not make the same demand with relation to the Mexican officers who rescued the prisoners, and that these may either be delivered to the American authorites for punishment or may be punished suitably by the Mexican Government, and this is the option which Mr. Bayard suggested to Señor Romero and conveyed to me.

I desire to repeat to your excellency the great pleasure imparted to my Government by the ready compliance with its request in the settlement of this Nogales affair upon the part of the Mexican Government, and I trust that the modification herein explained, which is only a rectification of what was misunderstood, will be equally acceptable to the Government of Mexico.

I am, etc., T. C. MANNING.

No. 443.

Mr. Manning to Mr. Bayard.

No. 100.] LEGATION OF THE UNITED STATES,
Mexico, March 28, 1887. (Received April 6.)

SIR: In acknowledging receipt of your No. 65, of the the 19th instant, with inclosures, which came to-day, I would state that my No. 93, of 21st instant, was accompanied by my note, of the same date, to Mr. Mariscal, to the effect that the United States Government could not be satisfied with anything less than the return to its jurisdiction of the prisoners who had been rescued from the custody of the American authorities at Nogales; that no other settlement had been originally entertained or proposed by yourself, either to Señor Romero at Washington or in your telegram to me; and that the misconception arose from the fact that there was an option suggested, but it applied alone to the Mexican rescuers.

No reply has as yet been received from Mr. Mariscal to my note above referred to.

I am, etc., THOS. C. MANNING.

No. 444.

Mr. Bayard to Mr. Manning.

No. 70.] DEPARTMENT OF STATE,
Washington, March 30, 1887.

SIR: In connection with my No. 47, of the 10th ultimo, relative to the alleged discrimination against the United States carrying trade, I now

inclose a copy of a further letter from Messrs. F. Alexandre & Sons, dated the 25th instant, respecting the subject, and inquiring what progress has been made concerning it. The Department would greatly regret to find that any differential customs duties were actually enforced in Mexico which would constrain this Government to execute the statutes applicable to the case of any discriminating duties or import being ascertained to exist in a foreign country to the disfavor of our carrying flag and the favor of the flag of such country or of any third power.

Awaiting your formal report, I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 70.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *March* 25, 1887.

SIR: We wrote you last on 8th instant, asking then if we could not receive some encouraging news as to what we might expect as to the question now existing of Mexico discriminating against American vessels, to which we have not yet received any answer.

Again we beg to ask you what are we to expect, as we will be forced to stop the running of our steamers to Mexico if the present discrimination in favor of the Spanish line is allowed to be continued. *Every* departure of Spanish line shows an increase of business, while our steamers show a marked decrease.

We inclose a memorandum of the cargo that the Spanish steamer *Panama* took out March 14 for Vera Cruz and Progreso, in which figure some goods, particularly 113 cases (large) dry-goods, which we can not touch at all, for the 2 per cent. discriminating less duty ex Spanish line is equal to 75 per cent. of the freight, and so with many other goods. Spanish steamer *Mexico* yesterday took out a much larger cargo.

We have thought of going on to see you, but feared no use from the long delay this question is being handled, so we beg we receive some answer from you which will decide us if any use going on to see you and what to expect from our Government. We think we are not pressing in our requests, as we have laid this matter before you since November 4.

An early answer will oblige,

Yours, respectfully,

F. ALEXANDRE & SONS.

[Inclosure 2 in No. 70.]

Cargo of steamship Panama for Progreso and Vera Cruz from New York, March 14, 1887.

Articles.	No.	Articles.	No.
Dry-goods.....cases..	113	Glassware.....cases..	16
Do.....bales..	11	Do.....barrels..	80
Furniture.....packages..	15	Lumber.....pieces..	864
Pumps.....cases..	3	Sewing-machines.....cases..	30
Stationery.....do....	13	Paints and varnish.....do..	16
Petroleum.....do....	100	Paint.....barrels..	2
Lamps and lampware.....packages..	5	Hardware.....cases..	52
Cocoa.....sacks..	143	Nails.....kegs..	34
Hams and meats.....barrels..	17	Ironware.....packages..	45
Lard oil.....do....	30	Canned goods.....cases..	20
Wine.....do....	3	Grindstones.....	26
Blacking.....do....	2	Log-wood.....cases..	36
Electric goods, etc.....packages..	8	Oil cloth.....bales..	2
Cloves.....bales..	5	Fruit and beans.....barrels..	16

No. 445.

Mr. Bayard to Mr. Manning.

No. 74.] DEPARTMENT OF STATE,
Washington, April 5, 1887.

SIR: I inclose for your information copies of two communications from the military authorities on our frontier which have been referred hither by the Secretary of War under dates of the 25th and 26th ultimo, in relation to the recent occurrences at Nogales, Ariz.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 74.]

Captain Lawton to the Adjutant-General.

NOGALES, ARIZ., *March* 7, 1887.

SIR: I have the honor to report that upon my arrival here yesterday I met Captain Dorst, who informed me that Governor Torres had expressed a desire to see me as soon as I arrived. I immediately proceeded with Captain Dorst to Governor Torres's headquarters, and was very cordially received by him. He expressed his great regret at the unpleasant occurrences, and assured me that every effort would be made to bring the guilty parties to justice. He referred to his pleasant associations with General Miles, both in his private as well as official relations, and hoped these pleasant relations would continue.

It appears, from the best information obtainable, that the troubles of the night of the 3d instant occurred in the following manner: A colonel, Arvizu, commanding a detachment of Mexican irregulars (twenty-five men), stationed in Nogales, Mexico, had been abandoned by his mistress, who took refuge on this side of the line. This colonel had made frequent efforts to induce the woman to return without avail. The evening of the 3d a well-known Mexican named Rincon went to the house of the woman and endeavored to induce her to go walking with him. Suspecting treachery she sent for an officer. Constable Littlepage [*sic*] went in obedience to the summons, and was soon followed by Deputy Sheriff Sheedy, accompanied by a citizen, Dr. Purdy. These parties induced Rincon to desist, go away, and leave the woman alone, they all walking away together. They had scarcely left the house when an armed man emerged from concealment, presented a revolver in the face of Constable Littlejohn (?) and demanded that he should release his prisoner, evidently presuming that Rincon, who was walking by the side of Littlejohn, was a prisoner. Littlejohn satisfied the person, who proved to be Lieutenant Gutierrez, of the Mexican irregulars, that Rincon was not a prisoner, and as soon as the lieutenant returned his pistol, Littlejohn drew his and arrested the lieutenant on the charge of drawing a weapon on an officer. The party then proceeded with the lieutenant as a prisoner, observing, however, several Mexican soldiers run ahead of them. Arriving opposite the railroad water-tank, a Mexican soldier stepped out, presented his rifle at Littlejohn and demanded he should release his lieutenant. Mr. Sheedy, who was behind, immediately fired on the soldier, who turned his piece on Mr. Sheedy and fired. Promiscuous firing then commenced, in which one Mexican soldier was wounded, who has since died, the others, including the lieutenant, escaping to the other side the line. It is surmised the colonel induced the parties from the Mexican side the line to engage in an enterprise to kidnap the woman in question, which was frustrated in the manner indicated above. There can scarcely any serious complications arise out of this escapade, as the action of the governor of Sonora has been prompt and vigorous. The obnoxious parties have been removed, the colonel by arrest and the lieutenant by desertion. The best people on both sides deprecate the action of the Mexicans concerned. Perfect quiet prevails and no trouble is anticipated. The presence of troops is really not necessary, although I would recommend their being retained sometime longer. A detachment of infantry would be better under the circumstances than cavalry, as they could be held closer to the town, and would not be encumbered with horses and the expense of transporting forage.

Having no uniform, bedding, or camp equipage with me for my own use, I will return to Huachuca to-day to procure the same and return at once, Captain Dorst re-

maining in command during my absence. The command is encamped in a fairly good place 3 miles north of town.

Very respectfully, etc.,

H. W. LAWTON,
Captain, Fourth Cavalry.

[First indorsement.]

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Cal., March 12, 1887.

Respectfully forwarded to headquarters Division of the Pacific.

NELSON A. MILES,
Brigadier-General, Commanding.

[Second indorsement.]

HEADQUARTERS DIVISION OF THE PACIFIC,
San Francisco, Cal., March 16, 1887.

Respectfully forwarded to the Adjutant-General of the Army.

O. O. HOWARD,
Major-General, Commanding.

[Third indorsement.]

WAR DEPARTMENT, *March* 25, 1887.

Official copy respectfully furnished for the information of the honorable the Secretary of State.

WM. C. ENDICOTT,
Secretary of War.

[Inclosure 2 in No. 74.—Telegram.]

Captain Lawton to Lieutenant Dapray.

NOGALES, ARIZ., *March* 11, 1887.

Prisoners are in custody of Mexican authorities and are being tried by Mexican court. They were to-day separated and are allowed no communication with each other or with the outside. Consular agent here states that Mexican authorities have acted satisfactorily in every particular. No official demand has yet been made by our Government for the prisoners, although Mexican authorities have expressed their willingness to turn them over on extradition or otherwise. All is quiet. There is no disagreement between officials of the two Governments and no trouble can occur. Governor Torres has notified me he will visit my camp to-day.

H. W. LAWTON,
Captain.

[First indorsement.]

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Cal., March 14, 1887.

Respectfully forwarded to headquarters Division of the Pacific.

NELSON A. MILES,
Brigadier-General, Commanding

[Second indorsement.]

HEADQUARTERS DIVISION OF THE PACIFIC,
San Francisco, Cal., March 17, 1887

Respectfully forwarded to the Adjutant-General of the Army.

O. O. HOWARD,
Major-General, Commanding

[Third indorsement.]

WAR DEPARTMENT, *March* 26, 1887.

Official copy respectfully furnished for the information of the honorable the Secretary of State.

WM. C. ENDICOTT,
Secretary of War.

No. 446.

Mr. Manning to Mr. Bayard.

No. 109.] LEGATION OF THE UNITED STATES,
Mexico, April 5, 1887. (Received April 13.)

SIR: I have the honor to inclose herewith copy and translation of the address delivered by President Diaz on the night of the 1st instant, upon the occasion of the opening of the second period of sessions of the Thirteenth Mexican Congress.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 109.—Translation.]

Address delivered by the President of the Republic upon the opening of the second period of sessions of the Thirteenth Congress of the Union, on April 1, 1887.

MESSRS. SENATORS AND DEPUTIES: With deep satisfaction upon seeing you assembled here to resume your legislative labors, I commence by expressing my conviction that peace, which is prevalent throughout the entire Republic, is now assured by the habits of good order and respect for law that are becoming more widely spread and deeply rooted among the Mexican people.

Our relations with foreign countries present to-day a most friendly character. Beginning with the neighboring nation upon our north, it gratifies me to state to you that there does not now exist any question whatever which can disturb the cordial understanding mutually had between the two Governments. Several occasions have even presented themselves favorable to the development of harmony and cordiality, uninterrupted, as they should be, between both peoples. One of such was the campaign undertaken by United States troops against Indians deserting from their reservations, and which resulted in the capture of the Indian chief Geronimo, the general in command of those troops at the same time duly recognizing the great assistance rendered him by the Mexican authorities and troops.

The United States Congress closed its sessions without having decided upon the so-called Weil and La Abra claims, and as this gave rise to the apprehension that the deposit made some time since might be distributed among the said claimants our minister at Washington, under instructions, called the attention of the United States Government to the inexpediency of such a step.

Pending the enforcement of the treaty touching the restoration of the boundary limits on the line from Paso del Norte to the Pacific, it was agreed to extend the time assigned for those operations, and the United States Senate assented to a modification of the extension. Being cognizant of the proposed alteration, it is to be believed that our Senate will not hesitate in its revision, it being a matter of urgency that the international boundary limits should be clearly fixed, their lack causing frequent and disagreeable complications.

Lately a lieutenant of a small force garrisoned at Nogales, a town partly in Sonora and partly in the Territory of Arizona, committed upon the American side, so it appears, offenses more or less serious, and was arrested by the local police. Forthwith a colonel and two soldiers who had crossed with him what is considered there the boundary line, rescued him by force and retreated to our territory, exchanging with the arresting party some shots. This disturbance did not precipitate a serious conflict, thanks chiefly, be it justly said, to the good judgment of the civil and military officers of Arizona, as well as to the efficient and prudent intervention of the governor of Sonora, who immediately went to the scene of the occurrence. The lieutenant I refer to, who at first escaped, was vigorously pursued by our military authorities and promptly arrested, while a due process was instituted against him, for the purpose of punishing according to their deserts the originators of that disturbance.

The treaty concluded with the Guatemalan plenipotentiary for the extradition of criminals is now pending the exchange of ratifications. The treaty with that Republic designed to extend the term for the operations of the boundary commission is in a similar status.

Our telegraphic system being united with that of Central America, as I will inform you in detail when I touch upon the department of public works, the secretary of foreign affairs, on February 5 last, signed, in addition to a provisional agreement concerning the same, a telegraph compact which, if approved, will insure many

advantages to the two countries, not alone for their official correspondence, but also in the interests of the public and of commerce. Said compact will be at once submitted to the Senate.

The treaty of friendship and commerce with the French Republic, signed in Mexico on November 27, 1886, requires similar action by the Senate; meanwhile two modifications to its articles, in the form of protocols, have been made, which will accompany the same to the Senate.

It pleases me to inform Congress that the laws decreed for the restitution of public confidence upon the highways and the railroads have fully met their purpose, serving rather to prevent than to punish the evils they were designed to remedy, for very rare have been the cases calling for an application thereof.

The elections in the State of Jalisco were verified in regular form; and the newly-elected governor took possession of his post on the first day of the past month.

In Guerrero also the elections to the legislature were effected and that body was installed.

The postal movement is incessantly on the increase and the Executive devotes special attention to that branch. Frequently a new office is opened to public service or a new route is established; or else the offices now opened are improved by the increase of weekly mails, or by new combinations designed to economize time in postal transmission. Among these improvements I will mention that communication with the port of Manzanillo via Guadalajara, Ciudad Guzman, and Colima have been reduced to one-half the time heretofore used by the mail to that port, so that now correspondence is exchanged three times a week, while the mail with Guadalajara, Ciudad Guzman, and Colima is daily.

Work upon the reforms to the postal treaty with the United States is on the advance, and will be soon terminated, the Executive therefore hoping that he can soon submit it to the consideration of the Senate. He can assert beforehand that the conditions of the treaty will be highly satisfactory for both countries, and will result in greater facilities for the mail service of both as well as for the European mail in transit.

It would be wearisome to here detail all the measures taken to improve the mail service. What I should take note of is that notwithstanding the reduction in the proceeds of the department due to the lessening of the rate, the day is not distant when the receipts will equal the expenses. From the start it was evident that the public were benefited, as the mail has more than doubled.

The Lake Patzcuaro Navigation Company, having organized, has commenced to carry out its contract and has brought there its first steamer, which will soon commence to make its stipulated trips.

In the month of September the contract term, so often extended, and in virtue of which Messrs. Alexandre & Sons, of New York, carried on a service between that and some Mexican ports, expired. The company then solicited a new extension, but a compact was not agreed upon with it, as it could not suit its trips and conditions to the exigencies of the commercial and postal movement of Mexico. Its steamers have continued running, though with less regularity. The respective department is now engaged in the study of a proposed contract offered by the company's representative for the transportation of the mail, under certain concessions. If that contract is agreed upon the transportation of the mail, reputed to be one of the principal services formerly stipulated for by that company, will be secured without the expenditure of $100,000 per annum formerly paid as subvention.

The contract with Messrs. Bussing & Co. for the carrying of the mail in the English steamers of the "Harrison Line" and those of the "Imperial German Mail" has been extended for two years; said service is rendered without a subvention.

The Mexican steamer *Alejandro* is now engaged in running regularly between the Pacific ports specified in the schedule of its contracts.

During the last months matters touching public health have earnestly engaged the Executive. The Asiatic cholera almost disappeared at the close of last year from Europe. Unfortunately it then appeared in the Argentine Republic, communicating from thence to Chili, Uruguay, and some ports of Brazil. Though our direct communication with those countries is not frequent, the necessary precautions were taken to avoid any contagion possible through the ships of the Pacific mail or any other line. Our ports were in consequence closed against vessels coming from the infected ports and the greatest care and most scrupulous attention was recommended in the visits to ships hailing from any nation of Central and South America, at the same time observance of the circular issued on July 16, 1885, was enjoined. Finally, several measures have been decreed and others are being studied with the double view of opposing invasion by that terrible plague and diminishing its ravages should it unfortunately enter our territory. The political and municipal authorities, the superior council of health, and the consulting board of charities have, in accord with the department, moved in this humanitarian mission.

Duly authorized, the board on drainage has advertised for bids for that work to the end that the necessary capital may be forthcoming and the work may be completed as soon as possible. Meanwhile the resources now available are employed advantageously, and the labors are advancing constantly. The regular reports furnished by the board bear out these statements, to the effect that a number of man-holes have been finished, the tunnel is very well advanced, and a tramway has been laid connecting with the leading railroads, and which will assist in the transportation of materials and in giving impetus to the work.

Construction on the penitentiary in this capital progresses incessantly, the Government giving impulse thereto by all the methods it can dispose of.

The Executive has shown like earnestness in the completion of the penitentiary in the city of Tepic. To that end the old board of directors of that work has been reorganized, and the appropriation voted by Congress for that important undertaking has been duly applied thereto.

For the purpose of helping the poor classes a new ordinance was issued governing the pawn-shops, which commenced operation on January 1 last. It included many favorable amendments for those who are obliged to patronize such establishments.

I am happy to inform you that the National Monte de Piedad is on the point of liquidating the liabilities it incurred in consequence of the failure, in April, 1884, in its banking operations. It has redeemed its debts and called in its outstanding notes to cancel them, until there remains in circulation at most 2½ per cent. of its paper current at the time of the failure to which I allude.

The medical and executive management of the hospitals dependent upon the public charities has done all that is possible for the relief of the sufferers, but the record is uneventful. The medicines are prepared carefully in the central pharmacy, and while their manufacture is economically conducted the therapeutic results are excellent.

Important improvements have been effected in the service of the correctional school of trades and professions, and the machinery in the shops has been increased.

In accord with the dominant principle in the law creating the normal college, measures have been adopted to introduce modern methods of instruction in the city schools as well as in those connected with the institutions dependent upon the department of the interior.

The handiwork executed in the school of arts and professions for women was during the past scholastic year exhibited to the public for several days, and thus revealed the progress reached by the pupils as well as the indisputable usefulness of that institution. Alike in the building occupied by the school as in the foundling hospital, important improvements have been and are still being made in the ornamentation as well as in the better adaptation of the study rooms and the work shops to their respective purposes.

The four justices, including a supernumerary magistrate of the national supreme court of justice, lately elected, have entered upon the discharge of their duties under the declaration of September 30 of last year.

The decree regulating the granting and use of licenses asked for by public employés is in revision.

In accordance with the decree of October 23 last the first district court of Vera Cruz has been removed to the port of that same name.

The election of magistrates and judges of the federal district being duly verified, said functionaries have assumed charge of their respective offices from January 1 of the current year.

In compliance with the law of June 3, 1885, and in order to secure the best administration of justice in the territory of Tepic, a lower court has been opened in the capital of that territory.

The normal college for teachers of the first grade, ordered established by the decree of December 17, 1885, was inaugurated on February 24 last.

The Executive has endeavored by all the means at his command to realize this transcendental undertaking, and he is confident that the results thereby obtained will carry out the patriotic and distinguished ideas which gave it birth.

The interests confided to the control of the department of public works have continued to develop, despite the fact that they naturally felt the effects of our protracted financial crisis.

The Central and National railroad companies have pushed their efforts to secure the capital needed for the continuation of construction on the important lines they control. With the assistance of the Executive, several difficulties in the way of the lines to the Pacific have been overcome, and it is to be presumed that they will soon renew construction with the old vigor shown in their prior operations.

The International Railroad Company, whose line starts from Piedras Negras, is now in full construction, and is working so rapidly that probably before this year closes its line will be linked in Lerdo with the Mexican Central Railroad.

Among Mexican enterprises of this character I should mention the line from Merida to Sotuta, which has ironed 16 kilometers in addition to the 4 kilometers previously

laid. This track will soon be open to traffic, and is the commencement of a new line in Yucatan.

The increase in railroad mileage has been small, the entire number of kilometers of track laid throughout the Republic now being 6,905.

The lines of federal telegraph have received improvements of great importance. The department of public works will give you detailed information touching the same. I therefore limit myself to specify in this report concerning but one of them, on account of the international character it has. By the stretching of a line of 62 kilometers, the telegraph lines of Mexico were on February 5 last united to those of Guatemala, the two Republics thus becoming linked by land. It was an occurrence that coincided with the anniversary of our political constitution, and it gave rise to the exchange of cordial greetings between some Central American governments.

Construction has continued on the lines, and it can be assured that the greater part are in a good state of preservation. There have been set up 25,000 new poles in addition to the 30,000 already set up. The repairs and improvements have been so economically managed that the estimates for the coming fiscal year have been reduced notwithstanding there are as yet important lines requiring repairs and construction.

The question of the tariff to be charged on the federal telegraph lines has also been studied. The new tariff will soon begin to operate, and it is certain that with the improvements introduced in the service, as well as by the improved tariff, the proceeds of the lines will increase.

In résumé, 1,851 kilometers of new line have been stretched, and general repairs and consolidation of 16,000 kilometers have been effected, that being the present extent of the federal telegraph system, aside from the local lines temporarily ceded to the states.

On December 31 last the time expired for the presentation of contract bids for the erection of the monument to be raised in the Reforma boulevard in commemoration of our independence. Seven bids were made, and the awarding committee, after being organized duly, selected from among them, after careful study, the one which best met the conditions required in a monument of that kind. The decision of the committee has been communicated to the successful bidders, and the Executive hopes to close the contract soon.

In view of the fact that the company in charge of the Vera Cruz Harbor works failed to obtain a legal standing, it became necessary to nullify the contract and to suspend the subvention granted to the company. In order to preserve those works already completed, an engineer was appointed, who, under inventory and by direction of the district judge, has assumed charge and custody of the materials, machinery, and other effects there delivered by the company, while an appraisement of everything has been proceeded with. The Executive is engaged in arranging the method best calculated to carry forward such an important improvement in the first port of the Republic.

The distribution of premiums to the Mexican exhibitors in the expositions of Buenos Ayres and New Orleans had been arranged for the 5th of February of the current year, but the iron and crystal pavilion, known at the New Orleans exposition as the mining pavilion, and which was the leading edifice there in the Mexican department, having arrived in this capital, the distribution of the prizes has been deferred till May 5 next, when the edifice will be completed and the ceremony to which I allude will then and there be carried out.

During the first six months of the fiscal year 1886–'87 there was coined in the mints of the Republic $14,098,292, as follows: $191,327 in gold, $13,788,592 in silver, and $118,373 in copper.

The coinage of the $200,000 in copper cents, decreed by the law of May 10 last, should be accomplished during the present fiscal year. But by reports received from the governors of the states it appears that the supply is yet insufficient to meet the demands of the public and of business, and a bill will shortly come before you to the effect that the issue of cents may be increased till the demand is fully met.

Desirous to render uniform the type of money coined in all the mints, the department of public works made a contract with certain parties for the establishment in this capital of the central bureau of engraving, to take charge of the manufacture of all the dies under said contract. The bureau began to furnish the dies on January 1 of this year, using the old matrices. But a new type for our monetary unit is now being designed, which will improve the engraving without in the slightest manner changing the value, dimensions, or other requisites fixed by law. This will perfect the type, and at the same time raise another difficulty in the way of counterfeiters.

The operations tending to qualify the desert lands for occupation have continued throughout various states, being conducted by private companies without further expense to the public treasury than the cession of the tracts of lands given to the companies in compensation for their labor. With reference to the law of July 20, 1863, the denouncements have been effected constantly, and private parties have frequently repaired to the department of public works for the purpose of legalizing the

excess in their property. All this movement and the demand at home and abroad, for these lands has raised them in price, and the Government has been enabled to place them on the market under increasingly improved conditions. Some of the boundary commissions who held contracts for the colonization of lands they proved up and others who had by different titles acquired lands have commenced to introduce and establish colonies. In this way new colonies of foreigners have been settled in Chihuahua, Sonora, Sinaloa, and Lower California, and Mexican families have also become incorporated therein.

Public order having been restored in the towns along the Yaqui and Mayo Rivers, the Government being desirous to assist the people to locate permanently and in the best manner in those places, has ordered the chief of the geographical exploration commission to proceed to Sonora with a corps of engineers to engage in the survey of the hereditary lands and inclosed tracts of each town-site, as well as to distribute lands to the residents under the system employed heretofore. The Executive confides in the integrity of the commission going to Sonora, and to its efforts in behalf of the condition of those Indians, and hopes that the efforts of the commission to that end will tend to establish peace throughout those territories and to revive the broken confidence of the rebellious Indians.

Agriculture and mining continue to receive special attention from the department of public works. Aside from the regular and the extra publications touching those interests which have been constantly in print, special attempts have been made in the interests of agriculture to develop certain plants, such as the mulberry, the ramie, and others, and seeds from abroad have been distributed.

Mining has continued in steady development, aided by uniformity in legislation and by the protection vouchsafed to the companies who have invested large capital in the working of some mines. The formation of companies in foreign countries to develop our mining resources gives an idea of the confidence inspired by the country and its Government and also facilitates the incoming of new capital.

Let it suffice me in closing my allusions to the Department of Public Works to recommend to you the dispatch of several bills designed to meet urgent necessities, among them those referring to patents or inventions, trade-marks, and to the regulations on waters and forests. The proposed law touching the depreciation of silver having been approved by the House of Representatives it is to be hoped that the Senate will devote its attention thereto, and will determine the best action upon the points not settled by the new tariff.

The Constitution having prescribed that financial matters shall be given the preference in this period of sessions, I should, above all, inform Congress, even if briefly, touching the status of this important branch of the Administration.

In due time and in accord with the fundamental law the estimates of expenditures for the ensuing fiscal year, the proposed bill of receipts, and the distribution of the finances during the past year were laid before you. With these and other data which the Treasury Department was enabled to place at the disposal of the people's representatives, if required by the latter, Congress is in a position to decide advisedly the financial question, which is by far the one of most importance for the equable progress of a constitutional Government.

The receipts of the public treasury are visibly on the increase, thanks to the efficiency and integrity of those intrusted with the management of the same. It is therefore soundly believed that they will exceed any former receipts. In order to increase them and to satisfy the just demands of society, at the same time harmonizing the interests of industry, agriculture, commerce, and the consuming public, a new tariff has been issued for the maritime and frontier custom-houses, which will begin to operate on July 1 next. There is nothing more difficult than to strike the happy medium in harmonizing the several interests naturally affected by a tariff law. Even among the most advanced nations the question of the tariff is one of most serious and transcendental character presentable to the consideration of the public powers. Upon examining this matter the Executive has endeavored to be guided by the best data obtainable and to act with strict impartiality, and if he has been unable to please everybody, at least, judging by the information at his command, it can be safely asserted that the majority of those interested in and affected by that law will be satisfied.

With the purpose of assisting in the collection of the taxes and the outlay of the expenditures alike in the interests of the tax-payers and of the Government, a law has been issued for the consolidation of the several measures designed to govern the stamp revenue, so that thereby the confusion inherent upon the existence of numerous laws upon the same subject may be avoided.

It being manifestly expedient that the Administration should have edifices of its own for its public offices, especially in the ports, the Executive has earnestly labored for the realization of that purpose, and has purchased buildings adapted for the federal custom-houses in Tapachula, San Blas, and San Fernando. The custom-house at Laredo is being built by contract, and should be ready for business on September 16 next. Work is being pushed on the Santiago Tlaltelolco custom-house in Mexico, to

the end that all the merchandise brought into this capital by the railroads may be dispatched in that one place. The custom-houses at Mazatlan, Acapulco, Frontera, and Vera Cruz, and other points, as well as the toll-gates and customs offices of this capital, have been renovated. Other national buildings are also being repaired. Finally, being desirous of securing competent quarters for our legations in the two neighboring Republics under conditions favorable to the public treasury, a building for that purpose is being erected in Washington, and one has just been purchased in Guatemala.

Not only have the civil and military pay-lists been met, but due attention has been given to the newly-acquired liabilities incurred with various creditors of the Government, who have been paid not only the interest agreed upon but also a large part of the principal. The nation's ordinary revenue has sufficed to meet these increased expenditures.

With regard to public credit, the Executive will persevere in the path he has entered upon, considering it as being important to the good name of Mexico at home and abroad as well as for the development of her wealth to regard no effort too great which will aid in preserving intact that great element, origin, and foundation of prosperity among civilized peoples.

Bureaus charged with the recognition and liquidation of the public debt have been established in Mexico and in London, and the general treasury has issued new bonds to the value of a little more than $6,000,000. In London old bonds to the nominal value of something over $45,000,000, our currency, have been presented for conversion.

Being convinced of the expediency of realizing in the matter of its foreign debt the policy initiated by Mexico twenty years ago, the Executive decreed that in the law regulating public credits the claims growing out of past diplomatic conventions should be merged in the common fund of the Mexican debt, drawing the same interest as the bonds of the other holders. I am gratified to inform Congress that this idea is being realized, for part of those claims have been spontaneously presented at the office in Mexico, and the majority of the holders of bonds under the old English convention have accepted, throughout, the law of June 22, 1885, and made an arrangement with the secretary of the treasury for the conversion of their claims. They have agreed that said claims may, without becoming of a diplomatic character, be merged into the common debt and carry 3 per cent. interest, in place of the 5 and 6 per cent. assigned under the now obsolete international conventions.

The payments due on July 1, 1886, and January 1, 1887, to the creditors resident in London, as well as those in the Republic, were paid, after being presented for conversion. The Executive is resolved that the payment of next July and those which follow will be met with the same promptness.

The eleventh installment of the American debt, under the arrangements of the treaty of 1868, was paid, and if, as is to be hoped, the United States Government will act justly in the matter of the Weil and La Abra claims this debt can be considered as fully paid.

I do not need to impress upon you the favorable influence for Mexico of the movement designed to arrange our debt and resume payment. So strong has been the reaction of confidence in favor of our country that, despite the panic prevalent in the European markets during the past months because of the rumored international conflict, Mexican bonds felt the least effect of any of the universal alarm. That confidence will probably take deeper root in proportion as the opinion touching our solvency is established here, and abroad an opinion based upon a knowledge of our resources and of the determination of our Republic to faithfully fulfill its pledges.

The interests commended to the department of war and of navy have been the object of special attention on the part of the Executive, who, being authorized thereto by the legislative power, has continued in the important work of reorganizing the army. To that effect the proposed modifications have been submitted to the four united commissions on ordinance and tactics, who are to duly report thereon.

Modifications to the general ordinance are also under consideration, and will soon be finished by the commissions charged with the matter. At the same time the military codes are in revision, especially in the parts bearing upon deficiencies in practice.

In September of 1886 I announced to you that some special commissions were examining the manual of rules for the infantry and cavalry, to the end of applying to those arms the important advances made in the art of war. I have to-day the satisfaction to advise you that those works have been revised and formulated and that the same will soon be applied to the army.

On that occasion I informed you that, although the people on the Mayo River and some of those near the Yaqui had submitted to the authorities, many of the inhabitants remained rebellious and were in hiding among the forests and mountains. Later on those tribes again took up arms. This necessitated a new campaign, which, being pushed with energy and rapidity, resulted in the complete pacification of the

insurrected places. The Indians, numbering about 6,000, including prisoners and those who nominally surrendered, recognize now the authorities of the Republic, and the latter is attending to their wants, through the treasury, pending the distribution among them of the lands they held so long without legal right.

As the greater part of the forces in the first military zone were employed in that campaign, which could be neither interrupted nor postponed, a large number of savages from the American reservations succeeded in crossing the Sonoro frontier and committed all kinds of depredations. The Executive, without delay, ordered a prompt pursuit of the hostiles, who were also followed by United States troops in accordance with the treaty then in force between the two countries. At last the American troops, effectually aided by our troops, as I have already had the honor to state to you, succeeded in capturing the chief of the rebellious Indians, Geronimo, who was sent to Florida.

As soon as the campaign on the Yaqui and Mayo rivers ended, the chief of the military zone was ordered to Mazatlan to aid in the pursuit of the roving bands that committed ravages in the State of Sinaloa, crossing occasionally into Durango. It is therefore certain that very shortly public safety will be completely restored in the small towns and villages overrun by the bandits.

By the published accounts in the Diario Oficial, Congress is already aware of the events which transpired in Zacatecas at the close of October and commencement of November of last year. As the arrest and death of General Garcia de la Cadena was the result of the pursuit by the forces of said State of General Cadena, the apparent leader of that sedition, and his band, the judicial authorities of the State which are competent to act in the case are engaged in conducting an investigation of the events.

During last December there was some trouble in Tamaulipas over the municipal elections, especially in Aldama, where the different parties tried to have their candidates elected by force of arms. These troubles, after lasting several days and having resulted in some killed and wounded, had the effect of calling out to the scene of the engagement the federal forces garrisoned at Tampico.

While the Executive has given attention to the movements of the troops, as above specified, he has aided in perfecting other matters in the department of war.

The manual for engineers, so combined as to provide for adaptation to the new forms introduced into the army, is now completed, and will, after its final revision, be put into effect.

The department of engineers of the war department possesses now new books and formulæ designed for the study and the practice of the different branches of the department.

Under the direction of the engineers of this department, in some cases work has been continued, in others concluded in the construction of the barracks, hospitals, and other edifices built by direction of the war department; also the important work, now almost completed, upon the military college.

This plant of instruction has justified the efforts and hopes which have clustered about it, and this was evidenced by the examinations conducted therein at the close of the collegiate year of 1886. The personnel of the college consisted then of 280 cadets and 12 officers. At that time 53 regular and 135 practical officers graduated and entered the army.

The decree issued on October 1, 1886, for the organization of the artillery service improved that service throughout.

The experiments conducted for the purpose of bettering the gun-carriages for the 80-millimeter cannon, of the Bange system, were so satisfactory that the improvement as made in our shops was adopted, and the problem hitherto unsolved of resistance and of other indispensable conditions in this class of mountings was thus resolved.

The department of the navy has also received careful attention, and its progress has been in sympathy with that of the army. To this end, and in exercise of the faculties conferred by Congress, on December 15 last a decree was promulgated for the organization of the bodies forming our small national navy.

On the 2d of the same December 4 cadets graduated from the military college who had closed their marine studies. They were given certificates of the first class.

Messrs. DEPUTIES, Messrs. SENATORS:

You will have seen by this message the condition of public affairs, and that none of the administrative branches have been neglected. If any of them were the object of special attention it would doubtless have been that which, by its vital transcendency, surpasses all and recommends itself to every settled government, to that of the treasury, and of public credit. Being deeply conscious that when peace is assured it is most important to strengthen the nation's credit by strict compliance with its obligations and to foster constantly its prosperity by the development of all its elements, I shall ever endeavor to reach those results by the means placed by the constitution at my command, confident that, in a labor so patriotic, you will never refuse me your distinguished aid.

No. 447.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *April* 6, 1887. (Received April 6—8.30 p. m.)

An earnest request is made by Mr. Mariscal that the Government of the United States will not insist upon its demand that Gutierrez should be delivered up. The President joins in Mr. Mariscal's request. It is declared by them that the military law of Mexico will inflict a more severe punishment upon him than would be inflicted by the American law. They further say that they have not the slightest desire to abstain from a full and friendly compliance with the duties prescribed by the law of nations, but that they will fulfill them perfectly.

No. 448.

Mr. Bayard to Mr. Manning.

No. 77.] DEPARTMENT OF STATE,
Washington, April 7, 1887.

SIR: I inclose for your information, in connection with Department's recent instructions upon the subject, a copy of a letter from Messrs. Alexandre & Sons, of New York, dated the 2d instant, concerning the alleged discrimination by Mexico against the carrying trade of the United States.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 77.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *April* 2, 1887.

SIR: Your favor of 30th ultimo received. We regret to learn from it that your Department has not yet received the precise information it needs to enable it to answer definitely our inquiry as to what to expect from our Government in the matter of discrimination by Mexico of 2 per cent. less duties on goods imported into the Mexican ports of Progreso and Vera Cruz, when imported ex Spanish line of steamers.

It is to be hoped that your Department will very soon be able to decide if we are to expect relief, for if not, then we will have to withdraw our American line of steamers from Mexican trade altogether.

We had hoped that since November 4, when we first officially called your attention to this grave question, your Department would have been able to decide before this as to what action it would take in the matter—a matter which we beg to impress on your mind is an all-important one to us, and consequently to all American shipping interests; for if Mexico is to be allowed to violate its treaty obligations with the United States, then we tell you, we for one will and must have to withdraw our line of steamers to Mexican Gulf ports.

In answer to your inquiry as to the steamers we run in our line to Mexico, we beg to say they are the American steamer *City of Puebla*, 2,643 tons: the American steamer *City of Alexandria*, 2,480 tons; the American steamer *City of Washington*, 2,635 tons; the American steamer *Manhattan*, 1,600 tons; and each and all are owned by American citizens, as on record—the three first ones entirely by ourselves. To show

you the reduced business of our line we beg to state, as taken from our books, that first quarter, *i. e.*, from January 1, 1886, to March 31, 1886, our freights to Vera Cruz and Progreso were $48,096, while for the same period of 1887 were $26,139, a falling off of $21,957.

Yours, respectfully,

F. ALEXANDRE & SONS.

No. 449.

Mr. Bayard to Mr. Manning.

[Telegram.]

DEPARTMENT OF STATE,
Washington, April 8, 1887.

As the right of this Government to insist upon its demand for the return to its jurisdiction of the prisoners rescued by the Mexicans is acknowledged by the Government of Mexico, this demand will be suspended by the United States as an evidence of their friendly disposition, and the result of the trial of Gutierrez by a military court for the offense committed at Nogales against the military code will be awaited.

No. 450.

Mr. Bayard to Mr. Manning.

No. 79.] DEPARTMENT OF STATE,
Washington, April 9, 1887.

SIR: On the morning of the 7th instant I received from you a telegram, apparently dated the 6th. On the afternoon of the same day, April 7, I sent you a reply by telegraph.

The views of this Government respecting its right to demand the return of Gutierrez have been made amply known to that of Mexico, through my previous instructions to you, and through my communications to Señor Romero. It does not appear from your dispatch that the Mexican Government contests the right so asserted; on the contrary, the statements of Señor Mariscal, and of his Excellency the President of Mexico, as reported by you, are understood as coupling a request for non-insistence upon that right with an explicit disclaimer of desire or intention to fall short of the full measure of friendly international obligation in the premises.

In dealing with this amicable request it is important to bear in mind that this Government can not, even by implication, permit this case to become a precedent for any assumption that forcible rescue can create any right of asylum or that the Mexican Government is not under the obligation to undo the unlawful act of its own officers and return the rescued party to the jurisdiction of the United States.

It is presumed that the friendly deference to the wishes of the Mexican Government, which is indicated in my telegram, will dispose of this incident in a manner entirely satisfactory to the President and Señor Mariscal.

I am, etc.,

T. F. BAYARD.

No. 451.

Mr. Manning to Mr. Bayard.

No. 114.] LEGATION OF THE UNITED STATES,
Mexico, April 12, 1887. (Received April 20.)

SIR: I have the honor to acknowledge receipt of your No. 70, of date March 30, relative to the alleged discrimination against the United States carrying trade, and have to say in reply that no correspondence has taken place between the Mexican Government and this legation since Mr. Mariscal's note to me of February 21 until to-day, when I addressed him a note, copy of which I herewith inclose.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 114.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, April 12, 1887.

SIR: Calling your excellency's attention to your note of February 21 last, touching the complaint of F. Alexandre & Sons, of New York, relative to the rebate of 2 per cent. of customs duties granted by the Government of Mexico to the Spanish Transatlantic Steamship Company, which you therein advise me you had referred to the department of public works in order that it might furnish you certain information, I beg to remind your excellency that none has as yet been furnished me.

I now have to advise your excellency that I am just in receipt of a communication from the State Department at Washington, in which occurs this sentence:

"The Department would greatly regret to find that any differential customs duties were actually enforced in Mexico which would constrain this Government to execute the statutes applicable to the case of any discriminating duties or impost being ascertained to exist in a foreign country to the disfavor of our carrying flag and the favor of the flag of such country or of any third power."

Your excellency will see from the tone of this extract that my Government is very much in earnest in effecting a satisfactory solution of this matter.

I have, etc.,

T. C. MANNING.

No. 452.

Mr. Manning to Mr. Bayard.

No. 116.] LEGATION OF THE UNITED STATES,
Mexico, April 14, 1887. (Received April 22.)

SIR: Mr. Mariscal has written me a personal note concerning your last telegram about the Nogales affair, in which is the following:

Your note conveys to me the satisfactory information that Mr. Bayard condescends in suspending his demand for the delivery of Gutierrez pending the proceedings of the Mexican Government against him, which I understand to mean that if he is duly punished by the Mexican authorities, there will be no demand for his being punished again on the other side.

With that understanding I fully appreciate Mr. Bayard's condescension as a friendly act to Mexico, and in answering your dispatch of the 21st ultimo, as I will do shortly, I will admit the right of your Government to demand the restoration of the prisoner to the American jurisdiction, as the Secretary of State desires it to be done.

The manifest sincerity of Mr. Mariscal to punish the perpetrators of the Nogales outrage in a manner that will not only entirely satisfy the

United States Government, but that will also by its severity prove an example to Mexican military men and civilians alike and will show to them the determination of his Government to put a stop to the commission of such offenses against our Government and people, inclines me to ask your special consideration of this case and to respect the sensibilities of the Mexican authorities as far as you may deem compatible with the honor and dignity of our Government.

I am, etc.,

T. C. MANNING.

No. 453.

Mr. Manning to Mr. Bayard.

No. 117.] LEGATION OF THE UNITED STATES,
Mexico, April 15, 1887. (Received April 23.)

SIR: Calling attention to my No. 35, of December 11, 1886, in which I reported to you an interview had with Mr. Mariscal, touching the need of some provision for Americans obtaining certificates of nationality who had not applied prior to December 6, 1886, I have the honor to inform you that I addressed a note to Mr. Mariscal on the 6th of the present month, copy of which I inclose, repeating the observations made by me in that interview, and renewing and pressing the request I had made for some provision to be speedily made by the Mexican Government in relation to that matter.

I now inclose herewith translation of a note from Mr. Mariscal, advising me that President Diaz has decided to memorialize the Mexican Congress to the effect that a new term may be designated within which foreigners who, having acquired real estate or having had children born to them in Mexico, desire to retain their nationality may apply for certificates of their respective citizenship.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 117.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, April 6, 1887.

SIR: I had the honor last December to call your excellency's attention in a personal interview to the fact that a number of Americans had not applied for certificates of nationality within the time fixed by the act of Congress of June, 1886, and that their failure to obtain certificates was not caused by their apathy or inexcusable procrastination. I stated in the same interview that the act of Congress provided for the formation of certain regulations for the guidance of foreigners who intended to apply for certificates of nationality, and that my countrymen had waited for the publication of those regulations until the time within which applications could be made had nearly elapsed. So that it was not so much their fault as the omission of the Government to make regulations that caused the applications of so many of them to be postponed until the time had nearly passed by.

I took occasion at the same time to say that this was a matter of greatest importance to my countrymen, because some of them might be involved in civil litigation, or in some way might be brought before the criminal tribunals of the country, or might find themselves placed in other positions wherein their nationality would be a fact of great consequence. The Mexican authorities might claim they were Mexican citizens because they had not obtained their certificates of nationality, as prescribed

by the act of the Mexican Congress. My own Government could not admit that claim, but would hold them to be American citizens.

Your excellency will therefore see that I am only foreseeing future complications and am endeavoring to avoid them by timely action now when I suggest that some mode of egress from the present situation be discovered. In reply to an inquiry made in that interview as to how many Americans were too late in their applications, I have the honor to inclose herewith a list of those that are now on file in this legation, and that came in after the 6th of December last. [Here follows a list of forty applicants.]

I beg, etc.,

T. C. MANNING.

[Inclosure 2 in No. 117.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, April 13, 1887.

SIR: I have the honor to acknowledge the receipt of your excellency's note, dated the 6th instant, in which you refer to an interview you had with me last December touching the fact that many American citizens had not applied for certificates of their nationality within the time fixed in the law of May 28, 1886, among other reasons because they had awaited the publication of the regulations provided for in the fifth chapter and the third article of said law, and as the Mexican authorities, according to your excellency, might claim that Americans who had not obtained their certificates as prescribed by that alien law were Mexican citizens, a claim that your excellency's Government would not admit, but would continue to hold them to be citizens of the United States, you were pleased to suggest that some mode of egress from the present situation of the parties in question should be discovered in order to avoid forthwith future complications.

In reply I have the honor to state to your excellency that in view of the facts in the case, and being especially impelled by a desire to avoid every complication with the Governments of friendly nations, the President of the Republic has seen fit to order a memorial to be sent to Congress to the effect that a new term may be designated within which those foreigners who, having acquired real estate, or having had children born to them in Mexico, desire to retain their nationality, can present their applications.

I renew, etc.,

IGNO. MARISCAL.

No. 454.

Mr. Manning to Mr. Bayard.

No. 118.] LEGATION OF THE UNITED STATES,
Mexico, April 16, 1887. (Received April 25.)

SIR: I herewith inclose translation of Mr. Mariscal's note to me of 14th instant, relative to the desire of his Government that it should be permitted to punish the perpetrators of the outrage at Nogales under the Mexican military code, and invoke your consideration of the reasons given by him therefor.

You will perceive that he apprehends that your suspension of the demand for the delivery of Gutierrez implies that it may be renewed after that officer has been punished by his own Government.

While he can not expect that you will now make any definite promise that this demand shall not be renewed, I trust that the punishment which the Mexican Government is determined to inflict upon Gutierrez will satisfy all the requirements for the vindication of the integrity of our territory and jurisdiction.

I am, etc.

T. C. MANNING.

[Inclosure in No. 118.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, April 14, 1887.

Mr. MINISTER: I have not had the honor to answer your excellency's note dated the 21st ultimo, because I was awaiting the result of the proposition which I made, verbally, in our interview of the 6th instant, to the effect that the Government of the United States should desist from its demand for the delivery of Lieutenant Gutierrez, in order that he might be tried by the Mexican authorities and suffer in company with the colonel, under whose orders he was in Nogales, a severe punishment—all of which would be impossible in the event that said lieutenant was tried in Arizona, where he would merely receive a punishment light in comparison with the merits of his military offense. The result would be that a like light punishment would release him from further castigation in Mexico, as our constitution prohibits the prosecution of any one twice for the same offense; on the other hand, it would seem unjust to visit a punishment more severe upon the colonel.

These reasons, among others which I had the honor to set forth in said interview, were, I understood, communicated by your excellency by telegraph to the Secretary of State of the United States, and as your excellency personally informed me he agreed to suspend the demand for the delivery of the offending lieutenant pending the proceedings against him, on the condition that the Mexican Government would recognize the right of your excellency's Government to make that demand, as also in the light of a friendly act towards Mexico.

I acknowledge the spirit of friendship actuating Mr. Bayard in this matter, although the reasons I alleged demonstrate that what I requested was the most expedient course for both countries to pursue. I also willingly accede that your excellency's Government has had a *certain* right to request that matters should be restored to their *status quo* by returning Gutierrez to the power of the Arizona authorities who held him a prisoner, for it is not a question of a Mexican fugitive from foreign justice, but of one who was forcibly rescued by Mexican soldiers who entered the neighboring territory armed, without any legal pretense or excuse of any kind, and certainly without order or warrant on the part of the Mexican Government.

Still, with the same frankness with which I admit the foregoing, I should state that I confidently trust in the good sense and friendly disposition of the Government so worthily represented by your excellency that the suspension of the demand referred to pending the proceeding against Gutierrez does not imply the possible contingency of a renewal thereof after the said party has been judged and duly punished. I can not imagine such a contingency; hence I abstain from all reasoning thereupon. Rather, in closing this note, I take pleasure in expressing the sincere conviction that touching the unfortunate events at Nogales the honorable Mr. Bayard and your excellency as well have exhibited a spirit of friendly conciliation worthy of notice and of eulogy.

In this connection, etc.,

IGNO. MARISCAL.

No. 455.

Mr. Manning to Mr. Bayard.

No. 119.] LEGATION OF THE UNITED STATES,
Mexico, April 18, 1887. (Received April 26.)

SIR: In connection with my No. 114 of 12th instant, inclosing copy of my note to Mr. Mariscal of same date, calling his attention most earnestly to the alleged discrimination against the American carrying trade, I have now the honor to inclose copy and translation of a note from Mr. Mariscal that reiterates the statement made in his note to me of February 21 last (sent to you under cover of my No. 72, of February 24, 1887), to the effect that he has requested "the department of public works to communicate as soon as possible the data required."

While writing this dispatch I have received your No. 77 of April 7, inclosing Alexandre & Sons' letter to you concerning this alleged dis-

crimination of Mexico against the carrying trade of the United States, and shall promptly communicate to Mr. Mariscal the anxiety felt by Messrs. Alexandre and the Department for a speedy and satisfactory reply.

I am, etc.,

T. C. MANNING.

[Inclosure in No 119.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, April 15, 1887.

Mr MINISTER: In reply to your excellency's note of the 12th instant, relative to the rebate of 2 per cent. of customs duties accorded to the Spanish Transatlantic Steamship Company, I have the honor to advise you that to-day I recommended the department of public works to communicate to me as soon as possible the data requested therefrom, referred to in my note of the 21st of February last.

I protest, etc.,

IGNO. MARISCAL.

No. 456.

Mr. Manning to Mr. Bayard.

No. 121.] LEGATION OF THE UNITED STATES,
Mexico, April 20, 1887. (Received April 28.)

SIR: Acting under your instruction No. 77, of the 7th instant, relative to the alleged discrimination by Mexico against the steamship line of F. Alexandre & Sons in its carrying trade, I have the honor to inclose a copy of a note I addressed to Mr. Mariscal. Trusting that the earnestness of my presentation of the case will provoke his immediate action.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 121.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, April 19, 1887.

SIR: I have the honor to call your excellency's attention to a very earnest letter, of date April 2, from Messrs. F. Alexandre & Sons to Mr. Bayard, in which they complain that they have not yet any information of what is to be done by the two Governments in the matter of discrimination by Mexico of 2 per cent. less duties on goods imported into the Mexican ports of Progreso and Vera Cruz, when imported ex Spanish line of steamers.

Messrs. Alexandre & Sons in that letter give a list of the steamers composing their line, which is as follows: *City of Puebla*, 2,643 tons; *City of Alexandria*, 2,480 tons; *City of Washington*, 2,635 tons, and *Manhattan*, 1,600 tons, all of which are owned by American citizens, and the first three by Alexandre & Sons.

They also make exhibit of the effect produced by the discrimination aforesaid upon their business; in the first quarter of 1886 the freights to Vera Cruz and Progreso being $48,096, while the freights for the same period of 1887 were reduced to $26,139, thus showing a falling off of $21,957.

With this statement of the case, it is almost needless for me to say to your excellency that this is a matter of supreme importance to Messrs. Alexandre & Sons, but

its effect as to them is only a pecuniary one, while my Government regards it as presenting a grave question, because it seriously affects all the shipping interests of the United States. The Government of the United States is quite unwilling to believe that any differential customs duties are knowingly and purposely enforced in Mexico to the detriment of the commercial interests of the United States, but unless the complaint of Alexandre & Sons be quite unfounded, it seems certain that such differential customs duties are actually enforced to the detriment of our commercial interests.

I had the honor to receive from your excellency, two days ago, an assurance that you would soon receive an answer from the department of public works, responsive to your inquiries relative to this matter, and I beg to say that the Department of State at Washington is impatient at the delay already experienced.

I take pleasure, etc.,

T. C. MANNING.

No. 457.

Mr. Bayard to Mr. Manning.

No. 92.] DEPARTMENT OF STATE,
Washington, April 25, 1887.

SIR: Referring to my instruction No. 47, of the 10th of February last, in relation to the operation of the recent contract between the Mexican Government and the Spanish Transatlantic Steamship Company, I have to inform you that Mr. John Alexandre, of the firm of Messrs. Alexandre & Sons, has, in verbal conference with the officers of this Department, made additional statements explanatory of the manner in which the contract is executed, which, if corroborated, exhibit the transaction in an unfavorable light, so far as its discriminations against the mercantile marine of the United States are concerned.

Mr. Alexandre represents that merchandise imported into Mexico by the Spanish line referred to practically pays but 98 per cent. of the customs duties exacted from merchandise imported in other bottoms. That under Article III of the contract, 2 per cent. of the regular duties on such merchandise is paid for the importers by the Spanish line, which, under Article IX of the contract, is repaid to the line by the custom-house, provided that the total duties on each entire cargo so imported amount to 50,000 Mexican dollars. Should the duties on any cargo not aggregate that amount the 2 per cent. aforesaid is not refunded, and the line receives only the regular subsidy of $5,000 for the trip. In fact, however, the duties are largely in excess of $50,000 on each cargo, and consequently extra trips in addition to the regular trips are obliged to be made by the line in order to transport the freight tendered. And by another provision of the contract the refund of 2 per cent. of duties on the merchandise imported in any one of the extra trips is made in all cases when the total duties on such cargo amount to 25,000 Mexican dollars.

This arrangement by which shippers of merchandise by the Spanish line pay 2 per cent. less customs duties in Mexico than shippers by any other vessels, is manifestly an unequal and unjust discrimination against all competitors of the Spanish line in carrying freight from the United States to Mexico.

The regular subsidy agreed upon in the contract to be paid by the Mexican Government to the Spanish line is not complained of by the Messrs. Alexandre. But the discrimination above described, by which a reduction of 2 per cent. of the Mexican customs duties is secured to shippers by the Spanish line, is in many cases largely in excess of the freight charged, and renders competition in freighting impossible.

If it be deemed politic by the Government of Mexico to induce larger importations into that country by granting a rebate on duties on all cargoes wherever the duties levied aggregate more than 50,000 Mexican dollars, the proposition should be made without discrimination, so that all vessels could avail themselves of it and announce the privilege to their proposed shippers in the United States. Under the present arrangement, however, as described by Mr. Alexandre, the discrimination against the carrying flag of the United States is obvious.

In this connection, it may be important to remember that the treaty of commerce and navigation of 1831, between the United States and Mexico having been terminated through notice given by the Mexican Government on November 30, 1880, this Government is left free to apply whatever measures are or may be provided by legislation to countervail the discrimination complained of. Such a discrimination, if persisted in, would necessarily be regarded as at variance with the intimate and mutually beneficial intercourse which the United States desire to maintian with neighboring communities, and as a disappointing response to the policy manifested by recent acts of Congress.

T. F. BAYARD.

No. 458.

Mr. Bayard to Mr. Manning.

No. 93.] DEPARTMENT OF STATE,
Washington, April 27, 1887.

SIR: I have received your No. 117, of the 15th instant, relative to the Mexican law concerning foreigners.

While appreciating the disposition of the Mexican Government to afford opportunity to citizens of the United States who desire to do so to comply with the provisions of the law in question of June last, this Department, for the reasons set forth in its instructions of November 20 last, is still compelled to dissent from the position that foreigners who have purchased land or had children born to them in Mexico may, from time to time, by a municipal statute, be deprived of their nationality unless they take some affirmative step to preserve it.

I am, etc.,

T. F. BAYARD.

No. 459.

Mr. Bayard to Mr. Manning.

No 96.] DEPARTMENT OF STATE,
Washington, May 2, 1887.

SIR: I have received your No. 116, of the 14th ultimo, relative to the recent troubles at Nogales.

The Department is pleased to notice the friendly tone of Mr. Mariscal's private letter to you, and it is hoped that his official note, soon to be written, and the prompt and thorough punishment of Gutierrez will terminate the Nogales incident.

I am, etc.,

T. F. BAYARD.

No. 460.

Mr. Bayard to Mr. Manning.

No. 97. DEPARTMENT OF STATE,
Washington, May 2, 1887.

SIR: I inclose for your information a copy of a letter from Messrs. F. Alexandre & Sons, of the 28th ultimo, expressing gratification at the Department's position as announced in its No. 92, of the 25th ultimo, to you, relative to the discrimination against American shipping interests by Mexico.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 97.]

Messrs. Alexandre & Sons to Mr. Bayard.

NEW YORK, *April* 28, 1887.

SIR: Your esteemed favor of yesterday received and its contents are gratifying, for we see your Department holds the same view we have ever held, that the Government of Mexico was injuring American shipping interests in allowing a Spanish line of steamers to enjoy a discriminating duty on imports by its vessels into Mexican ports of Progreso and Vera Cruz, to the *very great* prejudice of American vessels going to those ports. Now that your Department has taken that stand, we feel encouraged to the extent of not being willing to withdraw our line to Mexico.

It has been so far humiliating to see the Spanish line carrying American products into Mexico that our line could not touch, as the 2 per cent. less duty into Mexico ex Spaniards was equal to prohibition by our American steamers.

Respectfully,

F. ALEXANDRE & SONS.

No. 461.

Mr. Manning to Mr. Bayard.

No. 129.] LEGATION OF THE UNITED STATES,
Mexico, May 4, 1887. (Received May 13.)

SIR: I have received your No. 92, dated April 25, this morning, and immediately addressed a note to Mr. Mariscal, of which copy is inclosed. No communication from him touching this matter has been received since my last dispatch to you.

I am, etc.,

THOMAS C. MANNING.

[Inclosure 1 in No. 129.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, May 4, 1887.

SIR: I beg to call your excellency's attention again to my notes of December 6 last, and April 19th just passed, touching the operation of a certain contract which the Mexican Government has made with the Spanish Transatlantic Steamship Company, and of the serious detriment occasioned thereby to Messrs. Alexandre & Sons, the owners of a rival line of steamships plying between Mexican ports and the United States.

I have now the honor to transmit information given the Department of State, at Washington, by Mr. John Alexandre, of the firm just mentioned, explanatory of the manner in which that contract is executed, and which, if corroborated, exhibits the transaction in an unfavorable light, so far as the discriminations against the mercantile marine of the United States are concerned.

The dispatch from my Government goes on to say that Mr. Alexandre represents that merchandise imported into Mexico by the Spanish line referred to practically pays but 98 per centum of the customs duties exacted from merchandise imported in other bottoms; that under Article III of the contract 2 per cent. of the regular duties on such merchandise is paid for the importers by the Spanish line, which, under Article IX of the contract, is repaid to the line by the custom-house, provided the total duties on each entire cargo so imported amount to 50,000 Mexican dollars.

Should the duties on any cargo not aggregate that amount, the 2 per cent. aforesaid is not refunded, and the line receives only the regular subsidy of $5,000 for the trip. In fact, however, the duties are largely in excess of $50,000 on each cargo, and consequently extra trips, in addition to the regular trips, are obliged to be made by the line in order to transport the freight tendered. And by another provision of the contract the refund of 2 per cent. of duties on the merchandise imported in any one of the extra trips is made in all cases where the total duties on each cargo amount to 25,000 Mexican dollars.

This arrangement, by which shippers of merchandise by the Spanish line pay 2 per cent. less customs duties in Mexico than shippers by any other vessels, is manifestly an unequal and unjust discrimination against all competitors of the Spanish line in carrying freight from the United States to Mexico.

The regular subsidy agreed upon in the contract to be paid by the Mexican Government to the Spanish line is not complained of by the Messrs. Alexandre.

But the discrimination above described, by which a reduction of 2 per cent. of the Mexican customs duties is secured to shippers by the Spanish line, is in many cases largely in excess of the freight charged, and renders competition in freighting impossible.

If it be deemed politic by the Government of Mexico to induce larger importations into that country by granting a rebate on duties on all cargoes whereon the duties levied aggregate more than 50,000 Mexican dollars, the proposition should be made without discrimination, so that all vessels could avail themselves of it and announce the privilege to their proposed shippers in the United States. Under the present arrangement, however, as described by Mr. Alexandre, the discrimination against the carrying flag of the United States is obvious.

In this connection it may be important to remember that the treaty of commerce and navigation of 1831 between the United States and Mexico, having been terminated through notice given by the Mexican Government on November 30, 1880, this Government is left free to apply whatever measures are or may be provided by legislation to countervail the discrimination complained of.

Such a discrimination, if persisted in, would necessarily be regarded as at variance with the intimate and mutually beneficial intercourse which the United States desire to maintain with neighboring communities, and as a disappointing response to the policy manifested by recent acts of Congress.

I beg leave to call your excellency's attention very earnestly to the appearance which this matter has of a discrimination against the United States merchant marine, which cannot fail, whenever the truth of Mr. Alexandre's statements shall be confirmed, to produce a most unfavorable impression in my country.

I take occasion, etc.,

THOMAS C. MANNING.

No. 462.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *May* 5, 1887. (Received May 5.)

Gutierrez and the colonel who rescued him and another officer have been sentenced to death at Nogales.

MANNING.

No. 463.

Mr. Bayard to Mr. Manning.

No. 100.] DEPARTMENT OF STATE,
Washington, May 6, 1887.

SIR: I inclose for your information a copy of a letter from Messrs. Pomares & Cushman, shipping and commission merchants, dated New York, the 1st instant, touching the Mexican customs administration, and desire you to bring to the attention of the Mexican Government the matter of the vexatious and obstructive fines upon shipping for unimportant and technical variations in the invoice and manifests of vessels.

Messrs. Pomares & Cushman request that the amounts recently exacted from them in this way, and which they specify, may be returned to them.

It is not deemed necessary to instruct you in detail as to the manner of presentation of these cases. You will find ample precedent for the views of the Department upon the general subject, and for the argument to be employed in the special cases now brought to notice, in published volumes of the diplomatic correspondence of the United States (Foreign Relations, from 1873 down), wherein is contained the voluminous and protracted correspondence with the Spanish Government in respect of a system of treatment as irrational and annoying as that now followed by Mexico and other Spanish-American countries. You may profitably consult in particular the papers printed on pages 989–999, Foreign Relations, 1873, in which the discussion was initiated.

The two instances cited by the complainants to show the harsh treatment of American imports in Mexico deserve, however, a passing remark.

The first case cited is the shipment of "5 tierces of lard" by the *City of Puebla*, February 3, 1887, at Progreso. Although the invoice was correctly made out and certified by the Mexican consul at New York, a fine of $1.25 was imposed on the arrival of the goods "because we did not take an oath before the consul on the invoice, *that the weight of the lard was in American pounds, and that we were acting in good faith.*"

Here the omission is clearly due to the consul, who must be presumed to have known that the oath in question was a necessary part of the formality of authentication. In the published Spanish correspondence reference will be found to cases where the Spanish consul omitted some formality, *e. g.*, his signature or his seal, and the vessel was fined therefor. The arguments in those cases are equally pertinent now.

The second case concerns the shipment of "2 bales wick" by the *City of Washington*, and the exaction of a double duty. The weight of the wick was, including the covers, 513 pounds gross, or a little over 232 kilograms, and the cost in United States money $110. The duty exacted was $74.34, or 32 cents per kilogram (it should have been 16 cents, or $37.17). According to the letter of Messrs. Pomares & Cushman "the administrator of the customs" orders this fine because the New York "shippers wrote on their invoice '2 bales of wick,' a criminal laconism, as they should have written 2 *bales cotton-wick.*"

The imposition of double duties was because the invoice was described as "2 *bales wick*" instead of "2 *bales cotton-wick.*" This finds its parallel in the Spanish cases mentioned on page 997, Foreign Relations, 1873, where fines were imposed because hoops were not described as "wooden" and nails not specified as "iron."

The broad distinction between the Spanish-American system of irritating and unnecessary fines for trivial irregularities and the more generous mode of treating like informalities in the United States and in most commercial countries lies in the weight respectively given to the *bona fides* or *mala fides* of the transaction. With us, penalties properly apply to a dishonest intent, manifested by some misrepresentation of facts or perversive act, whereby, if undetected, the revenue might be defrauded. In Mexico (as in Spain) penalties seem to be applied as rewards for the ingenuity of the customs officers in discovering even the most trivial misnomer or descriptive omission in the invoice or manifest, which can in no way affect the revenue, for the customs duties are imposed on the goods and not on the invoiced description thereof. Take the instance of the wicks described in Messrs. Pomares & Cushman's letter. Wicks are necessarily "cotton;" no other fiber is suitable, and the fact that they are "cotton" is instantly ascertainable on the simplest inspection. There is no possible chance for fraudulent intent in omitting to describe the wicks as cotton. The imposition of double duties in such a case is an injury to commerce carried on in good faith. It is in the interest of both countries to favor and develop such commerce, and in that interest the present protest is made, irrespective of the insignificance of the amounts involved. The principle involved is of such importance as to warrant our expectation that the matter will be dealt with by the Mexican Government in the broad and rational spirit in which it is presented by us.

With these remarks the representation of the facts and the line of argument to be followed are confidently left to your sagacity.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 100.]

Messrs. Pomares & Cushman to Mr. Bayard.

NEW YORK, *May* 1, 1887.

SIR: It is with some reluctance that we appear before you with a matter of apparently trifling intrinsic significance. But the evil that we are about to denounce is of such importance for the trade between this country and Mexico at large that it seems to us to merit the immediate attention of the Department.

Moreover, we have no other resource but to your aid.

The custom-house, or rather the fiscal system in Mexico, has for many years been a great drawback to the development of advantageous relations.

The consignee of the goods we ship to Mexican territory is fined or duties increased, and the custom-house officials advise him that the punishment is for omission or error in the invoice.

The victim, being powerless to prevent the extortion, naturally reports the same to us, charging us with the blame, and insisting, rather logically, that, as we have made the errors, we must bear the penalties and pay him the amounts taken.

The Mexican consul in New York collects $4.20 for the invoice-blanks and the certification of each invoice. It would seem to us fair that we should not be made to pay more for such consular certificate than the American consul in Mexico collects for the similar service.

We have a correspondent in Merida (Progreso is the landing port), and by the steamer *City of Puebla* on February 3d sent him 5 tierces lard. We made the invoice correctly, and it was certified by the Mexican consul. Our correspondent informed us that, on arrival of the goods, he was fined $1.25 because we did not take an oath before the consul on the invoice "that the weight of the lard was in American pounds, and that we were acting in good faith."

Our next shipment to the same correspondent was on the steamer *City of Washington*, March 17, 1887, when we shipped him 2 bales wicks (for use in his business of making

candles). This time he advises that he is again punished by the exaction of a double duty. The weight of the wick was, including the cover, 513 pounds gross, or a little over 232 kilograms, and the cost, in our money, $110. The duty exacted was $74.34, or 32 cents per kilogram (it should have been 16 cents, or $37.17). The administrator of the customs "orders this fine because the New York shipper wrote in their invoice '2 bales wick,' a criminal laconism, as they should have written '2 bales cotton wick.'"

Our man's protest is useless, as with his very limited business and means he is not in a position to force attention, and is thus defenseless. We have within twelve years made three attempts to start some business there, but have each time been forced to withdraw, through similar experience.

We are, both of us, American citizens and ask that the amounts before named, of which we have been recently defrauded, be caused to be promptly repaid.

Respectfully,

POMARES & CUSHMAN.

No. 464.

Mr. Manning to Mr. Bayard.

No. 132.] LEGATION OF THE UNITED STATES,
Mexico, May 7, 1887. (Received May 16.)

SIR: I telegraphed you the result of the court-martial, the outcome of the Nogales affair, whereby Arvizu, the Mexican colonel who commanded the rescuing party, Lieutenant Gutierrez, the original offender and party rescued, and Valenzuela, sergeant, were all three sentenced to death. * * *

I desire to repeat, what I have before said, that the President evinced, from the instant he heard of this affair, a determination to do everything that my Government could properly ask or expect to vindicate the sanctity of its soil, which had been invaded by these Mexican officers, and the integrity of its jurisdiction from which Gutierrez had been violently wrested. * * *

In this connection I must state to you another circumstance that I think is of good augury. Governor Luis E. Torres, of Sonora, promptly repaired to Nogales, and executed the orders of the National Government for the apprehension of these three officers. He remained on the spot until they were put under military guard, and afforded the most efficient and prompt aid to the Federal Government throughout the whole affair. Now a large number of the citizens of the State of which he is governor have issued invitations to a ball to be given in his honor; the invitation itself reciting that "the distinguished services of Governor Luis E. Torres, lent to the country in general and to the State of Sonora in particular, intervening with singular tact in the disagreeable occurrences at Nogales and ably avoiding an international conflict, has inspired us to make him this public manifestation of our gratitude."

I think it is a circumstance worthy of special note that a large number of Mexicans should voluntarily tender to the governor of their State this manifestation of their approval of his participation in this affair and the assistance he rendered in bringing the offenders against our territorial and judicial jurisdiction to justice. This shows a condition of public sentiment that you will as much rejoice to know as I am to communicate the evidence of it to you.

I am, etc.,

T. C. MANNING.

No. 465.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *May* 11, 1887. (Received May 11.)

The three officers of the Nogales outrage have been shot.

MANNING.

No. 466.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *May* 11, 1887. (Received May 11.)

Dispatch stating shooting of Nogales rescuers premature. They have appealed.

MANNING.

No. 467.

Mr. Bayard to Mr. Manning.

[Telegram.]

DEPARTMENT OF STATE,
Washington, May 11, 1887.

Reports concerning executions at Nogales have been most conflicting since 6th instant. Your telegram announcing appeal is just received with satisfaction. This Government would view with deep regret the imposition of a penalty so extreme, and you are instructed to say that a mitigation would be regarded by us with favor.

BAYARD.

No. 468.

Mr. Manning to Mr. Bayard.

No. 134.] LEGATION OF THE UNITED STATES,
Mexico, May 14, 1887. (Received May 24.)

SIR: I have the honor to transmit herewith a translation of Mr. Mariscal's reply to my several notes concerning the complaint of Messrs. F. Alexandre & Sons regarding the rebate of duties accorded to the Spanish Transatlantic Mail Steam-ship Company. You will see that the Government of Mexico justifies its action, denies that Messrs. Alexandre have any just cause of complaint, and, in effect, though not in terms, refuses to give any relief.

Copy of the note will follow soon. I did not wish to delay this.

I am, etc.,

TH. C. MANNING.

[Inclosure 1 in No. 134.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, May 11, 1887.

Mr. MINISTER: Referring to your excellency's notes, dated December 6, February 19, and April 12 and 19, relative to the complaint of Messrs. F. Alexandre & Sons concerning the rebate of duties accorded the Spanish Transatlantic Company, I have the honor to inclose, in copy, the report of the department of public works, and the opinion of two respectable Mexican lawyers upon the case.

I should add that when the concession in question was made to the said company several complaints arose, though informally, from nations which had in their respective treaties with Mexico the most-favored-nation clause. The explanation then sufficed that the exemption was granted to a private company in lieu of subvention, and not to the flag of Spain, thus quieting said complaints.

As your excellency knows, Mexico is not held by express conditions to treat the United States as a most favored nation, for there is no general treaty in force between our countries. Though Mexico yields that treatment to the United States *de facto*, and perforce of peculiarly friendly reasons, it is evident that, under international usage, the complaint of Messrs. Alexandre & Sons has even less foundation than a similar complaint on the part of English or German companies.

I call your excellency's attention to the just statement contained in the report of the department of public works to the exact tenor that Messrs. Alexandre & Sons, who, for fifteen years, were subventioned by the Government of Mexico, should be the last to ignore Mexico's right to concede the advantages and privileges it may consider necessary to the promotion and progress of its maritime commerce.

I embrace this opportunity, etc.

IGNO. MARISCAL.

[Inclosure 2 in No. 134.—Translation.—Department of public works, colonization, industry, and commerce, Mexico. First section. No. 3416.]

The following report has been sent from the first section of this department:

Mr. SECRETARY: Hon. Messrs. Alfredo Chavero and Emilio Velasco have furnished the statement requested of them, by your direction, relative to the note sent by the minister of the United States of America to the department of foreign affairs, and referred by the latter to the department of public works, touching the contract made with the Spanish Transatlantic Company.

The said attorneys treat the question under two headings:

First. The interpretation of the third and ninth articles of the contract; and

Second. The nature of the rights acquired by the Spanish Transatlantic Company.

These were apparently the only two points which should be treated in view of the note referred to them for my information. But, as the American legation had previously sent two notes, under dates of April 15 and 23 last, relative to the same matter, this section, in compliance with your instruction, proceeds to report generally thereon.

While the said notes refer to the injury which the American merchant marine might suffer under the enforcement of the contract made with the Spanish Transatlantic Company, mention is made in all of them of the complaints of the firm of Alexandre & Sons, the last note even detailing that the said firm has suffered, during the first quarter of the present year, a reduction in its freights of $21,957. This is much to be regretted, but the Government is unable to remedy it, because other companies, among them the Spanish Transatlantic, had greater facilities, and charge a lower rate of freight. If it is due to the subvention enjoyed by the last-named company, that is no reason why the former should complain, for it is an indisputable right of the Government to subvention the companies it selects as most subservient to the good of the country, and that right the firm of Alexandre & Sons should be the last to question, for it received from the Mexican Government for more than fifteen years a subvention. During that period no other line could be therefore established. Neither was it imagined during that long period that the merchant marine of any nation was injured, nor did the firm of Alexandre, now a claimant, then consider that other lines might have their freight receipts lessened. This section can not therefore see any reason why what was considered good for so many years, when in favor of the firm of Alexandre, should be bad now when in favor of the Spanish Transatlantic Company, especially as the services rendered by the latter company are greater and more important than those then rendered by the former.

Now, merging fully into the question itself, which is that of the 2 per cent. rebate accorded to the Spanish Transatlantic Company, he who subscribes states that after September 30 of last year the agents of the English and German steamship companies repaired to this department sustaining the right they claimed to hold to receive, in common with the Spanish Transatlantic Company, the rebate of 2 per cent. referred to. This section passed upon the matter by entirely refusing to entertain the proposition, and so reported to the department of foreign affairs on October 27 of that same year. This report was indorsed by the said department. As the same matter is now under discussion, the undersigned is of the belief that he should call the attention of the department of foreign affairs to that report, a copy of which he can furnish thereto. In the light of that report he answered the notes from the legation of the United States, at the same time inclosing copy of the statement of the attorneys, Chavero and Velasco.

Transmitting a certified copy of the documents mentioned, I have the honor to do so in order that all this data may serve to assist you in reaching the conclusions your eminent judgment may dictate upon the particulars.

Liberty and constitution.

Mexico, May 6, 1887.

M. FERNANDEZ,
Chief Clerk.

[Inclosure 3 in No. 134.—Translation.—Department of public works, colonization, industry, and commerce, Mexico.]

Mr. SECRETARY: The department of foreign affairs sent to you the note it received from the minister of the United States of America touching the complaint of Messrs. F. Alexandre & Sons, to the end that you should communicate thereto the information and data to which the said minister referred.

This complaint concerns the contract made with the Spanish Transatlantic Steamship Company. Messrs. Alexandre & Sons base their complaint upon the fact that the Mexican Government grants a rebate of 2 per cent. of customs duties on merchandise imported in those steamers. In view of the relation between the third and the ninth articles of the contract the minister of the United States also believes that the articles are susceptible of distinct interpretations, and he desires to be informed as to what is the true interpretation placed thereon by the Government of the Republic.

Two questions should therefore be considered:

First. The interpretation of the third and ninth articles of the contract; and

Second. The nature of the rights acquired by the Spanish Transatlantic Company.

Under the ninth article the Government of the Republic engages to subsidize the company with the sum of $5,000 for each round trip, and with 2 per cent. of the customs duties accruing upon merchandise carried in its steamers, provided, always, that those duties amount to at least $50,000 for the trip. The subsidy is thus dual in its character. A certain sum is payable per trip, and the 2 per cent. is additional; that is to say, one amount is definite and defined, another is indefinite and undefined, the latter subject to the value of the merchandise which may be imported and payable only in case the merchandise imported produces customs duties aggregating over $50,000.

According to the third article, the company binds itself to pay for the importers 2 per cent. of the duties upon their merchandise, deducting this sum from the subvention it should collect in the custom-houses of Progreso and Vera Cruz.

The obligation of the company to pay a part of the duties and its right to a subvention arise from the third and the ninth articles. The contract provides for compensation within the sums which the Government and the company mutually owe each other; and the forms and effects of compensation can be explained under the various hypotheses of the contract.

If the merchandise imported in the trip be charged at the custom-house with duties falling short of $50,000 the company is credited with $5,000, but not with the 2 per cent. The company, however, is obliged to pay 2 per cent. of the customs duties, which 2 per cent. is deducted from the $5,000 payable for the trip by the Government.

If the merchandise imported on the trip nets customs duties exceeding $50,000, the company receives $5,000 and the 2 per cent. besides. From the total amount of these two accounts is to be deducted the 2 per cents. to the payment of which the company is pledged, the latter then receiving the balance due to it.

Upon the examination of the effects of the third and ninth articles it is seen that a subvention being granted to the Spanish Transatlantic Company, the guaranty of payment has been sought in the collection of the customs duties, and that the company having assumed the payment for importers of 2 per cent. on the merchandise

imported in its vessels is itself at liberty to charge the importers the sums it may pay for them.

The tenor of articles third and ninth being determined, it is expedient to characterize the contract with the Spanish Transatlantic Company as follows:

Articles third and ninth form part of a whole in which reciprocal rights and obligations figure. So the privileges accorded to the said company under those articles are not acquired gratis, but are in payment of services the company binds itself to render, services in the postal department, by the carrying of the mail, in the transportation of merchandise for the reduced tariff, especially in the exportation of national products, and, finally, in other services specified in the contract.

Messrs. Alexandre & Sons have considered as inimical to their interests the concessions granted to the Spanish Transatlantic Company. Probably the detriment to which they allude arises, in their judgment, from the difficulties they encounter in entering into competition with a subsidized company.

The third article of the contract could be suppressed without entailing any inconvenience. It contains simply a guaranty, that is to say, an accessory obligation, the suppression of which in nowise would affect the main obligations of the contract. Under the ninth article the Transatlantic Company would always have the right, by way of subvention, to $5,000 per trip in addition to the 2 per cent. of customs duties on the merchandise imported in their vessels. In the event of the suppression of the third article this subvention would be received directly from the Mexican treasury, and its form would suggest no objectionable features whatever, and would allow the said company to offer in transportation, under a different method from that which at present obtains in their steamers, similar privileges to those it grants to-day. The hopelessness of competition by nonsubsidized steamers is due not to the form in which a subvention is clothed, but to the nature of that subvention, which will at all times allow the steamship line enjoying it to conduct the business of transportation under conditions more favorable than the rest. A proof of this is furnished in the case of the line of Alexandre & Sons, a line which, during the fifteen years in which it was subsidized by the Mexican Government, rendered difficult any competition in transportation on the part of other lines which other companies were desirous of establishing.

We should not conclude this opinion without thanking you for the honor and confidence you were thus pleased to show us in consulting us.

Liberty and constitution.

Mexico, April 25, 1887.

ALFREDO CHAVERO.
EMILIO VELASCO.

To the SECRETARY OF PUBLIC WORKS, *present.*

No. 469.

Mr. Manning to Mr. Bayard.

[Telegram.]

MEXICO, *May* 16, 1886. (Received May 16.)

Your request for remission of death penalty to Nogales offenders has been presented to Mexican Government.

MANNING.

No. 470.

Mr. Manning to Mr. Bayard.

No. 137.] LEGATION OF THE UNITED STATES,
Mexico, May 19, 1887. (Received May 27.)

SIR: I have the honor to transmit herewith copy of my note to Mr. Mariscal, of this date, touching the vexatious manner in which the Mexican customs officers treat shipments from the United States, and

have pointed out the frequency with which they impose fines or exact double duties without cause. This note was written in obedience to your instruction No. 100, of the 6th instant.

I am, etc.,

T. C. MANNING.

[Inclosure in No. 137.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, May 19, 1887.

SIR: I am instructed to invoke the attention of the Mexican Government to certain internal abuses which affect materially and disastrously the trade between Mexico and the United States. My own Government desires that the trade between the two countries shall increase to their mutual benefit, and I assume the Mexican Government entertains the same wish. Everything that hampers that trade unnecessarily and injudiciously is a hurt to both countries, and every impediment in the way of commercial intercourse that can be removed consistently with the fiscal policy of both countries should be swept away. I do not purpose to make any argument touching the fiscal system of Mexico as concerns its tendency to affect its exchequer. Each Government decides for itself what system it will adopt to provide a revenue for its wants; but my observations will be confined to the manner in which the subofficers of the Mexican customs act in the execution of that system, so far as their action affects the business men of my own country who are trying to establish trade in Mexico.

It seems to be the special object of those customs officers to discover some trifling and wholly unimportant noncompliance with a set of minute regulations which they profess to have for their guidance, and their ingenuity seems to be painfully exercised to detect an omission or commission that will enable them to obtain the infliction of a penalty or a fine.

Thus, a New York shipper describes his goods in the invoice as "2 bales wicks," and the customs officer incontinently imposed double duty because the description was not "2 bales cotton wicks," cotton being the only material used for wicks. And the same shipper was fined because, in giving the weight of five tierces of lard as so many pounds, he did not specify they were American pounds. This shipment was made by the *City of Puebla* on February 3, of this year. The invoice was properly made out, and was certified by the Mexican consul at New York, who received his fee for it; and the customs officer here received his perquisite also by inventing an excuse for fining the consignee. It must be observed that the omission, even if it had been important, was clearly due to the consul, who must be presumed to have known what was necessary. Thus it results that one Mexican official fines an American shipper for the fault of another Mexican official.

Such conduct in an United States custom officer would insure his dismissal on the instant, because the United States Government would understand that foreign merchants are disgusted and discouraged by such business methods, and that the toleration, much less the encouragement of them, would drive trade away. Does Mexico want trade driven away? Now that the commercial nations are looking to her as probably affording a new outlet for their goods and a theater for the active development of a widening commerce, does her Government wish to keep in force regulations that justify her customs officers in such conduct?

I might supplement these instances by others that have come to my knowledge, but I confine myself to these, because they are the subject of a formal communication from Messrs. Pomares & Cushman, of New York, to Mr. Bayard, which the Secretary of State has forwarded to me with a dispatch instructing me to call the attention of the Mexican Government to this crying and pressing evil in its administration, and to request with friendly earnestness that it be eradicated, not less in the interest of Mexico than in that of the United States. I subjoin the letter of the complainants.

The broad distinction between this irritating system of microscopic inquisition for minute and trivial irregularities, and the broader and generous spirit with which such informalities are treated by advanced commercial nations lies in this cardinal rule, that the *mala* or *bona fides* of the shipper or consignee is the test for applying or withholding fines and penalties. If there is manifestly no intent to defraud the revenue, but only a trivial and unimportant misdescription of the goods, or an omission to comply with some minute and technical requirement, or the like, the usage in my country and in others of large commerce is to treat the matter as unworthy of notice. I regret to say the usage in Mexico is very different. The customs officer

seems to be ever on the alert to find something that furnishes an excuse for a fine, and he pounces on a trivial informality in the invoice or manifest, which can in no way affect the revenue, as the customs duties are paid on the goods and not on the invoiced description of them, with a vehemence and a gusto that would be ludicrous if the consequence of it were not so serious.

I beg to observe to your excellency that this is one of the most important matters that I have had to present to your Government. Mexico wants an increase of trade with foreign nations, and foreign merchants are intent on discovering new channels of trade. My countrymen especially desire closer trade relations with yours, but if these vexatious and irritating practices of the customs officers continue, trade will inevitably be driven away. Messrs. Pomares & Cushman, you will perceive, say they have given up all efforts to continue a trade they had begun because of the hinderances. It is in the interests of my countrymen that I have laid before your excellency the paramount necessity of remodeling the rules or usages that prevail in the Mexican custom-houses, and of reforming the service so that the old ways that have been long ago discarded by the commercial world, and exist here only as a remnant of ancient formalism, may be replaced by the simple and more effective methods in use elsewhere.

I have, etc.,

T. C. MANNING.

No. 471.

Mr. Manning to Mr. Bayard.

[Extract.]

No. 141.] LEGATION OF THE UNITED STATES,
Mexico, May 23, 1887. (Received June 1.)

SIR: I inclose herewith the reply of Mr. Mariscal (translated) to my note of the 16th instant, expressing the desire of the United States Government for the commutation of the sentence of death adjudged by the court-martial to be suffered by the perpetrators of the Nogales outrage.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 141.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, May 21, 1887.

Mr. MINISTER: I had the honor to receive the note dated the 16th instant, in which your excellency was pleased to advise me that you had promptly informed your Government of the result of the court-martial for the trial of Colonel Arvizú, Lieutenant-Gutierrez, and Sergeant Valenzuela, to-day under sentence of death; and that said Government had learned with great satisfaction the alacrity and promptitude with which the Mexican Government proceeded in the measures taken for the trial and punishment of the offenders. Your excellency adverts to their offense as being of the utmost gravity, as it involves the violation of the territory of the United States, and an outrage upon its judicial jurisdiction which embraced the prisoner Gutierrez at the time of his violent rescue; also that the Mexican Government, under this view, had determined to punish the perpetrators with exemplary severity.

In effect, the Mexican Government highly reproved the action of the persons I refer to, and if it did not accede to the return of Lieutenant Gutierrez to the Arizona authorities, it was due to the reasons I gave your excellency, among them the expediency of giving to Gutierrez and his accomplices a military trial in their own country. I stated then that the penalty to which they could be subjected, under the military code, would have to be very severe, and I based my judgment solely upon the especially rigorous character of that code in Mexico, as compared with what is observed

in other countries. The sentence of the court of first hearing has confirmed the correctness of that statement.

Your excellency is pleased to add that your Government, while it thinks that exemplary severity is necessary in this case, considers the penalty of death as being too extreme; and has instructed you by telegraph to request a commutation of the sentence of these offenders, so that their lives may be saved. I am charged by the President, in grateful reply to your excellency, to state that he duly appreciates the philanthropic sentiments of the Government of the United States upon this occasion, and will bear the same in mind in the event that the sentence of death is confirmed by the supreme court and execution is ordered.

I reiterate, etc.,

IGNO. MARISCAL.

No. 472.

Mr. Bayard to Mr. Manning.

No. 106.] DEPARTMENT OF STATE,
Washington, May 24, 1887.

SIR: I have to acknowledge the receipt of your telegram of the 16th instant, saying that the Department's request for the remission of the death penalty pronounced against the Nogales offenders had been presented to the Mexican Government.

I am, etc.,

T. F. BAYARD.

No. 473.

Mr. Bayard to Mr. Manning.

No. 107.] DEPARTMENT OF STATE,
Washington, May 25, 1887.

SIR: I transmit for your information, a copy of a further letter from Messrs. Alexandre & Sons, of the 23d instant, and observe that the receipt now furnished and the accompanying explanation establishes the fact, as alleged by those gentlemen, that the importing merchant in Mexico directly receives the benefit of the 2 per cent. rebate in the settlement of his account for duties, the merchant's receipt being admitted as part payment of the amount due on the goods.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 107.]

Messrs. F. Alexandre & Sons to Mr. Bayard.

NEW YORK, *May* 23, 1887.

SIR: Since ours of the 28th ultimo in answer to your esteemed and gratifying communication of the 27th ultimo, we have only yours of 28th same.

Now we beg to hand you the inclosed extract from our Vera Cruz agent (Mr. Juan Ritter) of 8th instant, which confirms our several statements as to the positive discrimination of the 2 per cent. less duties on goods ex Spanish line of steamers, as allowed by the Mexican customs. The inclosed blank form from the Vera Cruz customs-house clearly shows it, as explained in extract from our agent, and which we think will have been confirmed by the American consul there and by minister of United States at Mexico. Can you favor us with anything new on this important question?

Very respectfully,

F. ALEXANDRE & SONS.

[Inclosure 2 in No. 107.]

Abstract of letter of Mr. Juan Ritter, dated May 8, 1887, our agent at Vera Cruz.
F. A. & SONS.

2 per cent. rebate on duties.—I have seen with pleasure that the American consul of this place received orders from your Secretary of State to report about the 2 per cent. rebate on duties given to the Spanish line. Mr. Hoff, the American consul, called upon me for this purpose, and I gave him with the greatest pleasure all the information about it, explaining to him exactly the way the duties on goods per Spanish steamer are liquidated, which is very simple. The merchant fills out one of the receipts like the inclosed blanks, corresponding to the 2 per cent. on the total amount of his duties, and the custom-house admits this receipt in payment. Mr. Hoff besides asked from me and other houses here an exact copy of some of our liquidations of duties per Spanish steamers, with the exact figures, stating merchandise, name of steamer, etc., which, of course, all refused to give, as on one side there is no reasonable object for doing it, because the way of liquidating is very clear and can not be denied by the Mexican Government, and on the other side to give such particulars would have been only a personal compromise in case the matter respecting the special particulars is brought before the Mexican Government, without the security to help to finish the question with a good success. I only hope that the exertions or measures taken by the United States Government may have a good result. So far the Mexican Congress has not treated this question at all.

[Inclosure 3 in No. 107.—Translation.]

No. ———.

Spanish steamer ———, de ——— de 188—.

For $———.

I (or we) have received from this maritime custom-house the sum of ——— ———, being the 2 per cent. (2 per cent. upon $———) rebate upon the import duties in conformity with the contract of the 21st of August, 1886, the same corresponding with the duties specified in the application for entry number ———, register number ——— of the steamer above named.

Vera Cruz, ——— ——, 188—.

No. 474.

Mr. Bayard to Mr. Manning.

No. 108.] DEPARTMENT OF STATE,
Washington, May 31, 1887.

SIR: I have received your No. 134 of the 14th instant, transmitting the reply of the Mexican Government to your several communications touching the discrimination made in Mexican ports against the other foreign lines and in favor of a Spanish line of steamers, by a remission of 2 per cent. of the customs duties on goods shipped by that line.

The reply of the Mexican Government does not answer the complaint expressed in your notes, and especially in that of the 4th instant, which was written in close pursuance of your instructions.

This Department has not claimed most-favored-nation treatment of vessels of the United States in Mexican ports, because no stipulation for such treatment exists in the treaties between the two countries. Neither has any objection been made to the grant by the Mexican Government of a subvention or subsidy to the Spanish line for the special services agreed to be performed by that company. Indeed, it was expressly stated in your note to Mr. Mariscal of the 4th instant, that no complaint had been made of the grant of a subsidy to the Spanish line. Consequently the elaborate arguments presented by the Mexican Gov-

ernment on those questions do not touch the real ground of the present complaint.

The fact complained of, and which appears to be admitted in Mr. Mariscal's reply, is that the Mexican Government grants a remission of 2 per cent. of the customs duties to shippers of goods by the Spanish line. It is true that by the terms of the contract the remission is made conditional upon the total duties on the cargo amounting to a certain sum, and if they fall below that sum the company is required to pay the 2 per cent. to the shippers out of its subsidy.

But in practice this condition is a matter of words rather than of substance, and the result is that the Spanish line receives and retains its subsidy, while the shippers by it obtain a remission of 2 per cent. on the duties on their merchandise.

As illustrating the mode of operation, I refer you to a copy of a letter of the 23d instant (sent to you on the 25th), from Messrs. F. Alexandre & Sons, with a copy of a blank form (translation of which is herewith inclosed*) used at the custom-house at Vera Cruz, of a receipt for a certain amount of money representing 2 per cent. of the customs duties on certain goods shipped by the Spanish line. This receipt the shipper signs, and the custom-house then receives it in payment of the duties to the amount therein named, which is the 2 per cent. in question.

It is obvious that this is not a subsidy to the steamship line, but a bounty to shippers by that line, in the form of a remission of 2 per cent. of the customs duties on their goods.

You will, therefore, ask the attention of Mr. Mariscal to the misapprehension which has been betrayed as to this Government's complaint, and express the hope that the views herein set forth will receive favorable consideration.

I am, etc.,

T. F. BAYARD.

No. 475.

Mr. Manning to Mr. Bayard.

No. 147.] LEGATION OF THE UNITED STATES,
Mexico, June 7, 1887. (Received June 15.)

SIR: I have the honor to inclose herewith copy and translation of a note from Mr. Mariscal, of the 3d instant, with copy of the act of Congress of last month, extending for eight months the time within which foreigners can apply for certificates of nationality, under the law of June, 1886.

I have applied to the foreign office here for certificates for all the Americans whose applications for certificates of their nationality were made to this legation after the lapse of the time fixed by that law, and therefore too late for the certificates to be issued.

I also inclose copy of my note to Mr. Mariscal, in which you will perceive I reiterated the declaration which I have always made whenever the subject came up, that my Government does not, and will never, admit that a citizen of the United States can be deprived of his nationality without his own volition.

I am, etc.,

THOS. C. MANNING.

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* Printed page 730, *supra*.

[Inclosure 1 in No. 147.—Translation.]

Mr. Mariscal to Mr. Manning.

DEPARTMENT OF FOREIGN AFFAIRS.
Mexico, June 3, 1887.

Mr. MINISTER: I have the honor to send to your excellency six copies of the decree which extends for eight months the time designated in Article 1st of Chapter V of the law of foreigners and naturalization, of May 28, 1886, in order that foreigners who may have acquired real estate or have children born to them in the Republic, or hold any public office, may manifest whether they desire to obtain Mexican nationality or to preserve that of foreigners.

I reiterate, etc.,

IGNO. MARISCAL.

[Inclosure 2 in No. 147.—Translation.]

Decree extending time in which foreigners can apply for certificates of nationality.

DEPARTMENT OF STATE AND OF FOREIGN AFFAIRS, FOURTH SECTION.
Mexico, May 30, 1887.

The President of the Republic has been pleased to direct me the following decree:

"Porfirio Diaz, President of the United Mexican States, to its inhabitants, know ye:

"That the Congress of the Union has decreed the following:

"'The Congress of the United Mexican States decrees:

"'Sole article: The time designated within Article 1 of Chapter V of the law issued on May 28, 1886, under which foreigners who, prior to that date, may have acquired real estate or had children born to them in Mexico, or held any public office, and to whom apply the X, XI, and XII paragraphs of Article 1, Chapter V, of said law, may manifest whether they desire to obtain Mexican nationality or to preserve that of foreigners, is hereby extended for eight months from the date of this decree.

"'JESUS FUENTES Y MUÑIZ,
"'*Speaker House of Representatives.*
"'FELIX ROMERO,
"'*President of the Senate.*
"'ROBERTO NUÑEZ,
"'*Secretary House of Representatives.*
"'ENRIQUE M. RUBIO,
"'*Secretary of the Senate.*'

"I therefore order the same to be printed, published, and circulated, and that it be given due fulfillment.

"Done at the national palace of Mexico, on May 30, 1887.

"PORFIRIO DIAZ.

"To the DEPARTMENT OF STATE AND OF FOREIGN AFFAIRS."

Which I communicate to you for your information, to the end that foreigners spoken of in the preceding decree may make in this department the manifestation mentioned therein, either through the political authorities of their place of residence or of the place closest thereto, the said authorities to transmit immediately to this department the petition, in pursuance of which this department will issue the respective certificate.

I remain, etc.,

MARISCAL.

[Inclosure 3 in No. 147.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, June 7, 1887.

SIR: I beg to acknowledge receipt of your excellency's note of 3d instant, inclosing copies of the law recently passed by the Congress, extending for eight months the time in which foreigners who have acquired real estate in Mexico or had children born to them there, or have held public office under the Mexican Government, may apply for certificates of their nationality, which shall be evidence of their intention to retain their American citizenship.

I now inclose a list of those Americans whose applications for these certificates are on file in this legation since the 6th of last December, and I have the honor to request your excellency to issue the certificates or documents to them, similar to those that have been issued to the other applicants. To that effect I remit $40, the total amount of their fees.

(Here follows list of 40 applicants).

In doing this my Government specially enjoins upon me to repeat the declaration that it can not admit that any foreign Government can deprive a citizen of the United States of his nationality by any law or decree without the volition of the citizen.

I beg, etc.,

THOS. C. MANNING.

No. 476.

Mr. Manning to Mr. Bayard.

No. 150.] LEGATION OF THE UNITED STATES,
Mexico, June 11, 1887. (Received June 20.)

SIR: I inclose the Diario Oficial of the 10th instant, containing the published treaty of Mexico with Guatemala for the regulation of the telegraph service.

I am, etc.,

THOS. C. MANNING.

[Inclosure 1 in No. 150.—Translation.]

Treaty between Mexico and Guatemala regulating the telegraph service.

SECTION FIRST,
Mexico, June 2, 1887.

The President of the Republic has seen fit to send to me the following decree:

"Porfirio Diaz, President of the United States of Mexico, to the inhabitants thereof.

"Know ye: That on the fifth day of February of the present year a telegraph treaty between the United States of Mexico and the Republic of Guatemala was concluded and signed in the city of Mexico by plenipotentiaries duly authorized therefor, in the form and terms following:

"The undersigned, Ignacio Mariscal, secretary of state and of the department of foreign affairs of the Republic of Mexico, and Vicente Dardon, envoy extraordinary and minister plenipotentiary of the Republic of Guatemala, being duly authorized by their respective Governments, have agreed upon the following articles:

"ARTICLE 1.

"A Mexican telegraph station shall be established at Nenton, in the territory of Guatemala, as being the town nearest to the frontier next to the Guatemalan station now there, in order that both may deliver to each other for immediate transmission dispatches sent from one Republic to the other, or which may have to be forwarded through their territory to some other country.

"ARTICLE 2.

"The Mexican Government shall take upon itself to maintain the telegraph line [tramo] from the frontier to its office at Nenton. The Government of Guatemala, on its part, binds itself to protect from all damage or violence the said line and the Mexican office at Nenton, the employés and fixtures of which shall be under the especial protection [garantia] which the law of nations grants to the agents and property of a foreign Government.

"ARTICLE 3.

"Each Government shall have authority to interrupt for an indefinite time the international telegraph service throughout the line, or on a portion of it, whenever it may think proper, it being obliged nevertheless to immediately notify the other Government, and no claim whatever can be made on this account.

"ARTICLE 4.

"Each Government reserves to itself the power to detain a private dispatch which may seem to endanger the safety of the state, or which may be contrary to the laws of the country, to the public peace, or good morals, but giving immediate notice thereof to the transmitting office.

"ARTICLE 5.

"Official messages of the two Republics shall at all times have the right of preference for transmission over private messages.

"ARTICLE 6.

"For the purpose of preventing claims that might arise because of interruption, the operators must ascertain, before admitting any message whatever for transmission, whether or no the communication is open between the extreme offices of the line, and in case it is not, the message shall not be admitted, unless the person sending it is willing to leave it for transmission until the communication is re-established, an acquiescence which he must give under his signature. Should the party not desire to wait for notice of the communication being open, when this requires some time, the telegraph operator [telegrafista] can receive the message but without guarantying its immediate transmission.

"ARTICLE 7.

"The Governments of Mexico and Guatemala are not responsible for loss, alteration, or delay in the transmission or delivery of messages, except when the lines are working [esten expeditas] and the fault of the particular office is proved. In such case the responsibility of the Government shall be restricted to making the culpable employé pay the fine incurred, in conformity with the respective regulation. Both Governments are bound to issue, by common consent, the said regulation, three months, at the latest, after the establishment for public use of the international telegraph.

"In case a telegram is lost, the parties interested shall be entitled to the return of what they may have paid, provided they present their claims within two months after the date of the deposit of the message.

"ARTICLE 8.

"Original messages and their copies shall be preserved for one year at least, with every precaution necessary for keeping them secret.

"ARTICLE 9.

"The original of a dispatch and its copies can only be shown to the person who sent it, or to him to whom it was addressed, and besides to the public authorities when so required.

"ARTICLE 10.

"Messages which the two Governments may address to each other through their secretaries of state, as well as those which each one may send to its representative in the other Republic or *vice versa* shall go free of charge. So likewise shall the messages of the telegraphic offices in both states go free on all matters relative to the international service.

"ARTICLE 11.

"The transmission of the telegrams of private individuals to the frontier shall be paid for according to the tariff existing in the country whence the message is sent, and the other country shall collect nothing for its transmission to the place of its destination.

"ARTICLE 12.

"The present convention shall be put in force as soon as ratified by both Governments and its ratifications are exchanged in this city, remaining then in force for an indefinite time up to one year after being denounced by one of the two high contracting parties.

"In testimony whereof the undersigned plenipotentiaries have signed the present convention in duplicate and affixed thereunto their respective seals.

"Done at the city of Mexico, the 5th day of the month of February, 1887.

"[L. S.] IGNACIO MARISCAL.

"[L. S.] VICENTE DARDON."

Whereas, The preceding convention was approved by the Senate of the United States of Mexico the tenth day of May of the present year, and ratified by me the fourteenth day of the said month;

Whereas, It was likewise approved by the Legislative Assembly of the Republic of Guatemala the eighteenth day of April last, and was ratified by the President of the Republic of Guatemala the twenty-ninth day of the same month;

And the ratifications of the aforesaid convention were exchanged this day in the city of Mexico;

Therefore, I order it to be printed, published, and circulated, that it may be duly carried out.

Palace of the Federal Government,
Mexico, June 1, 1887.

PORFIRIO DIAZ.

To Licentiate IGNACIO MARISCAL,
Secretary of State for Foreign Relations.

And I communicate this to you, for the ends convenient, renewing to you the assurances of my consideration.

MARISCAL.

Señor ——— ———.

[Inclosure 2 in No. 150.]

Decree entending time for completion of labors of Boundary Commission.

DEPARTMENT OF STATE,
OFFICE OF FOREIGN RELATIONS, SECTION 1,
Mexico, June 6, 1887.

The President of the Republic has thought proper to send me the following decree:

"Porfirio Diaz, President of the United States of Mexico, to the inhabitants thereof. Know ye: That on the 16th of October, 1886, by ——— ———, plenipotentiaries, duly authorized therefor, a convention between the United States of Mexico and the Republic of Guatemala was concluded and signed in the city of Mexico, in the form and terms as follows:

"The Government of the United States of Mexico and the Government of the Republic of Guatemala, considering that the term of two years stipulated in Article IV of the treaty of boundaries between the two countries, of the 27th of September, 1882, for the conclusion of the labors of the commission intrusted with marking out the dividing line, and which term was extended by one year in the protocol signed in Guatemala the 8th of June, 1885, has not been sufficient for the purpose, and desiring that the said operations should come to a conclusion, have agreed to prolong the said term, appointing for that end their plenipotentiaries, to wit:

"By the President of the United States of Mexico, Señor Don Ignacio Mariscal, secretary of state and of foreign relations; and by the President of the Republic of Guatemala, Señor Don Vicente Dardon, envoy extraordinary and minister plenipotentiary near the Government of Mexico, who after making known to each other their respective powers, found to be in correct and due form, have agreed upon the following articles:

ARTICLE I.

The high contracting parties agree that the term designated by the treaty of boundaries of September 27, 1882, extended by the protocol of June 8, 1885, for the completion of the labors of the commission intrusted with marking out the dividing line between the two countries, be prolonged by two years, reckoning from the 1st of November next, ending the 31st of October, 1888.

ARTICLE II.

The present convention shall be ratified and the ratifications exchanged in the shortest time possible.

In testimony whereof the said plenipotentiaries have signed this convention and affixed to it their respective seals.

Done in the City of Mexico the 16th day of October, 1886.

[L. S.] IGNACIO MARISCAL.
[L. S.] VICENTE DARDON.

Whereas the preceding convention was approved by the senate of the United States of Mexico the 10th day of December, 1886, and ratified by me the 31st day of May of the present year;

Whereas the legislative assembly of the Republic of Guatemala likewise approved it the 5th day of April of the present year, and it was ratified by the president of the Republic of Guatemala the 19th day of the same month;

And the ratifications of the said convention were exchanged this day in the City of Mexico:

Therefore I order it to be printed, published, and circulated, and that it be duly carried out.

Palace of the Federal Government, Mexico, June 4, 1887.

PORFIRIO DIAZ.

To LICENTIATE IGNACIO MARISCAL,
Secretary of State and for Foreign Relations.

And I communicate this to you for the ends convenient, renewing to you my high consideration.

MARISCAL.

Señor ——— ———.

No. 477.

Mr. Bayard to Mr. Manning.

No. 115.] DEPARTMENT OF STATE,
Washington, June 13, 1887.

SIR: In connection with my No. 108, of the 31st ultimo, I herewith inclose for your perusal a copy of a dispatch* from Mr. Henry C. Hall, your colleague in Central America, No. 652, of the 11th ultimo, concerning a contract between two Spanish subjects (Messrs. Carlos F. Irigoyen and José A. March) and the Government of Guatemala for the establishment of a line of steamers between Panama and San Francisco, which entitles goods imported by this line into Guatemala to a rebate of 5 per cent. of customs duties. There would seem to be concerted movement to obtain for the Spanish lines, from the Central American states as from Mexico, subventions of this highly obnoxious character.

I shall likewise inclose to Mr. Hall, for his information, copies of the Department's No. 92, of April 25, 1887, and No. 108, of May 31, 1887, that he may see the similarity of our complaint against Mexico.

I am, etc.,

T. F. BAYARD.

No. 478.

Mr. Manning to Mr. Bayard.

No. 160.] LEGATION OF THE UNITED STATES,
Mexico, June 18, 1887. (Received June 27.)

SIR: I duly received your No. 108, of 31st ultimo, informing me that the Mexican Government's reply to the complaint of Messrs. Alexandre & Sons of a discrimination to their detriment in favor of the Spanish line of steamers was unsatisfactory, and I yesterday addressed a note to Mr. Mariscal, of which copy is inclosed, in which, in obedience to your instructions, I stated that the explanation of the department of public works did not meet the real issue, and that the remission of 2

* Printed page 117, *supra*.

per cent. of duties to shippers by the Spanish line was in fact a discrimination in favor of that line to the prejudice of Messrs. Alexandre & Sons, although it was clothed in a different form of words.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 160.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, June 17, 1887.

SIR: On receipt of your excellency's esteemed note of May 11, relative to the complaint of Messrs. Alexandre & Sons, I immediately transmitted it to Washington with accompanying arguments from the department of public works.

I have now the honor to state that I have received a reply thereto from Mr. Bayard, in which he directs me to inform your excellency that the explanation of the Mexican Government does not, in his opinion, answer the complaint expressed in my several notes on this important subject.

My Government has not desired most-favored-nation treatment of vessels of the United States in Mexican ports, because no stipulation for such treatment exists in the treaties between the two countries. Neither has any objection been made to the grant by the Mexican Government of a subvention or subsidy to the Spanish line for the special services agreed to be performed by that company.

You will remember that in my note of May 4 I expressly stated that no complaint had been made of a grant of a subsidy to the Spanish line, and it follows, therefore, that the elaborate arguments presented by the department of public works fail to touch the real ground of complaint.

What is actually complained of is that the Mexican Government grants a remission of 2 per cent. of the customs duties to shippers of goods by the Spanish line. This is not even denied by your excellency's Government. It is true that by the terms of the contract the remission is made conditional upon the total duties on the cargo amounting to a certain sum, and if they fall below that sum the company is required to pay the 2 per cent. to the shippers out of its subsidy.

Mr. Bayard directs me to say that this condition is a matter of words rather than of substance, and that the result is that the Spanish line receives and retains its subsidy, while the shippers by it obtain a remission of 2 per cent. on the duties on their merchandise.

As illustrating the mode of operation, I append a copy of a blank form used at the custom-house at Vera Cruz, to which I particularly call your excellency's attention. It is a receipt for a certain amount of money, representing 2 per cent. of the customs duties on certain goods shipped by the Spanish line. The shipper signs this receipt, and the custom-house receives it in payment of the duties to the amount therein named, which is the 2 per cent. in question.

In all fairness, your excellency must admit that this is not merely a subsidy to the steamship company, but a bounty to shippers by that line in the form of the remission of 2 per cent. of the customs duties on their goods. This appears to be so clear that Mr. Bayard instructs me to call your excellency's attention to what he considers an entire misapprehension of my Government's real ground of complaint, in the hope that the Mexican Government will review a decision that bears so harshly and unjustly on an American line of steamers.

Permit me to avail myself, etc.,

TH. C. MANNING.

No. 479.

Mr. Manning to Mr. Bayard.

[Extract.]

No. 167.] LEGATION OF THE UNITED STATES,
Mexico, June 29, 1887. (Received July 7.)

SIR: Referring to your No. 100, of May 6, touching the complaint of Messrs. Pomares & Cushman, of New York, of vexatious and obstructive fines imposed upon them by Mexican customs officers for trifling and

unimportant omissions in their invoices, and to my note to Mr. Mariscal, of May 19, I have now the honor to inclose translation of his reply, and copy of my rejoinder of yesterday's date.

I am, etc.,

THS. C. MANNING.

[Inclosure 1 in No. 167.—Translation.]

Mr. Mariscal to Mr. Manning.

[Extract.]

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, June 25, 1887.

Mr. MINISTER: Referring to your excellency's note of date May 19 last, concerning a complaint by Messrs. Pomares & Cushman, of New York, a copy of which your excellency was pleased to forward to me, I have the honor to inclose copy of the reply sent me by the secretary of the treasury giving the decision of the Mexican Government upon the matter.

In his reply the secretary of the treasury calls attention to the fact that Messrs. Pomares & Cushman showed at least bad taste in the selection of instances upon which to predicate their criticisms touching the fiscal procedures and acts of the customs employés in Mexico. In the case of the two shipments they specify, the fine in one was even less than they supposed, and its imposition was discountenanced and reproved by the treasury department, and ere this probably repaid to the complainants; while in the other case the heavy damages lamented were limited to $1.

I avail, etc.,

IGNO. MARISCAL.

[Inclosure 2 in No. 167.—Translation.]

Department of the Treasury to the Department of Foreign Affairs.

[Department of state and of the treasury and public credit, Mexico. First section. No. 24777.]

The President of the Republic has been pleased to approve the following measures:

With the accompanying note the department of foreign affairs sends translation of a note which the United States minister at this capital has addressed him, under date of the 19th ultimo, relative to certain practices in the custom-houses at our ports, complained of by some American business houses, among them the firm of Pomares & Cushman, of New York, *vide* the translated statement of said firm herewith also inclosed, a statement transmitted by them to the Department of State at Washington. The documents are furnished to the end that this department may minister a statement of the facts referred to.

This section does not enter into a consideration of the various ideas set forth alike by the United States minister as well as the merchants alluded to in their respective statements, copies of which are sent by the department of foreign affairs, for said department advises that in its reply it will answer those points of inquiry of the functionary above referred to. The section confines itself, in the report which it is called on to render in obedience to superior instructions, to the presentation merely of the legal causes or bias of the facts complained of by the parties in interest, as well the proceedings followed throughout.

The firm of Pomares & Cushman state that by the steamer *City of Puebla* they shipped to Progreso on February 3 last 5 tierces of lard, and that on the arrival of the goods a fine was imposed of $1.25, because the invoice was not accompanied by the customary oath. The firm state that they sent by the steamer *City of Washington* to the same port on March 17 last two bales of wick for the business of making candles, and that these were fined with double duties because it was not specified that said wicks were of cotton, which it was not necessary to specify.

Paragraph 3d of article 44 of the ordinance in force requires that consignees shall certify a *protest of the truth of their declarations*, and that in case this provision is not complied with, under the one hundred and sixteenth article a fine may be imposed up to $20, under the further conditions of the second paragraph, fraction 9 of article 408 of the ordinance in case no rectification is made by the consignees within a given time.

The consignees in question must have been aware of the law above referred to for their invoice contains other requisites set down in article 44, and which they duly complied with. The custom-house authorities therefore fined the responsible parties, who, under the fifty-ninth article of the ordinance, are the consignees themselves.

According to the Progreso custom-house document No. 1155, on file in this department, and which is subjoined, the fine imposed was not $1.25, as the claimants said, but $1, which charge was approved by the department, in view of the fact that a similar fine is always imposed upon the other merchants in similar circumstances. It is not true that the consignees invoiced the wicks as "mechas" wicks, or that double duties were imposed upon them. In the accompanying invoice, attached to custom-house paper No. 1447, the articles were simply specified as "pábilo" (wick for candle). The consignees neglecting to specify that the wicks were of *cotton*, the custom-house authorities applied a fine of 15 per cent., and not *double duties*, considering the case to come under the provisions of article 114 of the ordinance amended by the degree of August 1, 1885, referring to cases in which the *class or material* of merchandise is specified. Yet as the proceedings of customs officials in matters touching changes from the regular tariff are subject to the immediate revision of this department, which always endeavors to secure an exact compliance with the law by subordinate employés who may err in the interpretation of the law, this same case was referred to the department. The latter found the proceeding unjust, for the tariff does not classify "pábilo" as of any material save *cotton;* therefore it is evident that this article was the one referred to in the consular invoice. Therefore in its communication No. 12085, dated April 11 last, the department informed the Progreso custom-house that it did not approve of its procedure. The amount of the fine has probably been refunded. The parties interested have not, therefore, suffered a penalty more severe than a fine of $1, as a fine for the lack of the protest in one of the invoices. The damages so bitterly complained of by the consignees above named have not exceeded, in their totality, the single sum of $1 of fine, which could not be remitted because of the reasons given.

All of which I transmit to you for your information and its requisite effects, in reply to your esteemed note relative thereto, dated the 2d instant, at the same time reminding you that every case in which fines are imposed for infractions of fiscal regulations before being finally decided or executed are revised by this department.

Liberty and constitution.

Mexico, June 8, 1887.

In the absence of the secretary.

J. A. GAMBOA,
First Chief Clerk.

To the SECRETARY OF FOREIGN AFFAIRS,
Present.

Revised.

PEDRO A. MAGAÑA,
First Clerk.

[Inclosure 3 in No. 167.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, June 28, 1887.

SIR: I have the honor to acknowledge the receipt of your excellency's note of 25th instant, touching the complaint of Messrs. Pomares & Cushman, of New York. It seems to have escaped attention that I did not mention the moneyed demand of those gentlemen, partly because it was too insignificant in amount, but chiefly because I did not wish to dwarf the greater subject of a reform of customs regulations, with the consideration of which my note was chiefly employed.

I am so thoroughly penetrated by a desire to foster and augment the trade relations of our countries, that in the zeal of my argument I put the action of the subcustoms officers of Mexico in a less suave manner than I might have done. But, in truth, their mode of action is so serious an obstruction to trade and such effective discouragement and hinderance of it, that I should be doing a great service to the Government of Mexico and my own if I could make my argument so convincing as to effect the abrogation of regulations which do not increase revenue, but do increase the difficulties that attend the importation of goods from my country into Mexico; and, although I must consider the case of the present complainants at an end, I hope the deleterious results of continuing to employ the methods of action before pointed out will become so apparent, that your excellency's Government will gradually but certainly dispense with them.

Allow me to renew, etc.,

TH. C. MANNING.

No. 480.

Mr. Bayard to Mr. Manning.

No. 131.] DEPARTMENT OF STATE,
Washington, July 12, 1887.

SIR: I have received your No. 167, of the 29th ultimo, and have to approve your rejoinder to Mr. Mariscal in the matter of the complaint of Messrs. Pomares & Cushman against the action of the Mexican customs authorities at Progreso.

By remitting the penalty for the failure of the shippers to specify the wicks (pábilo) as of *cotton*, the treasury department of Mexico abundantly justifies this Department's complaint of such an imposition as an unjust impediment to trade carried on in good faith. The other penalty for the omission of a prescribed certificate appears to have been applied in strict conformity with a Mexican revenue law, of which, however onerous, the shippers must be presumed to have been cognizant. This ends the incident, but the principle of free and more generous commercial intercourse, at which the Department's instructions aimed, is left untouched.

I am, etc.,

T. F. BAYARD.

No. 481.

Mr. Manning to Mr. Bayard.

[Extract.]

No. 179.] LEGATION OF THE UNITED STATES,
Mexico, July 14, 1887. (Received July 22.)

SIR: I beg leave to call your attention to my No. 76, of February 28 last, inclosing Mr. Mariscal's note to me of the 25th, offering to return certain property which had been delivered to the authorities of the State of Chihuahua by United States Army officers, and also to pay $500, the estimated value of other property also delivered to the same authorities, and which had been lost. In his note Mr. Mariscal requests that some person be appointed by the United States Government to receive the property and the money.

I am, etc.,

TH. C. MANNING.

No. 482.

Mr. Porter to Mr. Manning.

No. 145.] DEPARTMENT OF STATE,
Washington, August 3, 1887.

SIR: In connection with the Department's No. 113, of June 13 last, I have now the pleasure to inclose for your information a copy of a further dispatch from Mr. H. C. Hall, your colleague at Guatemala City, No. 684,* of the 12th ultimo, announcing that the President of Guate-

*Printed page 131, *supra*.

mala had issued a decree which assimilates, as far as the contract will permit, the steamers of the Pacific Mail Steamship Company with those of the proposed Spanish line between Panama and San Francisco.

Mr. Hall has been told, in reply, that while the Department would be glad to see the entire abolition by the Government of Guatemala of any discrimination of the kind heretofore complained of, against an American and in favor of a foreign line of steamers, yet, at the same time, it was gratifying to note the disposition of that Government to accord to American vessels treatment more in harmony with the amicable trade relations between the two countries.

Since the pending discrimination question with Mexico stands in precisely the same position toward the United States as it did in Guatemala, you may find suitable occasion in your further discussion of the matter with Mr. Mariscal to refer to the friendly action of Guatemala, and to express the hope that Mexico may not longer delay the abolition of her discrimination against American vessels and commerce.

I am, etc.,

JAMES D. PORTER,
Acting Secretary.

No. 483.

Mr. Bayard to Mr. Manning.

No. 147.] DEPARTMENT OF STATE,
Washington, August 12, 1887.

SIR: I inclose for your information, in connection with previous correspondence upon the subject, a copy of a further dispatch from Mr. Henry C. Hall, United States minister to the Central American States, No. 691,* of the 22d ultimo, touching an additional contract between the Government of Salvador and the representatives of the Spanish line of steamers to run between San Francisco and Panama. The present arrangement proposes, instead of paying a bonus directly to the importers by that line, to furnish the company with debentures entitling the holders thereof to a rebate of 3 per cent. on customs duties.

I add, also, a copy of my reply, No. 492†, of the 12th instant, approving Mr. Hall's protest and directing him to take such further steps as were possible to secure American citizens their treaty rights.

I am, etc.,

T. F. BAYARD.

No. 484.

Mr. Manning to Mr. Bayard.

No. 203.] LEGATION OF THE UNITED STATES,
Mexico, August 29, 1887. (Received September 6.)

SIR: In my No. 160, of June 18, I apprised you of a note addressed on the previous day to Mr. Mariscal, informing him that the explanation of the department of public works of its action in the matter of

*Printed page 133, *supra*. † Printed page 137, *supra*.

the discrimination against Messrs. Alexandre & Sons, in favor of a rival line of steamers, was unsatisfactory.

Having received no reply to that note, I addressed to Mr. Mariscal another note to-day (of which copy is inclosed) recalling his attention to my note of last June, and requesting an answer thereto.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 203.]

Mr. Manning to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, August 29, 1887.

SIR: I am constrained to remind your excellency that no answer has been received to my note of June 17 last, concerning the complaint of Messrs. Alexandre & Sons, of a discrimination against them in favor of a rival Spanish line of steamers. In that note the explanation of the Mexican department of public works was reviewed, and by express direction of my Government I stated that it did not meet the real issue, and then proceeded to set out distinctly wherein that explanation was deemed by my Government to be insufficient and unsatisfactory.

I beg leave to say that the objection of my Government to the presentation of the case by the Mexican Government and to its justification is quite substantial, and deserves the prompt consideration of the minister of public works, in view of the undoubted fact that the interests of Messrs. Alexandre & Sons have suffered, and are still suffering, by this prolonged delay.

Let me assure your excellency that my Government awaits with interest some further communication on the subject.

I beg, etc.,

TH. C. MANNING.

No. 485.

Mr. Bayard to Mr. Manning.

No. 152.] DEPARTMENT OF STATE,
Washington, August 23, 1887.

SIR: In connection with my instruction No. 147, of 12th instant, I have now the pleasure to inclose for your information, and for such use as you may find it practicable, a copy of a telegram* from your colleague at Guatemala City, announcing that the Government of Salvador has agreed to extend the same rebate to American vessels as conceded to Spanish Central American steamers.

I am, etc.,

T. F. BAYARD.

No. 486.

Mr. Manning to Mr. Bayard.

No. 220.] LEGATION OF THE UNITED STATES,
Mexico, September 19, 1887. (Received September 27.)

SIR: Respecting your appeal for clemency in behalf of the perpetrators of the Nogales outrage, I have to inform you that no action has yet been taken thereon. They are still under sentence of death. Our

* Printed in Mr. Hall's No. 697, page 138, *supra*.

consul at Guaymas writes me "that they are treated as common prisoners; they have but one room, and the use of the jail yard, which is about 50 feet square, and is also used by 30 or 40 others—thieves and assassins are all herded together in this yard. While the thermometer this summer was at 95° and 98° for 18 hours out of 24, you can imagine their sufferings. Colonel Arvizu says he would sooner be shot than stay another summer in the Guaymas jail."

The sentence of these prisoners will be commuted ultimately, but the President is teaching a lesson to his people, and particularly to the army, that he intends shall be remembered. The confinement of these officers in the common jail with the vilest of criminals is ordered by him with a purpose, *i. e.*, to show officers even of the rank of Colonel Arvizu that personal and official degradation awaits them if they attempt to breed trouble between this country and the United States.

I hope this exhibition of the President's firm purpose to preserve the *entente cordiale* between the two countries by all proper means will convince those Mexicans who are evil disposed to our country and countrymen that the cordial friendship of the two nations can not be affected by their vicious conduct. I have not failed on proper occasions to give the President the assurance that my Government heartily and fully reciprocates the friendly feeling thus manifested by himself.

I am, etc.,

TH. C. MANNING.

No. 487.

Mr. Manning to Mr. Bayard.

No. 221.] LEGATION OF THE UNITED STATES,
Mexico, September 20, 1887. (Received September 28.)

SIR: The autumn session of the Mexican Congress opened on the night of the 16th instant, when the President read his address, a copy and translation of which is inclosed.

You will note with satisfaction his observations touching the friendly relations of his Government with the United States.

I am, etc.,

TH. C. MANNING.

[Inclosure in No. 22.—Translation.]

Address delivered by the President of the Republic upon the opening of the third period of sessions of the Thirteenth Congress of the Union, on September 16, 1887.

MESSRS. DEPUTIES AND SENATORS: Great is my pleasure to-day to find you gathered here for the purpose of performing your august duties, now that I appear before you to inform you of the condition of public affairs.

Generally speaking, our friendly relations with the Governments of other countries remain unchanged, and are on the same cordial basis to which I referred last April. We continue to cultivate like harmony with the United States of America. While diplomatic complaints, based upon the interests of individuals who consider themselves aggrieved, are pending between both countries, that is but a result of the contact consequent upon close vicinage, rendered even closer by railroad traffic, which is designed, however, to result eventually in positive good to both nations.

The treaty for the relocation of the boundary limits between the two countries is now in force, but is not yet executed, because the United States Congress is still to

authorize the expenses of the commission which, in connection with ours, is to relocate the boundary line.

On account of another rising of Indians on the San Carlos Reservation at the commencement of June, the United States Government expressed its wish that the agreement for the reciprocal crossing of troops over the boundary line, when in pursuit of hostile Indians, and which expired by limitation last November, should be renewed. Answer was made through our representative in Washington that we were disposed to grant the extension, with certain modifications dictated to us by experience.

The extradition of two Americans, perpetrators of scandalous crimes in Matamoras, has been refused on the grounds, often specified before, that the present treaty does not oblige the delivery of citizens of either country, nor can the President of the United States require the extradition of citizens of that Republic. This evinces the necessity that our Senate should confirm the extradition treaty, submitted thereto some time since, and thus authorize the Presidents of both countries for the delivery of their respective citizens, provided they consider that the interests of justice demand it.

The building to be occupied by our legation in Washington has been finished and delivered, and merely lacks some of the work of ornamentation, and the furnishings of the residences and offices.

The telegraph convention made with Guatemala has been duly promulgated, and has commenced to operate, yielding important advantages to commerce and to the public in general.

Upon the request of the Government of that nation, and in evidence of our friendly feelings toward it, various Guatemalians accused of conspiring against the public order in that country were arrested within 20 leagues of the frontier, the Executive resorting to the measure of threatening them with an application of the thirty-third article of the constitution, as he did not consider himself authorized to compel them in any other manner.

The second secretary of our legation in Central America was the victim of a criminal attack by a citizen of Guatemala. The delinquent having been condemned to a penalty disproportionate to the laws, our minister received instructions to request the punishment of the judges and the magistrates responsible for the trial.

Meanwhile, at the close of last June, the President of that Republic, by a *coup d'etat*, abolished the constitutional régime. I received a telegram from General Barillas carefully advising me of the change which had transpired, but no explanation therefor was given. My reply, in effect, was that the Mexican Government was disposed to favor whatever the Government of the people of Guatemala, in the exercise of their sovereignty, might decide upon touching the institutions which should govern them; and as, under such circumstances, the will of that people could not be known, instructions were sent to our minister that, until further notice, he should not officially recognize the administration thus initiated.

An incident then occurred which could be associated with political events. The second secretary of our legation was a second time attacked; this time the assailant escaping under cover of the night. The efforts of our representative to obtain satisfaction for such outrages did not meet with friendly advances from the new Government of Guatemala, but lately that Government has given some pledges upon the matter, and upon the final result of those promises will depend the attitude we assume towards that country for the defense of our interests.

For the protection of trade-marks a convention has been signed in this city by the plenipotentiaries of Mexico and Spain, and it will be at once submitted to the Senate for revision.

The treaty of commerce and navigation agreed upon by Mexico and France, and which was approved by the Senate, has also been approved by the Senate of France, and is awaiting the exchange of ratifications. Peace and public safety have not been disturbed throughout the Union, due in great measure to the care with which the State governments second the efforts of the Executive for the preservation thereof, as well as to the zeal unceasingly displayed by the city and country forces especially allotted to that purpose.

Our institutions continue in free development, and the Mexican people foster the same and assist the Government most efficiently in the sustenance of liberty and of reform—the firm foundations of our political existence.

The States of Aguas Calientes, Campeache, Colima, Queretaro, and Nuevo Leon have held their regular elections. Tabasco has also held her election, and that important act has re-established the constitutional status temporarily disturbed by the resignation of the governor and the voluntary dissolution of the legislature.

A division occurred lately in Chihuahua among the members of that State's legislature. But their patriotism led them to quickly end their differences, and the body continued to engage in its high duties.

Among the measures designed for the establishment of Tepic as a federal territory one of the most important was the provision of funds to the several municipalities which should be adequate to their needs and requirements.

The Executive, therefore, in the exercise of the authority vested in him by the law of December 11, 1884, issued the law of August 26 last.

The postal service acquires greater proportions every day. The proceeds of the postal department have increased until now they almost equal the proceeds realized from the high tariff in force four years ago. During the past fiscal year mail matter has amounted to 18,000,000 pieces; that is to say, nearly three times the number of pieces that circulated during the last year in which the old tariff was operative. While this increase has doubtless been due to an enlargement of the volume of private business in the Republic, under the protecting shadow of peace and the fostering influence of public improvement, still the principal cause has unquestionably been the increase in the facilities and frequency of the service and the cheapness of postage rates.

The postal convention made between Mexico and the United States of America was approved by the Mexican Senate and the President of the United States; it was duly ratified in Washington, and went into effect on July 1 of the current year. The departments of the interior and of the treasury issued their respective regulations for its execution, and have carefully endeavored to give the public all possible assistance for the exchange with the United States of mail matter, such as letters, papers, samples, and packages.

In order to facilitate communication between the interior of the Republic and the territory of Lower California, and taking advantage of the railroad line from this capital to the port of San Diego, United States, a contract has been made with the Mexican International Company for steamboat service, and a line of steamers is now running between San Diego and Ensenada de Todos Santos.

This service, at present, is being rendered gratis, the subvention allotted to the company not becoming operative until November 28 next.

Though the cholera has almost entirely disappeared from the Argentine Republic and from Chili, it has reappeared in some points of Italy. For that reason the boards of health have been again cautioned to observe the requirements of the regulations in force touching the arrival of vessels from Sicily and other Italian possessions where cholera is or may be found. On August 26 last, also, a circular was issued allowing vessels hailing from ports infected with small-pox to enter our ports under certain restrictive conditions.

All possible advance is made on the works of the drainage of the valley and the penitentiary.

The important matter of public charities is also receiving especial attention.

The Monte de Piedad has elicited the profound interest of the Executive. While announcing to you to-day, with satisfaction, that its liabilities are reduced to a small amount, I should state that a proposition is on foot to enable that beneficent institution to recover completely its lost prestige and to carry out its noble aims.

A special commission has been appointed to study the modifications to be made in the commercial code, in pursuance of the decree of July 4 of the current year, authorizing the Executive to modify the code totally or in part.

The commission charged with formulating the code of procedure for the federal courts is actively engaged in its labors, and has published the first part of its report.

As the Normal College at present is only for men, competent persons have been instructed to frame a plan for the transformation of the girls' second grade school into a normal school for lady teachers.

The Preparatory College, under certain rules approved by the department of public instruction, has commenced to hold public conferences given by the pupils, and which will result in popularizing science, and will stimulate the application of the scholars.

In the Medical College certain classes formerly detached have been united under one teacher, and the funds heretofore employed in those classes have reverted into three new classes absolutely necessary in a medical educational course. The board of directors has also been instructed, in accord with the school board, to study some plan of general modification for all the studies in the college.

Like improvements have been effected in the School of Commerce by the addition of a class in arithmetic and mercantile correspondence, this addition being demanded by the fact of an increase in the number of pupils to such an extent that they could not readily receive instruction from one teacher. Two classes also in stenography and Spanish language have been added to the course, and have proved already of great advantage to the curriculum.

The branches dependent upon the department of public works are being constantly developed, the new impulse given to railroad construction being especially noteworthy. The International Railroad Company is engaged in constructing the line which is to place Piedras Negras in communication with a point on the Central near Villa Lerdo, and which on account of the rapidity of construction will probably, as announced by the company, be finished by December next. This capital will thus have a new line of communication with the frontier, in length 615 kilometers.

With no less activity the Central Railroad is pushing the work on its Irapuato-Guadalajara branch, which was commenced last May, and it is said that the line will be concluded early next year. Work is also being prosecuted on the lines from Tampico to San Luis Potosi, although not as rapidly, owing to the difficulties encountered in construction on account of the topography of the country. The new Mexican National Company, having acquired by public auction some of the lines conceded to the old company of the same name, has just begun the construction of the road, which will shortly link Saltillo with San Miguel Allende, passing through San Luis Potosi.

Worthy of mention are the Yucatan railroads, for they continue their labors, though slowly. Since last April they have finished 6 kilometers on the Merida-Calkini line, 9 on the line to Sotuta, and 6 on that to Peto. Mention should also be made of the construction of a branch on the Central Railroad, from the station of Marquez to Zimapan passing by the hacienda of the Astillero, a branch constructed without the expenditure of any subvention, and being the first work on that line.

The satisfactory condition of the Federal telegraph service was evinced during the past rainy season, which was so violent throughout the country. In spite of the rains, communication has not been interrupted seriously, the breaks in the service having been unimportant and of short duration. Not only have the lines existing in April been kept in good condition and repaired whenever necessary, but they have been multiplied. Among the new lines mention should be made of that put up in Sonora to run to Nogales, thus placing that isolated point in connection with the rest of the country and all the states of the Republic. The following telegraph lines were also finished: Tuxpan to Vera Cruz via Jalapa; the double wire from Nuevo Laredo to Lampazos; the double wire from this capital to Chihuahua; from Mexico to Pachuca via Otumba; Puebla to San Martin Texmelucan; Cuencamé to Parras; and Frontera to Jicalango, the latter being important, as it places the entire country in communication with the States of Campeche and Yucatan. This communication is not entirely perfected, as the cables to be sunk in the Terminos Lake have not yet arrived, but the general manager has gone to England to purchase the cable, and on his return it will be laid.

Last May the new company assumed control of the works in the harbor of Vera Cruz and continued construction on the breakwater northeast of the Caleta Reef. Due attention is given in other parts to the preservation of docks and light-houses.

The location of the towns of Paso del Norte and Matamoras on the banks of the Rio Bravo exposes them to the destructive effects of washouts. The Government has commenced to lay out works of defense at Paso del Norte and has strengthened those already started at Matamoros.

It gives me pleasure to announce that the monument erected on the Paso de la Reforma to the memory of Cuauhtemoc was finished during the month of August and was inaugurated with a solemn celebration organized by the city council of this capital. The monument to be raised in Dolores to the father of our independence and to the erection of which the governments of the States, the Federal district, and the Territories have contributed, is well advanced.

Important improvements have been made in the mints, and in that of San Luis Potosi new machinery has been set up and is in operation. The amount coined during the fiscal year ending last June reached $26,844,031 in silver and $398,647 in gold, showing a slight decrease in the coinage of silver and a slight increase in that of gold, as compared with the operations last year.

The amount of $200,000 was coined in copper cents as decreed by Congress in its laws of May 10, of last year; yet, as that amount is insufficient, the department of public works will request you to grant permission to coin an additional quantity amounting to $300,000.

Mining industry throughout the country is being greatly developed, due to the uniformity of legislation and to the measures adopted by Congress at its last session. Since last April notice has been received of the registration of 800 new mining properties located, and of 15 reduction-works. Under the law passed on June 6 last various contracts have been made for the working of large mining properties.

In those portions of the country where means of exit provide for a ready exportation of products, and where interest is shown in the development of new plants, agricultural interests are improving. The grape industry is rapidly extending throughout the States of Aguas Calientes, Durango, Chihuahua, and Coahuila.

The cultivation of the ramie fiber has attracted the attention of many agriculturists, and marked preference is now being shown to the raising of mulberry trees and the development of silk-worms. The executive aids this movement with publications, with the distribution of plants and seeds, and with the instruction imparted by the inspectors assigned to that service.

The department of public works, be it justly said, has been aided by the efficient and disinterested cooperation of many persons who, as honorary agents, contribute data and information touching commerce, agriculture, and mining for the monthly

publication conducted by that department, and which is read with interest alike in the Republic and abroad.

In the colonies founded by the Government, the majority of the colonists have paid the value of the lands taken up by them and reimbursed to the Government the cost of their survey, etc. Touching the colonies started by private enterprise under contracts with the Government, I should state that they flourish, and especially so is that the case with the colonies founded at Ensenada de Todos Santos, Lower California, and in the mining town of Boleo, in the same Territory. To them was due, respectively, the opening of the ports of Todos Santos and Santa Rosalia, which are very active.

As regards the steamship companies which made contracts with the department of public works, the steamers of the Spanish Transatlantic Company effect their trips with regularity, and the ships of the Mexican International Company have commenced their trips on the Pacific coast.

Matters in the Treasury Department have continued in regular routine, and their success has been commensurate with the efforts of the Government and the hopes of the Republic.

It pleases me to inform Congress that during the fiscal year ending June 30 of this year, all the obligations contracted under the estimates of expenditures were met without any sacrifice; all the civil and military pay-rolls were covered, and the agreements made with various creditors, who received part of the principal and all of the interest, were fully complied with.

The balance sheet of the last fiscal year is very satisfactory. While we have not as yet realized our ideal of leveling our expenditures with our income, it can safely be stated that our ideal is almost reached, and will be accomplished in process of time and with the persevering efforts of the Government in the path it has selected.

As you will see, when the accounts, as specified by the Constitution are presented to you, the receipts have increased nearly $2,000,000 over the last fiscal year. During 1885-'86 they amounted to $26,770,000, and during the year just closed, $28,711,000; the increase being chiefly from the frontier and maritime custom-houses, and the revenue stamp tax. The receipts from the custom-houses alone exceeded those of the preceding year by over a million and a half dollars, and the increase in the stamp revenue was nearly $400,000.

These receipts have enabled the Government to meet the estimated expenditures, and to satisfy the claims of creditors without entailing any serious deficit, though the estimated expenditures amounted to $33,000,000, an excess over any previous estimates. This difference, alarming to those who do not understand the mechanism of our appropriations, is not really, nor can not be, dangerous, provided always that in the distribution of public moneys there shall be honesty and care displayed to prevent unnecessary expenditure. Some of the appropriation bills, probably the most important ones, do not fix an outlay as indispensable, but merely authorize the limit that may be reached. The executive has thus been enabled to avoid a large deficit by curtailing the expenditure of certain appropriations.

As I announced to Congress in my last report, the new custom-house ordinance went into effect on July 1 of this year. Public opinion has favored it, and the press, at home and abroad, has commented thereon in flattering terms, especially those publications which are devoted to financial matters. Since the enforcement of the new tariff smuggling has diminished, and new activity has vivified commerce, a result consonant with the wishes of the Government expressed in the establishment of liberal reforms in the tariff and in the simplification of several formulas.

We should congratulate ourselves on the favorable acceptance of the ordinance by the public, even though persons interested in the Mexican cotton industry are not satisfied with the lowering of the tariff on similar foreign productions. With a view to public good, and moved by a sense of strictest impartiality, the executive is engaged in the consideration of this complaint, and proposes to remedy the same as far as possible.

A postal convention having been entered into with the United States whereby the mails of both countries can carry packages, regulations have been formulated for the fixing of a tariff and collection of duties thereon, it being arranged that these operations, while not causing trouble to the public, may guarantee the Treasury's interests.

In commemoration of the anniversary we celebrate, to-day the new custom-house at Laredo, which, as is known, is to serve as a station for the Mexican National Railroad, is to be inaugurated. A building has been purchased in Acapulco to accommodate the custom-house, the captaincy of the port, and other offices of the federation. The Executive intends to carry out the idea that the nation shall have buildings of its own for its offices, especially in the ports.

Construction on the Santiago Tlaltelolco custom-house, in this capital, has been concluded. Of the four railroads which to-day have a terminus in this capital, two have run their rails out to the new custom-house, and I expect, before the year ends, the

other two companies will extend their lines thither, so that all freight brought on the railroads will be dispatched in the one place, in benefit of commerce, the public, and the administration.

Upon the conclusion of our new legation building in Washington, the partial payment called for in the contract was made, and hereafter we shall have to meet only the small annual payments agreed upon.

The liquidation and conversion of the public debt continue uninterruptedly. The agreement made with the holders of bonds of the canceled English convention, which I mentioned to you in my last report, has commenced to take effect, and by virtue thereof the claims of a diplomatic character have been merged in the common fund of the debt, whose interest has sunk to 3 per cent. per annum, instead of 5 and 6 per cent. as fixed by international agreements.

More than $11,000,000 of our domestic debt have been, up to the present, liquidated and consolidated. A large part of these titles were purchased in excess of the ruling price by some London houses and were sent to that market, the parties interested thus succeeding in floating the bonds of our domestic debt on the London Exchange.

The interest on the public debt, due June 30 last, was promptly paid, the necessary funds being placed in London and in this capital, in advance, so that the creditors might collect the interest whenever they chose. Our solvency and the honest purpose of Mexico to meet her indebtedness are becoming better known every day, so that our credit at home and abroad is firmly sustained.

The department of war has continued assiduously and carefully its labors of organization. The commission charged with the proposed general organization of the army will in a few days finish its important labors.

The commissions intrusted with the revision and recasting of the general army ordinance have concluded the same. It is now in press and will soon be issued.

The new regulations for infantry tactics are now in full practice; and the cavalry tactics, as soon as published, will be put into effect.

The uniform regulations were published and circulated, and take effect immediately.

The regulations of the law of June 7 of this year, ordering a revision of the military pension rolls under bases already fixed have been printed, and the commission appointed to conduct that matter is busily engaged therein.

The tribes along the Yaqui and the Mayo Rivers have been completely pacified, and now the commission of military engineers sent to survey and define the several lands are quietly pursuing their avocations with the care required in a work so indispensable to the peace and well-being of those Indians.

In order to secure the public safety of the mountainous and quasi desert portions of the States of Sinaloa and Durango, some of the troops sent to the Yaqui and Mayo campaigns have been stationed there.

Important improvements are being made in the military college; among them the pupils engaged in the study of engineering, staff duty, artillery, infantry, and cavalry have had special advantages assigned them. Since my last report to Congress, forty-two officers have graduated from that institution into the army. The grade of sublieutenant has been abolished because the cadets of that rank pursued the higher studies and their duties as officers often interfered with the time they should devote to their classes.

The labor corps, created under the present appropriations, has been organized and will shortly commence its labors.

With a view to perfecting the production of metallic cartridges, as well as economizing in their cost, the necessary machinery was set up in the arms factory, and is now in good working order.

After constant experiments the steel carriages for the "Bange" mountain howitzers have been adopted, and these gun-carriages have been officially recognized as the "reform gun-carriage of 1887."

New machines have been set up, and their probable production will be 4,000 projectiles per month, as well as the necessary cartridges.

Important improvements have also been effected in the powder factory, as well in the buildings as in the apparatus employed, to the end that the maximum production may be secured.

As far as the appropriations would allow, additions have been made to the navy department. Among other changes the floating dock, which was at Lerma and was useless there, was removed to Coatzacoalcos, where it will be shortly opened to public service.

I shall soon have the honor to propose to you the establishment of a training-ship for the practical instruction of our marine cadets as officers and sailors.

The gun-boat *Mexico*, having been retired from active service, has been transformed into a school for merchant-marine instruction, to enable the pupils of the Mazatlan Nautical School to acquire the practical education necessary for pilots.

Messrs. DEPUTIES AND SENATORS: The facts I have just laid before you evince that the executive, in compliance with a sacred duty, does not falter in the purpose to merit

the confidence of the country, at the same time striving to procure the development of the country's great elements by a perpetuation of peace and order on the unshaken foundation of progressive institutions, and carefully fostering all branches of public administration; also the establishment of its financial credit and the interests of its honor abroad. Fortunately there is nothing to distract us, nothing that can interrupt the nation's passage on the path of progress, provided that in the future, as in the past, the good sense of the Mexican people and the patriotism of her representatives prevail.

No. 488.

Mr. Connery to Mr. Bayard.

No. 228.] LEGATION OF THE UNITED STATES,
Mexico, September 26, 1887. (Received October 5.)

SIR: Upon receipt of your message of the 24th instant, informing me of the signing of a protocol between Mexico and Guatemala with a view to the settlement of pending difficulties, I addressed a brief note to Mr. Mariscal, a copy of which I inclose, conveying to him your congratulations on the prospects of an amicable adjustment of pending difficulties.

I also called upon him to-day, when he confirmed fully the information that a protocol had been signed between the two countries. He said, moreover, that the new order of things established by the *coup d'état* of Barillas would be formally recognized by the Mexican Government on the last day of this month, a sufficient time having elapsed, in the judgment of President Diaz, to justify the belief that no general opposition to Barillas's dictatorship existed among the people of Guatemala.

"My Government," said Mr. Mariscal, "does not concern itself in domestic affairs of its neighbors, and it has never had any desire to interfere with Guatemalan matters. When Barillas made his *coup d'état* we considered it prudent to withhold our recognition for a reasonable time to see if the Guatemalans sanctioned it. If the people do not like Barillas's *coup*, if they are opposed to his unconstitutional measure, they have not made it evident. The new Legislative Assembly called by Barillas will meet on the 1st of next month, and the Mexican Government, having received assurances that the irritating controversies with the Government of Guatemala will be terminated satisfactorily, has concluded not to defer beyond the 30th of this month a formal recognition of the *de facto* government."

I am, etc.,

THOMAS B. CONNERY.

[Inclosure in No. 228.]

Mr. Connery to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, September 26, 1887.

SIR: I have the honor to inform your excellency that I have received a cable message from Mr. Bayard by which I am advised that a protocol has been signed between Mexico and Guatemala, with a view to the settlement of pending difficulties. "We congratulate both parties," Mr. Bayard says in his message, "on the prospects of an amicable adjustment."

It gives me great pleasure to communicate to your excellency this expression of congratulation on the part of my Government. At the same time let me express the hope that nothing may occur to interrupt or postpone a complete settlement, honorable and satisfactory to both parties.

I am, etc.,

THOMAS B. CONNERY.

No. 489.

Mr. Connery to Mr. Bayard.

No. 233.] LEGATION OF THE UNITED STATES,
Mexico, October 1, 1887. (Received October 10.)

SIR: In connection with my No. 228 of 26th ultimo, I have the honor to inclose herewith translation of a note from Mr. Mariscal, dated September 27, 1887, aeknowledging mine of the previous day, which conveyed to the Mexican Government your congratulations on the prospect of an amicable adjustment of pending difficulties between Mexico and Guatemala.

I am, etc.,

THOMAS B. CONNERY.

[Inclosure in No. 233.—Translation.]

Mr. Mariscal to Mr. Connery.

DEPARTMENT OF FOREIGN AFFAIRS,
Mexico, September 27, 1887.

Mr. CHARGÉ D'AFFAIRES: I had the honor to receive your esteemed note of yesterday in which, under instructions from honorable Mr. Bayard, you were pleased to convey the congratulations of the United States Government to the Republics of Guatemala and Mexico in view of the protocol signed by the two nations with reference to the settlement of pending difficulties.

In reply I have the satisfaction of stating to you, by advice of the President, that the Government of Mexico duly thanks the Government of the United States for the friendly sentiments toward Mexico and Guatemala set forth in its congratulations.

I would personally thank you for the desire expressed in your note that nothing may delay a complete settlement, honorable and satisfactory to the people of Mexico and Guatemala.

IGNO. MARISCAL.

No. 490.

Mr. Connery to Mr. Bayard.

No. 253.] LEGATION OF THE UNITED STATES,
Mexico, October 20, 1887. (Received October 29.)

SIR: I have the honor to refer you to my No. 250, concerning the relations of Guatemala and Mexico, dated October 18, 1887, and to report that I have just received another note from Mr. Mariscal, copy of which I inclose, in which he expresses his high appreciation of your faith in the frankness and sincerity of Mexico's expressions respecting the neighboring Republic of Guatemala.

I am, etc.,

THOMAS B. CONNERY.

[Inclosure in No. 253.—Translation.]

Mr. Mariscal to Mr. Connery.

DEPARTMENT OF FOREIGN RELATIONS,
Mexico, October 19, 1887.

Mr. CHARGÉ D'AFFAIRES: I have the honor to acknowledge the receipt of your note, dated yesterday, in which you are pleased to inform me that the honorable Secretary of State of the United States has read with satisfaction the report that you sent to him respecting our last conversation about the relations between Mexico and Guatemala.

In reply, it is pleasing to me to inform you that I appreciate fully the fact that the honorable Mr. Bayard does justice to the frankness and sincerity with which Mexico expresses her sentiments in no way hostile toward Guatemala.

I protest to you, etc.,

IGNO. MARISCAL.

No. 491.

Mr. Bayard to Mr. Connery.

No. 200.] DEPARTMENT OF STATE,
Washington, November 1, 1887.

SIR: On the 19th of July, 1886, the minister of the United States at the City of Mexico was instructed to demand of the Mexican Government the release of A. K. Cutting, a citizen of the United States, then imprisoned at Paso del Norte, where he had been incarcerated since the 23d of the preceding month on a charge of libel alleged to have been published by him in Texas.

The case was first brought to the notice of the Department by Mr. Brigham, consul of the United States at Paso del Norte, who, in a dispatch dated the 1st July, 1886, reported that Mr. Cutting had been arrested and imprisoned for the publication in Texas, in the United States, of an alleged libel against a citizen of Mexico. Accompanying the consul's dispatch were affidavits substantiating his statements. It was also set forth that when Mr. Cutting was arrested and brought before the court, he was refused counsel and an interpreter, both of which he asked for, and that bail was refused him, which he was prepared to give in any reasonable amount. It was further stated that there was great cruelty in the manner of the prisoner's confinement, and that the physical suffering which he was compelled to undergo could not be borne without permanent injury to his health.

On the 17th of July a telegram was received at this Department from Mr. Brigham saying that Mr. Cutting was still in prison and that nothing had been done by the local authorities to alleviate his condition.

It is unnecessary to set forth in this communication a detailed account of the case, the facts of which are fully reviewed and copious extracts from the correspondence given in a report made in this Department on the subject of extraterritorial crime, with a special reference to the case in question, and a copy of which is herewith inclosed for your information. It is sufficient here to state, as was set forth at the time of the demand, that the ground upon which Mr. Cutting's release was demanded was that the judicial tribunals of Mexico were not competent under the rules of international law to try a citizen of the United States for an offense committed and consummated in his own country, merely because the person offended happened to be a Mexican.

This was coupled with another ground, namely, that, by the law of nations, no punishment can be inflicted by a sovereign on citizens of other countries "unless in conformity with those sanctions of justice which all civilized nations hold in common." "Among these sanctions," it was stated, "are the right of having the facts on which the charge of guilt was made examined by an impartial court; the explanation to the accused of these facts; the opportunity granted to him of counsel; such delay as is necessary to prepare his case, permission in all cases, not capital to go at large on bail till trial; the due production, under oath, of all evidence prejudicing the accused; giving him the right to cross-examination; the right to produce his own evidence in exculpation; release even from temporary imprisonment in all cases where the charge is simply one of threatened breach of the peace, and where due security to keep the peace is tendered."

From the facts before the Department it appeared that all these sanctions had been violated in the case of Mr. Cutting by the judge before whom he was brought. The importance of this second ground upon which Mr. Cutting's release was demanded is not to be underestimated, although, in the course of time, it was overshadowed by the jurisdictional question raised by the claim of the Mexican Government of a right to try and punish a citizen of the United States for an offense committed by him in his own country against a Mexican. Not only was this claim, which is defined in Article 186 of the Mexican penal code, defended and enforced by Judge Zubia, before whom the case of Mr. Cutting was tried, and whose decision was affirmed by the supreme court of Chihuahua (translations of both of which decisions are given in the inclosed report above referred to), but the claim was defended and justified by the Mexican Government in communications to this Department, emanating both from the Mexican minister at this capital and from the department of foreign affairs in the City of Mexico.

The statement of the consul at Paso del Norte that Mr. Cutting was arrested on the charge of the publication in Texas of an alleged libel against a Mexican is fully sustained by the opinion of Judge Zubia. Under the head of "It appears 6," in that decision, it is stated that on the 22d of June, 1886, "the plaintiff enlarged the accusation, stating that although the newspaper, the El Paso Sunday Herald, is published in Texas, Mr. Cutting had had circulated a great number in this town (Paso del Norte) and in the interior of the Republic, it having been read by more than three persons, for which reason an order had been issued to seize the copies which were still in the office of the said Cutting." The conclusive inference from this statement is that the charge upon which the warrant of arrest was issued was the publication of the alleged libel in Texas. It matters not whether such publication was originally treated by the court as a breach of a conciliation previously entered into between Cutting and Medina, the Mexican plaintiff, or whether it was treated as a distinct and original offense. In either case the assumption of the Mexican tribunal, under the law of Mexico, to punish a citizen of the United States for an offense wholly committed and consummated in his own country against its laws was an invasion of the independence of this Government. To say that a conciliation in Mexico which operates as a stay of criminal proceedings there binds a citizen of the United States in his own country, is simply to assert that the Mexican penal law is binding upon citizens of the United States in their own country. It appears, however, under "Considering 6," in Judge Zubia's decision, that the claim made in Article 186 of the Mexican penal code was actually enforced in the case in question as a dis-

tinct and original ground of prosecution. The decision of Judge Zubia was framed in the alternative, and it was held that, even supposing the defamation arose solely from the publication of the alleged libel in the El Paso (Texas) Sunday Herald, Article 186 of the Mexican penal code provided for punishment in that case; Judge Zubia saying that it did not belong to the judge to examine the principle laid down in that article but to apply it fully, it being the law in force in the State of Chihuahua. It nowhere appears that the Texas publication was ever circulated in Mexico so as to constitute the crime of defamation under the Mexican law. As has been seen, this was not a part of the original charge on which the warrant for Mr. Cutting's arrest was issued; and while it is stated in Judge Zubia's decision that an order was issued for the seizure of copies of the Texas paper which might be found in the office of Mr. Cutting in Paso del Norte, it nowhere appears from that decision that any copies were actually found in that place or elsewhere in Mexico.

But, however this may be, this Government is still compelled to deny what it denied on the 19th of July, 1886, and what the Mexican Government has since executively and judicially maintained, that a citizen of the United States can be held under the rules of international law to answer in Mexico for an offense committed in the United States, simply because the object of that offense happens to be a citizen of Mexico. The Government of Mexico has endeavored to sustain this pretension on two grounds: First, that such a claim is justified by the rules of international law and the positive legislation of various countries; and, secondly, on the ground that such a claim being made in the legislation of Mexico the question is one solely for the decision of the Mexican tribunals. In respect of the latter ground it is only necessary to say, that if a Government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name and would afford no protection either to States or to individuals. It has been constantly maintained and also admitted by the Government of the United States that a government can not appeal to its municipal regulations as an answer to demands for the fulfillment of international duties. Such regulations may either exceed or fall short of the requirements of international law, and in either case that law furnishes the test of the nation's liability and not its own municipal rules. This proposition seems now to be so well understood and so generally accepted, that it is not deemed necessary to make citations or to adduce precedents in its support.

I turn now to the consideration of the Mexican jurisdictional claim in connection with the principles of international law. It is not now, and has not been contended, by this Government, as seems to have been assumed in some of the arguments put forth in behalf of the Mexican Government, that if Mr. Cutting had actually circulated in Mexico a libel printed in Texas, in such manner as to constitute a publication of the libel in Mexico within the terms of the Mexican law, he could not have been tried and punished for this offense in Mexico. Oftentimes, the question where a libel may actually have been printed is a matter of small moment, the real offense being the publication or circulation. I shall, therefore, pass this question by as having nothing to do with the present case.

As to the question of international law, I am unable to discover any principle upon which the assumption of jurisdiction made in Article 186 of the Mexican penal code can be justified. There is no principle better settled than that the penal laws of a country have no extrater-

ritorial force. Each state may, it is true, provide for the punishment of its own citizens for acts committed by them outside of its territory; but this makes the penal law a personal statute, and while it may give rise to inconvenience and injustice in many cases, it is a matter in which no other Government has the right to interfere. To say, however, that the penal laws of a country can bind foreigners and regulate their conduct, either in their own or any other foreign country, is to assert a jurisdiction over such countries and to impair their independence. Such is the consensus of opinion of the leading authorities on international law at the present day, from whom ample quotations are made in the report accompanying this instruction. There being then no principle of international law which justifies such a pretension, any assertion of it must rest, as an exception to the rule, either upon the general concurrence of nations or upon express conventions. Such a concurrence in respect to the claim made in Article 186 of the Mexican penal code can not be found in the legislation of the present day. Though formerly asserted by a number of minor states, it has now been generally abandoned, and may be regarded as almost obsolete.

The only assertion I have found in the legislation of Europe of a general jurisdiction by one state of offenses committed abroad by foreigners against subjects is in the cases of Greece and Russia. The legislation of these countries gives to the judicial tribunals general jurisdiction over such offenses. In Sweden and Norway their punishment is discretionary, and depends upon the King ordering the prosecution. In Austria felonies, but not misdemeanors (the charge against Mr. Cutting of libel is only a misdemeanor, not only under the Mexican law, but under that of Texas), committed by foreigners abroad are punished, but only (except in crimes against the safety of the state and against the national seals and moneys, etc.) after an offer of surrender of the accused person hasfirst been made to the state in which the crime was committed, and has been refused by it. The law is substantially the same in Hungary and in Italy; but criminal offenses committed outside the state by foreigners against its citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, The Netherlands, Portugal, Spain, and Switzerland.

It is thus seen that Russia and Greece are the only European countries whose claim of extraterritorial jurisdiction is as extensive and absolute as that of Mexico; for it was held by Judge Zubia, whose decision was affirmed by the supreme court of Chihuahua, that it did not belong to the judicial tribunals of Mexico to examine the principle laid down in Article 186, but to apply it in all force, it being the law of the State of Chihuahua, and Mr. Mariscal disclaimed any power on the part of the Mexican Executive to interfere with the execution of the law by the judicial tribunals. Thus the Mexican claim is absolute, and exceeds that made by Sweden and Norway, where the prosecution can only take place if the King order it.

An appeal has been made in the Mexican arguments to the law of France as sustaining Article 186. The error of this is apparent when we observe that the French code authorizes the prosecution of foreigners for offenses outside of the territory of France, only in the exceptional cases of crimes against the safety of the state, and of counterfeiting the seal of the state, national moneys having circulation, national papers or bank bills authorized by law. Not only is the law thus clear, but it was decided by the court of cassation of France in 1873, in a case which is fully set forth in the report above referred to, that, with

the exception of the crimes above mentioned, the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived neither by the silence nor by the consent of the accused; that the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory, and that the incompetence of the French tribunals, as above stated, exists always and to the same degree in every stage of the proceedings.

Neither is Article 186 sustained by the legislation of the Spanish-American Republics. Neither in the Argentine Republic, nor in Chili, nor in Peru, nor in Colombia, nor in Costa Rica, is there any law, so far as known to this Department, that authorizes the punishment of foreigners for offenses committed abroad against citizens of those countries. Indeed, such a pretension is incompatible with those free and friendly relations which it is so important for Governments mutually to promote.

It has constantly been laid down in the United States as a rule of action, that citizens of the United States can not be held answerable in foreign countries for offenses which were wholly committed and consummated either in their own country or in other countries not subject to the jurisdiction of the punishing state. When a citizen of the United States commits in his own country a violation of its laws, it is his right to be tried under and in accordance with those laws, and in accordance with the fundamental guaranties of the Federal Constitution in respect to criminal trials in every part of the United States.

To say that he may be tried in another country for his offense, simply because its object happens to be a citizen of that country, would be to assert that foreigners coming to the United States bring hither the penal laws of the country from which they come, and thus subject citizens of the United States in their own country to an indefinite criminal responsibility. Such a pretension can never be admitted by this Government.

It has been seen that Article 186 of the Mexican penal code requires that the offenses included in the article must be also punishable in the place of their commission; and the proceedings before Judge Zubia, as set forth in his decision, show that the Texas penal code was introduced in the trial to prove that Mr. Cutting had committed the offense of libel in Texas. With this code before him, Judge Zubia held that its provision had been violated. Thus, sitting as a Mexican magistrate, he did what no Texas judge could have done had Mr. Cutting been on trial in that State for the alleged offense against its laws. By the Texas code (sec. 2291), "It is no offense to publish statements of fact as to the qualification of any person for any occupation, profession, or trade." But this is not all. By the fundamental law of the State no judge can convict any person of libel; for section 6, Article 1, of the constitution, of Texas provides that "in all indictments for libels the *jury* shall have the right to determine the law and the facts under the direction of the court, as in other cases."

The provisions render it wholly unwarrantable for any judge, domestic or foreign, alone to decide that a person has committed a libel under the law in Texas. Nor is it shown that Judge Zubia even attempted to inquire as to the truth of Mr. Cutting's alleged libelous statements.

You are therefore instructed to say to the Mexican Government, not only that an indemnity should be paid to Mr. Cutting for his arrest and detention in Mexico on the charge of publishing a libel in the United

States against a Mexican, but also, in the interests of good neighborhood and future amity, that the statute proposing to confer such extra-territorial jurisdiction should, as containing a claim invasive of the independent sovereignty of a neighboring and friendly state, be repealed. It would surely be highly honorable to the Mexican Government to follow in this regard the example of the Government of France, which, in 1852, withdrew an objectionable measure similar to Article 186 of the Mexican penal code in the interest of maintaining friendly relations with the Government of Great Britain. It appears that a draft of a law conferring upon the courts of France jurisdiction over offenses committed by foreigners against Frenchmen outside of France was adopted on the 10th of June, 1852, by the Corps Legislatif, by a vote of 191 to 5. The measure then went to the Senate, but was subsequently withdrawn by the Government because of representations made by the Government of Great Britain; and when this action of the French Government was announced in the British House of Lords the Marquis of Normanby, formerly British embassador at Paris, expressing his satisfaction, said that during the whole period in which he had labored to maintain amicable relations between the two countries, he had seldom listened to any statement with greater pleasure than that of the manner in which the French Government had acted in respect to the withdrawal of the *projet de loi* above referred to. Sincerely desirous of maintaining with the Government of Mexico the most cordial and friendly relations, I can not think that that end could be more signally promoted than by that Government following the highly honorable example of France in removing from the amicable relations of the two countries a law which stands as a constant menace to their continuance.

Nor is a change of municipal law to meet the exigencies of international intercourse without precedent in the United States. In the case of McLeod, in 1842, when, in reply to the demand of the British Government for the release of the prisoner, who was in the custody of the authorities of the State of New York, this Government was compelled to return a reply not dissimilar to that made by Mr. Mariscal to the demand for the release of Mr. Cutting, namely, the inability of the Federal authorities to interfere, Congress amended the law regulating the issuance of writs of habeas corpus so as to facilitate the performance by the Government of the United States of its international obligations. So that nothing is suggested to the Government of Mexico in this relation which has not been put in practice by the Government of the United States.

The importance of the harmonious exercise of jurisdictional powers by the Governments of the United States and Mexico, and the desire of this Government to maintain the closest and most friendly relations between these two neighboring countries, were so impressively stated by the President in his last annual message to Congress, that it is proper to quote from it the following pertinent passage:

"In the case of Mexico there are reasons especially strong for perfect harmony in the mutual exercise of jurisdiction. Nature has made us irrevocably neighbors, and wisdom and kind feeling should make us friends.

"The overflow of capital and enterprise from the United States is a potent factor in assisting the development of the resources of Mexico and in building up the prosperity of both countries.

"To assist this good work all grounds of apprehension for the security of person and property should be removed; and I trust that in the interests of good neighborhood the statute referred to will be so modi-

fied as to eliminate the present possibilities of danger to the peace of the two countries."

I have not burdened this instruction with citations of authorities and quotations from the works of publicists, which may be found in the elaborate report which accompanies this paper, and of which you are instructed to communicate a copy to Mr. Mariscal.

I am, etc.

T. F. BAYARD.

[Inclosure in No. 200.]

Report on Extraterritorial Crime and the Cutting Case.

DEPARTMENT OF STATE,
Washington.

SIR: In accordance with your request, I have the honor to report to you the results of an examination of the jurisdictional claim made by the Mexican Government in the case of A. K. Cutting, a citizen of the United States, arrested at Paso del Norte, Mexico, on the 23d of June, 1886, on a charge of having published in El Paso, in the State of Texas, a libel against a Mexican.

On the 19th of July, 1886, there was sent to Mr. Jackson, minister of the United States at the City of Mexico, the following telegram:

You are instructed to demand of the Mexican Government the instant release of A. K. Cutting, a citizen of the United States, now unlawfully imprisoned at Paso del Norte.

BAYARD.

The facts upon which this demand was based may briefly be summarized:

On the 1st of July, 1886, Mr. Brigham, consul of the United States at Paso del Norte, Mexico, wrote to the Department of State at Washington that A. K. Cutting, a citizen of the United States, had been arrested in Paso del Norte, on the 23d of the preceding month, by the direction of the judge of a local court, for the publication in Texas of a libel against a Mexican citizen. When arrested Mr. Cutting had, it was stated, been about eighteen months a resident of Paso del Norte, engaged in editing a newspaper called "El Centinela," in a recent number of which he had reflected upon the character and questioned the good faith of one Emigdio Medina, a Mexican, who proposed to start a rival newspaper in the same town. For this publication Mr. Cutting was, at the instance of Medina, arrested, brought before a local court, and required to sign a "reconciliation," which is in the nature of a compromise or settlement between the parties, in consideration of which the party who feels himself aggrieved abandons penal proceedings.

What occurred after the "reconciliation" may be related in Mr. Brigham's own words:

Under the law here, when the parties agree to and sign a "reconciliation," the case is dismissed, which was done in this instance, Mr. Cutting being required by the court to publish it (the "reconciliation") in his paper, which he did.

On the 18th day of June Mr. Cutting proceeded across the Rio Grande River to the United States, to El Paso, Tex., and published a card in the El Paso Herald, in which he reiterated his former charges, and made some others, branding Medina's conduct as contemptible and cowardly, etc. * * *

When Mr. Cutting returned to Paso del Norte he was again arrested, presumably at the instance of Medina, and taken before the judge of the second court. Before this court Mr. Cutting was refused counsel and an interpreter, both of which he requested, and with closed doors, no one being present but the judge, the court interpreter, and the accused, the so-called examination of the case was proceeded with, which resulted in the committing of Mr. Cutting to jail. (Mr. Brigham to Mr. Porter, July 1, 1886; House Ex. Doc. 371, 49th Cong., 1st sess.)

Mr. Cutting at once appealed to the United States consul for protection, stating that he had been cast into jail—

"for an alleged offense committed in Texas." On the receipt of this communication [continued Mr. Brigham] I proceeded to the office of the official interpreter of the court to ascertain the exact charges against Mr. Cutting, and was informed that he was arrested for the publication in the El Paso (Texas) Herald; that he was examined upon this charge alone, and committed to jail on the same. * * *

Mr. Cutting still (July 1) languishes in jail, having been thus confined for more than one week. Bail was refused him, which he was prepared to give in any reasonable amount.

Accompanying this dispatch of Consul Brigham, which was received at the Department of State on the 17th of July, were affidavits of the consul and other persons substantiating his statements. Among these affidavits is one of A. N. Daguerre, a Mexican, who accompanied Mr. Brigham's clerk to the court-room on the 24th of June, the day following the arrest, in order to inquire as to the progress of the case, and who deposed that the judge stated, in reply to a question of the clerk, that Mr. Cutting was held for the publication in Texas.

In addition to showing that Mr. Cutting was held for the publication in Texas, the affidavits accompanying Mr. Brigham's dispatch alleged great cruelty in the manner of the prisoner's confinement; that the place of his incarceration was "loathsome and filthy;" that he was "locked up with eight or ten other prisoners * * * in jail for various offenses * * * in one room, 18 by 40 feet, with only one door, which is locked at night, making it a close room in every respect, there being no other means of ventilation," and compelled to endure other grievous hardships.

On the 16th of July a dispatch was received at this Department from Mr. Jackson, inclosing correspondence with Mr. Mariscal, the Mexican minister for foreign affairs. This correspondence disclosed the fact that Mr. Jackson had, on the 6th of July, called Mr. Mariscal's attention to the circumstances of Mr. Cutting's imprisonment, the nature of the charge—"an offense committed upon the soil of Texas"—the manner of his confinement, and the fact that he had offered ample bail, which was refused. Mr. Jackson stated, however, that his purpose was not to discuss the question of jurisdiction, which had been referred to the Department of State at Washington, but to direct the attention of the minister of foreign affairs—

to the fact that an American citizen, of respectable character, charged with no serious crime, but with acts which, even if he be guilty, constitute the simplest of misdemeanors, is now undergoing a very severe punishment before conviction, and after offering the best of security for his appearance to stand his trial; and that his health, and even his life, are placed and held in jeopardy, despite of the efforts of an official representative of his country in his behalf. But for this serious aspect of the case, said Mr. Jackson, I should have awaited instructions from my own Government before approaching your excellency on the subject, and do so now only for the purpose of praying that proper relief may be extended to Mr. Cutting at the earliest moment and through the speediest practicable channel. (House Ex. Doc. 371, 49th Cong., 1st sess., p. 12.)

To this note Mr. Mariscal replied, on the 7th of July, saying:

By advice of the President I to-day address the governor of the state of Chihuahua, recommending him to see that prompt and due justice be administered, to the alleviation of the rude situation in which Mr. Cutting is found, as well as all else permitted by the laws. (*Ibid.*, p. 12.)

On the 17th of July, when all the facts above detailed were before the Department of State, a telegram was received from Mr. Brigham, saying that Mr. Cutting was still in prison, and that nothing had been done by the local authorities for his relief. (*Ibid.*, p. 13.)

The release of Mr. Cutting was then demanded, as appears by the telegram of July 19, above quoted.

On the 20th of July, the day after the date of the demand, Mr. Bayard sent to Mr. Jackson a full statement of the grounds thereof. After summarizing the facts, Mr. Bayard declared that—

the proposition that Mexico can take jurisdiction of its author [the libel's] on account of its publication in Texas is wholly inadmissible, and is peremptorily denied by this Government. It is equivalent to asserting that Mexico can take jurisdiction over the authors of the various criticisms of Mexican business operations which appear in the newspapers of the United States. If Mr. Cutting can be tried and imprisoned in Mexico for publishing in the United States a criticism on a Mexican business transaction in which he was concerned, there is not an editor or publisher of a newspaper in the United States who could not, were he found in Mexico, be subjected to like indignities and injuries on the same ground. To an assumption of such jurisdiction by Mexico neither the Government of the United States nor the governments of our several States will submit. They will each mete out due justice to all offenses committed in their respective jurisdictions. They will not permit that this prerogative shall in any degree be usurped by Mexico, nor, aside from the fact of the exclusiveness of their jurisdiction over acts done within their own boundaries, will they permit a citizen of the United States to be called to account by Mexico for acts done by him within the boundaries of the United States. On this ground, therefore, you will demand Mr. Cutting's release.

But there is another ground on which this demand may with equal positiveness be based. By the law of nations no punishment can be inflicted by a sovereign on citizens of other countries unless in conformity with those sanctions of justice which all civilized nations hold in common.

Among these sanctions are the right of having the facts on which the charge of guilt was made examined by an impartial court, the explanation to the accused of these facts, the opportunity granted to him of counsel, such delay as is necessary to prepare his case, permission in all cases not capital to go at large on bail till trial, the due production under oath of all evidence prejudicing the accused, giving him the right to cross-examination, the right to produce his own evidence in exculpation, release even from temporary imprisonment in all cases where the charge is simply one of threatened breach of the peace, and where due security to keep the peace is tendered. All these sanctions were violated in the present case. Mr. Cutting was summarily imprisoned by a tribunal whose partiality and incompetency were alike shown by its proceedings. He was refused counsel; he was refused an interpreter to explain to him the nature of the charges brought against him; if there was evidence against him it was not produced under oath, with an opportunity given him for cross-examination; bail was refused to him; and after trial, if it can be called such, violating, in its way, the fundamental sanctions of civilized justice, he was cast into a "loathsome and filthy" cell, where, according to one of the affidavits attached to Mr. Brigham's report, "there are from six to eight other prisoners, and when the door is locked there are no other means of ventilation"—an adobe house, almost air-tight, with a "dirt floor;" he was allowed about "8½ cents American money for his subsistence;" he was "not furnished with any bedding, not even a blanket." In this wretched cell, subjected to pains and deprivations which no civilized government should permit to be inflicted on those detained in its prisons, he still languishes, and this for an act committed in the United States, and in itself not subject to prosecution in any humane system of jurisprudence, and after a trial violating the chief sanctions of criminal procedure. (*Ibid.*, p. 13.)

Under date of July 27, Mr. Bayard sent to Mr. Jackson another communication, from which may be quoted the following pertinent passages:

On Saturday last, the 24th instant, I was called upon by Mr. Romero, the minister from Mexico at this capital, in relation to the case referred to.

Mr. Romero produced to me the Mexican laws, Article 186, whereby jurisdiction is assumed by Mexico over crimes committed against Mexicans within the United States or any other foreign country; and under this he maintained the publication of a libel in Texas was made cognizable and punishable in Mexico. And thus Mr. Cutting was assumed to be properly held.

This claim of jurisdiction and lawful control by Mexico was peremptorily and positively denied by me, and the statement enunciated that the United States would not assent to or permit the existence of such extraterritorial force to be given to Mexican law, nor their own jurisdiction to be so usurped, nor their own local justice to be so vicariously executed by a foreign government.

In the absence of any treaty of amity between the United States and Mexico providing for the trial of the citizens of the two countries respectively, the rules of in-

ternational law would forbid the assumption of such power by Mexico as is contained in the penal code, Article 186, above cited. The existence of such power was and is denied by the United States.

Mr. Romero informed me that the local or State jurisdiction over Cutting's case did not allow interference by the national Government of Mexico in the matter, and that it was this conflict that had induced delay in responding to the demand of this Government for Mr. Cutting's release. (*Ibid.*, p. 17.)

On August 2, the President of the United States, in response to a resolution of the Senate, transmitted to that body a report from the Secretary of State, in which the jurisdictional issue was again defined, as follows:

A copy of Article 186 of the Mexican code, which was handed to the undersigned by Mr. Romero in support of the claim of Mexico to take cognizance of crimes of which Mexicans were the subject in foreign countries, is herewith appended.

This conflict of laws is even more profound than the literal difference of corresponding statutes, for it affects the underlying principles of security to personal liberty and freedom of speech or expression, which are among the main objects sought to be secured by our framework of Government.

The present case may constitute a precedent fraught with the most serious results. The alleged offense may be—and undoubtedly in the present case is—within the United States held to be a misdemeanor, not of high grade; but in Mexico may be associated with penal results of the gravest character. An act may be created by a Mexican statute an offense of high grade which in the United States would not be punishable in any degree. The safety of our citizens and all others lawfully within our jurisdiction would be greatly impaired, if not wholly destroyed, by admitting the power of a foreign state to define offenses and apply penalties to acts committed within the jurisdiction of the United States.

The United States and the States composing this Union contain the only forum for the trial of offenses against their laws, and to concede the jurisdiction of Mexico over Cutting's case, as it is stated in Consul Brigham's report, would be to substitute the jurisdiction and laws of Mexico for those of the United States over offenses committed solely within the United States by a citizen of the United States.

The offense alleged is the publication in Texas, by a citizen of the United States, of an article deemed libelous and criminal in Mexico.

* * * * * * *

Under this pretension it is obvious that any editor or publisher of any newspaper article within the limits and jurisdiction of the United States could be arrested and punished in Mexico if the same were deemed objectionable to the officials of that country, after the Mexican methods of administering justice, should he be found within those borders.

Aside from the claim of extraterritorial power thus put forth for the laws of Mexico and extending their jurisdiction over alleged offenses admittedly charged to have been committed within the borders of the United States, are to be considered the arbitrary and oppressive proceedings which, as measured by the constitutional standard of the United States, destroy the substance of judicial trial and procedure, and to which Mr. Cutting has been subjected. (*Ibid.*, p. 3.)

Article 186 of the Mexican penal code, translated, is as follows:

Penal offenses* committed in a foreign country by a Mexican against Mexicans or foreigners, or by a foreigner against Mexicans, may be punished in the Republic (Mexico) and according to its laws, subject to the following conditions:

I. That the accused be in the Republic, whether he has come voluntarily or has been brought by extradition proceedings.

II. That, if the offended party be a foreigner, he shall have made proper legal complaint.

III. That the accused shall not have been definitively tried in the country where the offense was committed, or if tried, that he shall not have been acquitted, included in an amnesty, or pardoned.

IV. That the breach of law of which he is accused shall have the character of a penal offense, both in the country in which it was committed and in the Republic.

V. That by the laws of the Republic the offense shall be subject to a severer penalty than that of "arresto mayor."†

**Delito*, defined by Escriche as la infraccion de la ley penal.

†Arresto mayor is detention for from one to eleven months, as distinguished from arresto menor, which lasts from three to thirty days.

Such are the provisions of Article 186, which expressly asserts the jurisdictional claim of Mexico against which the Government of the United States protested and in denial of which Mr. Cutting's release was demanded.

It will now be seen that this jurisdictional claim was actually enforced by the Mexican court by which Mr. Cutting was tried.

On the 21st of July Mr. Jackson telegraphed to Mr. Bayard that Mr. Cutting's instant release was refused, and that reasons therefor were given. These reasons, communicated to Mr. Jackson by Mr. Mariscal on the 21st of July, were received at the Department of State on the 31st of the same month. They alleged the impossibility of compliance with Mr. Bayard's demand, owing to the inability of the Federal Executive to interfere with the authorities of the State of Chihuahua. The question of jurisdiction was not touched; but, as will hereafter be seen, Mr. Mariscal subsequently defended the claim asserted in Article 186. (House Ex. Doc. 371, Forty-ninth Congress, first session, pp. 19, 20.)

Immediately after the demand for Mr. Cutting's release, and pending the correspondence that ensued, the authorities of Chihuahua hastened to bring the case to trial; and, on the 6th of August, Judge Zubia, of the Bravos district, before whom the case had been brought for trial, rendered a decision sustaining the jurisdiction of Mexico, and sentenced the prisoner to a year's imprisonment at hard labor, to pay a fine of $600, or, in default thereof, endure one hundred days' additional imprisonment, and to pay a civil indemnity to Medina.

The complete official text* of Judge Zubia's decision is given in Exhibit A. Translated, it reads as follows:

In view of the present suit instituted against A. K. Cutting, who declares himself to be unmarried, forty years of age, a native of the State of New York, a resident of this town, and editor of the newspaper El Centinela, for the offense of defamation:

In view of the preliminary statement of the accused, the petition of the district attorney, the statement made by the complainant, Emigdio Medina (the civil party to the suit), the defense of the prisoner's attorney, Jesus E. Islas, and all else which appears from the proceedings and was proper to be seen:

It appears, 1. That in No. 14 of the newspaper called El Centinela, published in this place under date of the 6th of June last, there appeared a local item in English, in which there was criticised as fraudulent a prospectus published in El Paso, Texas, announcing the appearance of a newspaper called Revista Internacional.

It appears, 2. That Emigdio Medina, considering himself alluded to and aggrieved by that paragraph, appeared before the second alcalde, acting in turn as criminal judge in this town, and asked for a judgment of conciliation against A. K. Cutting, as responsible editor of El Centinela.

It appears, 3. That the parties being present before the mediating judge, agreed on the publication in the same newspaper, El Centinela, of a retraction which was written by Medina and corrected by Cutting, the publication to be made four times in English, and, if Mr. A. N. Daguerre, an associate editor of the paper, would allow it, also in Spanish.

It appears, 4. That Cutting, instead of complying with the agreement as stipulated in the conciliation, published on the 20th of the same month of June a retraction only in English in El Centinela, in samll type and with material errors that rendered it almost unintelligible, and published on the same day a notice or communication in the El Paso Sunday Herald, in which he ratified and enlarged the defamatory statement which were published against Medina, and denounced as contemptible the agreement of conciliation which had taken place before the second alcalde of this town.

It appears, 5. That the plaintiff then appeared and in due form accused Cutting of the penal offense of defamation, in conformity with Articles 643 and 646,† section 2, of the penal code, for which cause the corresponding order of arrest was issued.

* Correspondencia diplomatica sobre el caso del ciudadano de los Estados-Unidos de America A. K. Cutting, published by the Mexican Government.

† Article 646 provides that "defamation" shall be "punished with a penalty of from six months' detention to two years' imprisonment and a fine of from $300 to $2,000, when there is imputed a crime, act, or vice, which may occasion to the offended party dishonor or serious prejudice."

It appears, 6. That on the 22d of the same month the plaintiff enlarged the accusation, stating that although the newspaper, the El Paso Sunday Herald, is published in Texas, Cutting had had circulated a great number in this town and in the interior of the Republic, it having been read by more than three persons, for which reason an order had been issued to seize the copies that were still in the office of the said Cutting.

It appears, 7. That according to law the preliminary statement of the accused was taken, in which he denied the jurisdiction of the court, on the ground that the act had been committed in Texas, placing himself under the protection of the consul of the United States, and the warrant for his arrest in due form was ordered to be issued and communicated to the proper parties.

It appears, 8. That, having followed the examination through all its details, the accused insisted on his former answer, and when notified to appoint a person to defend him, as the citizen licentiate * José Maria Barajos had declined to serve, he refused to do so, whereupon the citizen A. N. Daguerre, a partner of the said Cutting in the editing of El Centinela, was officially appointed; but, as he also resigned, the appointment fell upon the citizen Jesus E. Islas, who conducted the case up to the presentation of his brief of defense.

It appears, 9. That in virtue of the opinion of the district attorney that the charge was well founded, the suit was duly advertised in the office of the clerk of the court for the term provided in Article 409,† as amended, of the code of criminal procedure, and that time having elapsed without any exception being filed, the parties to the controversy were summoned for the discussion, which took place on the 5th instant in the form and terms prescribed by the same code, the proceedings closing with the summons for sentence.

Considering, therefore, 1. That, in conformity with Article 121 of the code of criminal procedure, the foundation of the criminal proceeding is the proof of the act which the law accounts a penal offense, and that in the present case the existence of this fact is fully proved, as it consists of the publication appearing in El Centinela on the 6th of June last, characterizing as fraudulent the prospectus which was issued to announce the publication of the Revista Internacional.

Considering, 2. That although it is true that there was in regard to this matter an act of conciliation, which would have satisfied the plaintiff if it had been carried out, it is also true that the terms of this act were not complied with, and that, for this reason, the responsibility of the penal offense remains the same.

Considering, 3. That the proof of the lack of fulfillment of the compromise entered into in the judgment of conciliation is actually in the communication published by Cutting in the El Paso Sunday Herald, in which he ratified the original assertion that Emigdio Medina was a fraud and a swindler, and at the same time in the article published in El Centinela of the same date, leaving out all the capital letters and putting the name of Medina in microscopic type in order to make the reading of it difficult.

Considering, 4. That ratification, according to the dictionary of Escriche, is the confirmation and sanction of what has been said or done, it is retroactive, and by consequence does not constitute an act different from that to which it refers: "Ratihabitio retrotrahitur ad initium," nor does new responsibility, distinct from that which originally existed, arise therefrom.

Considering, 5. That this being so, the criminal responsibility of Cutting arose from the article published in El Centinela, issued in this town, which article was ratified in the Texas newspaper, which ratification, however, did not constitute a new penal offense to be punished with a different penalty from that which was applicable to the first publication.

Considering, 6. That even on the supposition, not admitted, that the defamation arose from the communication published on the 20th of June in the El Paso Sunday Herald, Article 186 of the Mexican penal code provides that—

"Penal offenses committed in a foreign country by a Mexican against Mexicans or foreigners, or by a foreigner against Mexicans," may be punished in the Republic and according to its laws, subject to the following conditions:

1. That the accused be in the Republic, whether he came voluntarily or has been brought by extradition proceedings; 2. That if the offended party be a foreigner, he shall have made proper legal complaint; 3. That the accused shall not have been definitively tried in the country where the offense was committed, or, if tried, that he shall not have been acquitted, included in an amnesty, or pardoned; 4. That the breach of law of which he is accused shall have the character of a penal offense both

* May here be translated as attorney-at-law.

† Article 409 (amended) provides that, after the preliminary examination and the formulation of the charge by the district attorney, the proceedings shall be placed in the office of the clerk of the court for three days, in order that exceptions may be taken by the defense.

in the country in which it was committed and in the Republic; 5. That by the laws of the Republic the offense shall be subject to a severer penalty than that of "arresto mayor"—requisites which have been fully met in the present case, for Cutting was arrested in the territory of the Republic; there is complaint from a proper legal source—that of Medina, who presented his complaint in the form prescribed by law; the accused has not been definitively tried, nor acquitted, nor included in an amnesty, nor pardoned in the country in which he committed the offense; the penal offense of which Cutting is accused has that character in the country in which it was committed and in the Republic, as can be seen in the penal code in force in the State of Texas, Articles 616, 617, 618, and 619, and in the penal code of the State of Chihuahua, Articles 642 and 646; and according to this latter article, section 2, the breach of law in question is subject to a heavier penalty than that of "*arresto mayor.*"

Considering, 7. That according to the rule of law, *Judex non de legibus, sed secundum leges debet judicare*, it does not belong to the judge who decides to examine the principle laid down in said Article 186, but to apply it fully, it being the law in force in the State.

Considering, 8. That this general rule has no other limitation than that expressed in Article 126 of the general constitution, which says "This constitution, the laws of the Congress of the Union passed in pursuance thereof, and all the treaties made or to be made by the President of the Republic with the approval of the Congress, shall be the supreme law of the whole Union. The judges of each State shall act according to said constitution, laws, and treaties, notwithstanding the existence of contrary provisions in the constitutions or laws of the States."

Considering, 9. That the said Article 186 of the penal code, far from being contrary to the supreme law or to the treaties made by the President of the Republic, has for its object, as is seen in the expository part of the same code, page 38, "the free operation of the principle on which the right to punish is founded, to wit, justice united to utility."

Considering, 10. That even supposing, without conceding it, that the penal offense of defamation was committed in the territory of Texas, the circumstance that the newspaper El Paso Sunday Herald was circulated in this town, of which circumstance Medina complained, and which was the ground of ordering the seizure of the copies which might be found in the office of Cutting, in this same town, properly constituted the consummation of the crime, conformably to Article 644 of the penal code.*

Considering, 11. That, according to the amended Article 7 of the general constitution, penal offenses committed by means of printing are to be tried by the competent Federal or State courts in conformity with their penal laws.

Considering, 12. That the publication by Cutting in El Centinela, ratified subsequently in the El Paso Sunday Herald and in the Evening Tribune, on file in the case, attacks the private life of Emigdio Medina, by attributing to him the penal offense of fraud and of swindling, and is therefore comprised in the restriction placed on the liberty of the press by the said article of the constitution.

Considering, 13. That as acts consummated in the territory of the canton of Bravos, State of Chihuahua, are in question, it is incumbent on the judge, whose name is hereto subscribed, to pass upon them conformably to the laws in force in the said State, especially in view of the fact that the accused resides in this town, where he has had his domicile for more than two years, as appears from the declarations made on folios 20, 21, and 22 of this case, a statement not contradicted by Cutting, who on folio 19 declares that he resides on both sides, that is, in Paso del Norte, Mexico, and in El Paso, Texas, without a fixed residence on either of the two sides.

Considering, 14. That to show this more fully, Cutting expressly recognized the jurisdiction of the authorities of this town by appearing before the second *alcalde*, acting in turn as criminal judge, and answering the demand for conciliation, which was made against him by Medina for defamation.

Considering, 15. That the responsibility of Cutting is fully proved, since it appears in credible documents which have in nowise been contradicted by their author; and if any doubt should exist respecting the malicious intent with which the first publication was made, it would disappear in view of the subsequent ratifications made in the El Paso Sunday Herald and in the Evening Tribune, in which Cutting expressly says that Emigdio Medina is a fraud, swindler, coward, and thief;† the requisites specified in Article 391 of the code of criminal proceedings being thus fully met.‡

Considering, 16. That in order to fix the penalty which ought to be enforced, it must be borne in mind that, although the charge imputed to the offended party causes

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* This article provides that defamation is punishable when committed by writing, printing, etc.

† The epithets applied by Cutting to Medina in the card published in Texas, as appears from a copy of the card now before the writer, were "fraud" and "dead beat."

‡ Article 391 relates to proof of malicious intent.

him dishonor and serious prejudice, and there are no extenuating circumstances, the crime under consideration is of a private character between two editors, in which the only aggravating circumstances that exist are those referred to in the 7th[1] and 11th[2] sections of Article 44 and Articles 656[3] and 657[4], section 4 of the penal code, it does not appear that the other aggravating circumstances mentioned by the district attorney are fully proved; for, although it is true that the present case has caused great alarm in the community, this is not attributable to the penal offense imputed to Cutting, but to the inadequate means which have been taken for his defense; this being exactly the case provided for in the final part of Article 66 of the said code;[5] and

Considering, finally, 17. That the person responsible for a penal offense is also responsible for its consequences, being likewise bound to make civil indemnity in the terms provided in Articles 326[6] and 327[7] of the penal code.

THE SENTENCE.

In view of the foregoing Article 646, section 2, and Articles 661[8], 119[9], and 218[10], of the said code, it is ordered and adjudged as follows:

First. For the penal offense of defamation committed against the person of Emigdio Medina, A. K. Cutting is sentenced to serve a year at hard labor and pay a fine of $600, or, in default thereof, endure additional imprisonment of a hundred days.

Second. He is also sentenced to pay the civil indemnity, to be fixed according to the provisions of Article 313[11] of the penal code.

Third. Let the defendant be admonished not to repeat the offense for which he is sentenced, and advised of the penalties to be incurred in that event.

Fourth. This sentence shall be published in the manner specified in Article 661 of the said code.

Fifth. The case shall be sent to the supreme court of justice, for the purposes to which the final part of the petition of the district attorney refers, relative to the intervention of the American consul in this suit.

Sixth. Let the interested parties be notified, and the prisoner be advised of the length of time he has to appeal from this sentence.

Lic. Miguel Zubia, judge of the Bravos District, has so decreed definitely, in the presence of witnesses.

MIGUEL ZUBIA.

Witnesses: L. FLORES and S. VARGAS.

From this decision the following facts appear: 1. Premise 6 ["It appears 6"] discloses that the original ground on which Mr. Cutting was held to answer the charge of defamation was the publication of the card in the El Paso (Texas) Herald.

2. Consideration 3 ["Considering 3"] discloses that the publication of the card in the Texas newspaper was treated as a breach of the "conciliation," which, having once been entered into, must have been violated by Cutting before Medina could have maintained a criminal suit for the defamation in El Centinela of June 6. It thus appears that the "conciliation" was held to be binding on Cutting in Texas, and consequently to have extraterritorial effect.

3. Consideration 6 discloses that Mr. Cutting was also held on the ground that the publication in Texas constituted of itself a distinct and complete offense, punishable under Article 186 of the penal code.

[1] Circumstances: That the delinquent is an educated person; [2] that he has violated more than one provision of the penal code; [3] that publicity is an aggravation in defamation; [4] that defamation is public when printed, etc., and distributed or exposed to the public, or shown to six or more persons.

[5] Giving certain discretion to the judge as to severity of penalty.

[6] The defendant is bound to make civil indemnity, if his act caused damage; [7] and for this indemnity he shall be held liable, whether criminally absolved or not.

[8] Requiring publication of sentence at defendant's cost.

[9] As to penalty of additional imprisonment, in default of payment of the fine imposed.

[10] Defendant must be admonished not to repeat the offense, and informed of the penalty imposed for such repetition.

By agreement between the parties.

4. Consideration 6 also discloses that in order to bring the case within the provisions of Article 186, the Texas code was introduced to show that the publication in the Texas newspaper constituted a penal offense in that State. Thus Judge Zubia became the vicarious interpreter of the Texas criminal law, and substituting himself, by authority of Article 186, for the judge and jury required for the trial in that State of the alleged violation of its laws, decided that such violation had been committed.

The importance of this observation can be appreciated only when we take into account that under section 2291 of the Texas code, "*it is no offense to publish true statements of fact* as to the qualification of any person for any occupation, profession, or trade;" and that, under the constitution of Texas (Art. 1, sec. 6), "in all indictments for libels, the jury shall have the right *to determine the law and the facts*, under the direction of the court, as in other cases." Under these legislative and constitutional provisions it would be impossible for any judge, domestic or foreign, to say, or for any expert to prove before a foreign tribunal, that the publication of the statement in question was a criminal libel in Texas. Yet, notwithstanding the rule that no penal law is extraterritorial, and in spite of the consideration that for a foreign tribunal to undertake to execute penally a law of the United States against a citizen of the United States may justly be, and in the case in question actually was, regarded as an offense against the United States, the Mexican judge not only undertook to interpret and apply the Texas law of criminal libel against a citizen of the United States, but interpreted and applied it in a manner flagrantly at variance with the methods and guarantees of the fundamental law of the State that enacted it.

It has sometimes been argued that the publication in the Texas newspaper of the card in relation to Medina gave the Mexican court unquestionable jurisdiction in the premises, because it was a violation of the "conciliation," which, being in the nature of a contract, was binding on the parties everywhere; and that, had the court proceeded on this ground alone, the United States would have had no cause for complaint. The fallacy of this argument should seem apparent.

It is true that the proceeding defined in Mexican law as a "conciliation" imports an agreement between parties, and thus bears some formal analogy to a private contract; but it also imports a compromise of a pre-existing criminal liability, which revives if the defendant violate the terms of the "conciliation." To argue, therefore, hat the fact of publication in the Texas newspaper was properly held to be a violation of the "conciliation," and to be attended with all the consequences of such violation, is merely to concede, in another form, but to the full extent, the claim asserted in Article 186, and enforced in the present case, that foreigners may incur liability to criminal prosecution in Mexico for acts wholly committed and consummated in a foreign country.

This conclusion is not affected by the fact stated in Judge Zubia's decision that where the terms of a conciliation have been violated, the prosecution relates back to the original offense; nor mitigated by the argument sometimes advanced, that the "act of conciliation" is purely voluntary. To the first suggestion it is sufficient to reply that the question whether the breach of a "conciliation" revives or creates liability to criminal prosecution is not material. It is enough that the breach restores that liability which the "conciliation" had removed. As to the second point, it is only necessary to advert to the fact that, while a defendant is not legally compelled to sign a "conciliation," it

may afford the means, and the only means, of escape from the uncertainties and tribulations of criminal prosecution and its possibly grave consequences.

To concede that a "conciliation" may have extraterritorial force would be to permit Mexico to impose upon citizens of the United States while in Mexico the burden of continued obedience to Mexican penal law, even after their return to their own country. From this burden their only escape would be to renounce the benefits of the provisions of Mexican law relating to the "act of conciliation" and undergo criminal prosecution.

The only incident of the trial of Mr. Cutting that now remains to be considered is the decision of the supreme court of Chihuahua, pronounced on the 21st of August, 1886, releasing the prisoner. Translated, this decision reads as follows:

The second alcalde of the canton of Bravos, acting in turn in the penal branch, began the trial of the present cause at the instance of the proper party against A. K. Cutting, who is unmarried, forty years of age, a native of the State of New York, a resident of Pas del Norte, and the editor of a weekly paper, El Centinela, which is published in that town, for the penal offense of defamation committed against the citizen Emigdio Medina. By virtue of the complaint presented by the offended party criminal proceedings were instituted and were afterwards continued by the law judge of that district in the manner prescribed by the penal code until definitive sentence was pronounced, the accused being condemned to suffer a year of imprisonment at hard labor and to pay a fine of $600, and being obliged, in addition, to pay a civil indemnity upon the terms prescribed by law. The defense was not satisfied with this decision, and having interposed its right to an appeal, the records in the case come to this second chamber, the appeal having been duly admitted.

In order that the appeal might have due course, the prisoner was notified to name a person to defend him in this second case; and the civil party was given a term of five days, at the end of which he should appear to assert his rights in the appellate court.

A. K. Cutting refused to appoint a person to defend him, for which reason the defense of his rights was placed in charge of the official defender, the citizen Licentiate Joaquin Villalva; and Emigdio Medina, who had promised to appear, did not do so, but transmitted a document on the 16th of this month withdrawing from the action which he had brought.

Notwithstanding this withdrawal, which was at once admitted by the court, the court deemed it its duty to maintain in force the summons previously issued, in order that the present case might be decided in accordance with the requirements of justice.

In the public session which took place yesterday morning the State prosecuting attorney asked that the prisoner be declared guilty, and that his offense be considered as purged by the imprisonment already suffered, which petition was seconded by defendant's attorney; and the proceeding was concluded with a citation to the parties for the final trial.

Considering (1) that Article 658 of the penal code expressly provides that no proceedings shall take place against the author of a libel, defamation, or calumny, unless on complaint of the person aggrieved, which provision is founded upon the fact that the principal party interested in the punishment of these offenses is the party aggrieved, and that by not presenting his complaint, or withdrawing therefrom, he renounces the right which the law gives him, and condones the offense.

2. Considering that on the supposition of the withdrawal of the party aggrieved, in the case of offenses which according to the penal code can not be officially prosecuted, the right of society to punish such offenses is not so perfect nor so comprehensive as in those offenses in which a complaint is not necessary; for there are cases in which the proceeding may be unjustifiable and improper, because the right of punishment might be confounded with revenge.

3. Considering that the reasons expressed in the two preceding considerations are made stronger by Articles 54 and 55 of the code of penal procedure, which code, in recognizing the right of the offended party to withdraw from the action brought, does not impose the actual obligation of continuing the accusation, this point remaining for the decision of the judges and the tribunals in the cases within their jurisdiction.

4. Considering that, as has been said before, the offended party, Emigdio Medina, has withdrawn from the action to which he had a right, as against A. K. Cutting, and therefore the principal motive of the suit does not exist; and as there is not, therefore, in the judgment of this court, sufficient ground to continue the case.

5. Considering, finally, that the withdrawal of the party offended is conceived to have had for its principal object the quieting of the alarm consequent upon his complaint, as the statements made on folio 8 of the second book give it clearly to be understood, and the continuation of the proceedings *on a point legally and accurately decided in the first instance*, would be not only to divest that laudable purpose of its effect, but would also be given beyond the requirements of the law and of the national dignity.

In view of the foregoing provisions, the court decides, in the name of the justice of the State, as follows:

1. The citizen Emigdio Medina is considered to have withdrawn to his own prejudice from the action brought by him against A. K. Cutting, who shall immediately be released.

2. Let the State prosecuting attorney, Licentiate José Maria Gandara, and the defendant's attorney, Licentiate Joaquin Villalva, be notified, and, after an examination of the first book of minutes, let the proper order be issued to the second minor judge of Bravos for its exact fulfillment. Let a certified copy be sent to the governor of the State and let all the papers be filed.

From the decision of the supreme court of Chihuahua appear the following facts:

1. The decision of Judge Zubia was fully approved; but—

2. The prisoner was released on the ground that the plaintiff having withdrawn from the prosecution of the suit, the principal motive of its continuance had ceased to exist; it appearing, moreover, that the withdrawal had "for its principal object the quieting of the alarm consequent upon his complaint."

The circumstances of the case of Mr. Cutting; the demand for his release; the jurisdictional claim of Mexico in denial of which the demand was made; the proof of that claim by Mr. Brigham; the implied avowal of it by the Mexican Government, and its enforcement by the Mexican courts, have been fully shown. Its express avowal and defense by that Government in the present case will be disclosed when we reach the consideration of the question whether the assertion by Mexico of a right to try a citizen of the United States for an alleged offense against a Mexican, committed in the United States, was justly resisted by the Government of the United States.

It is proposed to discuss this question upon the principles of international law, and not as a matter of expediency, depending for its determination upon the answer to be given to the inquiry whether there may not be reasons for denying the jurisdictional claim of Mexico, which would not be so cogent if the same claim were to be put forward by some other countries. This is an important consideration, and not necessarily disrespectful to the administration of justice in Mexico. For it is patent that there are, as between the criminal laws of different States, fundamental differences which it is impossible to disregard, and of which a comparison of the trial of Mr. Cutting, from its inception to its end, with a criminal trial for the same offense in the United States affords an apt illustration.

But, before entering upon the discussion of the purely legal aspects of the case, it may not be out of place to advert to the fact that it has sometimes been urged that in not insisting upon Mexico's immediate compliance with its demand the Government of the United States abandoned the position therein assumed. Such a contention is not sustained either by the facts or by the reason of the case.

In the note to Mr. Jackson, dated July 21, and stating that Mr. Cutting could not be released, Mr. Mariscal alleged the following reasons:

Mr. Minister, these are delays that are inevitable in a country governed by institutions like ours, where the Federal Executive is unable to communicate directly with the local authorities of the States. Much less could it give them orders. To do thus

would imply a positive offense, especially in the case of judges independent even of the administrative power of the State to which they belong, and that offense would be even more aggravated if designed to trample out and peremptorily stop a legal process instituted by an interested party, as I understand the case of Mr. Cutting to be. (House Ex. Doc. 371, Forty-ninth Congress, first session, p. 20.)

It thus appears that, although Mr. Mariscal has subsequently defended the validity of the jurisdictional claim of his Government, he did not then put its non-compliance with the demand of the United States on that ground.

It happened that the difficulty alleged by Mr. Mariscal was not without parallel in the history of the United States. Reference is made to the case of Alexander McLeod, arrested by the authorities of the State of New York in November, 1840, and held for trial on a charge of murder committed at the destruction of the steamer *Caroline*, within the territorial jurisdiction of that State. On the 13th December, 1840, the British Government asked for his immediate release, on the ground that the destruction of the *Caroline* was "a public act of persons in Her Majesty's service, obeying the order of their superior authorities"; that it could, therefore, "only be the subject of discussion between the two National Governments," and could "not justly be made the ground of legal proceedings in the United States against the persons concerned."

Mr. Forsyth, Secretary of State, replied on the 28th of December, with the declaration that no warrant for the interposition called for could be found in the powers with which the Federal Executive was invested, but at the same time denying that the demand was well founded. On the 4th of March, 1841, Mr. Webster succeeded Mr. Forsyth as Secretary of State, and on the 12th of the same month the demand for McLeod's immediate release was repeated. Mr. Webster's answer bore date the 24th of April, and, while admitting the grounds of the demand, declared that the Federal Government could not comply. In May McLeod was taken down to the city of New York, and was there brought before the supreme court of the State on a writ of habeas corpus. After a full argument, that tribunal, in July, refused to discharge him; and in the ensuing October, ten months after the first demand and seven months after the second, he was tried at Utica, and acquitted on proof of an alibi. This case led to the adoption by Congress in August, 1842, of an act to provide for the removal of cases involving international relations from the State to the Federal courts.

The course of the President of the United States in awaiting for one month the completion of judicial proceedings in the case of Mr. Cutting, instead of insisting on their abandonment, far from indicating a withdrawal of his demand, was a just and proper action, not only in the light of our former predicament, but as an exhibition of the friendly disposition of this Government toward Mexico.

It is not proposed to discuss the extent of the control of the Federal Executive of Mexico over the authorities of the States which compose that Republic. This is a question of municipal law, which, in accordance with the rule that the authorities of a nation are the proper interpreters of its municipal regulations, may be left to the Mexican Government. But it should not be forgotten that, while a domestic difficulty may be accepted as a plea for delay, it can not be set up as a bar to the ultimate performance of international obligations, and can not, therefore, be held to prevent a demand upon a Government for the fulfillment of those obligations. To hold otherwise would be to assert the supremacy of municipal regulations, and permit each nation to prescribe the measure of its international duty.

The municipal law of every well regulated community [said Pinkney, in his great opinion in the case of the *Betsey*],* in which the ends of social union, and the moral duties arising out of it, are understood, will furnish us with the axiom, "*sic utere tuo ut alienum non lædas.*" This axiom, although incorporated into the local code of many countries, belongs to and forms a part of the law of nature; and if such is the rule which natural as well as civil law prescribes to individuals in their social relations, it is not to be conceived that the law of nations, which considers States as so many individuals upon a footing of relative equality, communicates jurisdiction to any, without annexing a condition to the grant, that in its exercise it shall not trench upon the rights of any other member of the great society of nations.

Again, in the same opinion, he says:

It is obvious that between independent States, none of which can have authority over the others, one can not assume to itself an exclusive power of interpreting the law of nations to the prejudice of the rest. So long as the interpretation put upon that law is a proper one, *and works no injury to any other State or its citizens*, all are under a moral obligation to acquiesce in it, because all are bound by the rule itself; but surely if the rule is misconceived, *or if rules unknown to the law of nations are attempted to be intruded by one nation to the detriment of another*, the independence of nations is a term without a meaning, if this is to be submitted to.

It has constantly been held that neither the defective provisions nor the exaggerated pretensions of municipal legislation can be set up by a nation either to excuse the non-performance of its international duties or to justify its invasion of the rights and jurisdiction of other nations. Such was the position taken by the British Government and admitted by Mr. Webster in the case of McLeod. And such has constantly been the position taken by this Government in respect to claims against other Governments. To say that a nation may enforce upon foreigners within its territories whatever laws it may see fit to adopt, would exempt it from all the rules of international intercourse.

It is proper to state here, what may fairly be termed an incident of the Cutting case, that on the 14th of August, while the appeal was pending before the supreme court of Chihuahua, Mr. Mariscal, by direction of the President of Mexico, addressed to the governors of the States of that Republic a circular enjoining that in future, in case of the arrest of a foreigner for any cause, especial care should be taken and a detailed report of the causes of action and the proceedings thereon sent to the Federal Government.

The argument has not infrequently been made that, although the original charge against Mr. Cutting was the publication of a libel in Texas, the demand for his release was invalidated by the addition to the original complaint of the charge that he had circulated the alleged libel in Mexico. The answer to this argument is, that it can be regarded as sound only in so far as it sustains the position heretofore taken as to the propriety of the President's course in not insisting upon the Mexican Government's putting an end to judicial proceedings in the State of Chihuahua. The charge of circulation in Mexico having been combined with that of publication in Texas, it could not be known until those proceedings were completed whether the latter ground would be maintained. But this question was settled by the judgment of the supreme court of Chihuahua, which, in affirming Judge Zubia's decision, fully sustained the enforcement of Article 186.

We have seen that the sentence of Judge Zubia rested on the two-fold ground of the circulation of a libel in Mexico (as to the proof of which the sentence is not clear) and the violation of Article 186 by the publication in Texas of a libel against a Mexican.

* This opinion was delivered by Mr. Pinkney as a member of the mixed commission under the seventh article of the treaty between the United States and Great Britain of 1794. See Wheaton's Life of William Pinkney, p. 207.

It has been much debated, both in the United States and in England, whether a general verdict on an indictment containing good and bad counts *charging the same offense* ought not to be reversed on error. The preponderance of authority in this country has been that a court of error will presume that the verdict was rendered on the good counts, and will so apply it; and such was the prevailing practice in England, until it was shaken by the case of O'Connell.*

But this rule could not have been admitted to apply to the sentence of Mr. Cutting, because, in the first place, it continued expressly to rest, after appeal and final judgment, on what this Government held to be an inadmissible complaint. In the second place, the sentence was so framed in the alternative as to make it possible and even probable that it rested *wholly* on that charge.

We must, therefore, hold that the judgment of the supreme court of Chihuahua, in finally closing the door to judicial reversal or correction of Judge Zubia's sentence, consummated the wrong of which the United States complained, and, had Mr. Cutting not been released, would have left to this Government the alternative of either insisting upon or abandoning its original demand.

Viewing the matter generally, it would be strange, indeed, if the demand of a Government for the release of one of its citizens, held in a foreign country on an inadmissible charge, might be rendered nugatory by the answer that the invalid charge, however clear and unmistakable its enforcement, was accompanied by a valid complaint.

THEORIES OF CRIMINAL JURISDICTION.

The various theories of criminal jurisdiction discussed in the books may conveniently be arranged as follows:

I. TERRITORIAL.

1. *Actual*—
   - *a.* Subjective: As to offenses committed by persons on the territory, except diplomatic officers.
   - *b.* Objective: As to offenses committed within the territory by persons outside; *e. g.*, a shot fired on one side of the boundary and taking effect on the other; infernal machine, swindling letter, poisonous food, counterfeit money, etc., sent into country by person outside.
2. *Constructive*—Over offenses committed on vessels of country.

II. NON-TERRITORIAL.

1. *Personal, over citizens:*
   - *a.* generally; *b.* in particular places, *e. g.*, barbarous lands; *c.* as to particular acts.
2. *As to particular offenses*, whether by citizens or foreigners.
   - *a.* Piracy.
   - *b.* Where two countries by convention agree to punish the citizens of each other, *e. g.*, conventions for suppression of slave trade.
   - *c.* Against safety of state; counterfeiting or forging national seals, papers, moneys, bank bills, authorized by law.
3. Offenses committed abroad by foreigners against citizens.
4. All offenses, wherever and by whomsoever committed.

It is unnecessary for our present purpose to discuss in detail all the theories of criminal jurisdiction which are stated in the foregoing synopsis. The right of every nation, in the exercise of its sovereignty,

* Wharton's Crim. Pl. and Prac., S. 771, 8th ed.; R. *v.* O'Connell, 11 Cl. and Fin., 15.

to punish acts committed on its soil and in violation of its laws by persons within its territory, may be conceded. The right of a nation to punish offenses committed on its vessels, national or private, which for most purposes are considered as part of the national territory, is also admitted. Such offenses, it has been held, may be punished by the vessel's sovereign, even when they were committed on a merchant vessel in the ports of another sovereign, provided the latter did not take jurisdiction. And it may also be granted that a nation may, under proper limitations, punish offenses committed within its territory by persons corporeally outside.

It is true that in the case of an offense committed within the territory of one state by a person corporeally within the territory of another state, there may sometimes be concurrent jurisdiction—the former state having jurisdiction by reason of the locality of the act, the latter by reason of the locality of the actor. In such case the latter state may punish the perpetrator, or may give him up to the other state; or, if it see fit, may decline to do either. But the fact that a state may be unable to obtain jurisdiction of the offender is not a test of its jurisdiction over the offense, for such inability may exist where the person who committed the offense was, at the time of its commission, within the territory, but subsequently fled to the jurisdiction of another country.

The principle that a man who outside of a country willfully puts in motion a force to take effect in it is answerable at the place where the evil is done, is recognized in the criminal jurisprudence of all countries. And the methods which modern invention has furnished for the performance of criminal acts in that manner has made this principle one of constantly growing importance and of increasing frequency of application.

Its logical soundness and necessity received early recognition in the common law. Thus it was held that a man who erected a nuisance in one county which took effect in another was criminally liable in the county in which the injury was done. (Bulwer's case, 7 co., 2 b., 3b.; Com. Dig. Action, N. 3, 11.) So, if a man, being in one place, circulates a libel in another, he is answerable at the latter place. (Seven Bishops' Case, 12 State Trials, p. 331; Rex *v.* Johnson, 7 East, 65.) The same rule applies to obtaining money or goods by false pretences; but it must appear that the false pretences were actually made at the place where the prisoner is held, and not merely that the pretences, which were made elsewhere, resulted in defrauding some one at the place of trial. (Reg. *v.* Garrett, 6 Cox C. C., 260.) So, if persons outside of a country procure therein the making and engraving of a plate for purposes of forgery, they are indictable there. (Queen *v.* Bull & Schmidt, 1 Cox C. C., 281.) Likewise, for cheating by false papers. (King *v.* Brisac & Scott, 4 East, 164.)

The same principle obtains in the United States. Thus a man may be convicted of subornation of perjury in the State in which, through the agency of a person there resident, the offense was committed, though he was himself in another State. (Com. *v.* Smith, 11 Allen, 243.) So, where a citizen and resident of Ohio obtained money in the State of New York by a fictitious receipt signed by him in Ohio, but sent to the city of New York to be fraudulently used, it was held that, being in that State, he was liable to trial and punishment; and the court observed—

It is not necessary to notice the peculiar relation which a citizen of one of the United States sustains to the other States; for if a subject of the British Crown, while

standing on British soil in Canada, should kill a man in this State, by shooting or other means, I entertain no doubt that he would be subject to punishment here whenever our courts could get jurisdiction over his person. * * * If our courts can not get jurisdiction over his person they can not try him. But that is no more than happens when a citizen, who has committed an offense within the State, escapes, and can not be found. Jurisdiction of the offense or subject-matter and jurisdiction to try the offender are very different things. The first exists whenever the offense was committed within this State, and the second when the offender is brought into court, and not before. (Bronson, J., in Adams *v.* The People; Comstock's R. (N. Y.), 173, 179.)

The same principle has also been held to apply as to nuisances. (Stillman & Co. *v.* White Rock Mfg. Co. *et al.*, 3 Woodbury & Minot, C. C. Rep., 538.) So if a person forge notes in one place and utter them in another, using for that purpose the mails, he is answerable in the latter place for the utterance of the forged papers. (The People *v.* Rathbun, 21 Wend, 509; Supreme Court of New York.) But where, under a statute providing that "every person who shall sell or in any manner transfer the services of any black, who shall have been forcibly taken, inveigled or kidnapped from this State (New York) to any other State, place, or country, shall, upon conviction, be punished," a person was indicted not only for inveigling a free negro from the State of New York with intent to sell him, but also for the *actual sale* of him in another State, it was held that the counts in the indictment relating to the latter charge were bad, the court saying: "It can not be pretended or assumed that a State has jurisdiction over crimes committed beyond its territorial limits. (People *v.* Merrill, 2 Parker's Crim. Rep., 590.)

It has been held by the supreme court of Connecticut that where an inhabitant of Massachusetts sent some paupers into Connecticut in charge of his son, who, by direction of his father, left them there, in contravention of the statute of Connecticut forbidding the bringing of paupers into the State, under penalty of a fine, the father was answerable under the statute. (Barkhamsted *v.* Parsons, 3 Conn., 1.) The same principle was applied in the case of the State *v.* Grady, 34 Conn., 118, the court at the same time saying:

> It is undoubtedly true, as claimed, that the courts of this State can take no cognizance of an offense *committed* in another State. Such was the decision in Gilbert *v.* Steadman, 1 Root, 403. But it is true and universally conceded, that if an offense is *committed* in this State by the procuration of a resident of another State, who does not himself personally come here to assist in the offense, * * * such non-resident offender can be punished for the offense by the courts if jurisdiction can be obtained of his person.

On the principle of causal connection it is provided in the penal code of New York of 1881, that if a person without the State commits an act which affects persons or property within the State, or the public health, morals, or decency of the State, he is punishable therefor in the State of New York. On this principle also rest the provisions of the Texas code for the punishment of persons who, outside of that State, forge titles to land within the State.*

* So it has been held by the Texas courts. In the case of Hanks *v.* The State (13 Tex. Appeal, 289, decided in 1882), the question was fully discussed, and I quote from the opinion of the court the following passages, which speak for themselves:

"Appellant and one P. F. Dillman were jointly indicted in the district court of Travis County (Texas) for the forgery of a transfer of a land certificate for a league and labor of land in the State of Texas. It is alleged in the indictment that the acts constituting the forgery were all committed in Caddo Parish, in the State of Louisiana. No act or thing connected with the execution of the forgery is charged to have been done in Texas; but the crime and injury, so far as this State is concerned, are averred to consist in the fact that the said forgery in Louisiana 'did then and there relate to and affect an interest in land in the State of Texas, * * * and would, if the same were true and genuine, have transferred and affected certain property, to wit, a cer-

The principle of the liability of persons outside of a State for acts caused by them within the State was early established in Pennsylvania by the decision of the supreme court in the case of the Commonwealth *v.* Gillespie *et al.*, 7 Sergeant and Rawle, 469, decided in 1822. The facts in this case, which came up on a motion for a new trial, were that a lottery office was kept in Philadelphia in a house rented by Gillespie, one of the defendants and a resident of New York; that a lad named Gregory, the other defendant, kept the office and sold lottery tickets there as the agent of Gillespie, who occasionally visited the place; and that, in this capacity, Gregory sold at the office a New York lottery ticket, indorsed in the name of Gillespie and not authorized by the laws of Pennsylvania. The prisoners being indicted jointly as participants or conspirators in the crime, the court at the trial did not instruct the jury that Gillespie was criminally answerable for the act of his agent or servant, but left it to them to say whether, from the whole of the evidence, he was concerned in the sale of the ticket. The jury found that he was, and the supreme court sustained the verdict. This court said:

> It makes no difference where Gillespie resided; if he conspired to sell New York lottery tickets in Pennsylvania, with his agent, and his agent effected the act, the object of unlawful conspiracy, he is answerable criminally to our laws. * * * It must be recollected, the conspiracy is a matter of inference, deducible from the acts of the parties accused, done in pursuance of an apparent criminal purpose, in common between them, and which rarely are confined to one place; and if the parties are linked in one community of design, and of interest, there can be no good reason why both may not be tried, where one distinct overt act is committed.

This doctrine has, since Gillespie's case, been applied again in Pennsylvania to an indictment for a conspiracy to cheat and defraud, which was executed in that State, in the case of the Commonwealth *v.* Corliss *et al.*, 3 Brewster's Rep., 575, decided in 1869.

These Pennsylvania cases were decided in accordance with the rule of the common law that where two or more persons conspire to do an unlawful act, each conspirator is responsible in any place where any overt act by any of his co-conspirators is done, as well as in the place where the crime is concocted and started. (Wharton's Crim. Law, 9th ed., Book 1, § 287.) So careful, however, have courts been to keep within what

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tain land certificate, number 222, for one league and labor of land in the State of Texas, etc.

"This indictment was brought under Article 451 of the penal code.

"By Article 454 of the code it is declared that 'persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter *which do not in their commission necessarily require a personal presence in this State*, the object of this chapter being to reach and punish all persons offending against its provisions, whether within or without this State, etc.'

"It was made a ground both in the motion to quash the indictment and in arrest of judgment, and is again urgently insisted upon in the able brief of counsel for appellant, that the facts alleged, if true, would constitute an offense against the sovereign State of Louisiana alone, and one of which the courts of this State would have no jurisdiction.

"If the position thus assumed in behalf of the appellant be correct, then the legislature had no authority to pass the act quoted, and the same is an absolute nullity. * * * We can see no valid reason why the legislature of the State of Texas could not assert, as it has done in article 454 *supra*, her jurisdiction over wrongs and crimes with regard to the land titles of the State, no matter whether the perpetrator of the crime was at the time of its consummation within or without her territorial limits. Such acts are offenses against the State of Texas and her citizens only, and can properly be tried only in her courts. It may in fact be no crime against the State in which it is perpetrated; and if it is, under such circumstances we are considering, that other State would have no interest in punishing it, and would rarely, if ever, do so. When this forgery was committed in Louisiana, *eo instanti* a crime was committed against, and injury done to, the State of Texas, because it affected title to lands within her sovereignty."

they deemed proper jurisdictional limits, that where, in the case of a felony, a person was guilty only as an accessory *before the fact*, as, for example, where a person counseled a felony to be committed, but was not present at its commission, it was held that he could be tried only in the place where his guilty act of accessoryship took place. This limitation never applied to treason and misdemeanors, in which all participants before or at the commission of the offense were regarded as principals. By statute in several of the United States the accessory before the fact may be tried in the place having jurisdiction of the principal act, and by statutes still more recent, making all accessories before the fact principals, the accessory before the fact, or instigator, is triable in the place where the crime is perpetrated. But where no statute on the subject exists, it is still held that an accessory before the fact can be tried only in the place of his accessoryship. Thus it has been held in Indiana that a person who, in the State of Ohio, counseled with and encouraged two persons to come into Indiana and commit larceny, could not be held in that State, there being no statute abolishing the distinction in such case between principals and accessories. (Johns *v.* The State, 19 Ind., 421.) So, where several persons entered into a conspiracy in Ohio to burn a steam-boat, and the crime was executed in Arkansas, it was held by the supreme court of the latter State that one of the confederates, who remained in Ohio, was, by the law of Arkansas, merely an accessory before the fact, and could not be tried in that State. (State *v.* Chapin, 17 Ark., 561.)

The same rule was held to exist in New Jersey, in the case of The State *v.* Wyckoff (2 Vroom's Rep., 65), decided by the supreme court of that State in 1864. The defendant made arrangements in New York with one Kelly to go into New Jersey and steal certain articles, which he did, afterwards delivering them to the defendant in New York. Wyckoff never came into New Jersey, and it was held that as his offense merely constituted the crime of accessoryship before the fact, and this in New York, he could not be tried in New Jersey. Nevertheless the court said that it was a firmly established rule—

> that where the crime is committed by a person absent from the country in which the act is done, through the means of a merely material agency or by a sentient agent who is innocent, in such cases the offender is punishable where the act is done. The law implies a constructive presence from the necessity of the case; otherwise the anomaly would exist of a crime but no responsible criminal.

The decision just quoted speaks of an *innocent agent* and implies that if a person outside of a State commits an act within it, through an agent who is cognizant of the character of the act which, as such agent, he performed, the principal can not be held. This opinion rests on the doctrine of accessoryship, which, as has been seen, the New Jersey court recognized; the theory being that if the agent had a guilty knowledge of the character of his performance he became the principal offender in the place where he committed the act, and that the person for whom he acted was merely an accessory before the fact, and as such punishable only in the place of his accessoryship. But, as has been shown, the doctrine of assessoryship has been abolished by statute in many jurisdictions in which it formerly prevailed, and is condemned by many writers as unnecessary and unsound. Referring to accessories before the fact, Mr. Bishop says:

> The distinction between such accessory and a principal rests solely in authority, being without foundation either in natural reasons or in the ordinary doctrines of the law. The general rule of the law is, that what one does through another's agency is to be regarded as done by himself.

And on this point he cites Broom's Legal Maxims, 2 ed., p. 643; Co. Lit. 258*a*; and the opinion of Hosmer, C. J., in Barkhamsted *v.* Parsons, 3 Conn., 1, that "the principle of common law, *Qui facit per alium, facit per se*, is of universal application, both in criminal and civil cases."

Another jurisdictional question worthy of notice is that of the offense of larceny, where goods are stolen in one state or country and brought into another. It was held in England, and the decision has been widely followed in the United States, that in such a case an indictment will not lie for larceny in the country into which the goods were brought.

These decisions rest on the ground that a person committing a larceny in one country can not be punished for it in another jurisdiction. This may be regarded as sound, so far as it goes. But in some of the United States it has been provided by statute, as well as decided by the courts, that a person bringing stolen goods from one state into another may be indicted for larceny in the latter. And by a recent statute the same rule is in force in Canada in respect to persons bringing stolen goods into Canada from foreign jurisdictions.

This rule appears to rest on solid jurisdictional grounds. It does not imply a right to punish the offender for the taking in the foreign state, but only for his felonious act of holding in his custody in the punishing state with an intent to convert to his own use goods which he knows to be the property of another. This completely constitutes the crime of larceny in the latter state. For a clear and forcible exposition of the jurisdiction in such a case, I quote from Bishop on Criminal Law, section 140, vol. 1, 7th ed., the following passage:

> Though our courts are not permitted to recognize a foreign larceny and punish it, they can take cognizance of a foreign civil trespass to personal goods; and, if they obtain jurisdiction over the parties, they will redress the wrong done in the foreign country. The method under the common law procedure is by the familiar transitory action of trespass. Now, in every larceny there is a civil trespass as well as a criminal one. This civil trespass, when committed abroad, our courts can recognize, and practically enforce rights growing out of it to the same extent as if done on our own soil. So much is settled doctrine, about which there is no dispute. It is equally settled doctrine in larceny, that if one has taken another's goods by a mere civil trespass, even though it was unintended, then, if finding them in his possession, the intent to steal them comes over him, and with such an intent he deals with them contrary to his duty, this is larceny. Applying these two plain doctrines to the present case we have the result, that where a thief brings goods from a foreign state into ours our courts are required to look upon him as a trespasser; and, when he commits any asportation of them here, such as he necessarily did in bringing them across the territorial line, the intent to steal impelling him, they should regard him as a felon under our laws.

An interesting case of the constructive presence and consequent criminal liability of an absent confederate in the commission of a crime is that of the State of Nevada *v.* Hamilton *et al.*, 13 Nevada, 386, decided by the supreme court of that State in 1878. The circumstances of the case were that a plan was concocted between certain persons to rob the treasure box of a stage on the road from Eureka, in Eureka County, Nevada, to Nye County, in the same State; that one of the confederates was to ascertain when the stage left Eureka, and to make a signal to his confederate in Nye County, 30 or 40 miles distant, by building a fire on the top of a mountain in Eureka County, all of which he did. The question being whether this confederate could be held in Nye County for an attempt to rob there, he having been corporeally in Eureka County when his confederates attacked the stage, it was de-

cided that he was properly so held, the court adopting from Bishop's Criminal Law, sec. 650, vol. 1, the declaration that—

where several persons confederate together for the purpose of committing a crime which is to be accomplished in pursuance of a common plan, all who do any act which contributes to the accomplishment of their design are principals, whether actually present at its consummation or not. They are deemed to be constructively present though in fact they may be absent.

A question which has given rise to much contrariety of opinion is that of the proper jurisdiction of the offense of murder, where the injury is inflicted in one place or state, and the victim dies in another place or state. In England it was once held that where a blow was struck in one county and death ensued in another county, the criminal could be tried in neither. To remedy this defect, the statute of 2 and 3 Edw. VI, chap. 24, A. D. 1549, was passed, after which it was held that the criminal could be tried in either county. But as this statute was adopted merely to remedy a defect in the common law procedure, by enabling juries in one county of the realm to take cognizance to a certain extent of facts that occurred in another county of the kingdom, it has frequently been asserted in the United States, and is definitively settled in England, that where a blow is struck outside of the boundaries and jurisdiction of an independent state by a foreigner, the mere death of the victim, who subsequently to his injury has come or been brought into the state, does not give it jurisdiction of the crime. The decision of this question depends upon the view the court may take of the relation of the death to the infliction of the injury. The question was settled in England in the case of the Queen *v.* Lewis, 7 Cox C. C., 277, decided by the court of criminal appeal in 1857. The prisoner, who was a Frenchman by birth, and a naturalized citizen of the United States, shipped at New York in December, 1856, as a seaman on board of an American ship, on a voyage from thence to Liverpool. On board of the vessel, and shipped for the same voyage, was a seaman named George, towards whom the prisoner, soon after the commencement of the voyage, began to exercise acts of cruelty. The last act proved was committed four days before the vessel arrived at Liverpool, and when she was on the high seas west of Cape Clare, Ireland. The vessel arrived in the Mersey on the morning of January 12, 1857, and George died at a hospital in Liverpool on the afternoon of the same day in consequence of the cruelty and violence committed upon him by the prisoner during the voyage. The indictment was for manslaughter.

It was conceded by the counsel for the prosecution that by the common law the English courts would have had no jurisdiction, but he contended that it was conferred on them by the statutes of 2 Geo. II, c. 21, and 9 Geo. IV, c. 31. The former act provided that where any person, at any time after the 24th June, 1729, should be feloniously stricken or poisoned upon the sea, or at any place out of England, and should die of the same stroke or poisoning within England, or where any person should be feloniously stricken or poisoned within England and should die of the same stroke or poisoning upon the sea, or at any place out of England—in either of said cases an indictment thereof found by the jurors of the county in England in which such death, stroke, or poisoning should happen, respectively, should be as good and sufficient as if such felonious stroke or poisoning, death thereby ensuing, had happened in the same county where the indictment was found. The statute 9 Geo. IV, c. 31, § 8, provided—

That where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke, etc., in Eng-

land, etc., every offense committed in respect of any such case, etc., may be dealt with, inquired of, tried, determined, and punished in the county or place in England in which such death, etc., shall happen, in the same manner, in all respects, as if such offense had been wholly committed in that county or place.

Notwithstanding the general words, especially of the latter act, the court of appeal held that the British courts had no jurisdiction, and said that—

That section (§ 8, 9 Geo. IV, c. 31) ought not, therefore, to be construed as making homicide cognizable in the courts of this country by reason of the death occurring here, unless it would have been so cognizable at the place where the blow was given; and the homicide in this particular case would have been by the 7th section so cognizable if the offender had been a British subject, but not otherwise.*

An opposite view of the relation of the death to the mortal injury has been taken in the United States in the case of the Commonwealth *v.* Macloon *et al.*, 101 Mass., 1, decided by the supreme judicial court of the State of Massachusetts in 1869. The defendants, one a citizen of the State of Maine, and the other a British subject, were convicted in the superior court of Suffolk County, Mass., of the manslaughter of a man who died in that county in consequence of injuries inflicted on him by the defendants in a British merchant ship on the high seas.

The statute of Massachusetts under which the defendants were tried and convicted provides that:

If a mortal wound is given, or other violence or injury inflicted, or poison administered on the high seas, or on land either within or without the limits of this State by means whereof death ensues in any county thereof, such offense may be prosecuted and punished in the county where the death happens. (Gen. Stats., c. 171, par. 19.)

The decision of the supreme court, which was delivered by Gray, J., stated that the principal question in the case was "that of jurisdiction, which touches the sovereign power of the Commonwealth to bring to justice the murderers of those who die within its borders." It was not pretended that a foreigner could be punished in Massachusetts for an act done by him elsewhere. But it was held that where a mortal blow was given outside and death ensued within the State the offender committed a murder there. The court said:

Criminal homicide consists in the unlawful taking by one human being of the life of another in such manner that he dies within a year and a day from the time of the giving of the mortal wound. If committed with malice, express or implied by law, it is murder; if without malice, it is manslaughter. * * * The unlawful intent with which the wound is made or the poison administered attends and qualifies the act until its final result. No repentance or change of purpose, after inflicting the injury or setting in motion the force by means of which it is inflicted, will excuse the criminal. If his unlawful act is the efficient cause of the mortal injury, his personal presence at the time of its beginning, its continuance, or its result is not essential.

The same view of the crime of murder, and consequently of jurisdiction in the case where death occurs in an independent state from an injury committed outside, was taken by the supreme court of Michigan, in the case of Tyler *v.* The People, 8 Mich., 320, decided in 1860. Tyler was indicted under a statute of that State, which is substantially identical with the Massachusetts statute referred to in the case of Macloon; and it was held that, although the mortal wound was given in Canada, the person inflicting the blow was indictable in Michigan, where the death occurred, notwithstanding that it did not appear by the evidence

*See also Hoong *v.* The Queen, 7 Cox C. C., 489.

that he was a citizen of that State.* Manning, J., delivering the opinion of the majority of the court, said:

The shooting itself, and the wound which was its immediate consequence, did not constitute the offense of which the prisoner is convicted. Had death not ensued, he would have been guilty of an assault and battery, not murder; *and would have been criminally accountable to the laws of Canada only.* But the consequences of the shooting were not confined to Canada. They followed Jones [the victim] into Michigan, where they continued to operate until the crime was consummated in his death.

Campbell, J., delivered a dissenting opinion of much force, in which he argued that the coming into the State was the act not of the wrongdoer but of the injured person, and therefore should not subject the former to the jurisdiction of Michigan merely because the latter happened to die there. This argument was adverted to in the case of Macloon, and the answer made by the Massachusetts court was that—

it is the nature and the right of every man to move about at his pleasure, except so far as restrained by law; and whoever gives him a mortal blow assumes the risk of this, and in the view of the law, as in that of morals, takes his life wherever he happens to die of that wound. (See Com. *v.* Macloon, ante.)

In New Jersey, however, the contrary view was taken by the supreme court in the case of The State *v.* Carter (3 Dutcher, 499), decided in 1859. The defendant, who was assumed to be a citizen of New York, was indicted for homicide, by inflicting on the deceased in that State, mortal wounds, of which he afterwards died in New Jersey. The statute under which the indictment was found provided that—

where any person shall be feloniously stricken or poisoned upon the sea, or at any place out of the jurisdiction of this State, and shall die of the same stroke or poisoning within the jurisdiction of this State, * * * an indictment thereof found by jurors of the county within the jurisdiction of this State, in which such death, etc., shall happen, etc., shall be as good and effectual in the law, etc., as if such felonious stroke and death thereby ensuing, or poisoning and death thereby ensuing, etc,, had happened in the same county where such indictment shall be found. (Nixon's Dig., N. J., p. 184.)

Green, J., delivering the opinion of the court, said:

Nothing was *done* by the defendant in this State. When the blow was given *both* parties were out of its jurisdiction, and within the jurisdiction of the State of New York. The only fact connected with the offense alleged to have taken place within our jurisdiction is, that *after* the injury the deceased came into and died in this State. * * * Here no act is done in this State by the defendant. * * * The coming of the party injured into this State afterwards was his own voluntary act, and in no way the act of the defendant.

It was consequently held that, the offender not being a citizen of New Jersey, the courts of that State were incompetent to try him, notwithstanding the general language of the act under which the indictment was found.

The preponderance of decisions of the American courts unquestionably sustains the doctrine that in murder the crime is committed where the blow is struck.* It is not, however, my purpose to discuss here the soundness or unsoundness of these opposing views. My object in the preceding discussion of the English and American cases has been, in the first place, to show that in no case has an English or an American court assumed jurisdiction, even under statutes couched in the most general language, to try and sentence a foreigner for acts done by him abroad, unless they were brought, either by an immediate effect or by direct and continuous causal relationship, within the territorial juris

* Tyler was, in fact, a U. S. marshal. His extradition was demanded by the British Government under the treaty of 1842, for murder committed within British jurisdiction. But after his trial and conviction the demand was permitted to rest. (See Clarke upon Extradition, p. 68 *et seq.*)

diction of the court. In the second place, I have sought to illustrate the various phases of this principle for the purpose of dissipating the notion that it in some way sustains the doctrine of Article 186 of the Mexican penal code. The mere existence of the English and American cases negatives the claim made in that article. If a nation has jurisdiction of offenses committed and consummated by a foreigner outside of its actual or constructive territory, then all argument as to the place where his acts took effect is useless and irrelevant. It is only because such a pretension is denied and repudiated not only in England, but also in the United States, and as between the several States of the United States, united as they are by a supreme Federal Constitution, that the courts have inquired so constantly as to the locality of the crime.

Taking up the theories classified as non-territorial, we may first notice that which proposes the punishment by the state of its own citizens for acts done abroad.

This theory has been separated into three subdivisions, as follows:

(*a*) The punishment by the state of all acts of its citizens abroad, which, if committed within its territory, would constitute violations of its criminal law. This proposition makes the penal law of the state a personal statute, binding upon its citizens everywhere.

(*b*) The punishment by the state of all acts of its citizens which may be committed in particular places, and which, if committed within its territory, would constitute violations of its criminal law.

(*c*) The punishment by the state of particular acts of its citizens abroad, which, if committed within its territory, would constitute violations of its criminal law, and which, by reason of their gravity, or the fact that, as is the case with political crimes, the foreign state may not punish them, it is the duty of the state, not only to mankind but to itself, to punish.

It is not to be doubted that each state may, in the exercise of its sovereignty, punish its own citizens for such acts and in such manner as it may deem proper.

For the exercise of this right each state is responsible to itself alone, no other state being competent to intervene. Nevertheless, the subject has presented to publicists and legislators so many grave doubts on the score of expediency and justice, that few countries have attempted to require of their citizens a general observance of their criminal law outside of the national territory, except in particular places.

These exceptions are barbarous lands, in which local law does not exist, and to which the doctrine of the sovereignty of each nation over all persons within its territory does not completely apply; and Mohammedan and other non-Christian countries, in which the citizens of many states enjoy a conventional immunity from the local law. In such places it is not only proper but necessary for each state to subject its citizens to its own regulations. The argument of expediency may also be applied to the punishment of citizens for offenses of a high grade, such as murder, wherever committed. But, to quote the language of Sir George Cornewall Lewis†—

the system of tying the entire criminal law of a country round the neck of a subject, and of making him liable to its operation in whatever part of the world he may be, converts the criminal law into a personal statute, and puts it on the same footing as the law respecting civil *status*.

* Wharton's Cr. Law, § 292; Bishop's Cr. Law, § 113, vol. 1; *Riley* v. *State*, 9 Humph. (Tenn.), 646; *State* v. *Kelly*, 76 Maine, 331.

† Foreign Jurisdiction and the Extradition of Criminals.

The objection to this, as he states it, is that—

> the personal statute of one country, in civil matters, is recognized by another, so that there is no conflict of laws. But if the criminal law were a personal statute, a foreigner would at the same time be subject to two criminal laws—the criminal law of his own state and that of the state of his domicile. No text-writer and no state disputes the rule that all foreigners in a country are subject to its criminal law.

It is no answer to this cogent reasoning to say that the punishment of a citizen by the country in which the crime was committed would be a bar to his punishment at home for the same offense; for it may be very differently regarded by the two countries. The law of the sovereign of allegiance might punish it much more severely than the law of the country in which the offense was committed; and, were the case reversed, the punishment of the criminal in his own country would either guaranty him immunity from a greater penalty justly incurred in the state where the offense was committed should he return thereto, or, assuming that the former prosecution could not be set up as a bar in the latter country, would leave him liable on such return to a second punishment for the same offense. I am aware that it has been proposed by some writers, and adopted as a rule in some codes, to apply to offenses committed outside of the state either the penalty attached to the act by the law of the place where it was committed, or that imposed by the law of the place of trial, whichever may be the less severe. But the general and more consistent rule is to apply the penalty prescribed by the law of the punishing state; for, as it is a universal principle that one state will not enforce the penal laws and judgments of another state,* it seems to be illogical to apply to a criminal act, although committed abroad, the penalty prescribed by a foreign law.

In addition to the inharmonious and conflicting results already noticed of the proposition generally to extend the operation of criminal law to citizens when abroad, it is obvious that if such a rule were enforced the trial of persons at a place far away from the *locus delicti* would often be productive of great hardships and injustice; and, if the law were not enforced, its inutility and the capriciousness of its enforcement would render its existence inexpedient and improper.

The second subdivision of non-territorial jurisdiction in our synopsis includes, first, the single crime of piracy. This offense has been placed by itself, because it is *sui generis*. The scene of the pirate's operations being the high seas, which it is not the special duty or right of any nation to police, and his crime being treated as a renunciation of the protection of the flag which he may carry, he is regarded as a complete outlaw, and may be punished by any nation that captures him. Such an exercise of jurisdiction is both logical and necessary, and is recognized by all nations as a common duty and a common advantage. It scarcely need be said that the exercise, as in the case of conventions for the suppression of the slave trade (non-territorial, 2, *b*), of criminal jurisdiction by one country over the citizens of another, under a special treaty between the two countries, presents no conflict of jurisdictions, and is simply a question of expediency, to be considered by the parties to the agreement. The punishment by a nation of extraterritorial offenses against the safety of the state, and the counterfeiting or forging of national seals, papers, moneys, and bank bills authorized by law (non-territorial, 2, *c*) is, as will hereafter be seen, regarded as an exception to the general principles of criminal jurisprudence, and is placed by those who maintain and defend it upon the high ground of necessity and self-defense.

*Foelix, Droit International Privé, tom. ii, tit. ix, chap. iv.

Our fourth subdivision of non-territorial jurisdiction proposes the punishment by each state of all offenses, wherever and by whomsoever committed. It is unnecessary to discuss this theory specifically, because, in the first place, it is so rhapsodical and cosmopolitan in its character, and, while intended to be benevolent, is so impracticable and intrusive, that it has never assumed a legislative guise; and, in the second place, its character will necessarily be disclosed in the consideration, immediately to follow, of our third subdivision of non-territorial jurisdiction, which proposes the punishment by the state of offenses committed abroad by foreigners against citizens, and which is found in Article 186 of the Mexican penal code.

It has been constantly asserted, both in the United States and in Mexico, that this article is modeled on Articles 5 and 7 of the French Code of Criminal Procedure; and in an editorial in El Foro of the 6th of August last, a "journal of legislation and jurisprudence" published in the City of Mexico, the Mexican law is elaborately defended on that ground. How far such a statement is borne out by the facts may readily be ascertained.

POSITIVE LEGISLATION RESPECTING EXTRATERRITORIAL CRIMES.

Articles 5 and 7 of the French Code of Criminal Procedure* may be translated as follows:

ARTICLE 5. Every Frenchman who, outside of the territory of France, commits a *crime* punishable by the French law, may be prosecuted and judged† in France.

Every Frenchman who, outside of the territory of France, commits an act defined as a *délit* by the French law, may be prosecuted and judged in France, if the act is punishable by the legislation of the country where it was committed.

Nevertheless, in the case of a *crime* or of a *délit*, no prosecution shall take place if the accused prove that he has been definitively judged in the foreign country.

In case of a *délit* committed against an individual Frenchman or foreigner, the prosecution can be instituted only at the request of the public ministry: it must be preceded by a complaint of the offended party or by an official denunciation to the French authorities by the authorities of the country where the *délit* was committed. No prosecution shall take place before the return of the culprit to France, except for the crimes enumerated in Article 7, below.

ARTICLE 7. Every foreigner who, outside of the territory of France, shall be guilty of a *crime* against the safety of the state, or of counterfeiting the seal of the state, national moneys having circulation, national papers or bank bills authorized by law, may be prosecuted and judged according to the provisions of the French laws, if he is arrested in France, or if the Government obtains his extradition.

Such being the provisions of Articles 5 and 7 of the French Code of Criminal Procedure, argument is unnecessary to show that they do not contain a single provision that can be construed as a precedent for the Mexican statute. Article 5 applies solely to offenses committed abroad by Frenchmen, and even as to those there are important limitations. Article 7 applies to offenses committed abroad by foreigners; but the jurisdiction is strictly confined to *crimes* against the safety of the state, and what may be termed the analogous *crimes* of counterfeiting the seal of the state, national moneys in circulation, national papers, and bank bills authorized by law. There is no suggestion of a claim to try foreigners for offenses committed abroad against a private person.

It has been seen that in respect to offenses committed abroad by Frenchmen Article 5 makes a distinction between *crimes* and *délits*. These terms mark a distinction which may be likened to that denoted

*Code d'instruction criminelle, dispositions preliminaires. See Codes Français et Lois Usuelles, par H. F. Rivière, Paris, 1876.

†*I. e.*, tried, and acquitted or convicted.

by the English words "felony" and "misdemeanor." But, as *crime* and felony, as well as *délit* and misdemeanor, are technical terms, their correspondence, though general, is not exact. *Crime* is defined in the French code* as an offense which the laws punish with an afflictive or infamous penalty. Afflictive and infamous punishments are death, solitary confinement, imprisonment, hard labor for life or for a certain period, and transportation for life; punishments simply infamous are banishment and loss of civil rights.

Délit is defined as an offense which the laws punish with correctional penalties.† Such are imprisonment for a time in a house of correction, deprivation for a time of certain civic rights, and fines.

There is still another class of offenses called *contraventions*, which are defined as infractions of law punishable with police penalties.‡ Such are imprisonment for not less than a day nor more than a fortnight, or a fine of 1 to 15 francs, inclusive. *Contraventions* are not punishable by the code when they are committed outside of France. There is, however, a law of June 27, 1866, whose operation is conditional, which provides for the punishment of *contraventions* as well as *délits* of certain kinds when committed by a Frenchman in certain places outside of France. This law provides that every Frenchman who commits either a *délit* or a *contravention* in respect to the forests, the country, the fisheries, the custom-houses, or indirect taxes, on the territory of one of the contiguous states, may be prosecuted and tried in France, according to the French law, if the state in which the offense was committed authorizes the prosecution of its inhabitants for the same acts when committed in France; and it is further provided that reciprocity shall be legally established by international conventions, or by a decree published in the bulletin of the laws.

In the French code offenses against the safety of the state are divided into two classes, viz: those against its exterior and those against its interior safety. Among the former are machinations and holding communications with foreign powers, or their agents, to induce them to commit hostilities or enter upon war against France; committing hostile actions, not approved by the Government, which expose it to a declaration of war. Offenses against the interior safety of the state are attempts or plots directed against the governing powers, *crimes* tending to trouble the state by civil war, the illegal employment of an armed force, devastation and public pillage.

Germany.—The penal code of the Empire of May 15, 1871,§ as modified by the law of February 26, 1876, contains the following provisions:‖

SEC. 4. *Crimes* and *délits* committed in a foreign country are not, as a rule, subjected to any prosecution. There can, however, be prosecuted, according to the penal laws of the German Empire:

(1) Every *German* or *foreigner*, who, in a foreign country, is guilty of high treason against the Empire of Germany or one of the states of the confederation, or of counterfeiting money; or who has committed, in the quality of a functionary of the Empire of Germany, or of one of the states of the confederation, an act that the laws of the Empire define as a *crime* or *délit* committed in the exercise of public functions;

* Code Penal, Art. 1. L'infraction que les lois punissent d'une peine afflictive ou infamante est une crime.

† *Ib.* L'infraction ques les lois punissent de peines correctionnelles est un délit.

‡ Code Penal, Art. 1. L'infraction que les lois punissent des peines de police est une contravention.

§ This code went into operation over the Empire on January 1, 1872.

‖ See Drage's C. Code of the German Empire. In translating the criminal codes of the continental nations, I have used the terms *crime* and *délit*.

(2) Every *German* who, in a foreign country, is guilty of high treason against the Empire of Germany or one of the states of the confederation, or of an offense against a sovereign of the confederation;

(3) Every *German* who is guilty, in a foreign country, of an act defined as a *crime* or *délit* by the laws of the German Empire and punishable according to the laws of the place where it was committed. Prosecution can also take place when the criminal has not acquired the quality of a German until after the *crime* or *délit* has been consummated, provided, in the latter case, that the prosecution has been preceded by a complaint of the competent authority of the place where the act was committed. If the law of the foreign country imposes a lighter penalty, that law ought to be applied.

SEC. 5. In the case expressed by No. 3, section 4, the prosecution can not take place:

(1) If the foreign tribunals have decided on the offense by a judgment having the force of a final judgment, and if it has resulted in an acquittal, or if the person convicted has undergone his penalty;

(2) If the public action or the penalty falls under prescription according to the foreign law, or if the penalty has been remitted;

(3) If the person offended has not formulated a complaint, in the case where the foreign legislation subordinates the prosecution to the existence of the complaint.

SEC. 6. *Contraventions* committed abroad are not punishable, except in the cases determined by special provisions of the law or of treaties.

SEC. 7. A punishment suffered in a foreign country is to be reckoned in considering the punishment to be awarded if a fresh condemnation ensues in the territory of the German Empire for the same act.

Austria.—Part 1, chapter 2, of the penal code of the 27th May, 1852, contains the following provisions:

SEC. 36. *The subject of the Empire of Austria* who has committed a *crime* in a foreign country can not on his arrival in his own country be surrendered to that foreign country; but he shall be treated conformably to the present penal code, without regard to the laws of the country where the *crime* was committed.

If, however, he has already been punished in the foreign country on the charge of that violation of law, the penalty undergone shall be taken as part of that which is imposed by the present penal code. In no case can the judgments of foreign criminal jurisdictions be executed in this country.

SEC. 38. If a *foreigner* is guilty in a foreign country either of the *crime* of high treason against the Austrian state, * * * or of the *crime* of falsifying papers of credit or Austrian money, he shall be treated the same as a native, according to the present penal code.

SEC. 39. If a foreigner in a foreign country is guilty of any other *crime* than those specified in the preceding paragraph, he shall always be arrested on his arrival in this country; nevertheless, communication shall immediately be established in relation to the subject of extradition with the government of the country where the *crime* was committed.

SEC. 40. In case the foreign government refuses to accept the extradition, it shall then be proper, as a general rule, to proceed against the foreign criminal according to the provisions of the present penal code.

If, however, the law of the territory where the *crime* was committed is milder, it shall be proper to treat the culprit according to the milder law. The judgment of condemnation shall pronounce, in addition, banishment after the expiration of the penalty.

Part 2, chapter 1:

SEC. 235. The *native* who shall be guilty of *délits* or *contraventions* in a foreign country can never, on his arrival in his own country, be extradited to that foreign country. But when he has not been punished or prosecuted in the foreign country he shall be treated conformably to the present penal code without regard to the laws of the country where the violations of law were committed.

This provision is equally applicable in the cases where a penalty has already been pronounced against a native Austrian in a foreign country on the charge of like *délits* or *contraventions*, provided that the penalty has not been executed. In no case shall the judgments of foreign criminal jurisdictions be executed in this country.

Belgium.—The law respecting the punishment of offenses committed in a foreign country is substantially identical with that of France, whose legislation on this subject Belgium has followed since 1794.*

* Revue de Droit International, Vol. IX, p. 305.

The law of 17th April, 1878, which is still in force, contains the following provisions:

ARTICLE 6. There may be punished in Belgium every *Belgian* who, outside of the territory of the Kingdom, shall be guilty—

(1) Of a *crime* against the safety of the state;

(2) Of a *crime* or a *délit* against the public credit * * *†, if the *crime* or the *délit* has for its object moneys having circulation in Belgium, or bills, papers, seals, stamps, marks, or dies of the state, or of the departments of government or public establishments of Belgium;

(3) Of a *crime* or of a *délit* against the public credit * * *‡, if the *crime* or *délit* has for its object moneys not having legal circulation in Belgium, or the bills, papers, seals, stamps, marks, or dies of a foreign country.

The prosecution in the latter case can not take place, except on official notification given to the Belgian authorities by the authorities of the foreign country.

ART. 7. Every *Belgian* who, outside of the territory of the Kingdom, shall be guilty of a *crime* or of a *délit* against a Belgian may be prosecuted in Belgium.

ART. 8. [This article provides that the prosecution of Belgians who, outside of the realm, shall have committed certain *crimes* or *délits* against a foreigner, shall be based either on the complaint of the injured person or of his family, or on official notification of the foreign authorities to those of Belgium that the offense has been committed.]

ART. 9. [This article relates to violations of forestry, rural, fishery laws, and is like the law of France noticed on page 39.]

ART. 10. There may be prosecuted in Belgium the *foreigner* who shall have committed, outside of the territory of the Kingdom, a *crime* against the safety of the state; a *crime* or a *délit* against the public credit * * *‡, if the *crime* or the *délit* has for its object moneys having legal circulation in Belgium, or national bills, papers, seals, stamps, marks, or dies.

ART. 11. The foreign coadjutor or accomplice of a crime committed outside of the territory of the Kingdom by a Belgian may be prosecuted in Belgium conjointly with the accused Belgian or after his conviction.

ART. 12. Save the cases specified in Nos. 1 and 2 of article 6 and in article 10, the prosecution of the violations of law of which the present chapter treats shall not take place unless the accused is found in Belgium.

ART. 15. The preceding provisions shall not apply when the accused, having been judged in the foreign country on the charge of the same violation of law, shall have been acquitted.

He shall be in the same situation when, after having been condemned abroad, he shall have undergone or prescribed his punishment, or shall have been pardoned.

Every detention undergone abroad, in consequence of a violation of law which gives rise to a sentence of condemnation in Belgium, shall be deducted from the duration of the penalties carrying deprivation of liberty.

ART. 14. In the cases defined in the present chapter, the accused shall be prosecuted and judged pursuant to the provisions of the Belgian laws.

Denmark.—The penal code contains the following provisions:

SEC. 4. Every *Danish subject* who, for the purpose of avoiding a prohibitive law in force in Denmark, shall commit, outside of the frontiers of the Kingdom, the act which that law penalty forbids, shall be considered as having committed it in this country.

SEC. 5. Equally considered as having infringed the penal laws of the Kingdom is every *Danish subject* who, abroad, shall have been guilty of treason against the Danish state or of the crime of high treason, or who shall have counterfeited or altered Danish moneys, attacked or outraged, in the exercise of his functions, a Danish functionary located in a foreign country, or failed in any manner to perform any of the duties of loyalty and obedience to which he is held as a subject.

* * * * * * * §

SEC. 6. When, outside of the cases mentioned, a Danish subject shall have committed a *délit* in a foreign state, the minister of justice is authorized to prosecute him in the Kingdom, and the accused shall be judged according to the present law.

Great Britain.—British subjects are punishable who have committed, either as principals or accessaries, in a foreign territory, or in the colo-

†The omitted words relate to the definition, mode of proof, etc.

‡The omitted words refer to other parts of code for definition, mode of proof, etc.

§The omitted provisions relate to punishment of public functionaries of the Kingdom for violations of official duty abroad.

nies, murder or manslaughter, whether against an Englishman or against a foreigner, or offenses against the enlistment act.

Provision is also made by the merchant shipping act of 1854 for the punishment of the master, seaman, or apprentice of a British ship who, at any place out of Her Majesty's dominions, commit offenses against persons or property.

Special enactments also exist for the punishment of British subjects who commit crimes in uncivilized or uninhabited countries, or in countries where the British authorities exercise by treaty criminal jurisdiction. Laws have also been passed to execute the slave-trade treaties between Great Britain and certain powers, authorizing the creation of mixed courts for the adjudication of ships bearing the flag of either of the contracting parties. This, however, as is said by Sir G. C. Lewis,* "is an arrangement which it is competent to independent states to make in common, with the assistance of their respective legislatures, and it does not affect the rights of any third power."

Hungary.—Jurisdiction over offenses abroad is regulated by the penal code of 21st June, 1880, in force since 1st September of that year. Generally speaking, both Hungarians and foreigners are punishable for committing, outside of Hungary, high treason, violence against the King and members of the royal house, treason against the state, insurrection or disturbance, and falsification of metal or paper money accepted as a means of payment into the coffers of the Hungarian state, or of bills of public credit of Hungary. Trial and conviction abroad, even when the culprit has undergone the punishment there imposed, does not operate as a bar to trial and punishment in Hungary; nor does pardon, unless it was approved by a royal minister of Hungary. It is provided, however, that the punishment undergone abroad shall, as far as possible, be taken into consideration in applying the penalties of the Hungarian law.

Hungarians may be prosecuted for yet other crimes and offenses committed abroad; and it is provided that a foreigner, also, may be punished for a crime or offense committed abroad and not included in the category given above, when, according to treaties or actual usage, *there is no ground for extradition and the minister of justice orders the prosecution.* But it is further provided that such a crime or offense can not be prosecuted in Hungary when the act is not punishable by the law in force at the place where it was committed, or by the law of Hungary, or when it has ceased to be punishable according to one of those laws, or even when the competent foreign authority undertakes to punish it. It is also provided that when the penalty applicable to the crime or offense by the law of the place where it was committed is less severe than that of the Hungarian law, the former penalty shall be applied; and if part of the penalty shall have been served abroad, such part shall be taken into account by the Hungarian tribunals.

A Hungarian subject can never be surrendered to the authorities of a foreign country.

A penal judgment rendered by the authority of a foreign country can not be executed in the jurisdiction of Hungary.†

Italy.—Italian subjects may be punished who have committed on foreign territory *crimes* against the safety of the state, or counterfeited the seal, money, bills, or obligations of the state, or its paper money (Article 5), or who have committed on foreign territory a *crime* or a

* Foreign Jurisdiction, p. 28.

† Part I, Chap. II, Art. 7, Penal Code.

délit against an Italian or a foreigner (Article 6). In the case, however, of a *délit*, complaint must be made by the injured party, and, if he is a foreigner, it must appear that the legislation of his country assures the same protection to Italians.

In respect to offenses committed abroad by foreigners, the Penal Code* contains the following provisions:

ART. 7. There shall be judged and punished, according to the terms of the present code, the foreigner who, having committed on foreign territory either a *crime* against the safety of the state, or the *crime* of counterfeiting the seal, the moneys, bills, or obligations of the state, or its paper money, shall be arrested in the Kingdom or surrendered by another Government.

ART. 8. The foreigner who shall have committed on foreign territory, either against an Italian or against another foreigner, one of the *crimes* indicated in Articles 596 to 600, inclusive†, shall, if he happens to be arrested in the Kingdom, or to be surrendered by another Government, be judged and punished according to the provisions of Article 6‡, provided that the *crime* was committed at the distance of 3 miles at most from the Italian frontier, or, if the distance was greater, provided that the criminal has brought into the Kingdom the money or the property obtained by his depredations.

ART. 9. Besides the case indicated in the preceding article, the foreigner who shall have committed on foreign territory a *crime* to the prejudice of an Italian shall be arrested if he comes into the Kingdom. With the authorization of the King his return shall be offered to the Government of the place where the *crime* was committed, in order that he may there be judged. If that Government refuses to receive him the criminal shall be judged and punished in the Kingdom, according to the provisions of Article 6.

The same thing shall take place in the case of *délits* committed by a foreigner to the prejudice of an Italian on foreign territory, when, in the like case, the Italian would be punished in the country to which the foreigner belongs; except as to that which concerns the civil action.

Except in the case of offenses against the safety of the state, or counterfeiting the seal, money, bills, or obligations of the state, or its paper money, persons guilty of offenses abroad can not be tried in the Kingdom if they have been definitively judged in the country where the violation of law was committed, and, in case of condemnation, have undergone the penalty imposed.

Luxembourg.—By the law of 18 January, 1879, it is provided that every subject of the Grand Duke who, outside of the Grand Duchy, commits a *crime* or a *délit* may be prosecuted and judged in Luxembourg, provided that, in case of a *délit*, the act is punished by the legislation of the country where it was committed. If the criminal has been tried in the foreign country for the offense of which he is accused, and has been either acquitted or condemned, and if the latter is the case, has either undergone or prescribed his penalty, or has been pardoned, he can not be tried again.

Every detention abroad for the offense for which condemnation takes place in Luxembourg is counted as part of the penalty there, so far as the deprivation of liberty is concerned.

In the case of a *délit* committed against an individual subject of the Grand Duke or a foreigner, the prosecution can be instituted only on the request of the public ministry, and should also be preceded by a complaint of the offended party, or by an official denunciation to the Luxembourg authorities by the authorities of the country where the *délit* was committed.

The preceding provisions do not apply to political *crimes* or *délits* committed in a foreign country. Nevertheless, an attempt against the

* Code of 20 November, 1859.

† Relating to highway robbery.

‡ Relative to punishment of Italians for offenses committed abroad against an Italian or a foreigner. See *supra*.

person of the head of a foreign Government or against that of the members of his family is not regarded as a political offense, nor as an act connected with such an offense, when that attempt constitutes the crime of murder, or of assassination, or of poisoning. The prosecution is instituted at the request of the public ministry of the place where the accused resides, or of the place where he may be found.

In respect to offenses committed abroad by foreigners the law contains the following provisions:

ART. 7. Every foreigner who, outside of the territory of the Grand Duchy, shall be guilty, either as author or as accomplice, of a *crime* against the safety of the state, or of the counterfeiting of the seal of the state, of national moneys having circulation, of national papers, or of bank bills authorized by law, may be prosecuted and judged according to the provisions of the Luxembourg laws, if he is arrested in the Grand Duchy or if the Government obtains his extradition.

In respect to *délits* and *contraventions* by subjects of the Grand Duke in matters relating to the forests, the country, the chase, the fisheries, custom-houses, or indirect taxes in the territory of contiguous states, the law of Luxembourg follows that of France, and is founded on reciprocity and conventions.

Netherlands.—By the penal code, as modified by the law of 15 January, 1886, foreigners, as well as subjects, may be punished who, outside of the territory of the Kingdom, attempt to deprive the King of life, or to subvert the Government or the safety of the state, or who assault the King or Queen, or the successor to the Throne. Foreigners, as well as subjects, are also punished who, in another state, counterfeit the money and seals of the Netherlands, or bills of credit or certificates of debt of the Dutch Government or of the Dutch possessions, or of public institutions of the Netherlands.

Dutch subjects are punished for numerous other criminal offenses committed abroad.

Norway.—Subjects are judged, according to the laws of Norway, for violations of law committed either within or outside of the Kingdom.

Foreigners are likewise judged for offenses committed in the Kingdom, and also for violations of law outside of the Kingdom to the prejudice of Norway or of Norwegian subjects, *if the King orders the prosecution before the Norwegian tribunals.*

When an individual has been punished in a foreign country for a violation of law committed outside of the Kingdom, dismissal from office or employment is the only penalty which can be pronounced against him for that same offense.

Portugal.—Only Portuguese* are punishable for offenses committed outside of the state. They may be tried and punished for *crimes* committed abroad against the safety of the state, for falsification of the public seals, moneys, etc.; provided, however, that the criminals have not been judged in the country where they committed the offense. They may also be tried for *délits* committed abroad, provided the delinquent is found in Portugal; that the act of which he is accused is also defined as a *crime* or a *délit* by the legislation of the country where it was committed, and that the criminal has not been judged there.†

Russia.—The law of Russia in relation to criminal offenses committed outside of the national territory is fully set forth at p. 313 *et seq.* of vol. 11 (1879) of *Revue de droit international*, in a communication of M. Tagantzeff, professor of penal law in the University of St. Petersburg, to

*Law of July 1, 1869.

†See also J. Domis de Semerpont on Extradition, etc.

Professor Fiore, of the University of Turin, published by the latter in that journal, and which may be translated as follows:

Articles 172, 173, and 174 of the code, edition of 1866, established the following system of penalties applicable to crimes committed outside of the limits of Russia, in case of the voluntary return of the culprits to their country or of their extradition:

(1) *As regards Russian subjects:* The provisions differ here according as the crime committed has for its object Russia and Russian subjects, or else a foreign state and its subjects.

(2) Against Russia: Article 173 applies in the case where the crime is directed against the sovereign power of the state, the integrity, the safety, and the prosperity of Russia, or where an attempt is made upon the life of one or more of its citizens.

According to the sense of the law and the explanations of the commentators, its application requires:

(*a*) That the accused has done an injury to the rights of some individual—to his honor, his property, his liberty, his reputation, or his life; or else that he has committed an action directed against the government in force, or menacing the security and the tranquillity of the state. Nevertheless, the Russian legislation does not admit the restrictions upon responsibility adopted by the French law of 1867 (the difference between *crimes*, *délits*, and *contraventions*) and the German code of 1872, but does not make subjects responsible for the infraction, in a foreign country, of the regulations of Russian police, guarantying the interests of individuals, of the church, etc.;

(*b*) That the criminal has not been punished in the place of the crime, or that his offense has not been legally effaced by prescription, according to the laws of the country. This rule applies equally in the case where the said crime is punished more severely by our code than by that of the country where it was committed. The supplementary penalties of which the German code speaks are not admitted in ours;

(*c*) The institution of proceedings takes place on the general bases of the Code of Criminal Procedure of 1867 (the French code).

(3) To the prejudice of a foreign state: The application of article 174, in this case, requires:

(*a*) That the criminal shall have been delivered up by the state where the crime was committed, or that he shall have taken refuge in Russia;

(*b*) That he has done injury to the person or to the property of some foreign subject, or else against the interior safety of the state in which he lives;

(*c*) That his action is forbidden by the laws of the country where he committed it and by the Russian code;

(*d*) That the criminal has not been punished, and that his act has not been effaced by prescription;

(*e*) In the case where he has made an attempt against the interior safety of a foreign state, the criminal is punished according to the rules of article 260, code of 1866, relating to political crimes against foreign powers;

(*f*) In order that the penalty may be applied, it is absolutely necessary that complaint shall have been made against the criminal on the part of those offended, or on that of the power on whose territory the crime was committed;

(*g*) In case the crime is punished less severely by the local legislation than by the Russian code, the penalty is mitigated in proportion.

According to article 172 of the code, *foreigners* having committed crimes outside of Russia are not called before the Russian tribunals except in case of an attempt against the supreme power of Russia; that is to say, if they have participated in a plot tending to the overthrow of the existing Government, or to that of the Emperor and of the imperial family, or else if they have attacked the personal and property rights of Russian subjects. As for other crimes committed to the prejudice of Russia or of other states and foreign subjects, they are not included in the Russian penal code.

As to the conditions under which the application of penalties takes place, they are the same as for Russian subjects who have committed crimes to the prejudice of Russia.

Sweden.—Subjects are punished for violations of law committed outside of the Kingdom, if the King, acting through the council of state or on the report of the minister of justice, orders proceedings to be instituted.

Foreigners also are punished for offenses committed outside of the Kingdom to the prejudice of Sweden or of a Swedish subject, *if the King orders the prosecution.*

No one can be punished in the Kingdom for an act in a foreign country for which he has there been punished, unless the act entail dismissal

from office or civil degradation in Sweden, in which case such dismissal or degradation may be imposed.

Greece.—Foreigners are punishable for committing outside of the state high treason against Greece, for falsifying and counterfeiting national moneys having circulation in the Kingdom, counterfeiting the seals of the state, and for *crimes* or *délits* against a Grecian subject. Prosecution can take place only if the culprit has been delivered up to the justice of the state, or seized within the limits of the Kingdom.

Hellenic subjects are never extradited except in cases provided for by international conventions. The circumstances and manner of extraditing foreigners may be defined by law.

Brazil.—Both Brazilians and foreigners may be tried and punished who, on a foreign territory, have committed a *crime* against the independence, integrity, and dignity of the nation, against the constitution of the Empire and the form of government, or against the head of the state, or who have committed the crime of falsifying money or public titles, or bills of banks authorized by the Government. In such cases, however, the delinquent can be definitively judged only when he is actually in the Empire, either as the result of extradition or having come voluntarily.

There may also be prosecuted and definitively judged in the Empire, when they have re-entered it voluntarily, Brazilians who, on foreign territory, commit against Brazilians or foreigners the *crimes* of forgery, perjury, or swindling, or any other offense not warranting bail.

Foreigners who have committed any of the *crimes* enumerated in the preceding paragraph and subsequently have come into Brazil are extradited, if demanded; if not, they may be expelled from Brazilian territory or punished conformably to the Brazilian law. It is, however, necessary, in the last case, that there shall have been a complaint or denunciation authorized by the Government, and that the laws of the criminal's country punish foreigners in similar cases.

Spain.—Foreigners, as well as subjects, may be tried and punished who, outside of the territory of Spain, have committed offenses against the exterior safety of the state, or the offenses of high treason, rebellion, counterfeiting of the royal signature or stamp, counterfeiting of the signatures of public ministers or of the public seals, counterfeiting that is directly prejudicial to the credit or interests of the state, and the introduction and issuance of anything counterfeited, counterfeiting of bank notes authorized by law and the introduction or issuance of such counterfeit notes, and offenses committed by public officers in the discharge of their public functions.

Except in the cases of treason and high treason, if a person has been tried and acquitted or convicted in a foreign country of any of the offenses mentioned above, he can not be tried again in Spain for the same offense, unless, in case of conviction, he has not served out his sentence and has not been pardoned. In such case, he may be tried again in Spain; but any punishment he has actually undergone abroad is taken into account in adjusting the penalty in Spain. In all the cases indicated above, foreigners can be prosecuted only when they have been arrested on Spanish territory or when possession of them has been obtained by extradition. Spaniards may be punished who, in a foreign country, have committed offenses against other Spaniards, or against a foreigner, provided that in the latter case the offense was grave in character and was punishable by the law of the foreigner's country, as well as by the law of Spain.

Switzerland.—By the federal penal code of February 4, 1853, foreigners may be punished who, outside of Switzerland, commit offenses against the safety of the state, or contribute to the prejudice of the confederation by the embezzlement, destruction, or counterfeiting of official records, or by the violent overthrow of the constitution of the confederation, or the violent expulsion or dissolution of its authorities, or who recruit Swiss citizens for a prohibited military service.

In addition to the offenses specified above, Swiss citizens are punishable for a limited number of other offenses.

The importance in the present discussion of the preceding examination of the laws of different states touching offenses committed on foreign territory may best be apprehended in a tabular statement showing to what extent such jurisdiction over foreigners is actually claimed. It is unnecessary to tabulate the legislation respecting citizens, because that is merely a question of expediency which each state may determine for itself, and not a matter of international right, concerning which other nations may have to be consulted. It is, however, to be observed that while in some of the codes that have been quoted the provisions respecting offenses committed abroad by citizens are general and sweeping in their character, in no case is a claim put forth to punish a foreigner for such offenses, save under exceptional circumstances and in exceptional cases, which are supposed to justify the pretension.

Foreigners are punished who, outside of the national territory and jurisdiction, commit offenses—

(1) *Against the safety of the state:* (*a*) By France, Germany, Austria, Belgium, Hungary, Italy, Luxembourg, the Netherlands, Norway, Russia, Sweden, Greece, Brazil, Spain, Switzerland; (*b*) *not punished* by Denmark, Great Britain, Portugal.

(2) *Counterfeiting seals of the state, national moneys having circulation, national papers, or bank bills authorized by law:* (*a*) *Punished* by France, Germany, Austria, Belgium, Hungary, Italy, Luxembourg, the Netherlands, Norway, Sweden, Greece, Brazil, Spain, Switzerland; (*b*) *not punished* by Denmark, Great Britain, Portugal.*

(3) *Other offenses:* (*a*) General jurisdiction of offenses committed abroad by foreigners against subjects is claimed by Greece and Russia; (*b*) such offenses are punished by Sweden and Norway, if the King orders the prosecution; (*c*) *crimes*, but not *délits*, committed by foreigners in another state are punished by Austria, provided that (except in the case of *crimes* specified under 1 and 2) an offer of surrender of the accused person has first been made to the state in which the *crime* has been committed, and has been refused by it; (*d*) criminal offenses committed abroad by foreigners are punished by Hungary, if the minister of justice orders the prosecution, provided that the act is punishable at the place of commission, that it has not ceased to be punishable there, and that the competent authority does not undertake to punish it; (*e*) criminal offenses committed by foreigners against Italians in another state are punished by Italy, but only when (except in the cases under 1 and 2) an offer of surrender of the person accused has been made to the state in which the *crime* was committed, and has been refused by it, un-

* See, in this relation, United States *v.* Arjona, 120 U. S., 479, in which the Supreme Court, at its October term, 1886, held that the counterfeiting of foreign securities, whether national or corporate, which have been put out under the sanction of public authority at home, especially the counterfeiting of bank notes and bank bills, is an offense against the law of nations; and that, consequently, the Congress of the United States has authority, under its constitutional power to provide for the punishment of offenses against the laws of nations, to enact laws to punish the counterfeiting of foreign securities in the United States.

less the crime was committed within 3 miles of the frontier, or stolen property has been brought into the kingdom; (*f*) non-bailable offenses committed abroad by foreigners are punished by Brazil, if the prosecution is authorized by the Government, and the laws of the criminal's country punish foreigners in like cases; (*g*) criminal offenses committed outside of the state by foreigners against citizens or subjects are not punished under any conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain, or Switzerland.

It is thus seen that among all the countries whose legislation has been examined Russia and Greece are the only ones whose assertion of extraterritorial jurisdiction is as extensive and absolute in form as that of Mexico. For the question we are now considering is not that of the punishment of extraterritorial crimes against the safety of the state, or of coinage felonies, but of offenses, both *crimes* and *délits* (or felonies and misdemeanors), committed outside of a country by foreigners against a citizen. The only limitation imposed by article 186 upon the jurisdiction of the Mexican tribunals over offenses of this character, is that they must be punishable with a severer penalty than "arresto mayor" by the law of Mexico, and as penal offenses by the law of the country in which they were committed. Thus offenses which by the law of Mexico are merely *délits* and by the law of the United States merely *misdemeanors*, may be punished under article 186. Not only is this the language of the law, but such was its interpretation by the Mexican court in the case in question; and by the law of Texas libel is not a felony, but only a misdemeanor. (Smith *v.* The State, 32 Texas, 594.)

The claim of Mexico is not only thus extensive, but it is also absolute. We have seen that it was held by Judge Zubia, whose decision was affirmed by the supreme court of Chihuahua, that according to the rule, "*Judex non de legibus sed secundum leges debet judicare*," it did not belong to the judge to examine the principle laid down in Article 186, but to apply it in all force, it being the law of the state of Chihuahua. And we have further seen that Mr. Mariscal disclaimed any power to interfere with the execution of the law by the judicial tribunals. Thus the Mexican claim is absolute. In this respect it goes beyond the jurisdictional lines laid down by Sweden and Norway, whose claims of jurisdiction are, after those of Russia and Greece, the most extensive of any that have been examined. In Sweden and Norway the foreigner may be punished for an offense committed in a foreign country against a Swedish or Norwegian subject, *if the King orders the prosecution*. This makes the prosecution discretionary and enables the Government to meet any diplomatic question that may be raised in relation to the international right involved. The same thing may be said of the law of Hungary, where, in the case supposed, the prosecution must be ordered by the minister of justice. Austria punishes only *crimes*, not *délits* or misdemeanors, and then, except in the case of *crimes* against the safety of the state, or coinage felonies, only after an offer of surrender of the accused person has been made to the state in which the *crime* was committed, and has been refused by it. The same principle is found in the law of Italy, with almost the same definition of jurisdiction. Brazil makes the assertion of extraterritorial jurisdiction over foreigners in similar cases depend upon the assertion of a like jurisdiction by the criminal's country.

I have said that crimes committed outside of the national territory by foreigners against citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, the Netherlands, Portugal, Spain, or Switz-

erland. Before showing this I pronounced the Mexican contention, that the claim to punish foreigners for offenses committed against Mexicans outside of the national territory was sustained by the French code, to be wholly unfounded. I shall now show that such a claim has been pronounced by the highest judicial tribunal in France to be unwarranted by the principles of international law.

I refer to the case of *Raymond Fornage*, decided by the court of cassation, or supreme court, of France, at Paris in 1873, and reported in the Journal du Palais (p. 299 *et seq.*) for that year. This court being the highest judicial tribunal in France, its decisions in respect to the French law are not to be questioned. The circumstances of the case of Fornage are as follows: The prisoner was indicted by the "*Chambre des mises en accusation*" (grand jury) of the court of appeal of Chambéry for the crime of larceny, which was described in the indictment as having been committed in the canton of Vaud, Switzerland; and the case was referred for trial before a jury to the court of assizes (composed, in departments where there are courts of appeal, of three judges of that court) sitting at Haute-Savoie. The prisoner did not take an appeal, as he had a legal right to do, from the judgment of reference, but proposed before the court of assizes an exception to the competency of that court, based on the ground that, having the quality of a foreigner, the French tribunals could not try him for a crime committed in a foreign country. But the court of assizes, regarding itself as irrevocably clothed with jurisdiction by the judgment of reference from the court of appeals, which had not been attacked, declared that the exception of the accused was not receivable. Upon these facts the case was argued at length before the court of cassation by M. Réquier, a counsellor and reporter of the court, and M. Bédarrides, advocate-general, both of whom, while admitting that the rule was settled that a court of assizes could not declare itself incompetent to take cognizance of a case of which it had been possessed by a judgment of reference from which no appeal was taken within the periods established by law, nevertheless argued that there were considerations of a higher order in the case of Fornage, which ought to make it an exception to the general rule. In this relation I quote from the argument of M. Réquier the following passage:

> The right to punish has no foundation except the right of sovereignty, which expires at the frontier. If the French law permits the prosecution of Frenchmen for crimes or misdemeanors committed abroad, it is because the criminal law has something of the character at the same time of a personal statute and of a territorial statute. A Frenchman, when he has reached a foreign country, does not remain the less a citizen of his own country; and, as such, subject to the French law, which holds him again when he re-enters France. *But the law can not give to the French tribunals the power to judge foreigners for crimes or misdemeanors committed outside of the territory of France; that exorbitant jurisdiction, which would be founded neither on the personal statute nor on the territorial statute, would constitute a violation of international law and an attempt against the sovereignty of neighboring nations.* There exists a single exception to that rule of the law of nations. When a foreigner has committed, even outside of the territory, a *crime* against the safety of the state, he can be prosecuted, judged, and punished in France. But, save that exception, founded on the right of legitimate self-defense, foreigners are justiciable only by the tribunals of their own country for acts done by them outside of the territory. The French tribunals, in punishing an act of that nature, would commit a veritable usurpation of sovereignty, which might disturb the good relations of France with neighboring nations. * * * When a crime has been committed outside of the territory by a foreigner the culprit is not subjected by that act to the French law; the French tribunals have no jurisdiction over him; the incompetence is radical and absolute. The criminal court, in punishing the act, would commit an abuse of powers; it would usurp a right of sovereignty appertaining to a foreign power. Would it not be contrary to all the principles of justice to oblige the magistrates to render themselves guilty of an arbitrary act, of a violation of international law?

Not only did the court of cassation adopt this view, but in its judgment (the full text of which is given herewith as Exhibit B) the rule of international law, as laid down by the Government of the United States in the Cutting case, is expressed in terms which, for force, precision, and freedom from doubt or qualification, have not been surpassed. Translated, the material parts of the judgment are as follows:

"Whereas, if, as a general principle, the courts of assizes, possessed of a case by a judgment of the chamber of indictments not attached within the times fixed by Article 296 of the Code of Criminal Procedure, can not declare themselves incompetent, * * * this rule is founded on this, that the courts of assizes, being invested with full jurisdiction in criminal matters, can, without committing any excess of power and without transgressing the limits of their attributes, take cognizance of all acts punished by the French law; *but this jurisdiction, however general it may be, can not extend to offenses committed outside of the territory by foreigners*, who, by reason of such acts, are not justiciable by the French tribunals—seeing that, indeed, *the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory;* that, except in the cases specified by Article 7 of the Code of Criminal Procedure, the provision of which is founded on the right of legitimate defense, *the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived neither by the silence nor by the consent of the accused;* that it exists always the same, at every stage of the proceedings. * * * Whereas, indeed, Raymond Fornage was brought before the court of assizes of Haute-Savoie, accused of larceny committed in the canton of Vaud, Switzerland; * * * and, in ordering the trial to proceed, without passing upon the question of nationality raised by the accused, it (the court) violated Article 408 of the code, and disregarded the rights of the defense.

"Annul, etc."

This judgment may be regarded as finally and conclusively answering the contention that a precedent for Article 186 may be found in the French code.

PRINCIPLES OF AMERICAN LAW.

In the United States the territorial principle is the basis of criminal jurisprudence, and the place of the commission of an offense is generally recognized as the proper and only place for its punishment. Article 6 of the Amendments to the Federal Constitution provides that—

> in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

A similar though less elaborate provision for the punishment at the *locus delicti* of offenses committed in the United States exists in the Constitution itself, which provides (Article 3, section 2) that—

> the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed.

It is thus seen that notwithstanding the fact that the guaranties of the Federal Constitution to accused persons of a speedy and public trial; of trial by an impartial jury; of a right to know the nature and

cause of the accusation; to be confronted with witnesses; to have compulsory process for obtaining witnesses for the defense, and to have assistance of counsel, operate over the whole territory of the United States, and are binding on all the courts, State as well as Federal, it was nevertheless regarded as essential to the administration of justice to provide for the trial of the person accused in the State or district where his offense should be alleged to have been committed. But, in order to insure the punishment of crime, there was embodied in section 2 of Article 4 of the Constitution, the following provision:

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

These provisions of the Constitution apply to all offenses committed in the United States.

To the strict territorial principle, the laws of the United States furnish certain exceptions; but in no case is the exception of such a character as to involve or imply an assertion by the United States of jurisdiction over the territory of another nation.

The earliest bestowal by Congress upon the Federal courts of jurisdiction over offenses committed outside of the territory, actual or constructive, of the United States, was in the crimes act of 1790, which, as read in the text, has sometimes been supposed by writers to have conferred a far more extensive jurisdiction on the courts of the United States than the decisions of those tribunals have attributed to it. The eighth section of this act provides—

that if any person or persons shall commit, on the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State, murder or robbery, or any other offense, which, if committed within the body of a county, would by the laws of the United States be punishable with death or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandise, to the value of $50, or yield up such ship or vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defense of his ship, or goods committed to his trust, or shall make a revolt in the ship, every such offender shall be deemed, taken, and adjudged to be a pirate and felon, and, being thereof convicted, shall suffer death; and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may first be brought.

Under the provisions of this section several cases have been adjudicated by the Supreme Court. The first was that of United States *v* Palmer *et al.*, 3 Wheaton, 610, decided in 1818. This case was certified from the circuit court of the United States for the district of Massachusetts, on a division of opinion between Mr. Justice Story, of the Supreme Court, and Judge Davis, of the district court. The defendants were charged in the indictment with having committed a robbery on the high seas on a vessel belonging to persons unknown. There was no allegation that the defendants were citizens of the United States, two of them being described merely as "late of Boston," in the State of Massachusetts, and the other "as late of Newburyport," in the same State; and the goods were alleged to have been, at the time the defendants boarded the vessel and seized them, in the custody of "certain persons, being mariners, subjects of the King of Spain." One of the questions certified from the circuit court was as follows:

Whether the crime of robbery committed by persons who are not citizens of the United States, on the high seas, or on board of any ship or vessel belonging exclusively to the subjects of any foreign state or sovereignty, or upon the person of any sub-

ject of any foreign state or sovereignty, not on board of any ship or vessel belonging to any citizen or citizens of the United States, be a robbery or piracy within the true intent and meaning of the said eighth section of the act of Congress aforesaid, and of which the circuit court of the United States hath cognizance to hear, try, determine, and punish the same.

In response to this question, Chief-Justice Marshall, who delivered the opinion of the Supreme Court, said:

The question, whether this act extends further than to American citizens, or to persons on board American vessels, or to offenses committed against citizens of the United States, is not without difficulty. * * * The words of the section are in terms of unlimited extent. The words "any person or persons" are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them. * * * The court is of opinion that the crime of robbery, committed by a person on the high seas, on board of any ship or vessel belonging exclusively to subjects of a foreign state, on persons within a vessel belonging exclusively to subjects of a foreign state, is not a piracy within the true intent and meaning of the act for the punishment of certain crimes against the United States.

Although the offense charged in United States *v.* Palmer *et al.* was robbery on the high seas, the Chief-Justice, to sustain the limitation placed in the opinion on the words "any person or persons," as employed in the eighth section of the act of 1790, discussed the other provisions of the section as follows:

But these words (any person or persons) must be limited in some degree, and the intent of the legislature will determine the extent of this limitation. For this intent, we must examine the law. The succeeding member of the sentence commences with the words: "If any captain or mariner of any ship or other vessel shall practically run away with such ship or vessel, or any goods or merchandise to the value of $50, or yield up such ship or vessel voluntarily to any pirate."

The words, "any captain or mariner of any ship or other vessel," comprehend all captains and mariners as entirely as the words "any person or persons" comprehend the whole human race. Yet it would be difficult to believe that the legislature intended to punish the captain or mariner of a foreign ship who should run away with such ship and dispose of her in a foreign port, or who should steal any goods from such ship to the value of $50, or who should deliver her up to a pirate when he might have defended her, or even according to previous arrangement. The third member of the sentence also begins with the general words "any seaman." But it can not be supposed that the legislature intended to punish a seaman on board a ship sailing under a foreign flag, under the jurisdiction of a foreign Government, who should lay violent hands upon his commander, or make a revolt in the ship. These are offenses against the nation under whose flag the vessel sails, and within whose particular jurisdiction all on board the vessel are. Every nation provides for such offenses the punishment its own policy may dictate; and no general words of a statute ought to be construed to embrace them when committed by foreigners against a foreign Government.

That the general words of the two latter members of this sentence are to be restricted to offenses committed on board the vessels of the United States, furnishes strong reason for believing that the legislature intended to impose the same restriction on the general words used in the first member of the sentence.

The question of robbery on the high seas, under the eighth section of the act of 1790, was again before the Supreme Court in the case of United States *v.* Klintock, 5 Wheaton, 144, decided in 1820. This case was certified from the circuit court of the United States for Virginia, before which the defendant, a citizen of the United States, was charged with piracy committed in April, 1818, on a vessel called the *Norberg*, belonging to persons unknown. The facts found on the trial were that the defendant sailed as first lieutenant on a vessel called *The Young Spartan*, which was owned without the United States, and cruised under a commission from Aury, styling himself brigadier of the Mexican Republic, which had revolted from Spain but was not yet recognized by the United States, and generalissimo of the Floridas, a province then in the possession of Spain. The *Norberg*, which was a Danish vessel, was fraudulently seized by *The Young Spartan*, one of whose officers

secreted Spanish papers on board of the *Norberg* and then claimed her as a Spanish vessel; her company were left on an island off the coast of Cuba, and the vessel herself was taken to Savannah, in the State of Georgia, where the captors, personating the Danish captain and crew, entered her as a Danish vessel. The opinion of the Supreme Court was delivered by Chief-Justice Marshall, and it was held, in the first place, that the commission, under which the defendant professed to have been cruising, did not protect him, the seizure of the *Norberg* having been made—not *jure belli*, but *animo furandi*. On this point the Chief-Justice said:

So far as this court can take any cognizance of that fact, Aury can have no power, either as brigadier of the Mexican Republic, a Republic of whose existence we know nothing, or as generalissimo of the Floridas, a province in the possession of Spain, to issue commission to authorize private or public vessels to make captures at sea. Whether a person acting with good faith under such commission may or may not be guilty of piracy, we are all of the opinion that the commission can be no justification of the fact stated in this case. The whole transaction taken together demonstrates that the *Norberg* was not captured *jure belli*, but seized and carried into Savannah *animo furandi*. It was not a belligerent capture, but a robbery on the high seas. And although the fraud practiced on the Dane may not of itself constitute piracy, yet it is an ingredient in the transaction which has no tendency to mitigate the character of the offense.

The Chief-Justice then reviewed the decision of the court in the case of United States *v.* Palmer *et al.*, as above quoted, which had been invoked by the counsel for defendant, to show that he was not guilty of piracy under section 8 of the act of 1790, which, it was contended, did not apply under the ruling in Palmer's case to an American citizen entering on board of a foreign vessel exclusively owned by foreigners and committing piracy thereon.

On this point Chief-Justice Marshall said:

Upon the most deliberate reconsideration of that subject, the court is satisfied that general piracy, or murder, or robbery, committed in the places described in the eighth section, by persons on board of a vessel not at the time belonging to the subjects of any foreign power, but in possession of a crew acting in defiance of all law, and acknowledging obedience to no Government whatever, is within the true meaning of this act, and is punishable in the courts of the United States. Persons of this description are proper objects for the penal code of all nations, and we think that the general words of the act of Congress applying to all persons whatsoever, though they ought not to be so construed as to extend to persons under the acknowledged authority of a foreign state, ought to be so construed as to comprehend those who acknowledge the authority of no state. Those general terms ought not to be applied to offenses committed against the particular sovereignty of a foreign power; but we think they ought to be applied to offenses committed against all nations, including the United States, by persons who, by common consent, are equally amenable to the laws of all nations.

The result of these two cases—U. S. *v.* Palmer *et al.* and U. S. *v.* Klintock—is that, while general piracy was punishable under the eighth section of the act of 1790, and while in such case proof as to the nationality of the offender, or as to the origin of the vessel on which he sailed, was immaterial, a pirate being amenable to the jurisdiction of all nations alike, yet, where the offense charged under the section was not piratical in the general sense, but only by force of the statute, such averments must be made, and such evidence produced as to the national character of the vessel on which the offense was committed as would ordinarily give the courts of the United States jurisdiction. Such was the view announced by the Supreme Court in subsequent decisions. In U. S. *v.* Pirates, 5 Wheaton, 184, the court, while fully recognizing the decision in Palmer's case, said that—

when embarked in a piratical cruise, every individual becomes equally punishable under the law of 1790, whatever may be his national character, or whatever may have been that of the vessel in which he sailed, or of the vessel attacked.

In the case of U. S. *v.* Holmes, 5 Wheaton, 412, decided, as was also that of the Pirates, in 1820, the Supreme Court, speaking through Mr. Justice Washington, laid down, as the result of the preceding cases, the following rules:

> If it (the offense) be committed on board of a foreign vessel by a citizen of the United States, or on board of a vessel of the United States by a foreigner, the offender is to be considered *pro hac vice*, and in respect to this subject, as belonging to the nation under whose flag he sails. If it be committed, either by a citizen or a foreigner, on board of a piratical vessel, the offense is equally cognizable by the courts of the United States under the above-mentioned law.

It is to be observed that Mr. Justice Washington was a member of the Supreme Court at and prior to the time of the decision of Palmer's case, in February, 1818, as well as during the period intervening between that decision and the case of Holmes, his opinion in which has just been quoted; and in that intervening period, in April, 1818, just after the decision in Palmer's case, he had occasion to consider that decision, and the true construction of the eighth section of the act of 1790, in the circuit court of the United States for the State of Pennsylvania, in the case of U. S. *v.* Howard, 3 Wash. C. C., 340. Referring to Palmer's case he said:

> It was upon the whole decided that a robbery committed by any person on the high seas, on board of a ship belonging exclusively to a foreign state, or to the subjects thereof, or upon the person of a subject of a foreign state, in a vessel belonging exclusively to subjects of a foreign state, is not piracy within the true intent and meaning of the eighth section of that law. Although the offense of robbery is the only one stated in this decision; that being the only offense referred to in the question which was adjourned to the Supreme Court; yet there can be no doubt but that all the other acts of piracy, enumerated in that section, are included within the same principle.

It appears by this opinion, as well as by the opinion of Chief-Justice Marshall in Klintock's case, as above quoted, that the Supreme Court when the judgment in Palmer's case was rendered, understood it to decide not only that the general words employed in the act of 1790 in reference to statutory piracy must be restricted so as to apply only to offenses committed on board of American vessels, on the high seas, but also that the eighth section of the act did not include piracy by the law of nations, and, therefore, did not give the courts of the United States jurisdiction to punish it. We have seen that in Klintock's case, as well as in the other cases cited above from the decisions of the Supreme Court, it was subsequently held that that section did confer such jurisdiction; for, as it provided for the punishment of any person or persons for murder or robbery on the high seas, and as "the pirate is a man who satisfies his personal greed or personal vengeance by robbery or murder in places beyond the jurisdiction of a state,"* it was well held in the case of Klintock and of the Pirates, that piracy by the law of nations was punishable under the terms of the section. It is, however, worthy of notice that in March, 1819, after Palmer's case was decided, Congress passed a temporary act, which was subsequently renewed and made permanent, and is now substantially embodied in section 5368, Revised Statutes of the United States, expressly conferring on the courts of the United States jurisdiction of "piracy, as defined by the law of nations."

No attempt was made to remove or correct the limitation placed by the Supreme Court on the general words of the act of 1790, so far as they related to statutory piracy. And although, as has been seen, the

* Hall's Int. Law, 223 *et seq.* While piracy has been defined as robbery on the high seas, the more recent jurists hold that the depredation need not be *lucri causa*. Whart. Cr. L., §1860; Heffter. Völkerr., §104; Broglie, Sur la piraterie, iii, 335; Wheaton's Int. Law, §123, Dana's ed., p. 195.

court itself, in 1820, in the cases of Klintock, the Pirates, and Holmes, held that the eighth section of the act of 1790, under which the indictments in those cases were framed, covered piracy by the law of nations, and was not repealed by the act of 1819, yet it never was intimated that the previous decision respecting municipal piracy, under the act of 1790, was wrong. Indeed, in the case of Holmes, the latest of the cases cited, we observe in the opinion of the court a decided affirmation of the view expressed by the Chief-Justice in Palmer's case, that the question of jurisdiction of acts of municipal piracy would be determined by the flag of the vessel on which the offense was committed. "If it [the offense] be committed," said the court in Holmes's case, "on board of a foreign vessel by a citizen of the United States, or on board of a vessel of the United States by a foreigner, the offender is to be considered *pro hac vice*, and in respect to this subject, as belonging to the nation under whose flag he sails." This principle was recognized by Congress in the act of the 3d of March, 1825, entitled, "An act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," by which many of the provisions of different sections of the act of 1790 were replaced, as well as in the act of March 3, 1835, which, in substituting provisions for the punishment of revolt on shipboard, in place of those contained in the eighth section of the act of 1790, expressly restricted the jurisdiction of the courts to acts committed by "one or more of the crew of any American ship or vessel."

It may, therefore, be said that in respect to offenses committed on the high seas, the jurisdiction exercised by the judicial tribunals of the United States, under the legislation of Congress and the decisions of the Supreme Court, does not exceed, if, indeed, in the case of citizens of the United States, it reaches, the limitations of criminal jurisdiction over the high seas as defined by Wheaton, who, in his "Elements of International Law," lays down the following rules:

§ 124. Pirates being the common enemies of all mankind, and all nations having an equal interest in their apprehension and punishment, they may be lawfully captured on the high seas by the armed vessels of any particular state, and brought within its territorial jurisdiction for trial in its tribunals.

This proposition, however, must be confined to piracy as defined by the law of nations, and can not be extended to offenses which are made piracy by municipal legislation. Piracy, under the law of nations, may be tried and punished in the courts of justice of any nation, by whomsoever and wheresoever committed; but piracy created by municipal statute can only be tried by that state within whose territorial jurisdiction and on board of whose vessels the offense thus created was committed. There are certain acts which are considered piracy by the internal laws of a state to which the law of nations does not attach the same signification. It is not by force of the international law that those who commit these acts are tried and punished, but in consequence of special laws which assimilate them to pirates and which can only be applied by the state *to its own subjects and in places within its own jurisdiction*. The crimes of murder and robbery, committed by foreigners on board of a foreign vessel on the high seas, are not justiciable in the tribunals of another country than that to which the vessel belongs; but if committed on board of a vessel not at the time belonging, in fact as well as right, to any foreign power or its subject, but in possession of a crew acting in defiance of all law, and acknowledging obedience to no flag whatsoever, these crimes may be punished as piracy under the law of nations, in the courts of any nation having custody of the offenders.*

Mr. Dana, in a note citing these and other cases, states the following conclusion:

If an act of robbery or murder were committed upon one of the passengers or crew by another in a vessel at sea, the vessel being at the time and continuing under lawful authority, and the offender were secured and confined by the master of the vessel, to be taken home for trial, this state of things would not authorize seizure and trial by any nation that chose to interfere, or within whose limits the offender might afterwards be found.

*Dana's Edition, p. 193 *et seq.* Wheaton cites, as sustaining his views, the cases of U. S. *v.* Klintock and U. S. *v.* Pirates.

In 1799 an act was passed by Congress, the provisions of which are now substantially embodied in section 5335 of the Revised Statutes, which reads as follows:

SEC. 5335. Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government or of any officer or agent thereof with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person being a citizen of, or resident within, the United States, and not duly authorized, who counsels, advises, or assists in any such correspondence, with such intent, shall be punished by a fine of not more than $5,000, and by an imprisonment during a term not less than six months, nor more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government, or any of its agents or subjects.

The act of 1799, commonly called the "Logan" statute, after the person by whose informal diplomatic enterprises its enactment was suggested,* applied in terms, as does the section above quoted, only to citizens of the United States. It raises, therefore, no question of jurisdiction as between nations, and is of no importance in the present discussion.

The same observation may be made on the laws passed by Congress in pursuance of treaties with China, Japan, Siam, Egypt, and Madagascar, to confer on the minister and consuls of the United States in those countries, or in any other countries with which the United States has similar treaties, jurisdiction "to arraign and try, in the manner herein provided, all citizens of the United States charged with offenses against law committed in such countries." (Sec. 4084, Rev. Stat.) Neither, as has heretofore been stated, is any international question raised by an other provision of law (sec. 4088, Rev. Stat.) conferring a similar jurisdiction over citizens of the United States upon "consuls and commercial agents of the United States at islands and in countries not inhabited by any civilized people, or recognized by any treaty with the United States." In such places there being no system of law, or courts of justice, to which foreigners may be held answerable, it is admitted that they must remain subject to the laws and authorities of their respective governments.†

There is still another law, the act of Congress of August 18, 1856, section 24, now substantially embodied in section 1750 of the Revised Statutes, to which reference should be made. By this section secretaries of legations and consular officers of the United States in foreign lands are authorized, at their respective posts or places—

to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States.

It is provided further that—

every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done by or before any other (*sic*) person within the United States duly authorized and competent thereto.

* See Lawrence's Wheaton, ed. 1863, p. 1003; Wharton's Int. Law Digest, § 109, and same author's State Trials, pp. 20, 21.

† See Lewis on Foreign Jurisdiction, p. 11.

And is is finally provided that—

> If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury, in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be deemed and taken to be guilty of a misdemeanor, and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed three thousand dollars, and may be charged, proceeded against, tried, convicted, and dealt with, therefor, in the district where he may be arrested or in custody.

I am not aware that any case has ever arisen to require a judicial construction of this act, but, as it is generally understood,* it is not confined in its operation to citizens of the United States, but applies as well to aliens committing the designated offenses; and it has sometimes been referred to as an instance of the assertion by the United States of a general international right to try and punish aliens for acts done in a foreign country. It is not difficult to show that such a view of the statute is not warranted either by its terms or by the scope or results of its operation. It is not even necessary to its justification, upon principles of international law, to adopt the reasoning of Attorney-General Williams (14 Op., 285), who, referring to the law in question, affirmed its international validity on the ground that "according to international law, the domicile of an embassador, minister extraordinary, or consul is a part of the territory he represents for many purposes." This is unquestionably so. But the international validity of the act of 1856 does not, in my judgment, rest solely, not even in the main, on that ground.

It is to be observed that the act relates solely to certain officers, known to international law, who, upon the recognition and with the consent of the governments of foreign countries, discharge there the functions of official representatives of the Government of the United States. One of those functions is the performance of the official acts enumerated in the statute of 1856, namely, the taking of oaths, etc., and the performance of notarial acts, for use in the United States. And as these acts are performed under the laws of the United States, not only does the person who appears before a secretary of legation or a consular officer for any of the purposes enumerated in the act of 1856 submit himself to the laws of the United States to that extent, but if he swears falsely or does any other thing in contravention of the act he violates a law to whose execution in its territory the foreign government has consented. The act contains, therefore, neither an assertion of a general right to punish aliens for acts done by them outside of the United States nor even an assertion of such a right to punish them for acts so done against the Government of the United States, to say nothing of acts merely against its citizens.

The general rule that the laws of a nation have no binding force, except as to citizens, outside of the national territory, actual or constructive, was again laid down by the Supreme Court in 1824, in the case of

*Wharton's Cr. Law, § 276; Williams, Attorney-General, 14 Op., 285.

the *Apollon*, 9 Wheaton, 362. In that case Mr. Justice Story, speaking for the court, said:

> The laws of no nation can justly extend beyond its own territories, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation, within its own jurisdiction. And, however general and comprehensive the phrases used in our municipal laws may be, they must always be restricted, in construction, to places and persons upon whom the legislature have authority and jurisdiction.

In a still later case heard before him in the circuit court of the United States at Boston,* Mr. Justice Story again had occasion to consider and decide the question of jurisdiction over offenses committed outside of the national territory. In this case, the defendant, the master of an American whale ship, was indicted for manslaughter, by shooting at and killing a man on board of another and foreign vessel in the Society Islands. It appeared that the shot was fired by the defendant from his own vessel, and took effect as above described. Taking the view that, although the shot was fired from the American vessel, the crime was, in contemplation of law, committed "where the shot took effect," the learned judge said:

> Of offenses committed on the high seas on board of foreign vessels not being a piratical vessel, but belonging to persons under the acknowledged Government of a foreign country, this court has no jurisdiction under the act of 1790, chapter 36, section 12. That was the doctrine of the Supreme Court in United States *v.* Palmer (3 Wheat., R. 610), and United States *v.* Klintock (5 Wheat., 144), and United States *v.* Holmes (5 Wheat., 412); applied, it is true, to another class of cases, but in its scope embracing the present. *We lay no stress on the fact that the deceased was a foreigner. Our judgment would be the same if he had been an American citizen.* We decide the case wholly on the ground that the schooner was a foreign vessel, belonging to foreigners, and at the time under the acknowledged jurisdiction of a foreign Government.

It would be useless to attempt to collect all the declarations and applications by the State courts of the principle that penal laws have no extraterritorial force; and I shall quote the language of only a few cases, to mark the uniform current.

In the case of Gilbert *v.* Stedman (1 Root, 403), which was a *qui tam* action for stealing goods from the plaintiff's shop, in Massachusetts, and for receiving and concealing them, knowing them to be stolen, it was held by the supreme court of Connecticut, in 1792, that the declaration was insufficient because it alleged neither the stealing of the goods nor the concealment of them in Connecticut. And the court said:

> The crime charged was committed in the State of Massachusetts, and out of the jurisdiction of this court.

In the case of the State *v.* Grady, decided by the supreme court of same State in 1867 (34 Conn., 118), it was declared to be "undoubtedly true," "that the courts of this State can take no cognizance of an offense committed in another State."

In New York the line of decisions has also been unbroken. In the case of The People *v.* Wright, decided in 1804 (2 Caine's R., 213), the supreme court said:

> We have no jurisdiction over offenses committed in other States.

In Charles *v.* People, decided in 1848 (1 Comstock, 180), the court again declared:

> Our legislature has no extraterritorial jurisdiction; and when it forbids in unqualified terms the doing of an act, it must always be understood that the thing is only forbidden within this State. It can not be pretended or assumed that a State has jurisdiction over crimes committed beyond its territorial limits. (People *v.* Merrill, 2 Parker's Crim. Rep., 590.)

*U. S. *v.* Davis, 2 Sumner's C. C., 482; decided in 1837.

In People *v.* Noelke, 94 N. Y., 137 (A. D. 1883), the court, referring to the case of Van Voorhis *v.* Brintnall, 86 N. Y., 18, in which it was held that a marriage contract made in another State and there valid, was valid in New York, although it would have been invalid if made in New York; and to the case of Ormes *v.* Dauchy, 82 N. Y., 443, in which it was held that a contract made in relation to a lottery in a State in which lotteries were permitted, could be enforced in New York, where lotteries are prohibited, said:

Both cases rested upon the undeniable truth that our law could have no extraterritorial operation.

Said the supreme court of Alabama, Green *v.* The State, 66 Ala., 40, decided in 1880:

It is a safe principle, perhaps, to be asserted, that a crime committed in a foreign country, and in violation of the laws thereof, can not by mere legislative fiction or construction be constituted an offense in another country.

In the case of the State *v.* Knight (Taylor's Rep., 65), decided in North Carolina in 1799, the court said:

The States are to be considered with respect to each other as independent sovereignties, possessing powers completely adequate to their own government, in the exercise of which they are limited only by the nature and objects of government by their respective constitutions and by that of the United States. Crimes and misdemeanors committed within the limits of each are punishable only by the jurisdiction of that State where they arise. * * * Our legislature may define and punish crimes committed within the State, whether by citizens or strangers; because the former are supposed to have consented to all laws made by the legislature, and the latter, whether their residence be temporary or permanent, do impliedly agree to yield obedience to all such laws as long as they remain in the State; but they can not define and punish crimes committed in another State, the citizens of which, while they remain there, are bound to regulate their civil conduct only according to their own laws.

In New Jersey the supreme court, in the case of The State *v.* Carter (3 Dutcher, 499), decided in 1859, said:

There can not be two sovereignties supreme over the same place, at the same time, over the same subject-matter. The existence of theirs is exclusive of ours. We may exercise acts of sovereignty over the wastes of ocean or of land, but we must necessarily stop at the boundary of another. The allegation of an act done in another sovereignty to be a violation of our own is simply alleging an impossibility, and all laws to punish such acts are necessarily void.

Said the supreme court of Indiana:*

It may be assumed as a general proposition that the criminal laws of a State do not bind and can not affect those out of the territorial limits of the State.

Said the supreme court of Arkansas:†

The laws of this State have no extraterritorial operation. Each State possesses the exclusive power to provide for the punishment of crimes committed within its limits, except so far as this power may have been surrendered to the Government of the United States by the Federal Constitution.‡

MEXICO'S DEFENSE.

Having sufficiently disclosed the positive legislation of different countries, and its judicial construction, in respect to extraterritorial crime, I proceed to examine the arguments put forth by the Mexican Government in support of Article 186 of the penal code. These arguments, which were communicated from time to time to this Department by Mr.

* Johns *v.* The State, 19 Ind., 421, A. D. 1862.

† State *v.* Chapin, 17 Ark., 561, A. D. 1856.

‡ See also Haven *v.* Foster, 9 Pick. (Mass.), 112; State *v.* Moore, 6 Foster (N. H.), 448; *In re* Carr, 28 Kansas, 1.

Romero, Mexican Minister at this capital, are before me in three versions—Spanish, French, and English—the first and second published in pamphlet form by the Mexican Government, and the third made in this Department from the Spanish text communicated by the Mexican minister.

The first of these arguments is in a note addressed to Mr. Bayard by Mr. Romero, August 7, 1886, while Mr. Cutting was still in prison. This note opens with a statement of the circumstances of the case, derived, as Mr. Romero says, from private reports received by him from Paso del Norte. The only point I shall notice in this statement is the allegation that Mr. Cutting "distributed in El Paso del Norte, Mexico, several copies of the Sunday Herald (the Texas paper) containing his article against Medina," and that, "for this cause, the following day, June 21, he was summoned anew by Medina for defamation, in conformity with Articles 642 and 186 of the Mexican penal code." As has been shown, Article 642 merely defines defamation; and as by Mr. Romero's statement the only other law invoked was Article 186, the inference is that the warrant issued for Mr. Cutting's arrest was based on the publication of the alleged libel in Texas, and not, as Mr. Romero's information led him to suppose, on a charge of circulating that libel in Mexico. But we are not compelled to resort to inference; for it is stated in Judge Zubia's decision that on the 22d of June the plaintiff appeared and "broadened" his original accusation, on which the warrant of arrest had been issued, by the allegation that the defendant had circulated the Sunday Herald in Mexico.

After summarizing the facts, Mr. Romero proceeds to discuss the legal aspect of the case, as follows:

> The Government of the United States believes that Cutting is under trial in El Paso solely because of an article published in El Paso, Tex., in compliance with Article 186 of the Mexican penal code, and it considers that article incompatible with the principles of international law.
>
> I think it proper to state, with reference to the first point, that, as I understand it, Cutting is on trial for the publication in El Centinela, a periodical published in El Paso del Norte, Mexico, of an article against Medina which is deemed defamatory, and although there may have been adduced as an aggravating circumstance the publication of the other article in El Paso, Tex., I do not think that this is the principal crime of Cutting.

And to sustain this view Mr. Romero argues that the "conciliation" signed by Medina and Cutting on the 14th of June did not terminate the prosecution of Cutting absolutely, but only on condition of his complying with the terms of the agreement.

This argument has already been noticed, and it has been contended that to treat the publication by a citizen of the United States of a libel in Texas as a breach of a "conciliation" in Mexico, and as consequently subjecting the publisher to criminal liability in Mexico, is the same thing in principle as the claim made in Article 186 of a right to regulate and punish in Mexico the acts of foreigners in their own country, provided a Mexican is concerned. This, it is conceived, would be a sufficient answer to Mr. Romero's argument, even if it had not appeared that the sentence imposed on Cutting by Judge Zubia, and subsequently adopted and sustained by the Mexican Government, as will hereafter be more fully shown, rested not only on the ground that the publication in Texas violated the terms of the "conciliation" and restored Cutting's liability to criminal prosecution, but also distinctly and in the alternative on the ground that the publication in Texas created an original liability to prosecution and punishment under Article 186.

Mr. Romero then takes up this article, and says that the penal code in which it is found "was drawn up by a commission of distinguished Mexican lawyers, who threw on the subject the light of a special study of penal legislation, and who adopted from the European codes all that appeared to them most advanced and adaptable to the circumstances of Mexico;" and in support of this he cites the penal codes of Belgium, France, and Italy, and argues that the present tendency of criminal law is in the direction of a wider jurisdiction. On this subject more will be said hereafter. And I will now pass to another branch of Mr. Romero's argument, which, translated, reads as follows:

The system of punishing crimes committed in foreign parts, especially when these, although perpetrated aboard, have their complement or realization or produce their effects in the country which punishes them, is in practical application in several countries not merely in the provisions of their penal codes, but in the trials daily conducted and in the doctrines of various modern criminal authorities.

It is true that, under the laws (common law) of the United States and England, there is no jurisdiction to take cognizance of crimes committed in a foreign land; yet, in spite of this, there has just occurred a trial for libel in London on suit instituted by Mr. Cyrus Field against Mr. James Gordon Bennett, editor of the Herald, of New York, by reason of articles published in New York in Mr. Bennett's paper, which Mr. Field regarded as defamatory of himself, and in which Mr. Bennett was condemned by the English courts to pay $25,000 for the damages and injuries occasioned to Mr. Field by the aforesaid articles, notwithstanding that they had been published in New York and not in London. It should, moreover, be borne in mind that Mr. Bennett is not a resident of London, as Mr. Cutting is of Paso del Norte.

It is true that the basis of judgment of the English courts appears to be that, although the offense was committed in New York, its effects were produced in London, where the New York Herald circulates; but precisely the same reason exists in the case of Cutting, in the supposition that although the article was published in El Paso, Tex., it circulated in Paso del Norte, Mexico, where Medina was known, and where it may be said that it produced its effect.

Several writers on the American and English penal code maintain doctrines similar to those put forth in Article 186 of the Mexican penal code.

Joel Prentiss Bishop, in his Commentaries on the Criminal Law, seventh edition, 1882, Vol. I, chapter VI, section 110, page 59 (Boston: Little, Brown & Co.), says as follows:

"One who is personally out of the country may put in motion a force which takes effect on it; and in such a case he is answerable where the evil is done though his presence is elsewhere. Thus, murder, *libel*, false pretenses, etc. * * If a man standing beyond the outer line of our territory, by discharging a ball, kills another within it, or himself being abroad circulates through an agent libels here * * * or does any other crime in our own locality against our laws, he is punishable, though absent, the same as if he were present."

In support of this doctrine Bishop cites various American and English authorities, who sustain the principles enunciated by him.

This same doctrine is maintained by Bishop in his work entitled: "Criminal Procedure or Commentaries on the Law of Pleading and Evidence and Practice in Criminal Cases" (third edition, 1880, Vol. I, book II, chapter IV, section 53, page 27, Boston: Little, Brown & Co.), wherein he says as follows:

"*Personal presence.*—The law deems that a crime is committed in the place where the criminal act takes effect. Hence, in many circumstances, one becomes liable to punishment in a particular jurisdiction while his personal presence is elsewhere. Even in this way he may commit an offense against a state or country upon whose soil he never set his foot, as explained in criminal law."

Bishop then goes on to mention defamation (*libel*) among the crimes which are punished in the place where they produce their effects, even though the party responsible does not reside there, and he cites various authorities to support his theory.

The only observation I desire to make on this argument is that it blends two wholly distinct, and indeed antagonistic, principles of criminal jurisdiction, and treats them as if they were the same. It is one thing to say that a man who, outside of the territory of a country, commits a criminal act within it, may be punished by its courts, if brought within reach of their process; it is quite another thing to say that a man can be punished by the courts of a country for acts done outside of it, merely because the object of those acts happens to be one of its

citizens. The Government of the United States has never intimated that if Cutting had been arrested and tried on the charge of circulating, which in law would have been "publishing," a libel in Paso del Norte, the Mexican courts would not have had a right to punish him for having done so, merely because the printing was done in Texas. In law the circulation of a libel is a publication of it; it is "published" whenever and wherever it is circulated; and whenever and wherever a man actually circulates a criminal libel he commits a substantive criminal offense, whether he is corporeally present or no. The malicious intent, the guilty will, accompanying a lawless act, makes the actor, although not corporeally present at the place where his act takes effect, just as much a criminal there as if he were physically present.

The quotations made by Mr. Romero from Bishop's works on criminal law and criminal procedure, to show that it is held in England and the United States that corporeal presence is not always essential to the commission of crime, may be accepted as legally and logically sound, and as lucid, forcible, and satisfactory statements of a general legal principle.

Opposed to this is Article 186, against the principle of which it would be difficult to find more decided and more effective argumentative opposition than is contained in the works of Mr. Bishop, from which Mr. Romero has quoted. Article 186 asserts that a foreigner who, in a foreign country, commits an act there against a Mexican, may afterwards be punished for it in Mexico. It discards both the locality of the act and the locality of the actor, one of which, at least, must, according to the theory propounded by Mr. Bishop, have been within the territorial limits of the country, in order to give its court jurisdiction over a foreigner. In section 110 of the 1st volume of his Criminal Law, and immediately preceding the quotation made by Mr. Romero from that section, Mr. Bishop declares it to be a general principle "that no man is to suffer criminally for what he does out of the territorial limits of the country." Adverting in section 115 to the same question, he says:

> *When the citizen abroad commits an offense* it is competent and *consistent with the law of nations*, and in every respect just, for his own government to provide for his own punishment through its own courts. But in most other circumstances one government has no just right to punish what is done within the territorial limits, or the ships on the high seas of another government.

Not only is Mr. Bishop clear on this point, but he holds that where a statute is couched in such general terms as to include offenses committed abroad by foreigners it is the duty of the court to construe the statute in accordance with the law of nations. In section 112, volume 1, of his Criminal Law, he says:

> Doubtless, if the legislature, by words admitting of no interpretation, *commands a court to violate the law of nations*, the judges have no alternative but to obey. Yet no statutes (*i. e.*, in England and the United States) have ever been framed in a form thus conclusive; and, if a case is *prima facie* within the legislative words, still a court will not take jurisdiction should the law of nations forbid.

Discussing, in his work on statutory crimes, the same subject, he says:

> Statutes in terms binding persons beyond the territorial jurisdiction are, in the construction, *restricted where the law of nations limits the right, as extending only to the subjects of the government legislating.* (Stat. Crimes, 2d ed., § 141, p. 129.)

Although the judgment in the civil suit of Field *v.* Bennett *et al.*, to which Mr. Romero refers, was a judgment by default, and has, since the date of his note, been set aside by the Queen's Bench division of the supreme court of the judicature, it is proper to advert to the fact that

the rules governing the jurisdiction in civil and in criminal cases are founded in many respects on radically different principles, and that an assumption of jurisdiction over an alien in the one case is not to be made a precedent for a like assumption in the other. In the first place, civil proceedings are instituted only at the suit of private persons for the enforcement of private rights; criminal proceedings are conducted by the public authority, for the vindication of the national sovereignty and control. In civil suits, the courts of a nation will enforce foreign laws and foreign judgments; in criminal matters, it is a universal rule that the courts of one country will not enforce the laws of another. Thus in the protection and enforcement of private rights national boundaries are in a great measure obliterated; while, in criminal proceedings, they define the only jurisdiction in which, unless by treaty, the law can be enforced.

Taking these principles into consideration, the case of Field *v.* Bennett *et al.* could not have been regarded as an authority in favor of extraterritorial criminal jurisdiction, even if the defendant had come within reach of the process of the court and the judgment against him had not been reversed by the Queen's Bench. But, as the case now stands, it cannot be regarded as a precedent for extraterritorial claims of any kind.

The facts are* that there had appeared in the New York Herald, a paper published by the defendant, Bennett, in New York, and having an office in London and circulating in large numbers in Great Britain, certain paragraphs alleged by the plaintiff to be false and libelous, and to have done him great injury. One of these paragraphs reads as follows:

London, Feb. 4, 1885.—Mr. William Abbott, broker and operator, Tokenhouse-yard, supported by many stockholders of the Anglo-American Cable Company, announces that at the Friday meeting of the directors of the company he will introduce a resolution to expel Mr. Cyrus W. Field from the directorship, on the ground that he is unworthy of any position of confidence and trust.

The other reads as follows:

At a meeting of the company (meaning the Anglo-American Cable Company), held last week, Mr. William Abbott moved that Mr. Cyrus W. Field should not be re-elected. This worthy philanthropist, it would appear, was concerned with Jay Gould in the issue of Wabash preference stock, on which sham dividends were paid until the British public had been induced to buy it, when it fell from 92, the issue price, to about 12. According to American newspapers, Mr. Cyrus Field made by this operation about one million sterling. In these circumstances Mr. Abbott was right in opposing the re-election of this gentleman.

The plaintiff testified that he was a special partner in the firm of Field, Lindley & Co., the largest shippers of grain from America to Europe, and having agencies in London, Liverpool, Glasgow, Bristol, and other British and continental ports. He was, besides, director of ten large corporations, seven of which were in America and three in London. For some years past he had spent more than half his time in England, where he had a great many friends. There was not a shadow of foundation for either of the libels, and they were calculated to do him immense injury.

On these facts the jury at the Middlesex sheriff's court, before which, the judgment having been allowed to go by default, the case came for the assessment of damages, rendered a verdict for the plaintiff of £5,000.

* See London Times, July 27, 1886.

The question raised before the Queen's Bench was whether the defendant had ever been properly brought within the jurisdiction of the English courts. It was admitted that since the institution of the suit he had not been in England, and the process was served, not on him personally, but, under an order of the court of appeal, on the other defendant, named Hall, who acted as Mr. Bennett's counsel in London, and was joined in the action as co-defendant. The judgment of the Queen's Bench division, consisting of the Lord Chief-Justice Coleridge and Mr. Justice Denman, was delivered by the chief-justice. In the course of the opinion he said:*

It is hardly contended before us that this was a case in which service of a writ or notice of a writ out of the jurisdiction could have been allowed if the application had been originally made for such service so noticed. The action is for libel; the defendant is neither a British subject nor in British dominions, and service of a writ therefore upon him is forbidden by the order. [Referring to order 67, rule 6, and order 11, rules 1 and 6, regulating service of process.] * * * But it is contended that, although the writ itself could not be served, there may be a substituted service of it ordered under order 68, rule 6. We doubt whether this rule has any application for service out of the jurisdiction. But if it has, it is limited in terms to cases where the writ itself can be personally served, as matter of law, but where it can not be promptly served personally, in matter of fact. It is only in such cases that substituted service of the writ or the substitution of notice for service is permitted by the rules. But this is no such case; and it seems to us that in allowing substituted service the court of appeal acted beyond their powers. It follows that all the proceedings, beginning from and including the order of the court of appeal, must be set aside with costs.

It thus appears that the only point decided by this case is that the process of the British courts has no extraterritorial force as to foreigners.

The next argument on the part of the Mexican Government is in a communication from Mr. Mariscal to Mr. Romero, dated the 12th of August, 1886, and transmitted by the latter to the Department of State on the 30th of the same month. When this paper was dispatched by Mr. Mariscal Judge Zubia had, as we have seen, just delivered his decision, in which Article 186 was sustained and enforced. Mr. Mariscal, therefore, made only a passing reference to the question of the breach of the "conciliation," but proceeded directly to the defense of Article 186, and devoted his observations chiefly to that subject. The substance of his argument is that the doctrine that crime is local is peculiar to the common law; that in countries which have derived their legal institutions from the Roman system of jurisprudence the territorial principle is not acknowledged; that even in England and the United States there exist important exceptions to the theory of the common law; and that the question of the punishment of foreigners for offenses committed outside of the national territory "depends upon the principle which may have been adopted touching the competence in general over certain offenses perpetrated abroad; since it does not seem just to impose penalties therefor upon citizens and leave the foreigner in like circumstances unpunished."

Now, it is true that the territorial theory of criminal jurisdiction is more strictly carried out in England and the United States than in any other country, because in the common law, which prevails in both, criminal offenses, whether by citizens or by foreigners, are considered as purely local. And it may readily be admitted that, as Wheaton says in a passage quoted by Mr. Mariscal, "this principle is peculiar to the jurisprudence of Great Britain and the United States," and that "even

* See London Times, December 16, 1886.

in these countries it has frequently been disregarded by the positive legislation of each."

But the simple answer to the inference Mr. Mariscal seeks to draw from this fact is, that the controversy raised by the Cutting case is not as to the expediency or inexpediency, or as to the prevalence or non-acceptance, of the strict local theory of criminal offenses. When Wheaton says that this principal is peculiar to the common law, he does not refer to any question of right on the part of a nation to punish foreigners for acts committed outside of its territory. As we shall hereafter see, he utterly repudiates the notion that such a right exists in international law. The idea in his mind was the local principle of criminal offenses as applied to citizens. This he called peculiar to the common law. Like Mr. Bishop, who, as has been shown, also denies the extraterritorial principle in respect to foreigners, while advocating it in respect to citizens, Wheaton did not, as will hereafter be seen, doubt the right of a nation to punish its own citizens for offenses committed abroad. This is a matter which each nation may regulate as it deems expedient. The local principle of the common law is not due to any doubt as to the right of a government to punish its own citizens, but solely to the manner in which the criminal branch of that law was developed. The most ancient part of English criminal legislation was that which regulated the procedure. The country was divided into counties, in each of which there were juries, grand and petit. The grand juries, or *jurys d'accusation*, were supposed to know what passed in their own county, and nothing else. They held to this rule with such rigor that if a man was wounded in one county and died in another, the criminal sometimes escaped prosecution, and it was to remedy this defect that the act of 1549, 2 and 3 Edw. VI, c. 24, was passed, the result of which was to make the criminal justiciable in either county. (Sir J. F. J. Stephen, in Journal du droit int. privé, 1887, p. 129.) It was simply a matter of procedure and convenience involving no question of sovereign right or of international law, and the statutory modifications of the ancient practice, which have from time to time been made in respect to British subjects, have no significance in the present discussion.

As having relevance to the present case Mr. Mariscal cites the opinion of the Attorney-General in relation to the civil suit for damages brought in a Pennsylvania court in 1794 against a Frenchman, then lately governor of Guadaloupe, for an alleged wrongful seizure and condemnation by him of a vessel belonging to the plaintiff. The French minister asked that the suit might be stopped, *not on the ground that the defendant, being a foreigner, was not subject to suit on civil process*, but on the ground that, as the act on which the suit was founded was done by him in virtue of his authority as governor, he was not personally liable to suit for it. The question having been referred to the Attorney-General, Bradford, he gave an opinion, saying that "with respect to his suability, he (the late governor) is on a footing with any other foreigner (not a public minister) who comes within the jurisdiction of our courts;" and that "if the circumstances stated form of themselves a sufficient ground of defense, they must, nevertheless, be regularly *pleaded*."

The bearing of this case on the jurisdictional claim asserted in Article 186 of the Mexican penal code is not apparent. As has heretofore been stated, jurisdiction in civil suits and in criminal prosecutions rests on different grounds and proceeds upon opposite principles. While it is a universal principle, admitted even by those countries which have gone farthest in the direction of punishing extraterritorial crime, that the courts of one nation will neither enforce the penal laws nor the penal

sentences of the tribunals of another nation, yet this territorial circumscription of the operation of law is so far discarded in civil cases that it may be said that the principal basis of civil responsibility as between persons in different places is the recognition and enforcement by the courts of one country, in civil matters, of the laws and judgments of other countries. So far has this rule been carried that it has lately been held in England* that a foreign judgment affecting the succession to property in that country would be enforced, and could not be impeached or reviewed there, although it involved a question of English law which was misconstrued. The civil liability of man to man is not circumscribed by national boundaries; the subjection of a foreigner to the sovereignty of a state exists only when by his own acts he brings himself within the territorial operation of its laws.

Mr. Mariscal further argues that the principle of Article 186 "is not only in accord with the most authoritative doctrines of private international law, but also with the positive legislation of several nations which command respect in such a matter, such as France and Austria, where such offenses [by foreigners outside of the country] are punished if they have been committed against the nation; Prussia, where they are all punished in conformity with the law of the country wherein they are committed; Bavaria and Norway, without this characteristic and without the requisites and conditions exacted by our code." On the question of doctrine he cites by name Foelix, Voet, Boehmer, Martens, Saalfeld and Pinheiro-Ferreira, and says that Fiore might be added by reason of his general theories. The names of these writers, excepting the first and last, are evidently taken from the work of the first named, Foelix, on private international law, published in 1866, in paragraph 574 of which they are, with the exceptions stated, given in the order in which they are found in the note of Mr. Mariscal. This paragraph, after stating that writers are not in accord on the subject in question, mentions by name Voet, Boehmer, Martens, Saalfeld, and Pinheiro-Ferreira as advocates of various degrees of extraterritorial jurisdiction over foreigners; and Schmalz, Abegg, Feuerbach, Homan, Sumner† and Rolin as opponents; and adds that Mittermaier does not contradict their opinion. It is not singular that the list of Foelix, published in 1866, and incomplete as it was then, does not contain the names of many high and recognized authorities on international law at the present day; nor that for the same reason Mr. Mariscal should have been led into error of citing the legislation of Bavaria and of Prussia, which has been superseded by the German Imperial code of 1872, whose restriction of extraterritorial jurisdiction over foreigners to offenses against the safety of the state and coinage felonies has been seen. It will hereafter be shown that Fiore, while recognizing extraterritorial jurisdiction to that extent, refuses to admit the international validity of such a claim as that contained in Article 186. Foelix, so far as I am able to ascertain, expresses no personal opinion on the subject; but although he quotes the codes of Bavaria, Wurtemberg, Oldenburg, Hanover, Thuringia, and Prussia, all of which, until superseded by the German Imperial code of 1872, gave to the tribunals of the state jurisdiction of offenses committed outside of its territory by foreigners

In re Trufort, before Mr. Justice Sterling, reported in London Times, July 27, 1887; following decision in *Castrique* v. *Imrie*, L. R., 4 H. L., 414; *Godard* v. *Gray*, L. R., L. C., 6 Q. B., 139.

† The author doubtless referred to the opinion of Mr. Justice Story in the case of United States *v.* Davis, 2 Sumner's Rep., p. 482. He refers to the report, but gives the reporter as the authority.

against subjects, he states at the end of the paragraph above cited, "that positive legislations do not, as a general rule, admit the prosecution of a foreigner charged with *crimes* or *délits* in another state, save only in the case of a violation of law prejudicial to the state (considered as a whole) in the territory of which the prosecution is undertaken, or when it concerns *crimes* of the highest gravity."

On the 13th of August, 1886, Mr. Mariscal dispatched to Mr. Romero another communication, in continuation of that of the preceding day, which has just been examined. In this dispatch of the 13th of August is inclosed a copy of El Foro, a legal journal published in the city of Mexico, containing an article on the Cutting case by Judge José M. Gamboa, of that city. To this article due reference will be made, after notice has been taken of the points in Mr. Mariscal's dispatch.

In continuation of the effort made in his preceding communication to sustain Article 186 by the legislative example of other countries, Mr. Mariscal cites the French law of 1808, which was replaced by the law of 1866, now in force, but which, as he states, the latter did not greatly alter. We have seen how the court of cassation at Paris, in the case of Fornage in 1873, construed the law of 1866, and repudiated the doctrine on which Article 186 is bottomed. Turning now to the provisions of the law of 1808 for the punishment of foreign offenses, we find them to be as follows:

5. Every Frenchman who is guilty, outside of the territory of France, of an attempt against the safety of the state, of counterfeiting the seal of the state, national moneys having circulation, national papers, bills of banks authorized by law, may be prosecuted judged, and punished in France according to the French laws.

6. This provision may be extended to foreigners who, being authors of, or accomplices in, the same crimes, shall have been arrested in France, or of whom the Government shall have obtained the extradition.

7. Every Frenchman who shall have been guilty, outside of the territory of the Kingdom, of a *crime* against a Frenchman, may, on his return to France, be there prosecuted and punished, if he has not been judged and prosecuted in the foreign country, and if the offended Frenchman makes complaint against him. (French criminal code of 17th November, 1808, promulgated on the 27th day of the same month.)

In respect to offenses committed abroad by foreigners, it is seen that the provisions of this law are substantially identical with those of the law of 1866. It further appears that even in respect to French citizens, provision is made for their punishment for acts done outside of the state only when those acts amount to a *crime* (felony), and not when they constitute merely a *délit* (or misdemeanor). And so it was held by the court of cassation in 1864 (Journal du Palais, 1864, p. 404), in the case of Jacques Trottet, for reference to which, as well as to the case of Fornage, previously cited, I desire to acknowledge my obligations to the Marquis de Chambrun. The syllabus of this case reads as follows:

When an act referred to the court of assizes as constituting a CRIME *committed in a foreign country by a Frenchman against another Frenchman, is reduced by the finding of the jury to a simple* DÉLIT, *the court of assizes ceases to be competent to take cognizance of it: Article 7, C. Crim. Procedure, according to the terms of which the Frenchman who is guilty of a* CRIME *against a Frenchman in a foreign country can be prosecuted and punished in France on his return, having no application to the case where the act has only the character of a* DÉLIT.

The facts in the case were that Trottet, a Frenchman, having been indicted by the grand jury of the Imperial court of Chambéry for a willful assault and battery on another Frenchman, causing inability to work for more than twenty days, and with premeditation, which made the offense a *crime* (felony), the case was referred for trial to the court of assizes of Haute-Savoie, sitting with a jury. On the trial the jury

found the facts as alleged, except as to premeditation, which their verdict negatived, thus reducing the offense to a *délit* (misdemeanor). And the case having been finally brought before the court of cassation, that tribunal rendered the decision which is summarized in the syllabus above quoted.

With the exception of the brief mention of the French law of 1808, the rest of Mr. Mariscal's paper of the 13th of August is almost exclusively devoted to the praise of a draft of a penal code, a part of which was approved by the Italian chamber of deputies in 1877. This draft was principally the work of Professor Mancini, a former Italian minister of justice, and has undergone much discussion in Italy, both before and since its approval by the chamber of deputies. But even if it were identical, in respect to the punishment of foreigners, with Article 186 of the Mexican penal code, it could hardly be contended that the doctrine had made much progress in Italy, where, both before and since its approval by the chamber of deputies, it has not only been the subject of continual controversy, but where the work containing it, although begun more than twenty years ago, remains in effect a mere *projet*, and, as is admitted by Mr. Mariscal, is not yet in force.

It is, however, pertinent to observe that in the *projet* in question there are important qualifications of foreign jurisdiction which escaped notice in Mr. Mariscal's paper of the 13th of August. For the purpose of showing these qualifications I shall not quote particular provisions of the *projet* itself, but shall avail myself of two admirable discussions of it—one by M. Albéric Rolin, an advocate of the Court of Appeal of Ghent, and secretary of the Institute of International Law, which was published in the Revue du Droit International* in 1877; and the other by M. Fiore, the distinguished authority on international law and professor of that subject at the University of Turin, which was published in the same journal† in 1879. We learn from these sources that four *projets* have been discussed in Italy, which, because of their non-conformity in respect to the principles of international penal law, have provoked numerous controversies as to the limits of its extraterritorial authority. "The first *projet*," says M. Fiore, "of a penal code is that which was formulated in 1868 by the commission instituted for that purpose. That *projet* was the object, in 1870, of many modifications by a commission composed of three members. The Minister Vigliani introduced in it yet other modifications, and presented it to the Senate on the 24th of March, 1874. The Senate, after long discussions, modified it again on certain points. The Minister Mancini presented the fourth draft of the *projet* in November, 1876, and the first book has been adopted by the Chamber of Deputies." As to the application of the penal law on the territory, the four *projets* conformed, but in respect to the repression of offenses committed abroad they differed widely. By Article 7 of the *projet* of 1868, it was proposed that if a foreigner, after having committed abroad an offense punishable under the Italian law with imprisonment at hard labor, or with imprisonment or banishment, should enter the Kingdom, he should, his extradition having first been offered to and refused by the government where he committed his offense, be tried and punished according to the Italian law. And in case of an offense punishable with less than five years' imprisonment, it was provided that a complaint should be made by the injured party, or by the government of the country to which the offended person belonged. This theory was thought by the courts to be exorbitant, and "the

* Vol. ix, p. 461, *et seq.* † Vol. xi, p. 308, *et seq.*

court of Parma, among others," says M. Fiore, "proposed that the citizen himself should not be punished for offenses committed abroad, save for those against the safety or economic life of the state. In pursuance of those observations, the theory of extraterritoriality was modified in all the other *projets.*"

A proposal was made by the Ministerial Commission in 1876 to revive the provisions of Article 7 of the *projet* of 1868.

"But," says M. Fiore,

the magistracy, the law faculties and the colleges of advocates observed that there could be no interest in punishing the foreigner who, outside of the country, commits an offense to the prejudice of another foreigner, and that to meet every peril it would be sufficient to extradite or expel him. *The Minister Mancini,* in his *projet, did not adopt in an absolute manner either the one or the other of the two systems;* but proposed that prosecutions against the foreigner, in the cases in which he was justiciable, *should be discretionary and before all preceded by an offer of extradition,* and that, *where the offer should not have been accepted* by the government of the place where the crime was committed, the government should be free either to *expel* the foreigner from the kingdom, or else to arraign him in case the crime should be of the number of those prescribed in the convention of extradition, or one of the crimes against the law of nations, or against persons, property, or public credit, or else amounting to fraudulent bankruptcy or an outrage on good morals.

Such are the qualifications of the claim of extraterritorial jurisdiction, as proposed in the Mancini codification. And in regard to them, M. Rolin, in the article to which I have already adverted, says:

Crimes and *délits* committed by a foreigner outside of the territory are not judged and punished in Italy (by the Mancini *projet* as adopted by the Chamber of Deputies) *save under a conjunction of exceptional circumstances. It is a great deal that they should ever be.* We may say, it is true, that, *when the party injured is an Italian subject, when extradition has been offered and refused, when the act is punished as well by the Italian as by the foreign laws,* it would be an outrage for a foreigner to be permitted to re-enter Italy as if for the purpose of defying there its authority. *But if we are free to expel him,* it would be as hard to apply to him, for an act committed previously in a foreign country, under the empire of foreign laws, the penalties pronounced by the Italian laws which he did not know, *to which he was not subject on any ground, and which consequently he could not violate. Neither the system of territorial authority, nor that of the personal authority of the penal law, nor that which combines both,* could justify in such case the action of the national tribunals.

Mr. Mariscal supplements his argument of the 13th of August with a list of nations whose laws punish to a greater or less extent extraterritorial crime. To this list reference will be made hereafter. And I shall now proceed briefly to notice the argument of Judge Gamboa, without, however, referring to his citations from Foelix's work of 1866 of laws which have since become obsolete.

Judge Gamboa's argument opens with a statement of facts, which it is unnecessary to review, because, for the purposes of this report, the facts have been accepted as set forth in the decision of Judge Zubia.

The whole of Judge Gamboa's argument may be summed up in a single sentence, which he quotes from Foelix, and which reads as follows:

The competence of the authorities and the form of procedure before them are controlled by the law of the country where the action is instituted, whatever may be the law under whose empire have occurred the acts which give rise to such action.

As a general proposition this may be accepted as incontestable. The competence and forms of procedure of the judicial tribunals of a country are regulated and defined by its municipal law. There is no doubt that *under the law of Mexico* the courts of Chihuahua are competent to try a foreigner for offenses begun and consummated in his own country against a Mexican. But this is not the question raised by the United States in

the case of Mr. Cutting. That question is whether the provisions of the law of Mexico, as contained in Article 186 of the penal code, *are in contravention of the rules of international law.* And to this question the Mexican judicial tribunals are not competent to make a definitive reply. "According to the rule of law," said Judge Zubia, "*judex non de legibus sed secundum leges debet judicare,* it does not belong to the judge to examine the principles laid down in said Article 186, but to apply it in all its force, it being the law in force in the state of Chihuahua." To this decision the Government of the United States has made no objection. It has not questioned the competency of the Mexican court under the Mexican law. But it has held that that law, and consequently all proceedings under it, are in violation of the principles of international law.

All the salient points of the Mexican defense have now been examined, except the list (inclosed in Mr. Mariscal's paper of August 13) of codes that provide for the punishment of extraterritorial crimes. It will be recollected that it has already been shown that the jurisdictional claim contained in Article 186 is not sustained by the penal legislation of the present day. And we have seen how, notwithstanding the constant appeal, doubtless made under a misapprehension, to the code of France, the court of cassation has peremptorily and completely repudiated the notion that, because of the *exceptional provisions* as to crimes against the safety of the state and against the currency, the French code could be held in *principle* to assert criminal jurisdiction over foreigners for acts done outside of France. The principles of public law, so the court held, did not warrant such a pretension; and that this view is correct will hereafter be copiously proved by the opinions of the highest authorities on international law at the present day.

There being no principle of international law that permits the tribunals of a nation to try and punish foreigners for acts done by them outside of the national territory or jurisdiction, *it necessarily follows that any assumption to do so, in respect to particular crimes, must rest, as an exception to the rule, either upon the general concurrence of nations, in respect to the crimes in question, or upon an express convention.*

It follows, therefore, that it is not enough to quote, in favor of Article 186, the law of France, or of any other country whose legislation makes provision for the punishment of foreigners who, outside of the national territory and jurisdiction, commit offenses against the safety of the state, or coinage felonies, or other particular crimes. *It must be shown that Article* 186 *is sustained both in amplitude of extent and in form by a general concurrence of positive legislation.*

This, as we have seen, can not be done. And it will now further be shown, by the list of codes inclosed with Mr. Mariscal's communication of the 13th of August, that the claim set forth in Article 186, of the right of a nation to punish a foreigner for an offense committed against one of its citizens outside of its territory, has been generally abandoned and may now be regarded as obsolete. The list contains merely the names of the countries and the dates of the codes cited, quotations from the provisions of some of them being made in the article of Judge Gamboa. Most of the codes are ranged under the head of "nations that punish crimes committed in foreign countries by their own subjects," and the rest under the head of "nations that punish, more or less, crimes committed in foreign countries by foreigners when such foreigners enter the territory." But as most of the codes ranged under the first head, the principle of which is not in dispute, are repeated

under the second head—*e. g.*, the code of France—I shall place all in one list, and make opposite each appropriate explanations.

LIST OF CODE.	COMMENTS.
France, law of 1866.	Still in force, but punishes only *crimes* against the safety of the state, and *crimes* of counterfeiting seals of state, national moneys, etc.
Austria, code of 1872.	Still in force, but punishes only *crimes*, and not *délits*, and then, except in offenses against the safety of the state and currency felonies, only after offer of surrender.
Italy, code of 1859.	Still in force, but substantially same as Austrian code.
Belgium, law of 3d October, 1836.	Replaced by law of April 17, 1878, which is substantially identical with that of France of 1866. But the law of 1878 made little change in Belgian jurisdiction, which since 1794 has closely followed that of France.
Portugal, code of 1852.	Replaced by law of July 1, 1869, under which foreign jurisdiction extends only to Portuguese.
Greece, code of 1834.	Punishes foreign *crimes* and *délits* against subjects, and is still in force.
Ionian Isles, code of 1841.	
Holland, penal code. (No date given.)	The Dutch code, which punished foreigners for assassination, arson, and certain other grave and enumerated *crimes* committed abroad against subjects, was modified by law of January 15, 1886, which is substantially indentical with French law of 1866.
Hanover, penal code. (No date given.)	As quoted by Foelix in 1866 punished foreigners for offenses committed abroad against Hanoverians; *but this is superseded by German imperial code of* 1872, *which does not recognize this principle, and confines jurisdiction of extraterritorial offenses of foreigners to crimes against safety of state and coinage felonies.*
Norway, code of 1842.	Same provision as former Hanoverian law, *but prosecution is discretionary with the Government.*
Russia, penal code. (No date given.)	Bears date 1866, and punishes foreigners for offenses abroad against Russians.
Bavaria, code of 1861.	Punished foreigners for offenses abroad against subjects, *but is superseded by German imperial code of* 1872.
Prussia, code 1851.	Same comment as on Bavarian code.
Würtemburg, code of 1839.	Same.
Saxony, code of 1838.	Same.
Baden, code of 1845.	Same.
Oldenburg, code of 1814.	Same.
Brunswick, code of 1840.	Same.
Hesse, code of 1841.	Same.
German Empire, code of 1872.	See comment on Hanoverian code.

Placing the Ionian Isles under the Greek system, it is seen that in the foregoing list there are only two legislative systems now in force which in extent and form sustain Article 186; that of Russia of 1866, and that of Greece, formulated in 1834. As for the rest, such of them as might have been cited to sustain the Mexican claim have been placed by time beyond the purview of the present discussion, except for the purpose of showing the rejection of their principle in positive legislation.

Nor is this principle sustained by the legislation of the Spanish-American Republics.

In the Argentine Republic criminal jurisdiction in respect to foreigners is confined, as in the United States, to offenses committed where the Republic, or one of its states, has exclusive jurisdiction; save in the exceptional cases stipulated in treaties with foregn powers.*

In Chili the territorial principle prevails, it being provided not only that foreigners, but also that Chilians, shall not be punished for crimes or offenses committed out of the territory of the Republic, save in the cases indicated by the laws.†

In respect to offenses against the safety of the state committed outside of the Republic, Article 106 of the penal code provides as follows:

Any one who, within the territory of the Republic, conspires against its external security by inducing a foreign power to delare war against Chili shall be punished by imprisonment in the penetentiary for life. If hostilities have ensued, he shall suffer the death penalty.

The provisions of this article shall be applied to Chilians even where the plots to induce a declaration of war against the Republic have been carried on outside of its territory.

It is thus seen that even in respect to crimes against the safety of the state the Chilian code distinguishes between citizens and foreigners, and punishes the latter only when they carry on their conspiracies with foreign powers from the territory of the Republic, and are therefore within its territorial jurisdiction.

As to counterfeiting the currency, securities, and certificates of debt issued under Chilian law, Article 174 of the penal code provides as follows:

Any one counterfeiting the shares or the promises to pay up the shares of joint stock companies, bonds, or other securities legally issued by municipalities or public establishments, of whatever denomination, or interest coupons, or dividends belonging to these various securities, shall be punished by detention from its intermediate to its highest grade, and by a fine of from five hundred to one thousand dollars if utterance thereof has been made in Chili, and by detention in its intermediate grade, and by a fine of from one to five hundred dollars when the utterance has been in a foreign country.

Here, again, adherence to strict territorial theories is illustrated by the mitigation of the sentence where the utterance of the forgeries has been effected abroad; so that the punishment shall apply only to what was done within the national territory, namely, the forgery, and not to its foreign utterance.

Nor does the penal code depart from the territorial principle in respect to libels. On this subject Article 425 provides as follows:

Concerning slander or insults published by means of foreign newspapers, prosecutions may be instituted against those who, *from the territory of the Republic*, have sent the articles, or given instructions for their insertion, or contributed to the introduction or circulation of those newspapers in Chili, with the manifest intent to spread the slander and insult.

The penal code of Colombia of 1873 follows, as to acts of foreigners committed outside of the national territory, the lines laid down in the French law of 1866, and in case of private injuries confines the jurisdiction over crimes and offenses to those committed by one native against another. On these subjects Article 77 provides as follows:

Punishment shall be inflicted in conformity with this code, without the plea of ignorance of its provisions serving to exculpate, on natives and foreigners, who, *within*

*I desire to acknowledge my obligations for a written statement as to the Argentine laws to Mr. Severo Ygarzábal, of the Argentine legation. See for specific provisions Codigos y leyes usuales de la República Argentina; Buenos Aires, 1884; especially secs. 77, 78, penal code.

†Article 6 of the penal code of 1874.

the territory of the Republic, commit any crime or offense, saving as regards the latter class of persons, the exceptions fixed by international law; on the diplomatic agents of the Republic who commit, in a foreign country, any crime or offense, and on the same or any other officials of the Government in a foreign country who commit any act of disobedience or unfaithfulness to the said Government, or any crime or offense in the exercise of their functions; on natives and foreigners who, out of Colombian territory, have become guilty as principals, accomplices, or accessories of any crime against the security and tranquillity or the constitution of the Republic; who have counterfeited or introduced into Colombia counterfeit money of the nation; who have introduced into the country foreign counterfeit moneys which have legal circulation in Colombia; who have counterfeited or introduced counterfeit postage-stamps; who have counterfeited the great seal of the Republic, or those of the administrative department, or those which the courts and other authorities use conformably with the law, or instruments of public credit settled by, or admitted as a debt of, the nation, or bonds, warrants, or receipts of the national treasuries, or other offices of the treasury department, which circulate under the Government's guaranty, or the notes of legally incorporated banks; provided that in all these cases they have not been tried and sentenced in the nation in whose territory the offense was committed, and that they have been arrested in Colombia, or the Government has obtained their extradition;

On natives and foreigners who commit acts of piracy, and are arrested by the Colombian authorities, provided that they have not been tried and sentenced in another country for the said crimes;

On the commanders, officers, crew, and marines of national war vessels who commit any crime or offense on the high seas or on board of their vessel in the waters of a foreign nation;

On the captains, passengers, and crew of merchant vessels of Colombia who commit any crime or offense on the high seas, or within the waters of a foreign nation, provided that, in the last case, they have not been tried and condemned in the nation within whose jurisdiction the offense has been committed;

On natives who have committed any crime or offense against a native in a foreign country, provided that they have not been tried and condemned for the said offense or crime in the nation in which it was committed, and provided that being in Colombia the action has been commenced against them by the parties interested in conformity with the law.

In respect to the law of Costa Rica, I find in Orozco's "Elements of the Criminal Law of Costa Rica,"* published in San José, in 1882, the following statement:

The jurisdiction of the courts is thus limited to the territory of the nation, since offenses committed by natives of Costa Rica or foreigners outside of its jurisdiction are not subject to the punishments of the penal code. All the codes of the world recognize this theory, and ours declares it by saying that "crimes and offenses committed out of the territory of the Republic by Costa Ricans or foreigners shall not be punished in Costa Rica except in the cases provided by the law."†

The exception to which this article refers, in harmony with the laws of other nations, is none other than the crimes or offenses committed by Costa Ricans or foreigners against the external safety of the Republic. As this class of offenses directly affects the independence and sovereignty of the nation, all legislators have conceded to the courts of the injured state the right to try and punish them, whatever may have been the place of their commission, and without paying any attention to the question whether the latter belongs to a foreign nation, belligerent or neutral.

The collection before me of the laws of Peru is very incomplete, and I am therefore unable to speak with certainty as to recent legislation in that country. But in the penal code of 1863 the territorial principle was observed; and in respect to offenses by foreigners against the safety of the state, jurisdiction was confined to those who were in the Republic at the time of their criminal activity. (Article 114.)

The only assertion I have discovered in Spanish-American legislation (after a necessarily imperfect examination of it) of the principle of Article 186 of the Mexican penal code, is in the law of Venezuela, which provides for the punishment, under certain conditions, of foreigners who, having, outside of the territory, committed against a Venezuelan

* See p. 15 of work quoted. † Article 6.

the crime of arson, of murder, of robbery, or any other crime subject to extradition, shall come to reside in the Republic. (Seijas' Spanish-American Int. Law, vol. 1, p. 526, *et seq:* Carácas, 1884.) This provision, it is true, is neither identical in extent nor in form with Article 186, because the offenses that fall under the Venezuelan law are fewer in number and more restricted as to grade than those that are reached by the Mexican statute; and the element of residence is lacking in the latter. I am unable, however, to see that this element affords ground for a distinction in principle between the Venezuelan and the Mexican law. The mere residence of a foreigner in a state to which he owes nothing but local allegiance can not be conceded to create a retroactive criminal responsibility there for his previous conduct in other jurisdictions.

OPINIONS OF PUBLICISTS.

It will now be shown that the pretension of a state to punish foreigners for offenses committed by them against its citizens outside of the national territory is condemned by the leading authorities on international law. In this relation I shall first cite Fiore, who, in his *Droit International Privé*, says:*

Each state possesses and exercises, exclusively, jurisdiction over its own territory—

(1) Over all persons found there, whether citizens, naturalized persons, or foreigners. * * *

Jurisdiction extends outside—

(1) Over certain places assimilated to territory, in pursuance of special conditions;

(2) Over certain acts done outside the territory, in certain specified cases.

The right which pertains to every sovereign as regards *his own citizens* (allegiance, *sujétion, subditanza*) and in virtue of which he may require obedience of them, is certain and uncontested. * * *

This is not to be understood in the sense that the sovereign of a state may coerce his own citizens to obey when they are in the territorial domain of another sovereign, or that he may there exercise *imperium* and *jurisdictio*. That would involve a parallel exercise of two jurisdictions within the same territory. Nevertheless, a sovereign may, when *his own citizens* return to their native country, require them to render an account of their infractions of the laws which govern them, even if such infractions were committed in a foreign country; and when there is occasion therefor he may punish them, in case the right violated in a foreign country was protected by the national penal law. * * *

The rights of jurisdiction of territorial sovereignty as regards foreigners are exercised in the same manner as they are in regard to natives, so long as such foreigners reside within the territory of the state. They are, in fact, considered as temporary subjects. "A foreigner," says Mangin, "becomes subject to the law of a country to which he goes; he is subject to the public power of that country. This is a principle of public law which is admitted among all nations." * * *

What does not, however, appear to us to be clear, is the theory of those authors who would seek to extend the rights of territorial sovereignty over foreigners to the points of attributing to that sovereignty the full competence to put them on trial for any offense whatever, in whatever country committed. They say that their theory rests on the principle that important offenses infringe the rights of all mankind, and that, in consequence, every sovereign power has the right to punish them, on the sole condition of having the culprit in its power. "The penal laws," says Pinheiro-Ferreira, "do not punish the culprit because he has cast a stigma on this or that country by his crime, but because, in committing it, he has attacked, in the person of his victim, the whole human race; he is, therefore, justiciable by all tribunals, and, wherever he be, the public ministry should make it its duty to bring him before the judicial power of the country whose laws and whose magistrates he has insulted by flattering himself that, through the impunity they might accord to him, they would become the accomplices of his crime."

It seems to us that each sovereign power has the right to provide for the preservation of order in its own country and for the protection of the rights recognized and proclaimed by the constituted authorities as appertaining to the citizens of the state

*2nd ed., Paris, 1885, vol. i, page 408, *et seq.*

with regard to the actual circumstances of the time and the place where they may be found; but we do not believe it allowable to regard the social powers as the mandataries of God, or that they have the power to punish invasions of the moral law. We do not thereby refuse to admit the principles of the moral law or to recognize that grave crimes are in contravention thereof; but we do not believe that human judges possess positive *criteria* for exactly estimating the moral wrong and proportioning the penalty to the aggression against the moral law. * * *

Now, in admitting the theory of Pinheiro-Ferreira and those who share his views a contradiction is inevitable, because, on the one hand, it can not be admitted that the tribunals of a state can adjudge and punish by the application of the foreign law which has been violated, for it is contrary to the independence of sovereign states to execute each other's penal laws; *and, on the other hand, those tribunals themselves could not apply the law of their own state, if that state did not possess the authority necessary to compel obedience from the accused in a foreign country, for we can not admit that a rule of action may be violated which was not obligatory in the place where the offense was committed.*

Fiore refers for a more explicit discussion of this subject to his work entitled Droit Pénal International. Adverting, in the second chapter of that work, to the theory that an individual is protected in all places by the laws of his country, and that consequently the tribunals of that country may take cognizance of acts committed to his prejudice in another state, he says:

We can not admit that doctrine, for it does not seem to us that the extraterritoriality of penal law ought to depend on the quality of the person to the prejudice of whom the offense has been committed.

The learned author regards as punishable, when committed outside of the state, offenses against the safety of the state and against the public credit, and certain other offenses against rights which may be considered as protected by the laws of the state, whether committed by citizens or by foreigners. But in respect to other offenses he expressly declares that "no sovereign can exercise his repressive power on territory under the dominion of another sovereign.*

Phillimore says:†

The general rule, Foelix remarks, adopted by the positive legislation of states on this subject, which is one of public law, is to permit the criminal prosecution of a foreigner on account of crimes committed in another state only in those cases in which either the state in which the prosecution is to be carried on has been in its collective capacity injured by the crime, or in which the crime has been of the gravest kind (*de la plus haute gravité*). The effect of this rule is to make the criminal law of a state a *personal statute* to its subjects, traveling with them, and inseparably attached to them, wherever they happen to be; and such is the doctrine of Paul Voet and others. It was the opinion of Bartolus that *if*, and *when*, a state did take cognizance of crimes committed by foreigners in a foreign state, it must proceed according to the criminal law of that state—*"Ut possit contra eum procedi et puniri secundum statuta suæ civitatis;" a proposition sufficiently impracticable, it should seem, to prove the wisdom and justice of abstaining altogether from such experiments.*

Wheaton says:‡

The judicial power of every independent state, then, extends, with the qualifications mentioned—§

(1) To the punishment of all offenses against the municipal law of the state, by whomsoever committed, within the territory.

(2) To the punishment of all such offenses, by whomsoever committed, on board its public and private vessels on the high seas, and on board its public vessels in foreign ports.

(3) To the punishment of all such offenses by its subjects, wheresoever committed.

* Droit Pénal International, Paris, 1880, p. 94; Droit International Privé, ed. 1885, sec. 493.

† 4 Phillimore, p. 707.

‡ Page 180, Dana's edition.

§ These qualifications relate to the extra territorial privileges of foreign sovereigns, ambassadors, and other privileged persons, who are exempted from local allegiance.

(4) To the punishment of piracy, and other offenses against the law of nations, by whomsoever and wheresoever committed.

It is evident that a state can not punish an offense against its municipal laws, committed within the territory of another state, unless by its own citizens.

Hall, a late and very able English authority, says:

Whether laws of this nature (punishing foreigners for offenses committed abroad) are good internationally; whether, in other words, they can be enforced adversely to a state which may choose to object to their exercise, appears, to say the least, to be eminently doubtful. It is indeed difficult to see upon what they can be supported. Putting aside the theory of the non-territoriality of crime *as one which unquestionably is not at present accepted either universally or so generally as to be in a sense authoritative*, it would seem that their theoretical justification, as against an objecting country, if any is alleged at all, must be that the exclusive territorial jurisdiction of a state gives complete control over all foreigners not protected by special immunities while they remain on its soil. But to assert that this right of jurisdiction covers acts done before the arrival of the foreign subjects in the country is in reality to set up a claim to concurrent jurisdiction with other states as to acts done within them, and so to destroy the very principle of exclusive territorial jurisdiction to which the alleged rights must appeal for support. It is at least as doubtful whether the voluntary concession of such a right would be expedient except under the safeguard of a treaty. In cases of ordinary crimes it would be useless, because the act would be punishable under the laws of the country where it was done, and it would only be necessary to surrender the criminal to the latter.*

Story, in his work on the Conflict of Laws, says:†

SEC. 620. The common law considers crimes as altogether local and punishable exclusively in the country where they are committed.‡ No other nation, therefore, has any right to punish them, or is under any obligation to take notice of or to enforce any judgment rendered in such cases by the tribunals having authority to hold jurisdiction within the territory where they are committed.§ Hence it is that a criminal sentence of attainder in the courts of one sovereign, although it there creates a personal disability to sue, does not carry the same disability with the person into other countries. Foreign jurists, indeed, maintain on this particular point a different opinion, holding that the state or condition of a person in the place of his domicile accompanies him everywhere. Lord Loughborough, in declaring the opinion of the court on one occasion, said: "Penal laws of foreign countries are strictly local, and affect nothing more than they can reach and can be seized by virtue of their authority. A fugitive who passes hither comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like, and can not be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend." Mr. Justice Buller, in the same case, on a writ of error, said: "It is a general principle that the penal laws of one country can not be taken notice of in another." The same doctrine was affirmed by Lord Ellenborough in a subsequent case; and it has been recently promulgated by Lord Brougham in very clear and authoritative terms. "The *lex loci*," says he, "must needs govern all criminal jurisdiction from the nature of the thing and the purpose of the jurisdiction."

SEC. 621. The same doctrine has been frequently recognized in America. On one occasion, where the subject underwent a good deal of discussion, Mr. Chief Justice Marshall, in delivering the opinion of the Supreme Court, said: "The courts of no country execute the penal laws of another."‖ On another occasion, in New York, Mr. Chief Justice Spencer said: "We are required to give effect to a law (of Connecticut) which inflicts a penalty for acquiring a right to a *chose in action*. The defendant can not take advantage of nor expect the court to enforce the criminal laws of another State. They are strictly local, and affect nothing more than they can reach."¶ Upon the same ground, also, the supreme court of Massachusetts have held that a person convicted of an infamous offense in one State is not thereby rendered incompetent as

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* Hall's International Law, 2d ed., 1884, p. 190.

† 5th ed., 1857, p. 984 *et seq.*

‡ "Crimes," said Lord Chief Justice De Gray, in Rafael *v.* Verelst, 2 Wm. Black. R., 1058, "are in their nature local, and the jurisdiction of crimes is local."

§ Rutherf. Inst., B. 2, ch. 9, sec. 12; Martens, Law of Nations, B. 3, ch. 3, secs. 22, 23, 24, 25; Merlin, Répertoire, Souveraineté, sec. 5, n. 5, 6, p. 379 to 382; Commonwealth *v.* Green, 17 Mass. R., 515, 545, 546, 547, 548.

‖ The Antelope, 10 Wheat. R., 66, 123.

¶ Scoville *v.* Canfield, 14 Johns. R., 338, 340. See also The State *v.* Knight, Taylor's N. C. Rep., 65.

a witness in other States.* [So in a late case in chancery,† a foreigner in England was not allowed to withhold certain documents whose production was sought by a bill of discovery upon the plea that their contents would render him liable to the penal laws of his own country, they having no such effect in England, and the courts of the latter country having no regard to the penal laws of a foreign state.

SEC. 622. The same doctrine is stated by Lord Kames as the doctrine in Scotland. "There is not," says he, "the same necessity for an extraordinary jurisdiction to punish foreign delinquencies. The proper place for punishment is where the crime is committed. And no society takes concern in any crime but what is hurtful to itself."‡

Sec. 623. The same doctrine is laid down by Martens as a clear principle of the law of nations. After remarking that the criminal power of a country is confined to the territory, he adds: "By the same principles a sentence which attacks the honor, rights, or property of a criminal can not extend beyond the courts of the territory of the sovereign who has pronounced it; so that he who has been declared infamous is infamous in fact but not in law, and the confiscation of his property can not affect his property situated in a foreign country. To deprive him of his honor and property judicially there also would be to punish him a second time for the same offense."

SEC. 624. Pardessus has affirmed a similar principle. "In all the states of Christendom (says he), by a sort of general consent and uniformity of practice, the prosecution and punishment of penal offenses are left to the tribunals of the country where they are committed. The principle of the French legislation, that the laws of police and bail are obligatory upon all who are within the territory, is a principle of common right in all nations." Bouhier also admits the locality, or, as he terms it, the reality of penal laws; and of course he limits their operation to the territory of the sovereignty within which they are committed.§

SEC. 625. On the other hand, Hertius and Paul Voet seem to maintain a different doctrine, holding that crimes committed in one state may, if the criminal is found in another state, be, upon demand, punished there. Paul Voet says: *Statutum personae ubique locorum personam comitatur, etc., etiam in ordine ad poenam a cive petendam, si poena civibus sit imposita.* And he, as well as some others of the foreign jurists, enters into elaborate discussions of the question whether, if a foreign fugitive criminal is arrested in another country, he is to be punished according to the law of his domicil or according to the law of the place where the offense was committed. If any nation should suffer its own courts to entertain jurisdiction of offenses committed by foreigners in foreign countries, the rule of Bartolus would seem to furnish the true answer, *Delicta furniunter juxta mores loci commissi delicti, et non loci ubi de crimine cognoscitur.*

Bar, the distinguished professor of law in the University of Göttingen, who, since the first publication of his work on International Law in 1862, has seen the extraterritorial pretensions of the German states, which he condemned, swept away by the Imperial code of 1872, defines‖ four theories of criminal jurisdiction, of which the first three are as follows:

(1) The theory that a criminal statute is limited to the territory for which it was enacted, and that any act committed in another country is beyond its influence.

(2) The theory that the criminal law of a state applies not only to crimes committed there, but also to those committed by its citizens abroad.

(3) The theory that proposes to extend still further No. 2, and lay down that the state has a right to protect itself and its subjects from injury, and is therefore privileged to visit any injury with punishment.

* Commonwealth *v.* Green, 17 Mass. R., 515, 540, 541, 546, 547. [Contra in North Carolina, State *v.* Chandler, 3 Hawks, 393; Chase *v.* Blodgett, 10 N. H., 22.]

† King of Two Sicilies *v.* Wilcox, 1 Simons, N. S., 301.

‡ Kames on Equity, B. 3, ch. 8, sec. 1. See also Ersk. Inst. B. 1, tit. 2, p. 23.

§ Bouhier, Cout. de Bourg., ch. 34, p. 588. See also Matthæi, Comm. ad Pand., Lib. 48, tit. 20, secs. 17, 18, 20. Mr. Hallam has remarked: "The death of Servetus has, perhaps, as many circumstances of aggravation as any execution for heresy that ever took place. One of these, and among the most striking, is that he was not the subject of Geneva, nor domiciled in the city, nor had the *Christianissima Restitutio* been published there, but at Vienne. According to our laws, and those, I believe, of most civilized nations, he was not answerable to the tribunals of the Republic." Hallam's Introduction to the Literature of Europe, vol. 2 (Lond. edit., 1839), cap. 2, sec. 27, p. 109.

‖ Page 626 *et seq.*, Gillespie's translation, Edinburg, 1883.

On the third theory Bar says:

But although it is true that the protection of persons and property is secured by criminal law, the right to punish does not flow from the right to protect; the latter may justify any measures of defense or self-defense, but gives no right to correct. But even if a law of punishment could be derived from the right of defense and self-defense, yet, since the obligation to protect by punishment lies, in the first instance, upon the state in which the injured parties are, such a law would be subsidiary only, and the state whose permanent subjects those injured persons are would primarily have no share in the matter, beyond supporting all other states in applying their criminal law. * * *

A union of such divergent principles (territoriality, personality, and right to protect) must at the same time lead to the most manifold doubts and the most irreconcilable results. * * *

But* as regards the right of the state to punish foreigners who may commit in a foreign country acts prejudicial to the state or its subjects, it is to be remembered that foreigners are not bound to pay any heed to the ways and means which our state takes to attain the aim of its being; indeed, it may be that, as is the case in uncivilized states, they have views diametrically opposed to ours as to the means by which the individual may be perfectly developed within the state. If we propose to compel foreigners to respect our laws in their own country, this is simply to declare that the regulations by which we attain the final end of our state are the only justifiable regulations, *and to extend the territory of the state beyond its bounds.*

To this we must add that there is no obligation on a foreign state to suffer the presence of our subjects within its territory, and even if there were a complete obligation of such a kind, it could only be pressed against the state itself by means of public law, not against its individual subjects by means of criminal law. The foreign state has to fix under what conditions it will suffer the presence of our subjects within its territory, and what rules it will prescribe for the intercourse of its permanent or temporary subjects with our subjects.

As regards the case of an act which is prejudicial to a private person who belongs to our state there can not even be any consideration of expediency urged for the extension of the criminal law in such a case. Every civilized state punishes common crimes without caring whether they have been committed upon a foreigner or a native subject.

Field, in his International Code, proposes the following rules:

643. The criminal jurisdiction of a nation extends to foreigners—

(1) Who commit theft beyond its limits, and bring, or are found with, the property stolen, within its limits; or,

(2) Who, being beyond its limits, abduct or kidnap, by force or fraud, any person, contrary to the laws of the place where such act is committed, and send or convey such person within the limits of the nation, and are afterwards found therein; or,

(3) Who, being within its limits, cause, or aid, advise or encourage, another person to commit any act, or be guilty of any neglect within the same, which is a criminal act or neglect according to the laws of the nation, and who are afterwards found within its limits.—Penal Code, reported for New York, sec. 15.

644. The criminal jurisdiction of a nation extends also to foreigners found within its jurisdiction who have committed at any place beyond its territorial limits, either as principals or accessories, any of the following infractions of its criminal law:

(1) A crime against its national safety; or,

(2) Counterfeiting or forging its national seal, national papers, national money having currency within its limits, or bills of any bank authorized by its laws.

These provisions are taken from the law of June 27, 1866, amending Articles 5, 6, and 7 of the French Criminal Code, vol. 9, p. 557.

Wharton, in defining, in his work on the Conflict of Laws, different theories of criminal jurisdiction, says:†

(*b*) *That penal jurisdiction belongs to the country of arrest, provided such jurisdiction be necessary for the prevention of crime.* That this view can not be logically maintained is argued at large in another work, whose positions can not, for want of spaee, be here recapitulated. (Whart. Crim. Law, 8th ed., secs. 2 *et seq.*

(*c*) *That penal jurisdiction belongs to the country of arrest, provided such jurisdiction is necessary to protect or indemnify parties injured.* So far as concerns the question of prevention this position is blended with the last. So far as concerns jurisdiction for the purpose of binding over a dangerous person to keep the peace, it is what has always been exercised by justices of the peace under the English common law.

* Page 654, edition referred to.
† Second ed., 1881, sec. 809.

Every justice of the peace is authorized by that law to require such persons, on cause being shown that injury to persons or things is justly to be apprehended from them, to give bail for good behavior, or, in default of such bail, to be committed to prison. The claim, however, put forward in this connection by several codes, goes beyond this. It assumes that criminal jurisdiction is based on the right of a sovereign, in order to protect his subjects from injury, or to indemnify them for injuries sustained, to penally prosecute the offender, whether he be subject or alien, or whether the offense was committed at home or abroad. Aside, however, from the objections noticed under the last head to the assumption of penal jurisdiction over aliens for offenses committed abroad against their own sovereigns, there are two special difficulties in the way of the reasoning on which this particular claim is advanced. In the first place, the right of protection, as such, justifies, not punishment of others, but simply defense of the party endangered. Secondly, to urge protection or indemnity as a ground of jurisdiction involves, as Barr acutely observes, a *petitio principii*. To assume that a sovereign has jurisdiction because one of his subjects is injured by the defendant, is to assume the defendant's guilt, concerning which it is the object of the procedure to inquire. And once more, if the government can only intervene to protect or indemnify subjects, a large class of offenses must go unpunished; such as those against foreigners, or those in which joint defendants, as in case of some sexual crimes, are equally guilty of the common wrong.

It is proper here to advert to the views of President Woolsey, as expressed in his work on International Law, which has been quoted against the position of the Government of the United States in the case under consideration. I shall quote from the last (the fifth) edition, revised and enlarged, as published in 1883. In section 76, which contains the passages that have been cited to sustain the Mexican law, the author says:

Each nation has a right to try and punish, according to its own laws, crimes committed on its soil, whoever may be the perpetrator. But some nations extend the operation of their laws so as to reach crimes committed by their subjects upon foreign territory. In this procedure municipal law only is concerned, and not international; and, as might be supposed, laws greatly differ in their provisions. (1) One group of states, including many of the German states, some of the Swiss cantons, Naples (once), Portugal, Russia, and Norway, punish all offenses of their subjects, committed in foreign parts, whether against themselves, their subjects, or foreigners, and this not in accordance with foreign but with domestic criminal law. (2) At the opposite extreme stand Great Britain, the United States, and France, which, on the principle that criminal law is territorial, refrain from visiting with penalty crimes of their subjects committed abroad. * * *

The same difference of practice exists in the case of crimes committed by *foreigners* in *a foreign* country against a state or one of its subjects, who are afterwards found by the injured state within its borders. England and the United States seem not to refuse the right of asylum, even in such cases. France punishes public crimes only, and such as Frenchmen would be liable for if committed abroad. (See this section above.) So Belgium and Sardinia, but the latter state also, in the case of wrongs done to the individual Sardinian, first made an offer of delivering up the offending foreigner to the *forum delicti*, and if this was declined, then gave the case over to its own courts. Many states, again, act on the principle that it is right to punish a foreigner as a subject for foreign crimes against themselves or their subjects.

Nearly all states consider *foreign crimes* against foreign states or their subjects as beyond their jurisdiction. A few refuse sojourn on their soil to such foreign wrongdoers; a few go so far as to punish even here in case the party most nearly concerned neglects to take up the matter. Thus Austria, if an offer of extradition is declined by the offended state, punishes and relegates the criminal.

From this exposition it is evident (1) that states are far from universally admitting the territoriality of crime. (2) That those who go farthest in carrying out this principle depart from it in some cases, and are inconsistent with themselves. To this we may add (3) that the principle is not founded on reason, and (4) that, as intercourse grows closer in the world, nations will the more readily aid general justice. (Comp., sec. 20*b*.)

This section (20*b*) is connected in its line of reasoning with section 20*a*, from which I will quote the following passage:

There must be a certain sphere for each state, certain bounds within which its functions are intended to act, for otherwise the territorial divisions of the earth would have no meaning. In regard to the right of *punishing in any case* outside of the bounds of the state there may be rational doubts. Admitting, as we are very ready

to do, that this is one of the powers over its subjects, we can by no means infer that the state may punish those who are not its subjects, but its equals. And yet, practically, it is impossible to separate that moral indignation which expresses itself in punishment from the spirit of self-redress for wrongs. As for a state's having the vocation to go forth, beating down wickedness, like Hercules, all over the world, it is enough to say that such a principle, if carried out, would destroy the independence of states, justify the nations in taking sides in regard to all national acts, and lead to universal war.

In section 20*b* are found the following passages:

The inquiry, whether a state has a right to punish beyond its own limits, leads us to the more general and practically important inquiry, whether a state is bound to aid other states in the maintenance of general justice; that is, of what it considers to be justice. The prevalent view seems to have been that, outside of its own territory, including its ships on the high seas, and beyond its own relations with other states, a state has nothing to do with the interests of justice in the world. Thus laws of extradition and private international law are thought to originate merely in comity. * * * This is the most received, and may be called the narrow and selfish view. On the other hand, the broad view, that a state in getting justice done everywhere, if its aid be invoked, and even without that preliminary, would occasion more violence than could thus be prevented.

It is thus seen that while the learned author in section 76 criticises the doctrine of territoriality as "not founded on reason," in section 20*a* he says:

In regard to the right of *punishing in any case*,* outside of the bounds of the state, there may be rational doubts. Admitting, as we are very ready to do, that this is one of the powers of the state over its subjects, we can by no means infer that the state may punish those who are not its subjects but its equals.

The fair and just inference from these contrasted propositions is that, when in section 76 the learned author criticised the territorial principle as unreasonable, he was considering it solely in connection with the theory of *personal* jurisdiction, as applied to citizens or subjects of a state. Even on this supposition it is going a great way to characterize the territorial theory as unreasonable. It may not be expedient always to apply the strict rule of territoriality to citizens, but so general is the recognition of the *reason* of the doctrine, that among the legislative systems in force to-day that punish extraterritorial offenses of citizens, there is, as we have seen, scarcely one, if any at all, that does not impose important limitations and conditions upon the exercise of the power. And it is not too much to say that until the conditions of time and space shall have been overcome, and humanity shall have realized the millennial dream of the obliteration of national boundaries, and the unification of legal systems following the extinction of all diversity of creeds and aspirations, the penal law will continue to be essentially territorial.

The grounds of the territorial theory of criminal jurisdiction have been stated by Sir G. C. Lewis in a passage so remarkable for clear, condensed, and cogent reasoning, that it is well to quote it in this place. It reads as follows:†

The system of tying the entire criminal law of a country round the neck of a subject, and of making him liable to its operation, in whatever part of the world he may be, converts the criminal law into a personal statute, and puts it on the same footing as the law respecting civil *status*. Now, the personal status of one country, in civil matters, is recognized by another, so that there is no conflict of laws. But if the criminal law were a personal statute, a foreigner would at the same time be subject to two criminal laws—the criminal law of his own state and that of the state of his domicile. No text-writer and no state disputes the rule that all foreigners in a country are subject to its criminal law.

The received rule as to the territoriality of criminal law rests on a sound basis. The territorial sovereign has the strongest interest, the greatest facilities, and the most powerful instruments for repressing crimes, whether committed by native-born

* These are the learned author's italics.

† Foreign Jurisdictior p. 29 *et seq.*

subjects or by domiciled aliens in his territory. But a sovereign government which pursues its subjects into foreign countries, and keeps its criminal law suspended over them, attempts a task in which, even if undertaken with earnestness, it is sure to fail; but which will probably be performed in a careless, indifferent, and intermitting manner. A government has no substantial interest in punishing crimes in the territory of another state; it has not on the spot officers of justice to discover and arrest the criminal; the transport of witnesses to a distance is a troublesome and costly operation; the difference of language, law, and customs creates further impediments. A failure of justice, and an acquittal, is therefore likely to occur, even if the utmost diligence is used; but it may be assumed as certain that, unless some special motive exists, little diligence will be used. A government would feel, with respect to offenses committed abroad in a civilized country, that it was, at the best, undertaking a work of supererogation; perhaps that it was interfering in a matter which, as the law of the place provided for it, would most properly be left alone.

The experience of this and other countries shows that a criminal law applicable to offenses committed in foreign lands (such as the act of 33 Hen. 8 and 9 Geo. 4) is for the most part a *brutum fulmen*, and that it is rarely carried into execution. The slumber of the law is therefore in practice a sufficient security to the native subject against its oppression. But if a government was to set to work vigorously to execute such a system of foreign criminal law as that which is embodied in the Austrian and Prussian codes, the sense of insecurity would infallibly lead to loud complaints, and the legislature would be urged into the adoption of a less ambitious course. Guilty men might occasionally be brought to justice; but innocent men, charged with the commission of crimes in distant parts of the world, would be almost incapable of defending themselves against the accusation, and of proving their innocence. Even an educated person, provided with money and friends, might find it difficult to extricate himself from such a position; but a poor, uneducated, friendless man might be almost at the mercy of a false accuser. Such a law, if a government afforded funds and encouragement for its enforcement, might be a formidable weapon in the hands of unscrupulous malignity.

It may, therefore, be laid down as a general principle, resting on grounds of the most enlarged expediency, that a criminal law ought to be local; that the sovereign ought to enforce it with respect to all crimes committed within his territory and in national ships upon the high seas; but should not seek to apply it to crimes committed in the territory or ships of other civilized states.

But although, in explanation of the generalizations at the close of section 76 of President Woolsey's work, which appear to have had reference solely to the question of punishing the extraterritorial offenses of citizens, I have quoted his express condemnation elsewhere of the pretension of a state to punish foreigners for offenses committed abroad, it is necessary to notice the statement made in the same section, that "many states, again, act on the principle that it is as right to punish a foreigner as a subject for foreign crimes against themselves or their subjects." It is observed that the only legislative systems referred to in this section (except those of Great Britain, the United States, France, Portugal, Russia, Belgium, Holland, and Norway, of which only Russia and Norway, and the latter not in an absolute manner, assert a right to punish foreigners for offenses committed abroad against citizens or subjects), are those of "many of the German states, some of the Swiss cantons, Naples (once)," and Sardinia. The citation of the legislation of these states, which are the "many states" referred to, is accounted for by the learned author's statement, made in a note to section 76, that the facts therein set forth "are drawn from an essay, by R. von Mohl, in his *Staatsr., Völkerr. u. Politik*, vol. 1., 644–649." This volume was published in 1860, and, as it antedated the unification of Italy and the formation of the German Empire, quoted the then independent legislation of Sardinia, and of Hanover, Oldenburg, Prussia, Baden, Saxony, and Coburg. It fails, however, to notice the Swiss federal law of 1853, and cites many ancient cantonal statutes long antedating the formation of the Swiss Confederation.

Aside, however, from President Woolsey's specific declarations of opinion adverse to the right, which section 76 of his work has sometimes been quoted to sustain, of a nation to punish the extraterritorial offenses of foreigners, it would be difficult to find a stronger condemna-

tion of such a pretension than is contained in section 77, which relates to extradition. In this section he says:

The considerations which affect the question, what a government ought to do in regard to fugitives from foreign justice who have escaped into its territory, are chiefly these: *First*, that no nation is held to be *bound* to administer the laws of another, or to aid in administering them; *secondly*, that it is for the interest of general justice that criminals should not avoid punishment by finding a refuge on another soil, not to say that the country harboring them may add thereby to the number of worthless inhabitants; *thirdly*, that the definitions of crime vary so much in different nations that a consent to deliver up all accused fugitives to the authorities at home for trial would often violate the feeling of justice or of humanity; and *fourthly*, that truth can be best ascertained and justice best administered near the *forum criminis*, and where the witnesses reside. There is also a substantial agreement among the most civilized nations in regard to proof and to penalty in criminal law. Some have contended for an absolute obligation to deliver up fugitives from justice; but (1) the number of treaties of extradition shows that no such obligation is generally recognized, else what need of treaties giving consent to such extradition, and specifying crimes for which the fugitive should be delivered up? (2) It may be said that the analogy of private international law requires it. If a nation opens its courts for the claim of one foreigner on another, and in so doing applies foreign law to the case, why should it not open them for claims of a foreign government against violators of its law? But the analogy fails. In *private* claims the basis of right is admitted with a general agreement by the law of all States. In *public* prosecution of criminals different views of right are taken, as it respects offenses, method of trial, and degree of punishment.

Every consideration advanced by the learned author in respect to extradition is in direct antagonism to the claim of Article 186 of the Mexican penal code. Extradition ought to be granted, so he argues, because it is for the interest of general justice that criminals should not avoid punishment by finding a refuge on another soil, and because truth can be best ascertained, and justice best administered, near the *forum criminis*, and where the witnesses reside—all of which is sound territorial doctrine. But at the same time we are to consider that to consent to deliver up all accused fugitives to the authorities at home for trial would often violate the feelings of justice and humanity!

To apply this argument to the case of Mexico, there exists between the United States and that country a reciprocal treaty of extradition, under which each government has agreed to deliver up to the other, persons who, after judicial examination, shall be found to have been duly charged with the commission, within the jurisdiction of the demanding government, of certain offenses enumerated in the treaty; but in no case is either government required to deliver up its own citizens. Among the offenses enumerated in the treaty, libel, the offense with which Mr. Cutting was charged, is not found. Hence the claim made by the Mexican Government in the Cutting case, under Article 186 of the penal code, is not only to try and punish, according to its laws, a citizen of the United States (whose extradition could in no case have been required under the treaty) for an offense committed in his own country, but to try and punish him for an offense for which the surrender of a Mexican could not have been demanded by his Government, even if he had committed it on Mexican soil. Surely such a claim may be said to "violate the feelings of justice and humanity."

Heffter, in his work on the International Law of Europe, says:*

As regards criminal jurisdiction the following principles are in the main to be recognized:

I. It can only extend—

* This work was first published in Germany in 1844, and new editions, with changes and additions to keep it abreast of the times, were issued in 1848, 1855, 1861, 1867, and 1873. Translations of it were published in France in 1857, 1866, 1873, and 1883, the last edition being copiously annotated by Geffcken. Heffter, who was a professor in the University of Berlin, an attorney for the crown, and a counsellor of the supreme court of justice at Berlin, died in 1880. I quote from section 36 of the last German dition.

a. To crimes and offenses committed in the country by a person, whether native or foreigner, being in the said country;

b. To crimes committed in a foreign country by a subject against the laws of his own country, which are binding on him even in a foreign land.

While the second proposition is in theory often not admitted, and all right to inflict punishment in the case of offenses committed abroad denied to the state, yet a practice of individual states goes even further and permits each, by almost universal acknowledgment, to punish all those crimes which are committed by a foreigner in a foreign country against its existence and most important political interests. Formerly the exercise of the office of punishing on behalf of another perfectly competent state, when commissioned by the latter, was not regarded as inadmissible. Yet the constitutional principle which now prevails is opposed to this, namely, that no one should be withdrawn from the jurisdiction of his natural, *i. e.*, his constitutional judge.

In support of the principles thus stated Heffter refers to his work on Criminal Law, published in 1854, in which* he sustains his position with great clearness and conclusiveness of argument and with ample citation of authorities. He also refers to M. Faustin Hélie's *Traité de l'instruction criminelle*, and to an opinion of the law faculty of Halle, given in 1832, in which it was held that, in order to render a person criminally liable for his conduct, there must be an *obligatio ex lege*, which does not exist in the case of a foreigner outside of the national jurisdiction. Like Bar, who still survives, Heffter lived to see the pretension of many of the German states to punish foreigners for offenses committed outside of the state against subjects disappear before the Imperial code of 1872.

In the great work of M. Faustin Hélie,† the subject of foreign jurisdiction is discussed with almost unequaled elaboration and completeness. And after arguing that in respect to crimes against the safety of the state the right of self-defense may be invoked to justify their punishment, he says that this argument can not be extended to extra-territorial offenses by foreigners against citizens, for the following reason: ‡

The state to which the injured citizen belongs can not invoke the right of defense, for its safety is not compromised by a private crime committed on one of its citizens; it can not invoke the trouble caused by the presence of the criminal on its territory, for that is a matter for expulsion. And then, how is it possible to apply to that foreigner a law which did not govern him at the moment of the perpetration of the act? How can it be made to retroact to a period in which it could not touch him, since he was a foreigner and the crime was committed in a foreign country?

The question is examined by the learned author in all its bearings, and no ground whatever is found to justify the exercise by the state of such jurisdiction.

Pradier-Fodéré, the learned editor of Grotius, founder and honorary dean of the faculty of political and administrative sciences of the University of Lima, and honorary professor in the school of political science at Paris, in his recent work on Public International Law, European and American, says: §

1840.—Should the penal law of a state punish crimes committed outside of the territory of that state by foreigners against its own citizens? We must admit at the outset that it is the duty of the local sovereignty whose territory has been the scene of the crime to act first; this is demanded in the interest of the success of the preliminary examination, in the interest of the exemplary repression of crime, nay, in the interest of the proper administration of justice, for in the locality in which the crime was committed the public will better appreciate the various circumstances which accompanied it, the consequences to which it has given rise, and the grounds

*Secs. 25-27, inclusive.

†*Traité*, etc., vol. 2, secs. 127, 128.

‡Id. p. 591.

§ Traité de Droit International Public Européen et Américain suivant les progrés de la science et de la pratique contemporaines par P. Pradier-Fodéré, Paris, 1887, vol. 3, sec. 1840.

of aggravation, mitigation, or of excuse that may exist; the seriousness of the social disturbance caused will also be more accurately measured in that locality. The territorial competence of the penal law becomes to such an extent obligatory, owing to its advantages, and the principle that a criminal act should be punished in the place where it is committed is so dominant, that the state whose citizen or subject has been injured would have good ground to offer to the state in whose territory the crime was committed the extradition of the perpetrator of that crime, in case of his having taken refuge on the soil of the victim's country. It may happen, however, that the foreign state to which the criminal belongs, and in whose territory the crime was committed, refuses to prosecute, or that its judicial institutions furnish no guaranties.

Is a state that has been injured in one of its citizens then theoretically authorized to bring the guilty party to trial, if it has him in custody? The affirmative is taught by those philosophers who think that crimes should be considered as a violation of universal law, and that any jurisdiction is competent to repair the disturbance caused by them in the moral order of society; it is likewise maintained by those authors who consider that penal jurisdictions are instituted for the protection of those under them, by legally repressing unlawful acts of which they may be the victims, and the state to which the injured parties belong resumes all its rights, and should secure, as far as possible, the judicial repression which is indispensable to the security of those citizens when the authorities of the foreign country in which they have been the victims of a crime do not protect those who dwell in or cross the territory of that country, thus disregarding the reciprocity of protection and the solidarity of reparation and justice that should be a bond between civilized states. "Is it not a spectacle revolting to conscience and reason," said Bonjean, "to see this foreigner, who, after murdering a Frenchman on the soil of one of the neighboring states, comes to seek an asylum in the very country of his victim, insulting by his presence and his impunity the legitimate grief of the relatives and friends of the murdered man?"*

These observations are certainly entitled to weight, but they can not prevail against considerations which are not less weighty. As a general rule, with very few exceptions, the law, as well as penal jurisdictions, is territorial, and the laws or customs under which the guilty party lived at the time when he committed the crime can not be set aside. How can we admit that a foreigner ought to be punished for having violated laws which he was in no way bound to obey? "I am obliged to obey the laws when I live under the laws, but when I do not live under them can they still be binding upon me?"† "It does not seem to us," says Pasquale Fiore, "that the extraterritoriality of penal law ought to depend upon the quality (citizenship) of the person to whose detriment the offense was committed. It is true that a man is born a citizen of a given country, and that he is subject, as such, to the social power of his native land, which, by its laws, secures to him the free exercise of his rights, and that he should everywhere be protected by the sovereignty of his country. On the other hand, however, he may remove from his country and enter the territory of another state; he may submit to a foreign social power, which, by right, takes the place of the social power of his native country as regards the protection of the persons and property of those who, living within the territory that is subject to it, have become its temporary subjects."‡ * * *

It will be observed that if a crime committed in a foreign country were due to the nationality of the victim, if it consequently menaced exclusively the safety of persons belonging to that nationality, and if it remained unpunished, or even without sufficient repression, this would be a subject for diplomatic representation. (V. *supra*, Nos. 1363 *et seq.*)

OPINION OF THE INSTITUTE OF INTERNATIONAL LAW.

The subject of criminal jurisdiction received the early attention of this learned association, and in a report§ by M. Brocher, of the University of Geneva, at the annual meeting of the Institute in Paris in September, 1878, the following conclusions were stated:

(1) The general principles of criminal law, and the exigencies of a good administration of repressive justice, unite in establishing, so far as is practicable, the supremacy of territorial jurisdiction.

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*Bonjean, Report on the bill relative to crimes committed in a foreign country, p. 34.

†Montesquieu, Persian Letters.

‡Pasquale Fiore, Treatise on penal international law, Antoine's French translation, 1880, No. 81, p. 88.

§Annuaire de l'Institut for 1880, pp. 50 *et seq.*: Wharton's Conf. of Laws, sec. 810; 1 Crim. Law Wag., 691 (1880.)

(2) This jurisdiction covers all acts which invade rights in the territory of each particular state.

(3) The criminal jurisdiction of a state is not limited to cases in which the perpetrator was, at the time of the offense, on the soil of such state. It should extend to acts which, transpiring abroad, affect domestic peace and order.

(4) This extension of territorial jurisdiction is correlative to facts which present themselves in various aspects. Among these may be mentioned, (1) a shot on one side of a boundary taking effect on the other side; (2) swindling letters issued from one country and operating in another; (3) poisonous food sent into a foreign land addressed to a specific person; (4) forgery of commercial paper meant to operate extraterritorially; (5) treason and political offenses by subjects abroad, counterfeiting of public money and other securities; (6) acts committed abroad to elude home law, such as a duel arranged within the territory to take effect outside; (7) accessory help and co-conspiracy in cases in which the principal offender acts intraterritorially; (8) acts penetrating to the moral core of the state, such as bigamy, incest, or adultery committed by two subjects abroad; (9) acts of piracy, and other acts of a similar class committed on the high seas or in barbarous lands on the ground that each state has territorial rights in such regions.

(5) Simple residence in a country gives territorial jurisdiction of all things done by such resident in such country, though not of things done by him before his arrival.

(6) Domicile, as distinguished from residence, does not usually impose subjection by the domiciled person to the state for acts done when he is absent from the state.

(7) Nationality, in certain states, is a basis of criminal jurisdiction; all persons who are members of a nationality being subject, wherever they may be, to the laws of the nationality to which they belong. Such nationality, however, is not to be considered as a personal law, binding a citizen of a nation to obey its laws wherever he may be. Its extraterritorial effect should be limited to special cases; as, for instance, those in which the order of a state is assailed by its subjects abroad, and it has no other means of redress.

When this report came up for discussion at Brussels in 1879 it was advocated by its author, who claimed that each state, besides *territorial*, was entitled to exercise a *quasi-territorial* jurisdiction, authorizing it to assume, in all matters relative to its public order and security, jurisdiction over persons in foreign lands; and he cited several examples to show that this jurisdiction could be sustained on neither the territorial nor the personal theory. It is true that in this way an offense might be subjected to two jurisdictions, that of the country where the crime takes effect and that of the country where it is concocted; but for this purpose a hierarchy of jurisdiction should be recognized, to be graduated as follows: Where the act is concocted and takes effect exclusively in a particular territory, that territory should have jurisdiction; if in two territories, then the territory of concoction as well as of execution should have jurisdiction.

Professor von Bar replied that the scheme proposed would give each state almost universal jurisdiction, which would endanger the authority of other countries, as well as the security of individuals.

Mr. Westlake took the ground that the claim by a state of a right to punish the subjects of other states for acts committed by them outside of its territory, derogates from the security which a foreigner admitted within such territory ought to enjoy, and that this pretension would give

rise to diplomatic collisions. He admitted the right of a state to punish for acts done on its territory, and also for acts done by its citizens abroad. An individual, he argued, is punished for violating the law of the country in which he lives, because he is bound to know this law; he cannot be punished for violating a foreign law, which he is not bound to know.

Professor Goos, of the University of Copenhagen, also thought that M. Brocher went too far. He did not deny the competence of the state to prosecute for all the cases enumerated in the report. But he gave to the right of the state a different basis. He admitted the territorial competence and the personal competence; he rejected everything that went beyond that. Such was the system of the Danish code of 1866, and it sufficed perfectly for the national security.

The president, M. Rolin-Jacquemyns, a Belgian jurist and statesman of eminence, and minister of the interior, questioned whether, in addition to territorial and personal jurisdiction, a third scheme, the quasi-territorial, could be recognized.

M. Asser, of Amsterdam, a professor of law in that city, and author of several learned papers on international law, did not think that the question should be presented in so absolute a manner. There were cases where a foreigner outside of the territory of the prosecuting country commits an attempt against that country; such is, for example, the case of a conspiracy against the safety of the state. Would they argue that in such case foreigners could not be prosecuted? He was convinced that MM. Westlake, de Bar, and Goos did not wish to go so far; they could, without being illogical, admit here an exception, since the prosecuting state would definitively limit itself to exercising the right of legitimate self-defense. Besides the prosecuted delinquent has committed an attempt, intentionally and knowingly, against the safety of the state, and violated laws which he knew.

Mr. Westlake and M. Goos refused to admit such an exception.

Professor von Bar conceded that there would be jurisdiction in the attacked state when the state in which the offender resides will not interfere.

Professor Neumann, of the University of Vienna, urged that public safety is a sufficient ground for punishment. The Austrian code went still farther, authorizing Austrian courts to punish a foreigner, resident in Austria, for an offense committed by him in a state which refuses to make a demand for his extradition.

The following proposition by Professor von Bar was adopted by a vote of 19 to 7:

> Each state has the right to punish for acts committed outside of its territory by foreigners, in violation of its penal laws, when these acts constitute an attack (*atteinte*) on the social existence of the state, compromising its safety, and which are not cognizable by the penal law of the country where they take place.

The president then put the question whether the "quasi-territorial" jurisdiction assumed was to include other acts than those determined by the proposition of Professor von Bar—that is to say, whether a state can punish a foreigner who commits abroad offenses against its laws other than those designated in that proposition. This was answered in the negative by a vote of 17 to 9.

The subject came before the institute for final resolution at its session in Munich in September, 1883, under the presidency of the Baron Holtzendorff, on a report presented by Dr. von Bar and M. Brusa. There were present at this session M. Arntz, professor in the University of Brussels; Dr. von Bar, of the University of Göttingen; M. Brusa, of the University of Turin; Dr. von Bulmerincq, a privy coun-

sellor, and professor at the University of Heidelberg; M. Clunet, of Paris, manager of the *Journal du droit international privé*; M. Gessner, of Berlin; Professor Goldschmidt, of the University of Berlin; Professor Holland, of the University of Oxford; Baron Holtzendorff, of the University of Munich; M. Lueder, professor at the University of Erlangen; M. Marquardsen, member of the Reichstag of the German Empire, professor at the University of Erlangen; M. Martens, of the University of St. Petersburg; M. Moynier, of Geneva; Baron Neumann, professor at the University of Vienna, member of the chamber of peers; M. Pierantoni, professor at the University of Rome, senator of the Kingdom of Italy; M. Renault, professor of law, of Paris; M. Rivier, professor at the University of Brussels; M. de Stein, of the University of Vienna; Sir Travers Twiss, of London; Mr. Westlake, of London; Prof. A. V. Dicey, of Oxford; M. Harburger, of the University of Munich; Count Kamarowsky, of the University of Moscow; Professor Koenig, of the University of Berne; M. Lehr, counsel to the embassy of France in Switzerland, of Lausanne; Professor Lyon-Caen, of the faculty of law and the school of political science, Paris; Professor de Martitz, of the University of Tubingen; M. de Montluc, counsellor to the court of Angers; M. Perels, of Berlin; M. Prins, professor at the University of Brussels; M. Roszkowski, of the University of Léopol, Galicia; M. Sacerdoti, of the University of Padua.

Professor Brocher had made a supplementary report at the session of the institute at Oxford in 1880, but the question of extraterritorial jurisdiction, which was adjourned at the session at Brussels, was not formally discussed at Oxford, nor at the following session at Turin. But at the latter place, MM. de Bar and Brusa were charged with preparation of a report which the former presented at the meeting at Munich in 1883. The report contained fifteen propositions, covering the whole ground of criminal jurisdiction. But, although it would be of great interest to give them in full, together with the discussion upon each, I shall confine myself to such features as are strictly pertinent to the present question.

The report, in the first place, adopted as the basis of criminal jurisdiction the territorial principle. On this subject Professor von Bar, in a separate report accompanying the propositions, said that history taught that penal law was derived from the law of revenge. In remote times the party injured pursued the criminal, and either slew him or accepted a ransom. At that epoch the difference between an intentional and an unintentional offense vanished. This point was clear; it was useless to give proofs; it was known to everyone who studied at all the history of law, or possessed any knowledge of the usages and manners of savage peoples of our own times. The great problem, however, of criminal law at the present day is to measure the injury according to the culpability of the agent. But there arise difficult questions of morality, of the influence of the mental condition, etc.

And there also arises

[he continued]

that other question, that of the competence of the penal law, it being admitted in our day that no one ought to be punished if he can not know the penal law which punishes the act of which he is to undergo the penalty.

As it is clear that in general it is only when a person sojourns in a country or is a citizen of it that he can have knowledge of its penal laws, or else, if knowledge of the law is not regarded as necessary, be imbued with their fundamental moral principles, according to the fundamental principle of culpability itself, the competence of the penal law ought to be confined to acts committed in the territory or committed by citizens abroad. It may be said in reply that in the case of a sojourn more or less

momentary in a foreign territory, where an individual of foreign origin does not or may not know the laws of the place where he sojourns, and that even in the case of a citizen sojourning in a foreign country, yet always preserving his nationality, there may be no knowledge of the national laws. These are very exceptional cases, in reference to which it is not possible to make the laws. But if the state wishes to punish acts committed by foreigners outside of its territory, it can do so only by discarding the principle of culpability and holding itself competent only on the principle of vengeance, attenuated by humanitarian considerations. It is only in exceptional cases, of most urgent necessity, that the state ought to reserve to itself the right to punish acts committed abroad by foreigners.

In respect to the punishment of extraterritorial offenses by citizens, the 7th resolution reported by MM. de Bar and Brusa, read as follows:

Each state reserves the right to punish its citizens according to the penal laws of the nation. But, in general, it does not punish the acts of citizens committed abroad when those acts are not punishable by the law of the place. In punishing the acts of citizens committed abroad the state applies the penalty of the foreign law, if it is lighter. There are excepted from these rules the cases mentioned below in proposition 8.

The 7th proposition, after various objections, was displaced, and the following amendment, proposed by Mr. Westlake, was adopted in its stead:

Each state reserves the right to extend its national penal law to acts committed by its citizens abroad.

Proposition 8, which was intended to define the permissible extraterritorial jurisdiction over foreigners, read as follows:

Each state may punish, independently of the law of the place of activity of the culprit, and of his nationality, all violations of law against its own political security.

Equally *by simple exception*, in view of a practical necessity, and on condition of an express and formal sanction, the state may punish certain other acts committed in a foreign country, even when the territorial legislation does not consider these acts as punishable, or when it assures conditions reputed excessively favorable for its citizens.

MM. de Neumann and Prins wished to add the words, *against the political and economic safety*, the public credit forming an essential element of the life of the state.

M. de Montluc objected to the words "economic safety" and "public credit."

Dr. von Bar, yielding to the opinion of MM. de Neumann and Prins, proposed to add the words, *crimes against the public credit.*

MM. Renault, Lyon-Caen, and de Montluc proposed to strike out the word *political.*

Dr. von Bar then withdrew his amendment and went back to the terms of the resolution presented at Brussels in 1879, which, as has been seen, read as follows:

Each state has the right to punish for acts committed outside of its territory by foreigners in violation of its penal laws, when these acts constitute an attack (*atteinte*) on the social existence of the state, compromising its safety, and which are not cognizable by the penal law of the country where they take place.

This resolution was adopted by a large majority, and without modification.

A final negative was given to M. Brocher's proposition for a distinct ground of territorial jurisdiction, which was discussed at the session of 1879 as *quasi-territorial.* This negative answer was embodied in the following resolution, which was submitted to the Institute in the report of MM. de Bar and Brusa:

The penal justice of a country in the territory of which, according to the intention of the guilty person, the effects of his activity are, or ought to be, realized, is not competent by reason of those effects alone.

This resolution was adopted, apparently without objection or division.

The argument of Dr. von Bar, in support of the resolution, and against the general quasi-territorial jurisdiction proposed by M. Brocher, was that to hold a man in all cases criminally liable in every place for the mere effects there of acts done in other countries, would not only be fraught with general danger to individuals, but would give room for vexations and extortions. No one could be sure of not committing an offense according to a foreign law, of not being unexpectedly arrested on a voyage, or of not having his fortune and his credits seized in a foreign land. He would have to consult the codes, the special laws even, of every country in the world. Police and fiscal laws, he said, seem constantly on the increase, and the rules applied in them are naturally more or less arbitrary. A merchant writing a letter to a foreign correspondent and offering merchandise, could, for having written that letter, or for not having paid for a stamp, be brought before a foreign tribunal. The writer, the publicist, conforming to the laws of his country and of the place of publication, ought to dread to be prosecuted before foreign tribunals, which would perhaps rate a frankly-spoken word as an injury, and a scientific work as blasphemy.

We have now seen that the claim made in Article 186 of the Mexican penal code of a right to punish foreigners for offenses committed abroad against Mexicans is neither sustained by positive legislation nor warranted by the recognized and established principles of international law. I shall now show that the denial of that right in the Cutting case was not merely supported but required by the traditions of the Government.

INTERNATIONAL PRECEDENTS.

It has been constantly laid down by the Executive Department of the Government of the United States, as a rule of action, that the criminal jurisdiction of a nation is confined to acts committed upon its actual or constructive territory. "We hold," said Mr. Calhoun, when Secretary of State*—

that the criminal jurisdiction of a nation is limited to its own dominions and to vessels under its flag on the high seas, and that it can not extend it to acts committed within the dominion of another without violating its sovereignty and independence.

In his note to the Chevelier Hülsemann, of the 20th of September, 1853, in relation to the case of Koszta, Mr. Marcy said:

The conflicting laws on the subject of allegiance are of a municipal character, and have no controlling operation beyond the territorial limits of the countries enacting them. All uncertainty as well as confusion on this subject is avoided by giving due consideration to the fact that the parties to the question now under consideration are two independent nations, and that neither has the right to appeal to its own municipal laws for the rules to settle the matter in dispute, which occurred within the jurisdiction of a third independent power.†

Mr. Cass, as Secretary of State, said:

By the laws of nations every independent state possesses the exclusive right of police over all persons within its jurisdiction, whether upon its soil or in its vessels upon the ocean, and this national prerogative can only be interfered with in cases where acts of piracy are committed, which, by the public law of the world, are cognizable by any power seizing the vessel, thus excluded from the common rights of the ocean.‡

The question of extraterritorial jurisdiction was discussed in Congress in the cases of Warren and Costello, two naturalized American citizens, who were tried and sentenced in Dublin, in 1867, for treason felony, on account of participation in the *Jacmel* (Fenian) expedition. It was

*Mr. Calhoun to Mr. Everett, September 25, 1844; MSS. Inst. Great Britain.
†MSS. Dept. State.
‡Instruction to Mr. Dallas, Great Britain, February 23, 1859.

proved that they had come over to Ireland in that vessel, and had cruised along the coast for the purpose of effecting a landing of men and arms in order to raise an insurrection. At the trial, in order to connect them with the Fenian conspiracy that existed at Dublin, and to show their *animus* in cruising along the Irish coast, evidence was introduced of certain acts and declarations of the prisoners in the United States. It was ultimately shown that this evidence was introduced merely in proof of the criminal design with which the prisoners entered the British jurisdiction and of the criminal object of their acts there. But, while still under the impression that the acts and declarations in the United States were being made the foundation of a criminal prosecution in Dublin, the House of Representatives, on the 15th of June, 1868, adopted a resolution requesting the President to take such measures as should seem "proper to secure the release from imprisonment of Messrs. Warren and Costello, convicted and sentenced in Great Britain, for words and acts spoken and done in this country," etc.

The position that the penal laws of a country have no extraterritorial force was taken by the Department of State, under the advice of the Attorney-General, in the case of Carl Vogt, in 1873. The facts were that Vogt, a Prussian subject, charged with the crimes of murder, arson, and robbery, committed in Brussels, Belgium, fled to the United States, from which his extradition was demanded by the Government of Germany, under the provisions of the treaty between the United States and Prussia, of June 16, 1852, by which the contracting parties engaged to deliver up to each other fugitives from justice, charged with certain crimes, including those above mentioned, *committed within the jurisdiction of either party.*

Having been arrested, Vogt was brought on a writ of habeas corpus before Judge Blatchford, sitting in the circuit court of the United States at New York, who held that as the German Empire made provision by law for the punishment of its subjects for certain offenses committed outside of the territory, among which were those specified in the requisition, the prisoner was liable to extradition. The examination then proceeded before the commissioner, and Vogt was committed for surrender.

The case was then referred by Mr. Bancroft Davis, Acting Secretary of State, to the Attorney-General, who, in an opinion dated July 21, 1873, held that although by the law of Germany the accused, a German subject, might be justiciable in that country, yet under the treaty the *locus delicti* was material, and unless it was *within the jurisdiction* of the demanding Government, the provisions of the treaty did not apply.

> To affirm [said the Attorney-General] that the jurisdiction of Germany, by virtue of its own laws for the punishment of crimes, extends over the territory of Belgium, is equivalent to holding that the same jurisdiction extends to France, Great Britain, and the United States, and, indeed, to every nation and country of the world. * * * Germany has an undoubted right to punish her subjects, if she chooses, for crimes committed in Belgium or the United States, but it would not be proper, therefore, to say that Belgium and the United States are within her jurisdiction; but it would be proper to say that she has made provision to punish her subjects for crimes committed without as well as within her jurisdiction. * * * All nations have jurisdiction beyond their physical boundaries. Vessels upon the high seas and ships of war everywhere are *within* the jurisdiction of the nations to which they belong. Limited jurisdiction by one nation upon the territory of another is sometimes ceded by treaty, as appears from the treaties between the United States, Turkey, China, Siam, and other powers. Constructive jurisdiction may possibly exist in special cases arising in barbarous countries or uninhabited places, so that effect can be given to the word "jurisdiction" as meaning more than territory, without holding that Germany has jurisdiction over crimes committed in Paris, London, or Washington. * * * To recognize the claim of Germany in this case would establish a precedent that might

lead to serious international complications. * * * To facilitate the punishment of crime is desirable, but the United States can not, with dignity and safety, admit that any foreign power can acquire jurisdiction of any kind within their territory by virtue of its local enactments. * * * To recognize the claim to jurisdiction accompanying the requisition in this case may open the door to confusion and controversy as to claims of jurisdiction in other respects made under local laws by foreign governments. The plain and practical rule upon the subject seems to be that the jurisdiction of a nation is commensurate with, and confined to, its actual or constructive territory, excepting changes made by agreement; and to this effect are the authorities.

The surrender of Vogt to the German Government was accordingly refused, and he was subsequently surrendered to Belgium under a treaty which was afterwards negotiated, but made retroactive in its terms. In the course of the negotiations, Mr. Fish, adverting, in a note to Mr. Delfosse, the Belgian minister, to the decision of Judge Blatchford, said:

I deem it proper to say that the laws did not afford an opportunity to invite a revision of the action of the court in that case by a higher [judicial] tribunal. Had there been such an opportunity, the President entertains little doubt that the decision would have been reversed; and the course of reasoning upon which it was founded, and to which you refer, would have been shown to be erroneous. *

It may be remarked as a coincidence that in the same year in which the case of Vogt occurred a precisely similar question was determined in the same way by the privy council in England in the case of Attorney-General for the Colony of Hong-Kong *v.* Kwok-a-Sing, L. R., 5 P. C., 179, decided June 19, 1873, only a month before the date of the Attorney-General's opinion in the Vogt case, which contains no reference to the case of Kwok-a-Sing.

The defendant in this case was one of a cargo of Chinamen shipped at Macao on the 30th September, 1870, on a French vessel, called *La Nouvelle Pénélope*, bound for Peru, in South America. On the 4th October, 1870, when at sea, Kwok-a-Sing, with certain other coolies, killed the captain and several of the crew of the vessel, and then, taking possession of her, compelled the remaining seamen to conduct her back to China, where the coolies landed and abandoned the ship. Some of them were tried in China. Kwok-a-Sing fled to Hong-Kong, from whence the Chinese authorities asked for his extradition. Pursuant to this request, an investigation was held, which resulted in his commitment for surrender for crimes and offenses against the laws of China by participating in the murder of a portion of the crew of the French ship *Nouvelle Pénélope* at sea and feloniously seizing a boat of the ship and landing. The warrant of commitment was issued under Hong-Kong ordinance No. 2, of 1850, which was passed to carry into effect a treaty between Great Britain and China for the extradition of Chinese criminals fleeing to Hong-Kong, and which provided for the commitment to prison on probable cause, with a view to their surrender, of fugitive Chinese charged with "*any crime or offense against the laws of China.*" Kwok-a-Sing was then brought before the chief-justice of the supreme court of the colony, who ordered his release on several grounds, among which was that the demand for extradition must come from the country in which the crime was committed (citing 1 Phill. Inter. Law, p. 413), which was not so in the case under consideration, the crime having been committed at sea on a French ship, and not in China. From this decision an appeal was taken to Her Majesty in Council, where the case was heard before Sir J. Colvile, Sir R. Phillimore, the Lord Justice Mellish, Sir Barnes Peacock, and Sir Montague E. Smith. The judgment of their lordships was delivered by the Lord

* Mr. Fish, Secretary of State, to Mr. Delfosse, August 11, 1873.

Justice Mellish, who said their lordships had to consider whether there was evidence that Kwok-a-Sing had been guilty of crimes against the laws of China within the meaning of the ordinance above referred to. He was accused of two crimes, murder and piracy.

The alleged murder [continued his lordship] was the murder of a Frenchman on board a French ship, in which Kwok-a-Sing was a passenger, on the high seas. They [their lordships] have, therefore, to consider whether murder by a subject of China of a person who was not a subject of China, committed outside the Chinese territory, is a crime against the laws of China within the meaning of the ordinance, and they are of opinion that it is not. Their lordships cannot assume, without evidence, that China has laws by which a Chinese subject can be punished for murdering beyond the boundary of the Chinese territory a person not a subject of China. Up to a comparatively late period England had no such laws. Moreover, although any nation may make laws to punish its own subjects for offenses committed outside its own territory, still, in their lordships' opinion, the general principle of criminal jurisprudence is that the quality of the act done depends on the law of the place where it is done. * * * On the whole, therefore, on these two grounds: first, that it cannot be assumed without evidence that there is any law in China to punish a Chinese subject for a murder committed upon a foreigner within foreign territory; and, secondly, because, even if it could be assumed that there was such a law, still this offense, having been committed within French territory, ought to be treated as an offense against French law, and not as an offense against Chinese law, their lordships are of opinion that there was no evidence before the magistrate that Kwok-a-Sing, in murdering the French captain, committed an offense against the laws of China according to the true construction of the ordinance.

On this ground their lordships held that the magistrate's warrant committing Kwok-a-Sing for surrender was illegal and beyond his jurisdiction, and that the chief-justice's order for the release of Kwok-a-Sing from imprisonment under the warrant was right, and ought to be approved.

As an illustration of the international complications to which the Attorney-General referred in the case of Vogt as likely to result from extraterritorial pretensions, and as an example of a denial of such pretensions by one government to another, we may advert to a remarkable and important incident in the history of the relations between France and Great Britain.

On June 1, 1852, M. Th. Vernier, a deputy of the Corps Législatif of France, presented, on behalf of a commission* appointed to examine a *projet* of a law modifying Articles 5, 6, and 7 of the code of criminal procedure of 1808, a report recommending a *projet* which had been adopted by the council of state and by the commission, and which was as follows:

Articles 5, 6, and 7 of the code of criminal procedure are abrogated and replaced as follows:

ART. 5. Every Frenchman who, outside of the territory of France, is guilty of a *crime* or a *delit* punished by the French law, may be prosecuted and judged in France, but only on the request of the public ministry.

If the *crime* or *délit* has been committed against an individual Frenchman or a foreigner, the prosecution and judgment shall not take place before the return of the accused to France.

* * * * * * *†

ART. 6. The foreigner who, outside of the territory of France, is guilty of a crime, whether against the public welfare or against a Frenchman, may, if he comes into France, be arrested and judged there conformably to the French laws.

As regards *délits*, the prosecution shall take place only in the cases and under the conditions determined between France and foreign powers by diplomatic conventions.

All prosecutions cease against a foreigner of whom extradition has been demanded and obtained.

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* The commission consisted of MM. Charles Laffitte, president; O'Quiv, secretary; Riché, de la Haiechois, Duboys, de Beauverger, and Vernier.

† The omitted portion refers solely to certain judgments by default.

ART. 7. * * *§ When a person has committed a *délit*, or when the crime has been committed against an individual Frenchman or foreigner, no prosecution is carried on against the accused Frenchman or foreigner, if it appears that he has been definitively judged outside of France for the same acts, and against an accused foreigner if he establishes the fact that the act does not constitute either a crime or a *délit* in the country where it took place.

In respect to those provisions of the *projet* relating to offenses committed by foreigners outside of France, the report said:

The extension proposed by Article 6 of the *projet* is the consequence of that admitted by Article 5. After having accorded to the foreigner as against the Frenchman the protection of our laws, it is just that, by an equitable reciprocity, we should assure the punishment of punishable acts committed by a foreigner against our citizens. Besides, we can not permit the soil of France to become a place of refuge or of impunity for the foreigner who, even outside, shall have attacked French interests. Moreover, it is the arrival of the foreigner in France, after the crime or *délit* has been committed by him, that, in creating an interest in the repression, affords the first condition of the prosecution. *

On the 10th June, 1852, the Corps Législatif adopted the *projet* reported by M. Vernier by a vote of 191 to 5. †

The measure then went to the senate, but was subsequently withdrawn by the Government.

In the debates on the law of 1866, now in force, it was asserted more than once, and not denied, that the bill of 1852 was withdrawn on account of the opposition of foreign powers. ‡ And in reply to a question by M. Jules Favre, M. Rouher, minister of state, admitted that it stopped negotiations between France and Great Britain for a treaty of extradition.

Turning now to Hansard's Debates in the British Parliament, we find both these facts fully confirmed.

On the 8th June, 1852, Lord Malmesbury, minister for foreign affairs, moved, in the house of lords, a second reading of the bill giving sanction to an extradition convention with France, then lately concluded. The question was generally discussed, and in the course of the debate Lord Brougham referred to the bill before the French Legislature to give French tribunals jurisdiction over offenses committed abroad, whether by citizens or by foreigners.

Lord Malmesbury thought his noble and learned friend was mistaken. The bill, he thought, was confined to Frenchmen.

Lord Brougham said that was the way the bill stood when he last saw it, and he was glad to hear it stated that it was confined to Frenchmen, which till then he had never heard alleged.

On the 14th June (the French *projet de loi* was passed by the Corps Législatif on the 10th) Lord Brougham arose and implored Lord Malmesbury, before the next stage of the bill, to reconsider the propriety of withdrawing the measure, a step warranted by the change in the French law.

Lord Malmesbury replied that he had already made up his mind upon the subject. He had come down to the house intending to announce at the proper time that Her Majesty's Government thought fit to withdraw the bill at present. He referred to the mistake into which he had fallen on a previous evening, which originated in an error of the person who wrote the dispatch to him, and which the British ambassador at Paris had desired him to explain. "Before I leave this subject," said Lord Malmesbury, "I only wish to state that it would be extremely

§ The omitted portion relates only to the competence of tribunal.
* Le Moniteur, 4 June, 1852, p. 832.
† *Id.*, 10 June, p. 369.
‡ Le Moniteur, 31 May, 1866; M. Picard.

dangerous, I think, at the present moment, for Her Majesty's Government to continue this act of Parliament under the new law which has been passed in France."

On the 25th June the Marquess of Clanricarde inquired of Lord Malmesbury whether Her Majesty's Government intended to communicate any correspondence with Her Majesty's ambassador at Paris, or the French ambassador in London, concerning the law lately enacted in France, which had caused the withdrawal of the surrender of criminals bill, and which was not compatible with the relations at present existing between the two countries.

Lord Malmesbury replied that he had no correspondence *which he could lay before the house*; but that the French Government had acted in the most friendly and frank manner, and had no sooner perceived the hostility in the house to the *projet de loi*, than they gave him "*an assurance that the projet de loi would not be persevered in.*"

The Marquess of Normanby* expressed great satisfaction at this announcement, and said he could not sit down without stating "that during the whole period which he had labored in endeavoring to maintain amicable relations between the two countries, he had seldom listened to any statement with greater pleasure than that of the noble earl with regard to the manner in which the French Government have acted with respect to the withdrawal of the *projet de loi* referred to."†

Another denial of the right of a nation to punish foreigners for acts done by them abroad was made both by Great Britain and the United States upon the passage by the Brazilian Chambers in 1875 of the law now in force in Brazil on that subject, although it is not nearly so extensive and absolute in its provisions as Article 186 of the Mexican penal code. The adoption of the law was first made known to the Government of the United States by its minister at Rio in a dispatch‡ bearing date the 20th of August, 1875, and inclosing a copy of the law. In a later dispatch, dated April 20, 1876, he called the attention of the Department more specifically to the provisions of the measure, and reported that the British *chargé d'affaires* at Rio had been instructed by the Earl of Derby, in a dispatch inclosing a copy of an opinion of the law officers of the Crown, to notify the Government of Brazil that Her Majesty's Government could not consent or submit to any action by Brazil under the law which would punish British subjects in Brazil for acts done by them either in Great Britain or in any other foreign country not subject to Brazilian jurisdiction.§

To this dispatch Mr. Fish, Secretary of State, replied on May 26, 1876, as follows:

> Your dispatch No. 322, of the 20th ultimo, has been received. It represents that the British Government, pursuant to the opinion of the law officers of the Crown, has instructed its minister to inform the Government of Brazil that it will not acquiesce in the application of the Brazilian law to which you refer to acts done by British subjects outside of the jurisdiction of Brazil. This decision may be regarded as obviously sound, and is entirely concurred in by this Government.
>
> If, therefore, there should be occasion, you will inform the minister of foreign affairs that we can not consent to the prosecution or punishment of a citizen of the United States pursuant to the objectionable statute adverted to. ‖

In the same year (1876) this doctrine was again announced by Mr. Fish in the case of Peter Martin, tried and sentenced in British Columbia. The circumstances of the case were that Martin, a naturalized citi-

*Formerly British ambassador at Paris, etc

†See Hansard, 3 series, vol. cxxii, pp. 194–214, 562, 1278–1283.

‡For. Rel., 1875, p. 123.

§For. Rel. 1876, p. 25.

‖For. Rel., 1876, p. 26.

zen of the United States, was tried at Laketon, British Columbia, for an assault on an officer in the execution of his duty, prison breach, and escaped from custody; and having been found guilty, was sentenced to fifteen months' imprisonment at Victoria, in the same province, there being no jail or secure place of confinement at Laketon. He was accordingly placed in the custody of constables to be conveyed to Victoria. A part of the route taken lay through Alaska, and was traversed by canoe, via the Stickine River, near the mouth of which, and within the Territory of Alaska, the party made a landing for the purpose of cooking food. While they were thus engaged the prisoner obtained possession of a loaded gun and made a deadly assault on one of the constables, but was overpowered and conveyed to Wrangel Harbor, from whence he was taken by steamer to Victoria.

It having been reported that Martin would be tried at Victoria for this assault, Mr. Fish, on the 2d of November, 1876, wrote to the British Minister at Washington, Sir Edward Thornton, and after reciting the facts substantially as above stated, said:

> It further appears, from what has been intimated by the consul [of the United States, at Victoria], that Martin will be fully committed for this assault, and that his case will be given to the grand jury, where a true bill will most likely be found against him, and that the case then will come up in the supreme court some time during the present month.
>
> From the facts presented in the case, it is suggested that the person in question should not be tried for the offense with which he is charged, it having been committed, as is reported, within the jurisdiction of the United States, and that, such being the case, he should be set at liberty.
>
> I will therefore thank you, at your earliest convenience, to call the attention of Her Majesty's proper authorities to the matter, in order that a thorough examination of the facts in the case may be made.

On the 10th of January, 1877, Mr. Fish addressed another note to Sir Edward Thornton, informing him that a dispatch had been received from the consul at Victoria stating that Martin had been tried there before the Hon. P. P. Crease, a justice of the supreme court of the province, for the assault committed on the Stickine River, and had been found guilty and sentenced to one year and nine months' imprisonment at hard labor, to take effect after the expiration of the term of fifteen months to which he was sentenced at Laketon. The consul's dispatch further stated that as the evidence at the trial was conflicting as to the precise distance of the scene of the assault from the mouth of the Stickine, and as the boundary line between the British and American territory was not definitely marked, the judge charged the jury that, under these circumstances, the court had either jurisdiction or concurrent jurisdiction, and that the proceedings were just and proper. To this line of argument Mr. Fish answered, first, that if the colonial officers in transporting Martin from Laketon to Victoria conducted him at any time within and through the unquestioned territory of the United States, they committed, in so doing, a violation of the sovereignty of the United States, which rendered his further detention unjustifiable. And in respect to the question of jurisdiction of the assault he said:

> I must not allow this question to pass without entering an explicit dissent from the doctrine which seems to be advanced by the learned judge who presided at the trial of Martin, that jurisdiction or concurrent jurisdiction vests in Her Majesty's colonial authorities or courts over offenses committed within any part of the territory of Alaska, even though so near to the treaty line that uncertainty or doubt may exist on which side of such line the offense is committed. It can not, I think, be necessary to argue this point, or to do more than record this dissent and denial of a doctrine which, I have no doubt, Her Majesty's Government agrees with me in repudiating.*

* British and Foreign State Papers, vol. 66, pp. 1227–1228.

On the 25th of September, 1877, the British chargé d'affaires at Washington addressed a note to Mr. F. W. Seward, Acting Secretary of State, saying:

I have the honor to inform you that I have just learned from the deputy governor of Canada that the Dominion government has concluded the inquiry into the circumstances of the case, and has decided upon setting Peter Martin at liberty without further delay.

In his annual message of the 6th of December, 1886, the President defined the position of the United States on the jurisdictional question involved in the Cutting case, as follows:

The admission of such a pretension would be attended with serious results, invasive of the jurisdiction of this Government, and highly dangerous to our citizens in foreign lands; therefore I have denied it, and protested against its attempted exercise, as unwarranted by the principles of law and international usages.

A sovereign has jurisdiction of offenses which take effect within his territory, although concocted or commenced outside of it; but the right is denied of any foreign sovereign to punish a citizen of the United States for an offense consummated on our soil in violation of our laws, even though the offense be against a subject or citizen of such sovereign. The Mexican statute in question makes the claim broadly, and the principle, if conceded, would create a dual responsibility in the citizen, and lead to inextricable confusion, destructive of that certainty in the law which is an essential of liberty.

When citizens of the United States voluntarily go into a foreign country they must abide by the laws there in force, and will not be protected by their own Government from the consequences of an offense against those laws committed in such foreign country; but the watchful care and interest of this Government over its citizens are not relinquished because they have gone abroad; and if charged with crime committed in the foreign land a fair and open trial, conducted with decent regard for justice and humanity, will be demanded for them. With less than that this Government will not be content when the life or liberty of its citizens is at stake.

Whatever the degree to which extraterritorial criminal jurisdiction may have been formerly allowed by consent and reciprocal agreement among certain of the European states, no such doctrine or practice was ever known to the laws of this country or of that from which our institutions have mainly been derived.

In the case of Mexico there are reasons especially strong for perfect harmony in the mutual exercise of jurisdiction. Nature has made us irrevocably neighbors, and wisdom and kind feeling should make us friends.

The overflow of capital and enterprise from the United States is a potent factor in assisting the development of the resources of Mexico, and in building up the prosperity of both countries.

To assist this good work all grounds of apprehension for the security of person and property should be removed; and I trust that in the interests of good neighborhood the statute referred to will be so modified as to eliminate the present possibilities of danger to the peace of the two countries.

Three causes have operated during the present century to diminish extraterritorial pretensions in criminal matters: (1) The growth of the idea of nationality and of national equality; (2) the development and extension of commercial intercourse; (3) the more general recognition and performance by independent states of their rights and duties under international law.

The first cause has operated to produce a clearer apprehension of the objects of national existence and of the bounds of national authority; the second has rendered more apparent the necessity of personal immunity from vexatious and unjust prosecutions under foreign and unknown laws; the third has made governments more ready to abandon assumptions of authority which infringe the rights of other sovereign powers.

The infliction of punishment involves an exercise of power, and power implies subjection. This principle holds good in public as well as in private affairs. The punishment by one state of the citizen of another for an act for which he was solely answerable to the laws of the latter,

or even for an act for which he was not answerable to the laws of the former, is a public wrong.

For a nation to hold its penal laws to be binding on all persons within the territory of another state, is to assert a right of sovereignty over the latter, and impair its independence. A state may, if it see fit, tie its criminal law about the neck of its citizen and hold him answerable for its violation everywhere. But even this power of control has its limitations. For the citizen so bound is nevertheless not exempt from obedience to the law of the place where he may be, and it would be no defense to a charge of having violated it to say that the act complained of was required by the penal law of his own country. The local allegiance would be paramount; his double allegiance would be his misfortune, for relief from which he could appeal to the mercies of his own Government alone.

When a man in his own country violates its laws, he is answerable for his misconduct to those laws alone; and it is his right to be tried under them, and in accordance with the methods of procedure they prescribe. To say that he may be answerable to another law because the person he attacks is a foreigner would in principle subject him in his own country not merely to a dual, but to an indefinite, responsibility. Such a pretension is an assertion not only of an *imperium in imperio*, but of *imperia in imperio*. It would expose citizens and all other persons in the United States to liability to as many penal systems as there happened to be nationalities represented in the foreign population. Every fresh accession to that population would extend the operation, and potentially increase the variety of foreign penal systems in force in this country.

The mere statement of such a proposition is a sufficient refutation of it.

When a citizen of the United States commits in his own country a violation of its laws, he is entitled as a matter of right to be tried under and in accordance with its constitution and laws. As Heffter says, he should not be withdrawn for trial for such an act from his constitutional judge. While he is answerable in such case to the laws of his country, he is entitled to the rights of defense and the safeguards of liberty which they provide, and in accordance with which alone his guilt can be established. The methods of trial are not a matter of form, but an essential and inseparable part of every system of criminal jurisprudence.

In respect to the punishment advocated by so many continental jurists and provided for in so many continental codes, of offenses against the safety of the state, it is beyond the purview of this report to enter into an elaborate discussion, and attempt to state a definitive conclusion. The grounds of necessity and self-defense, on which this claim of jurisdiction is based, are conditional and circumstantial rather than strictly legal, and the very mention of them is suggestive of international controversies and complications. It is within the competence of every independent state to decide what measures it will take to secure its safety. On the other hand, it may become necessary for foreign powers to consider whether those measures violate their sovereign prerogatives or the rights of their citizens.

All of which is respectfully submitted.

JOHN B. MOORE,
Third Assistant Secretary of State.

Hon. T. F. BAYARD,
Secretary of State.

Exhibit A.

SENTENCE OF JUDGE ZUBIA.

Vista la presente causa instruida contra A. K. Cutting, quien declaro ser soltero, de 40 años de edad, originario del Estado de Nueva-York, residente en esta villa y editor del periódico El Centinela, por delito de difamacion.

Vista la preparatoria del inculpado, el pedimento del representante del Ministerio público, lo expuesto por la parte civil C. Emigdio Medina, la exposicion del defensor C. Jesus E. Islas y todo lo demas que del proceso consta y ver convino.

Resultando, 1º: Que en el número 14 del periódico intitulado El Centinela que se publica en este lugar, correspondiente al 6 de Junio próximo pasada, apareció un párrafo de gacetilla en inglés, en el que se critica de fraudulento un prospecto publicado en El Paso, Texas, anunciando la aparicion de un periódico intitulado Revista Internacional.

Resultando, 2º: Que el C. Emigdio Medina considerandose aludido ó injuriado en ese párrafo se presentó al alcalde segundo en turno de lo criminal en esta villa, promoviendo juicio de conciliacion en contra de A. K. Cutting, como editor responsable de El Centinela.

Resultando, 3º: Que presentes las partes ante el Juez conciliador convinieron en publicar en el mismo periódico El Centinela una retractacion que fué redactada por Medina y corregida por Cutting, cuya publicacion debia hacerse por cuatro veces en inglés, y si lo permitia el Sr. A. N. Daguerre, editor tambien del periódico, seria publicada en español.

Resultando, 4º: Que Cutting, léjos de cumplir lo estipulado en la conciliacion, publicó el veinte del mismo mes de Junio la retractacion solamente en inglés en El Centinela, en letra diminuta y con faltas sustanciales que la hacen casi ininteligible, publicando en la misma fecha un aviso ó remitido en el The El Paso Sunday Herald, en el que ratifica y amplia los conceptos difamatorios que publicó contra Medina y califica de indigno el acto de conciliacion que se verificó ante el alcalde segundo de esta villa.

Resultando, 5º: Que el ofendido se presentó en forma acusando á Cutting por el delito de difamacion conforme á los artículos 643 y 646, fraccion segunda, del Código Penal, por cuyo motivo se libró la órden correspondiente de detencion.

Resultando, 6º: Que en 22 del mismo mes la parte ofendida amplió la acusacion manifestando: que aunque el periódico The El Paso Sunday Herald se publica en Texas, Cutting lo hizo circular en gran número en esta poblacion y en el interior de la República, habiéndolo leido más de tres personas, por cuyo motivo se mandaron recoger los ejemplares que se encontraban en la oficina ó despacho del mismo Cuttiug.

Resultando, 7º: Que dentro de los términos legales se tomó al inculpado su declaracion preparatoria en la que declinó la jurisdiccion del juzgado, por tratarse de un acto consumado en Texas, poniéndose bajo la proteccion del Cónsul de los Estados-Unidos, y se decretó el auto de formal prision, habiéndose comunicado á quienes corresponde.

Resultando, 8º: Que seguida la averiguacion por todos sus trámites, el inculpado insistió en su anterior respuesta, y al prevenirle nombrara defensor por habor renunciado el C. Lic. José Maria Barajas, se negó á hacerlo, nombrándose de oficio al C. A. N. Daguerre, socio del mismo Cutting en la redaccion de El Centinela; pero habiendo renunciado á su vez, recayó el nombramiento en el C. Jesus E. Islas, quien ha desempeñado el cargo hasta presentar su alegato de defensa.

Resultando, 9º: Que en virtud de la conclusion del Ministerio público relativa á haber lugar á la acusacion, se puso de manifiesto el proceso en la secretaría por el término que señala el artículo 409 reformado del Código de Procedimientos penales, y vencido el término sin haberse opuesto excepcion alguna, se citó á las partes para el debate que se verificó el dia 5 del actual en la forma y términos prescritos por el mismo Código, terminando el acto con la citacion para sentencia.

Considerando, 1º: Que conforme al artículo 121 del Código de Procedimientos penales, la base del procedimiento criminal es la comprobacion del hecho que la ley reputa delito; y en el presente caso, está plenamente comprobada la existencia de este hecho, puesto que lo constituye la publicacion que apareció en El Centinela correspondiente al 6 de Junio próximo pasado, en la que se calificó de fraudulento el prospecto que se dió á luz para anunciar la publicacion de la Revista Internacional.

Considerando, 2º: Que si bien es cierto que respecto de este hecho hubo un acto conciliatorio, que habria dejado satisfecha á la parte ofendida si se hubiera cumplido, tambien lo es que ese acto no llegó á complirse y, por lo mismo, quedó en pié la responsabilidad del delito.

Considerando, 3º: Que la prueba de la falta de cumplimiento del compromiso contraido en el juicio de conciliacion está precisamente en el remitido publicado por Cutting en el The El Paso Sunday Herald en el que ratifica la original asercion de que Emigdio Medina es un defraudador y estafador, y á la vez en la publicacion hecha

en El Centinela de la misma fecha, suprimiendo todas las mayúsculas y poniendo el nombre de Medina con letra microscópica, á fin de dificultar su lectura.

Considerando, 4°: Que la ratificacion conforme al Diccionario de Escriche, es la confirmacion y aprobacion de la que hemos dicho ó hecho: Tiene retroactivo y por consiguiente no constituye un acto diverso de aquel á que se refiere: "ratihabitio retrotrahitur ad initium," ni nace de ella una nueva responsabilidad distinta de la que surgió al principio.

Considerando, 5°: Que siendo esto asi, la responsabilidad criminal de Cutting surgió de la publicacion hecha en El Centiuela que ve la luz publica en esta villa, la cual fué ratificada en el periódico de Texas sin que esta ratificacion constituyera un nuevo delito que deba ser castigado con una pena diversa de la que corresponde por la primera publicacion.

Considerando, 6°: Que aun en el supuesto no concedido de que la difamacion procediera del remitido publicado con fecha 20 de Junio en el The El Paso Sunday Herald, el artículo 186 del Código penal mexicano previene "que los delitos cometidos en territorios extranjeros por un mexicano contra mexicanos ó contra extranjeros, ó por un extranjero contra mexicanos," podrian ser castigados en la República y con arreglo á sus leyes si concurrieren los requisitos siguientes: 1°, que el acusado esté en la República ya sea porque haya venido espontáneamente ó ya porque se haya obtenido su extradicion: 2°, que si el ofendido fuere extranjero, haya queja de parte legítima: 3°, que el reo no haya sido juzgado definitivamente en el país en que delinquió, ó que si lo fué no haya sido absuelto, amnistiado ó indultado: 4°, que la infraccion de que se le acuse tenga el carácter de delito en el país en que se ejecutó y en la República: 5°, que con arreglo á las leyes de ésta, merezca una pena más grave que la de arresto mayor; requisitos que se han perfectamente llenado en el presento caso, supuesto que Cutting fué aprehendido en territorio de la República; hay queja de parte legítima ó sea del C. Medina, quien presentó su querella en la forma prescrita por la ley; el reo no ha sido juzgado definitivamente, ni absuelto, amnistiado, ni indultado en el país en que delinquió; el delito de que se acusa á Cutting tiene ese carácter en el país en que lo ejecutó y en la República, segun es de verse en el Código penal vigente en el Estado de Texas, artículos 616, 617, 618 y 619, y en el Código penal del Estado de Chihuahua, artículos 642 y 646; y segun este último artículo, en su fraccion segunda, la infraccion de que se trata merece pena más grave que la de arresto mayor.

Considerando, 7°: Que segun la regla de derecho *Judex non de legibus, sed secundum leges debet judicare*, no corresponde al juez que decreta examinar el principio ascentado en el referido artículo 186, sino aplicarlo en toda su plenitud, por ser la ley vigente en el Estado.

Considerando, 8°: Que esta regla general no tiene más limitacion que la expresada en el artículo 126 de la Constitucion general, que dice: "Esta Constitucion, las leyes del Congreso de la Union que emanen de ella, y todos los tratados hechos ó que se hicieren por el Presidente de la República con la aprobacion del Congreso, serán la ley suprema de toda la Union. Los jueces de cada Estado se arreglarán á dicha Constitucion, leyes y tratados, á pesar de las disposiciones en contrario que pueda haber en las Constituciones ó leyes de los Estados."

Considerando, 9°: Que el repetido artículo 186 del Código penal, léjos de ser contrario á la ley suprema ó á los tratados hechos por el Presidente de la República, ha tenido por objeto, segun es de verse en la parte expositiva del mismo Código, página 38, "que obre de lleno el principio en que se funda el derrecho de castigar, esto es, la justicia unida á la utilidad."

Considerando, 10°: Que aun suponiendo, sin conceder, que el delito de difamacion se hubiere ejecutado en territorio de Texas, la circunstancia en que tuvo en esta villa el periódico El Paso Sunday Herald, de la que se quejó el C. Medina, motivando el decreto en que se mandaron recoger los ejemplares existentes en la oficina de Cutting, situada en esta misma villa, constituye propiamente la consumacion del delito, conforme al art. 644 del Código Penal.

Considerando, 11°: Que segun el artícula 7° reformado de la Constitucion general, los delitos que se cometen por medio de la imprenta deben ser juzgados por los tribunales competentes de la Federacion ó de los Estados, conforme á su legislacion penal.

Considerando, 12°: Que la publicacion hecha por Cutting en El Centinela, ratificada despues en el The El Paso Sunday Herald y en el The Evening Tribune, que obran en el proceso, ataca la vida privada del C. Emigdio Medina al atribuirle el delito de fraude y estafa, y por lo mismo está comprendida en la taxativa puesta á la libertad de imprenta por el artículo constitucional citado.

Considerando, 13°: Que tratándose de hechos consumados en el territorio del Canton Bravos, perteneciente al Estado de Chihuahua, corresponde al Juez que suscribe juzgarlos conforme á la legislacion vigente en el mismo Estado, particularmente si se tiene en consideracion que el inculpado reside en esta villa, donde tiene su domicilio hace más de dos años, segun consta de las declaraciones visibles á fojas 20, 21 y 22 del proceso, afirmacion que no ha sido contradicha por Cutting, quien declara á fojas 19 que reside en ambos lados, esto es, en Paso del Norte, México, y en El Paso, Texas, sin residencia fija en ninguno de los dos lados.

Considerando, 14º: Que á mayor abundamiento, Cutting reconoció expresamente la jurisdiccion de las autoridades de esta villa, compareciendo ante el Alcalde de 2º turno de lo criminal y contestando la demanda conciliatoria que por difamacion interpuso en su contra el C. Medina.

Considerando, 15º: Que la responsabilidad de Cutting está plenamente probada, puesto que aparece consignada en documentos fehacientes que de ninguna manera han sido contradichos por su autor; y si alguna duda hubiere respecto de la intencion dolosa con que se hizo la primera publicacion, desapareceria en vista de las ratificaciones posteriores hechas en el The El Paso Sunday Herald y en el The Evening Tribune, en las que Cutting expresa textualmente que Emigdio Medina es un *defraudador, estafador, cobarde y ladron;* quedando así llenados los requisitos que señala el artículo 391 del Código de Procedimientos penales.

Considerando, 16º: Que para graduar la pena que deba aplicarse, hay que tener presente, que aunque el hecho que se imputa al ofendido le causa deshonra y perjuicio grave, y no existen circunstancias atenuantes, se trata de un delito de carácter privado entre dos editores, en el que solo han concurrido las circunstancias agravantes á que se refieren las fracciones sétima y undécima del artículo 44 y los artículos 656 y 657, fraccion cuarta, del Código Penal: no apareciendo plenamente justificadas las demas que menciona el Ministerio público, pues si bien es cierto que el presente caso ha producido grande alarma á la sociedad, esto no ha provenido del delito que se imputa á Cutting, sino de las medidas inadecuadas que se han tomado para su defensa: siendo en consecuencia de perfecta aplicacion la parte final del artículo 66 del Código citado; y,

Considerando, finalmente, 17º: Que el responsable de un delito lo es de sus consecuencias, quedando obligado á la indemnizacion civil en los términos que se disponen en los artículos 326 y 327 del Código Penal.

Con apoyo de las disposiciones citadas y de los artículos 646, fraccion segunda, 661, 119 y 218 del mismo Código, se resuelve con las proposiciones siguientes:

Primera: por el delito de difamacion cometido en la persona del C. Emigdio Medina, se condena á A. K. Cutting á sufrir un año de servicios públicos y á pagar una multa de 600 pesos, ó en su defecto á cien dias más de arresto.

Segunda: se le condena igualmente á la indemnizacion civil, que se fijará como lo dispone el artículo 313 del Código Penal.

Tercera: amonéstese al reo, para que no reincida en el delito por el cual se le condena, advirtiéndole las penas á que se expone.

Cuarta: esta sentencia se publicará en los términos que previene el artículo 661 del propio Código.

Quinta: remítase esta causa al Supremo Tribunal de Justicia, para los efectos á que se contrae la parte final del pedimento del agente del Ministerio público, relativa á la intervencion que ha tenido el Cónsul americano en este proceso.

Sexta: notifíquese á las partes y adviértase al reo el término que tiene para apelar de esta sentencia.

El C. Lic. Miguel Zubia, Juez letrado del Distrito Bravos, fallando en definitiva, así lo proveyó con testigos.

MIGUEL ZUBIA.

A., L. FLORES.
A., S. VARGAS.

Lo comunico á Vd. para su conocimiento.

FELIX FRANCISCO MACEYRA.

EXHIBIT B.

ARRÊT.

LA COUR:—Attendu que si, en principe général, les cours d'assises saisies par un arrêt de la chambre des mises en accusation non attaqué dans les délais fixés par l'art. 296, C. inst. cr., ne peuvent se déclarer incompétentes, soit parce que le fait incriminé ne constituerait qu'un délit, soit par le motif que l'accusé aurait dû être renvoyé devant une autre cour d'assises, ou même devant un tribunal d'exception, cette règle est fondée sur ce que les cours d'assises, étant investies de la plénitude de juridiction en matière criminelle, peuvent, sans commettre aucun excès de pouvoir et sans sortir des limites de leurs attributions, connaître de tous les faits punis par la loi française; mais que cette juridiction, quelque générale qu'elle soit, ne peut s'étendre aux délits commis hors du territoire par des étrangers, qui, à raison de ces actes, ne sont pas justiciables des tribunaux français;—Attendu, en effet, que le droit de punir émane du droit de souveraineté, qui ne s'étend pas au delà des limites du territoire; qu'à l'exception des cas prévus par l'art. 7, C. inst. crim., dont la disposition est fondée sur le droit de légitime défense, les tribunaux français sont sans pouvoir pour juger les étrangers à raison des faits par eux commis en pays étranger;—Que leur incompétence

à cet égard est absolue, permanente; qu'elle ne peut être couverte ni par le silence, ni par le consentement de l'inculpé; qu'elle existe toujours la même, à tous les degrés de juridiction, et que la chambre des mises en accusation, par son arrêt de renvoi, ne peut donner à la cour d'assises le droit, qu'elle n'a pas elle-même, de statuer sur un fait non soumis à la loi française;—Attendu, en fait, que Raymond Fornage a été traduit devant la cour d'assises de la Haute-Savoie, comme accusé d'un vol commis dans le canton de Valais (Suisse); qu'avant l'ouverture des débats il a posé des conclusions tendant à ce que cette cour se déclarât incompétente, par le motif qu'étant né en France de parents étrangers, et n'ayant pas réclamé la qualité de Français, il n'était pas justiciable des tribunaux français à raison d'un fait commis en pays étranger;—Attendu que cette exception, qui mettait en contestation la légalité même de la poursuite et le droit de juridiction de la cour d'assises, constituait nécessairement une question préjudicielle qui devait être jugée par cette cour avant tout débat sur le fond du procès; que le demandeur n'a pu être privé du droit d'exciper de ce moyen péremptoire, ni par son silence pendant le cours de l'instruction, ni par le défaut de pourvoi contre l'arrêt de la chambre des mises en accusation, qui, d'ailleurs, n'a pas été appelée à statuer sur la question de nationalité posée pour la première fois devant la cour d'assises;—Attendu qu'en le déclarant non recevable à présenter cette exception par le motif qu'il ne s'est pas pourvu dans le délai fixé par la loi contre l'arrêt de renvoi, la cour d'assises de la Haute-Savoie a faussement appliqué les art. 296, 297 et 301 du C. d'inst. crim.; et qu'en ordonnant qu'il serait procédé à l'ouverture des débats sans statuer sur la question préjudicielle de nationalité soulevée par l'accusé, elle a violé l'art. 408 du même Code, et méconnu les droits de la défense;—Casse, etc.

Du 10 janv. 1873.—Ch. crim.—MM. Faustin Hélie, prés.; Réquier, rapp.; Bédarrides, av. gén.

No. 492.

Mr. Connery to Mr. Bayard.

No. 273.] LEGATION OF THE UNITED STATES,
Mexico, November 16, 1887. (Received November 25.)

SIR: I have the honor to acknowledge receipt of your No. 200, dated the 1st instant, with inclosures, relative to the case of Mr. A. K. Cutting, and to say that immediately after studying it carefully in connection with the exhaustive report on "Extraterritorial Crime," I addressed to Mr. Mariscal a long communication, in which I endeavored to set forth the arguments embodied in your instructions why the Mexican Government should pay an indemnity to Mr. Cutting, as well as modify their penal code in accordance with the rules of international law.

I beg to inclose herewith a copy of my note to Mr. Mariscal, from which you will see that I made copious extracts from your instructions, which accounts for its unusual length. I found it impossible to do otherwise without impairing the force of your arguments.

I trust that my communication will be found to cover all the essential points and arguments, and that it will meet with your approval.

I am, etc.,

THOMAS B. CONNERY.

[Inclosure in No. 273.]

Mr. Connery to Mr. Mariscal.

LEGATION OF THE UNITED STATES,
Mexico, November 15, 1887.

SIR: It will hardly surprise your excellency to learn that in this communication I propose, by direction of my Government, to reopen the discussion of the important questions arising from the arrest, imprisonment, and sentence of Mr. A. K. Cutting, an American citizen, for an alleged offense committed outside of Mexican jurisdiction. The release of Mr. Cutting by the higher court on a mere minor point settled only the

question of his personal liberty. The vital issues remain; and now, when the excitement engendered by the first discussion of the case has disappeared, it is hoped that they may be considered with that judicial calmness and moderation which their importance demands.

The object of my Government in reopening the case is twofold:

First. To say to your excellency that, in the opinion of my Government, an indemnity should be paid to Mr. Cutting for his arrest and detention in Mexico on the charge of publishing a libel in the United States against a Mexican; and

Second. To suggest to your excellency's Government that the statute proposing to confer such extraterritorial jurisdiction should be repealed, in the interests of good neighborhood and future amity, and because it is invasive of the independent sovereignty of a neighboring and friendly state.

I have already placed in your excellency's possession, by command of my Government, a copy of an able, indeed, I may say, an exhaustive report on "Extraterritorial Crime," which was prepared by request of the Department of State with a special reference to the Cutting case. I ask your excellency's most careful perusal of the same, and beg that it be considered a part of the papers in the case presented by my Government. After a calm examination of the report, I feel confident that your excellency will see cogent reasons for modifying the views enunciated by the Mexican Government at the first stage of the discussion of this important case, if indeed you do not cease to entertain a doubt of the untenability of the position assumed by the Mexican Government that its own obligations under the law of nations may be nullified by its own municipal laws.

Before proceeding to state why, in the opinion of my Government, an indemnity should be asked from Mexico, let me set forth some reasons why your excellency's Government should so change its laws as to enable it to comply with its international obligations. And, with this view, I am directed to say to your excellency that it would be highly honorable to the Mexican Government to follow in this regard the example of the Government of France, which in 1852 withdrew an objectionable measure similar to Article 186 of the Mexican penal code in the interests of maintaining friendly relations with Great Britain. On the 10th of June, 1852, the *Corps Législatif* of France adopted, by a vote of 191 to 5, a *projet de loi* conferring upon the courts of France jurisdiction over offenses committed by foreigners against Frenchmen outside of France. In consequence of representations made by the Government of Great Britain the measure was withdrawn. The Marquis of Normanby, formerly British ambassador at Paris, thereupon declared in the house of lords that during the whole period in which he had labored to maintain amicable relations between Great Britain and France he had seldom listened to any statement with greater pleasure than that of the manner in which the French Government had withdrawn this objectionable *projet de loi*. In his instructions to me, Mr. Bayard refers to the above case, and observes as follows:

"Sincerely desirous of maintaining with the Government of Mexico the most cordial and friendly relations, I can not think that that end could be more signally promoted than by that Government following the highly honorable example of France in removing from the amicable relations of the two countries a law which stands as a constant menace to their continuance."

In urging Mexico to adopt this course at this opportune moment, when the question can be considered dispassionately, my Government only suggests what it has put in practice itself under circumstances somewhat similar.

This is shown by the action of Congress in the McLeod case, which occurred in 1842, to which I beg leave to refer your excellency. In that case, when, in reply to the demand of the British Government for the release of the prisoner who was in the custody of the authorities of the State of New York, the United States Government was obliged to refuse on the ground that the Federal authorities had no right to interfere, Congress amended the law regulating the issuance of writs of habeas corpus, so as to enable the United States Government to fulfill its international obligations. In that case the reply of the United States Government to the demand for release was not dissimilar from that made by your excellency's Government to the demand for the release of Cutting. But the United States made all haste to conform its municipal laws to its international obligations.

Allow me to close this part of my communication by another quotation from the instructions on this subject which I have received from the honorable Secretary of State. Mr. Bayard writes thus:

"The importance of the harmonious exercise of jurisdictional powers by the Governments of the United States and Mexico, and the desire of this Government to maintain the closest and most friendly relations between these two neighboring countries, were so impressively stated by the President in his last annual message to Congress that it is proper to quote from it the following pertinent passage:

"'In the case of Mexico there are reasons especially strong for perfect harmony in the mutual exercise of jurisdiction. Nature has made us irrevocably neighbors, and wisdom and kind feeling should make us friends.

"'The overflow of capital and enterprise from the United States is a potent factor in assisting the development of the resources of Mexico and in building up the prosperity of both countries.

"'To assist this good work all grounds for apprehension for the security of person and property should be removed; and I trust that in the interests of good neighborhood the statute referred to will be so modified as to eliminate the present possibilities of danger to the peace of the two countries.'"

To set forth clearly the reasons why an indemnity should be paid, it becomes necessary to recall the essential facts connected with the illegal arrest, detention, trial, and sentence of Cutting, familiar though they be to your excellency.

A. K. Cutting was arrested on June 23, 1886, at the request of Emigdio Medina, a citizen of Paso del Norte, on account of the publication of an alleged libel in Texas. He was brought before the Mexican court, refused counsel and an interpreter when he asked for them, was not allowed to give bail though ready to do so, was thrown into prison, and subjected to great cruelty while so confined. All this because he committed an act in Texas objectionable to a Mexican citizen, and because a Mexican judge considered himself competent to so punish an American citizen under an article of the Mexican penal code, called Article 186, which translated is to the following effect:

"Penal offenses committed in a foreign country by a Mexican, against Mexicans or foreigners, or by a foreigner against Mexicans, may be punished in the Republic (Mexico) and according to its laws, subject to the following conditions:

"I. That the accused be in the Republic, whether he has come voluntarily or has been brought by extradition proceedings.

"II. That if the offended party be a foreigner, he shall have made proper legal complaint.

"III. That the accused shall not have been definitively tried in the country where the offense was committed, or, if tried, that he shall not have been acquitted, included in an amnesty, or pardoned.

"IV. That the breach of law of which he is accused shall have the character of a penal offense, both in the country in which it was committed and in the Republic.

"V. That, by the laws of the Republic, the offense shall be subject to a severer penalty than arresto mayor" (detention for from one to eleven months).

My Government denied the right of your excellency's Government to assume jurisdiction of the case merely by force of a municipal law violative of the well-recognized principles of international law. Mr. Bayard demanded the release of Cutting on the grounds:

First: That the judicial tribunals of Mexico were not competent under the rules of international law to try a citizen of the United States for an offense committed and consummated in his own country and merely because the person offended happened to be a Mexican; and,

Second: Because the sanctions of justice which all civilized nations hold in common had been violated by his treatment.

"Among these sanctions," it was stated, "are the right of having the facts on which the charge of guilt was made examined by an impartial court; the explanation to the accused of these facts; the opportunity granted to him of counsel; such delay as is necessary to prepare his case; permission in all cases not capital to go at large on bail till trial; the due production, under oath, of all evidence prejudicing the accused, giving him the right of cross-examination; the right to produce his own evidence in exculpation; release even from temporary imprisonment in all cases where the charge is simply one of threatened breach of the peace, and when due security to keep the peace is tendered."

I am directed to say to your excellency that the importance of this second ground upon which Mr. Cutting's release was demanded is not to be underestimated, although in the course of time it was overshadowed by the jurisdictional question raised by the claim of the Mexican Government of a right to try and to punish a citizen of the United States for an offense committed by him in his own country against a Mexican.

"Not only was this claim," says Mr. Bayard, "which is defined in Article 186 of the Mexican penal code, defended and enforced by Judge Zubia, before whom the case of Mr. Cutting was tried, and whose decision was affirmed by the supreme court of Chihuahua, but the claim was defended and justified by the Mexican Government in communications to this Department, emanating both from the Mexican minister at this capital and from the department of foreign affairs in the City of Mexico.

"The statement of the consul at Paso del Norte, that Mr. Cutting was arrested on the charge of the publication in Texas of an alleged libel against a Mexican, is fully sustained by the opinion of Judge Zubia. Under the head of 'It appears 6' in that decision it is stated that on the 22d of June, 1886, 'the plaintiff enlarged the accusation, stating that although the newspaper, the El Paso Sunday Herald, is published in Texas, Mr. Cutting had had circulated a great number in this town and in the interior of the Republic, it having been read by more than three persons, for which reason an

order had been issued to seize the copies which were still in the office of the said Cutting.' The conclusive inference from this statement is that the charge upon which the warrant of arrest was previously issued was the publication of the alleged libel in Texas. It matters not whether such publication was originally treated by the court as a breach of a conciliation previously entered into between Cutting and Medina, the Mexican plaintiff, or whether it was treated as a distinct and original offense. In either case the assumption of the Mexican tribunal under the law of Mexico to punish a citizen of the United States for an offense wholly committed and consummated in his own country against its laws was an invasion of the independence of this Government. To say that a conciliation in Mexico which operates as a stay of criminal proceedings there, binds a citizen of the United States in his own country, is simply to assert that the Mexican penal law is binding upon citizens of the United States in their own country. It appears, however, under 'Considering 6' in Judge Zubia's decision, that the claim made in Article 186 of the Mexican penal code was actually enforced in the case in question as a distinct and original ground of prosecution. The decision of Judge Zubia was framed in the alternative, and it was held that, even supposing the defamation arose solely from the publication of the alleged libel in the El Paso (Texas) Sunday Herald, Article 186 of the Mexican penal code provided for punishment in that case, Judge Zubia saying that it did not belong to the judge to examine the principle laid down in that article, but to apply it fully, it being the law in force in the State of Chihuahua. It nowhere appears that the Texas publication was ever circulated in Mexico so as to constitute the crime of defamation under the Mexican law. As has been seen, this was not a part of the original charge on which the warrant for Mr. Cutting's arrest was issued; and while it is stated in Judge Zubia's decision that an order was issued for the seizure of copies of the Texas paper which might be found in the office of Mr. Cutting in Paso del Norte, it nowhere appears from that decision that any copies were actually found in that place or elsewhere in Mexico.

"But however this may be, this Government is still compelled to deny, what it denied on the 19th of July, 1886, and what the Mexican Government has since executively and judicially maintained, that a citizen of the United States can be held under the rules of international law to answer in Mexico for an offense committed in the United States, simply because the object of that offense happened to be a citizen of Mexico. The Government of Mexico has endeavored to sustain this pretension on two grounds: First, that such a claim is justified by the rules of international law and the positive legislation of various countries; and, secondly, on the ground that such a claim being made in the legislation of Mexico the question is one solely for the decision of the Mexican tribunals. In respect of the latter ground it is only necessary to say, that if a government could set up its own municipal laws as the final test of its international rights and obligations then the rules of international law would be but the shadow of a name and would afford no protection either to states or individuals. It has been constantly maintained and also admitted by the Government of the United States, that a government can not appeal to its municipal regulations as an answer to demands for the fulfillment of international duties. Such regulations may either exceed or fall short of the requirements of international law, and in either case that law furnishes the test of the nation's liability and not its own municipal rules. This proposition seems now to be so well understood and so generally accepted that it is not deemed necessary to make citations or to adduce precedents in its support."

In proceeding to the consideration of the Mexican jurisdictional claim in connection with the principles of international law, Mr. Bayard bids me say that he has not contended, as seems to have been assumed, that if Mr. Cutting had actually circulated in Mexico a libel printed in Texas in such a manner as to constitute a publication of the libel in Mexico within the terms of the Mexican law, he could not have been tried and punished for the offense in Mexico.

As to the question of international law, Mr. Bayard is unable to discover any principle upon which the assumption of jurisdiction made in Article 186 of the Mexican penal code can be justified.

"There is no principle better settled," observes Mr. Bayard, "than that the penal laws of a country have no extraterritorial force. Each state may, it is true, provide for the punishment of its own citizens for acts committed by them outside of its territory; but this makes the penal law a personal statute, and while it may give rise to inconvenience and injustice in many cases, it is a matter in which no other government has a right to interfere. To say, however, that the penal laws of a country can bind foreigners and regulate their conduct, either in their own or any other foreign country, is to assert a jurisdiction over such countries and to impair their independence. Such is the *consensus* of the leading authorities on international law at the present day. There being, then, no principle of international law which justifies such a pretension, any assertion of it must rest as an exception to the rule, either upon the general concurrence of nations or upon express conventions. Such a concurrence in

respect to the claim made in Article 186 of the Mexican penal code can not be found in the legislation of the present day. Though formerly asserted by a number of minor states it has now been generally abandoned and may be regarded as almost obsolete.

"The only assertion I have found in the legislation of Europe of a general jurisdiction by one state of offenses committed abroad by foreigners against subjects is in the cases of Greece and Russia. The legislation of these countries gives to the judicial tribunals general jurisdiction over such offenses. In Sweden and Norway their punishment is discretionary and depends upon the King ordering the prosecution. In Austria felonies, but not misdemeanors (the charge against Mr. Cutting of libel is only a misdemeanor, not only under the Mexican law but under that of Texas), committed by foreigners abroad are punished, but only (except in crimes against the safety of the state and against the national seals and moneys, etc.) after an offer of surrender of the accused person has first been made to the state in which the crime has been committed and has been refused by it. The law is substantially the same in Hungary and in Italy; but criminal offenses committed outside the state by foreigners against the citizens or subjects are not punished under any circumstances or conditions by France, Germany, Belgium, Denmark, Great Britain, Luxembourg, The Netherlands, Portugal, Spain, and Switzerland.

"It is thus seen that Russia and Greece are the only European countries whose claim of extraterritorial jurisdiction is as extensive and absolute as that of Mexico; for it was held by Judge Zubia, whose decision was affirmed by the supreme court of Chihuahua, that it did not belong to the judicial tribunals of Mexico to examine the principle laid down in Article 186, but to apply it in all force, it being the law of the State of Chihuahua, and Mr. Mariscal disclaimed any power on the part of the Mexican Executive to interfere with the execution of the law by the judicial tribunals. Thus the Mexican claim is absolute, and exceeds that made by Sweden and Norway, where the prosecution can only take place if the King orders it."

Neither do the laws of France sustain the principle set forth in Article 186. A careful examination of those laws shows that the French code authorizes the prosecution of foreigners for offenses outside of the territory of France, only in the exceptional cases of crimes against the safety of the state, and of counterfeiting the seal of the state as well as national moneys having circulation, national papers or bank bills authorized by law. The court of cassation of France decided, in 1873, in the case of Raymond Fornage, which your excellency will find set forth in the report on "Extraterritorial Crime," that with the exception of the crimes already mentioned the French tribunals are without power to judge foreigners for acts committed by them in a foreign country; that their incompetence in this regard is absolute and permanent; that it can be waived neither by the silence nor consent of the accused; that the right to punish emanates from the right of sovereignty, which does not extend beyond the limits of the territory, and that the incompetence of the French tribunals, as above stated, exists always the same in every stage of the proceedings.

The same can be said as to the legislation of the Spanish American Republics. "It does not sustain the idea of Article 186. Neither in the Argentine Republic nor in Chili, nor in Peru, nor in Colombia, nor in Costa Rica is there any law," observes Mr. Bayard, "that authorizes the punishment of foreigners for offenses committed abroad against citizens of those countries."

In conclusion, I wish to make another long quotation from Mr. Bayard's comprehensive instruction to me on this important subject. After reviewing the legislation of other countries, the honorable Secretary says:

"It has constantly been laid down in the United States as a rule of action that citizens of the United States can not be held answerable in foreign countries for offenses which were wholly committed and consummated either in their country or in other countries not subject to the jurisdiction of the punishing state. When a citizen of the United States commits in his own country a violation of its laws, it is his right to be tried under and in accordance with those laws and in accordance with the fundamental guaranties of the Federal Constitution in respect to criminal trials in every part of the United States. To say that he may be tried in another country for his offense, simply because its object happened to be a citizen of that country, would be to assert that foreigners coming to the United States bring hither the penal laws of the country from which they come, and thus subject citizens of the United States in their own country to an indefinite criminal responsibilty. Such a pretension can never be admitted by this Government.

"It has been seen that Article 186 of the Mexican penal code requires that the offenses included in the article must be also punishable in the place of their commission; and the proceedings before Judge Zubia, as set forth in his decision, show that the Texas penal code was introduced in the trial to prove that Mr. Cutting had committed the offense of libel in Texas. With this code before him, Judge Zubia held that its provisions had been violated. Thus, sitting as a Mexican magistrate, he did what no Texas judge could have done had Mr. Cutting been on trial in that State for the alleged offense against its laws. By the Texas code (sec. 2291) 'it is no offense to

publish true statements of facts as to the qualifications of any person for any occupation, profession, or trade.' But this is not all. By the fundamental law of the State no judge can convict any person of libel; for section 6, Article I of the constitution of Texas provides that 'in all indictments for libels the *jury* shall have the right to determine the law and the facts under the direction of the court, as in other cases.'

"These provisions render it wholly unwarrantable for any judge, domestic or foreign, alone to decide that a person has committed a libel under the law in Texas. Nor is it shown that Judge Zubia even attempted to inquire as to the truth of Mr. Cutting's alleged libelous statements."

I have made these copious quotations from Secretary Bayard's instructions because it seems to me that his very able arguments are most convincing, and I could not well see a shorter method of placing the whole case forcibly before your excellency.

Before closing let me direct attention specially to pages 86, 87, and 88 of the report on "extraterritorial crime," by which your excellency will see that the list of codes inclosed with the communication of the Mexican department of foreign affairs under date of August 13, 1886, can not be relied upon to sustain the claim set forth in Article 186 of the right of a nation to punish a foreigner for an offense committed against one of its citizens outside of its territory.

Also I would beg to direct attention to the remarks of the author of the same report respecting the opinions of publicists like Fiore, Phillimore, Wheaton, Bar, Hall, Story, Field, Wharton, Sir G. C. Lewis, Heffter, M. Faustin Helie, Pradier Fodéré, and even President Woolsey, as well as others referred to on pages 92, 93, 94, 95, 96, 97, and 98 of the report on "extraterritorial crime."

Finally I wish to notify your excellency that for all the above reasons my Government considers that the arrest, imprisonment, trial, and sentence of Cutting, as well as the denial to him of the sanctions of justice recognized by all civilized countries were violative of the rules of international law, binding upon Mexico in spite of any domestic enactments conflicting therewith, and that, therefore, Mexico should be ready and willing to make all the reparation in its power by offering to pay the injured party an indemnity commensurate with the wrong inflicted.

I beg to renew, etc.,

THOMAS B. CONNERY.

CORRESPONDENCE WITH THE LEGATION OF MEXICO AT WASHINGTON.

No. 493.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,

Washington, August 7, 1886. (Received August 9.)

MY DEAR MR. BAYARD: With the aim of preventing any misunderstanding between our two countries from rendering more difficult the speedy solution of the difficulties now pending, growing out of the imprisonment in El Paso del Norte, Mexico, of the United States citizen Augustus K. Cutting, to the prejudice of the good relations which both have cultivated and desire to cultivate, I take the liberty, in view of the importance and transcendency of this affair to proffer to you a few observations, which I hope may serve to set right facts which I fear have not been sufficiently understood here.

I deem it proper, first of all, to say to you that, not having been authorized by my Government to discuss this question with that of the United States, since its gravity naturally leads the Mexican Government to prefer to treat it directly, what I am about to state to you conveys my personal impressions, based on the knowledge I possess of this matter, of the intentions of the people and Government of Mexico to-

ward the United States, and of the scope and tendencies of the legislation of my country.

Mr. A. K. Cutting has lived for eighteen months in Paso del Norte, Mexico, of which place he is, therefore, a resident [*vecino*]. He there takes part in the publication of a weekly periodical, printed in English and Spanish, called El Centinela [The Sentinel].

In the number of this periodical, dated June 6, of this year, he attacked a Mexican citizen, Emigdio Medina, who had announced the publication of a rival periodical in the same town of El Paso del Norte, Mexico.

Medina deemed himself slandered by that article, and before instituting a suit for defamation, in conformity with article 642 of the penal code of Mexico, which had been adopted by the state of Chihuahua, he sought, on the 14th of the same June, in conformity with an ancient Spanish law, likewise in force in Chihuahua, a "conciliation" before the second municipal judge, in term of the criminal branch, Regino Castañeda, against Don Alexander N. Daguerre, the responsible agent of the periodical El Centinela. Mr. Daguerre stated that not he but Mr. Cutting was responsible for the article, for which reason the judge summoned Cutting, who put in an appearance and stated that he would publish in his periodical an apology in favor of Medina, and signed the respective "act of conciliation."

Cutting was not condemned by the judge to retract what he had published against Medina, nor constrained in any way to withdraw his offensive words, as he asserts in an article which he afterwards published in El Paso, Tex.; but he signed his retraction spontaneously, and, perhaps, to avoid the consequences of a criminal suit instituted by Medina.

Cutting published his correction in El Centinela, in English only, and choosing the smallest type, so that it might be read with difficulty, and on the same day, June 20—or the 18th, according to his affidavit—he published in English and in Spanish, in a periodical of El Paso, Tex., entitled Sunday Herald, an article in which he reiterated the attacks made upon Medina in El Centinela.

Thereupon Cutting distributed in El Paso del Norte, Mexico, several copies of the Sunday Herald containing his article against Medina.

For this cause, the following day, June 21, he was summoned anew by Medina for defamation, in conformity with articles 642 and 186 of the Mexican penal code. The following day, the 22d, Cutting was arrested by order of the judge, but at his own request he was permitted to sleep in his own house that night. The 23d Cutting appeared before the court, but refused to answer the questions put to him, saying that this matter would be ventilated by the Government of the United States, and he was taken to prison under arrest, and on the morning of the 25th the judge issued his warrant of commitment, (*auto de bien preso*), in conformity with the prescription of article 19 of the Mexican constitution.

It appears to me that this is the exact and detailed narrative of the facts, which I have in part taken from reports received by me from El Paso del Norte, which, although of a private character, I deem trustworthy, and in part from other sources, also private.

I now proceed to examine the questions which these facts involve.

The Government of the United States believes that Cutting is under trial in El Paso del Norte solely because of an article published in El Paso, Tex., in compliance with article 186 of the Mexican penal code, and it considers that article incompatible with the principles of international law.

I think it proper to state, with reference to the first point, that, as I understand it, Cutting is on trial for the publication in El Centinela, a periodical published in El Paso del Norte, Mexico, of an article against Medina, which is deemed defamatory, and although there may have been adduced as an aggravating circumstance the publication of the other article in El Paso, Tex., I do not think that this is the principal crime of Cutting.

An attempt has been made to show that the "conciliation" signed between Medina and Cutting before the judge of El Paso del Norte, Mexico, on the 14th of June, put an end to the suit of Medina against Cutting because of the publication in El Centinela; but it is proper to bear in mind that the "conciliation" is not a trial, it involves no judicial sentence, nor does it put an end to anything, except in so far as the interested parties choose to submit themselves to its conditions.

The "conciliation" is an effort made by the law to avoid litigation, and its object is to bring to an agreement the parties interested in a future suit. If these agree, and each of them fulfills the terms of the agreement or "conciliation," the suit is obviated. If they do not agree, the formal suit begins; and the same thing takes place if, having come to an agreement, they fail of what they had stipulated in the "conciliation."

This latter is precisely the case between Cutting and Medina. They came to an agreement which rendered unnecessary the criminal action for defamation brought by the latter against the former; but this adjustment did not prevent one or both of the interested parties from failing to comply with its terms, and in this event the criminal action for defamation could be set in motion, which I believe is what took place.

When I gave you, in the interview we had at the Department of State on the 24th of July last past, a translation of article 186 of the Mexican penal code, my object was not to state that the judge of El Paso del Norte could (or *might*) proceed against Cutting exclusively in virtue of that article, but to bring to your attention that, contrary to the impression which seemed to prevail here, there was nothing arbitrary in the conduct of a Mexican judge who, under certain circumstances and under certain conditions, might institute trial for an offense committed in a foreign country, since, in conformity with the Mexican legislation, this case was provided for by the aforesaid article. As it contains a general provision, which is not restricted to the United States, but is equal with respect to offenses committed in every foreign country, it seemed to me that it might be taken as a proof that, in adopting that law, Mexico had sought to act in conformity with the precepts of international law.

I beg you to permit me to state that the penal code which the Mexican Congress approved on the 7th December, 1871, was drawn up by a commission of distinguished Mexican lawyers, who threw on the subject the light of a special study of the penal legislation of the most civilized countries, and who adopted from the European codes all that appeared to them most advanced and adaptable to the circumstances of Mexico. The one hundred and eighty-sixth article contains provisions which, with more or less limitation, are adopted in the penal codes of Belgium and Italy, as appears by the fourth article, chapter 1, book 1, of the penal code of Belgium, 5th edition, published at Brussels; and by articles 6, 7, 8, and 9 of the Italian penal code of November 20, 1859, edition of Milan, 1880, and which were adopted in that of France until

recently, when they were restricted, as appears from the notes upon the French legislation, which you were pleased to show me in our interview of yesterday, although the principle still subsists that a country may, in certain cases, adjudge crimes committed abroad.

At first sight the provision of the Mexican penal code appears to be a counter principle (*un contra principio*), but when it is considered that the tendency of modern civilization is not to leave crimes unpunished, and that the first step which has been taken in this direction is in consenting to the extradition of criminals, which practice is now universal among civilized nations, it does not seem strange that the second step should be to give competence to the national courts to take cognizance of crimes committed in foreign parts, with certain restrictions and qualifications, such as are comprised in the five paragraphs of article 186 of the Mexican penal code.

Before passing to another matter, I deem it proper to state to you that the translation of the article in question, which I handed to you in our interview of 24th July, is not entirely correct, since the phrase "*arresto-mayor*," which is found in the fifth paragraph of the aforesaid article, does not admit of ready translation into English; for which reason I inclose herewith a new translation of the same, and furthermore of article 124, which defines "*arresto mayor*."

The system of punishing crimes committed in foreign parts, especially when these, although perpetrated abroad, have their complement or realization or produce their effects in the country which punishes them, is in practical application in several countries, not merely in the provisions of their penal codes, but in the trials daily conducted and in the doctrines of various modern criminal authorities.

It is true that under the laws (common law) of the United States and England there is no jurisdiction to take cognizance of crimes committed in a foreign land; yet in spite of this, there has just occurred a trial for libel in London, on suit instituted by Mr. Cyrus Field against Mr. James Gordon Bennett, editor of the Herald of New York, by reason of articles published in New York in Mr. Bennett's paper, which Mr. Field regarded as defamatory of himself, and in which Mr. Bennett was condemned by the English courts to pay $25,000 for the damages and injuries occasioned to Mr. Field by the aforesaid articles, notwithstanding that they had been published in New York and not in London. It should, moreover, be borne in mind that Mr. Bennett is not a resident of London, as Mr. Cutting is of Paso del Norte.

It is true that the basis of the judgment of the English courts appears to be that, although the offense was committed in New York, its effects were produced in London, where the New York Herald circulates; but precisely the same reason exists in the case of Cutting, in the supposition that although the article was published in El Paso, Tex., it circulated in Paso del Norte, Mexico, where Medina was known and where it may be said that it produced its effect.

Several writers on the American and English penal code maintain doctrines similar to those put forth in article 186 of the Mexican penal code.

Joel Prentiss Bishop, in his commentaries on the Criminal Law, 7th edition, 1882, Vol. II, Chapter VI, section 110, page 59 (Boston: Little, Brown & Co.), says as follows:

> One who is personally out of the country may put in motion a force which takes effect in it, and in such a case he is answerable where the evil is done though his presence is elsewhere. Thus, murder, *libel*, false pretenses, etc. * * * If a man stand-

ing beyond the outer line of our territory, by discharging a ball, kills another within it, or himself being abroad circulates through an agent libels here, * * * or does any other crime in our own locality against our laws, he is punishable, though absent, the same as if he were present.

In support of this doctrine Bishop cites various American and English authorities, who sustain the principles enunciated by him.

This same doctrine is maintained by Bishop in his work entitled "*Criminal Procedure, or Commentaries on the Law of Pleading and Evidence and Practice in Criminal Cases*" (third edition, 1880, Vol. I, Book II, Chapter IV, section 53, page 27. Boston: Little, Brown & Co.), wherein he says as follows:

Personal presence.—The law deems that a crime is committed in the place where the criminal act takes effect. Hence, in many circumstances, one becomes liable to punishment in a particular jurisdiction while his personal presence is elsewhere. Even in this way he may commit an offense against a state or country upon whose soil he never set his foot, as explained in criminal law.

Bishop then goes on to mention defamation (*libel*) among the crimes which are punished in the place where they produce their effects, even though the party responsible does not reside there, and he cites various authorities to support his theory.

Before passing to another matter, I beg you to allow me to state that in the diplomatic correspondence annexed to the message of the President of the United States, of December 6, 1880, pages 707 to 719, it appears that since 1879 the Government of the United States has had knowledge of the provision of the Mexican penal code contained in the 186th article thereof; for, General Ord having complained to Señor Zamacona that a Mexican soldier named Zeferino Avalos had committed a murder in Texas and taken refuge in Mexico, he was tried for that crime committed in a foreign country, condemned to the capital penalty, and executed. Mr. Foster then went so far as to express satisfaction at the efficiency of the Mexican law, and the Government of Mexico took pleasure in being able to show that it prosecuted criminals. It is true that that law was then applied to a Mexican, and that the case changes its aspect when it is made effective in respect of a foreigner. But I mention this incident because it shows that the law has been applied for some time past with the knowledge and, it may be said, even to the satisfaction of the Government of the United States, or at least of its representative in Mexico.

Señor Mariscal, secretary of foreign relations of the United Mexican States, stated to Mr. Jackson, in the communication which he addressed to him on the 21st of July last past, that the political institutions of Mexico, like those of the United States, from which they have really been taken, did not permit the executive power of the federation to interfere with the administration of justice of the states, and that, for this reason, he could not give orders to the judge of Paso del Norte to set Cutting at liberty. The force of this consideration appears the more clearly when we take into account the case of Alexander McLeod, of which you had the goodness to speak to me in our interview of yesterday.

I have examined this case with attention, and find that McLeod, a British subject domiciled in Canada, was arrested in the State of New York, in the year 1841, because it was said that he had taken part in the capture of the steamer *Caroline*, which took place on the American side of the Niagara River in 1837, and was put on trial for murder. The British minister in Washington, Mr. Fox, demanded the imme-

diate release of McLeod, on the ground that the capture of the *Caroline* had been the public act of persons in the service of the British Government, who had obeyed the orders of their superior officers, and that, according to the principles of international law, McLeod could not be held on account of acts committed in compliance with those orders. The Secretary of State, Mr. Webster, in his reply to Mr. Fox, recognized the force of the observations of the British minister so far as international law was concerned, and in a communication he addressed to Mr. Crittenden, Attorney-General of the United States, on March 15, 1841, he said that if the case were pending in any of the Federal courts of the United States the President would immediately order recourse to a *nolle prosequi*, thus satisfying the demand of the British minister; but he added that the President had no power to interfere in the proceedings of the civil or criminal courts of the State of New York. This point was clearly established by Mr. Webster in his note to the British minister of April 24, 1841, in which he used the following language: "In the United States, as in England, persons arrested in virtue of judicial proceedings can only be set at liberty by judicial proceedings. In neither of the two countries * * * can the arm of the executive power intervene directly or by force to set the arrested person at liberty. His liberty must be sought in a way in conformity with the principles of the law and the procedure of the courts."

It appears, moreover, that, notwithstanding the admission of the Federal Government that McLeod had been arrested in contravention of the principles of international law, and the interposition of the resort of habeas corpus by the counsel of the United States before the supreme court of the State of New York, this court refused the release of McLeod, and went on with his trial in virtue of the charge of murder.

In the case of Cutting, an offense was committed which is punished with equal severity by the laws of both countries, seeing that the law of Texas imposes a fine not exceeding $2,000 and imprisonment for not more than two years, and the Mexican law with a fine of from $200 to $2,000 and imprisonment (arresto*) from six months to two years (article 646 of the Mexican penal code).

If Cutting has been arrested by the authorities of the State of Chihuahua on account of an act recognized as a criminal offense by the laws of both countries, that is to say, the Mexican laws and those of the United States, and if the arrested person may be tried in conformity with international law, the case of McLeod presents an important precedent, which justifies the course of the Federal Government of Mexico in not interfering with the proceedings of the courts of Chihuahua.

It is true that in consequence of the McLeod incident the Congress of the United States passed the act of 29th August, 1842, under which the Federal judges are authorized to take cognizance of cases similar to that of Cutting, and even to procure the immediate release of a foreign citizen or subject who is under trial by local courts; but, besides the fact that no such statute exists in Mexico as that of 29th August, 1842, even did it exist, I do not think it would be applicable to the case of Cutting, for two reasons—first, because the statute in question requires that the arrested alien shall be domiciled in a foreign country, while Cutting was domiciled in Mexico; and secondly, because the exception which is alleged must depend upon the law of nations, and the case of Cutting does not appear to come within this exception.

Arresto signifies the imprisonment due to a misdemeanor, not imprisonment *with labor*, which is due to a felony.

The interest with which the Government of Mexico has regarded this case has been evident from the moment that the Government of the United States called its attention thereto, through the medium of Mr. Jackson, its minister in Mexico; that is to say, since the 6th of July aforesaid.

As soon as the President of the Mexican United States had notice of this incident, by means of the note which Mr. Jackson addressed to Señor Mariscal on that date, he addressed the governer of the State of Chihuahua, recommending him to administer speedy and full justice in the case of Cutting, and that there should be amelioration of his situation, which, according to the statements made by Cutting and by Mr. Brigham, the consul of the United States at Paso del Norte, was very hard.

When Mr. Jackson again addressed Señor Mariscal in the matter, in his note of the 21st of the same July, these recommendations were repeated, and, as the result thereof, the governor of the State of Chihuahua sent, first, his secretary of government, Señor Don Manuel E. Rincon, from the city of Chihuahua to Paso del Norte to inform himself of the condition of the jail in the latter town, and to do everything possible in favor of Cutting, and he subsequently communicated the recommendation of the President to the supreme tribunal of the State, which called for a report from the judge who had cognizance of the case, and, not satisfied with this, commissioned its presiding magistrate to go in person to Paso del Norte for the purpose of seeing that the conclusion of the trial should be hastened, as far as might be possible, and to satisfy himself that the proceedings were in conformity with the law.

Although the affidavits of Cutting before the consul of the United States at Paso del Norte, and the reports of the latter, appear to paint in the most terrible colors Cutting's condition in prison, I deem it proper to inform you that, instead of being confined in a filthy and loathsome dungeon, as Cutting represents, he has had the whole prison for his jail, with liberty to be, during the day-time, in any part thereof he wished, and at night he slept in the warden's room, which is the best in the prison.

When Señor Don Francisco N. Ramos, chief-justice of the supreme tribunal of Chihuahua, reached Paso del Norte, and saw that in reality the room referred to had little ventilation, he ordered a window to be opened in order to ameliorate the condition of the prisoner.

It would be desirable if all the Mexican towns had commodious prisons like those which exist in many of the cities and towns of the United States; but, unfortunately, the financial condition of that country has not permitted the construction of prisons combining the advantageous conditions of some of those in the United States; and if that of Paso del Norte is among the more disagreeable ones, this circumstance can not be regarded as in any way intended to unduly inconvenience those citizens of the United States who are obliged to be confined therein.

As another proof of the zeal of the Mexican authorities in ameliorating Cutting's condition, I will mention the fact that, according to the rules of the prison at Paso del Norte, only 10 cents a day are allowed to the prisoners for their subsistence, and that, for the benefit of Cutting, the chief-justice of the supreme tribunal of the state ordered that he should be allowed 50 cents, which sum, as I am informed, is the price of two meals in the hotels of that place.

It has been said that the judge of Paso del Norte attempted to try Cutting by applying to him the laws of Texas, and I deem it proper to correct this assertion by stating that if the laws of Texas have been spoken of in the court of Paso del Norte, it has probably been because,

according to the fourth paragraph of article 186 of the Mexican penal code, it is necessary, in order that a crime committed in a foreign country shall be punishable in Mexico, that it shall be characterized as a crime in the country in which it was committed, and in Mexico. For this reason, probably, it may have been necessary to have recourse to the laws of Texas, in order to examine whether the { offense / misdemeanor } *falta* of Cutting had the character of a crime (*delito*) in that State.

I deem it proper to state to you, before concluding this letter, that if the case of Cutting in El Paso del Norte has suffered any delay it is probably due in great part to the course followed by him in ignoring the authority of the judge who had cognizance of his case.

I entertain the hope, which I have imparted to you in the several conferences we have had touching this matter, that it will come to an end before long in a manner decorous for both countries and equally satisfactory to each of them, and that, far from interrupting the good relations which unite them, it will enable them to understand each other better, and help to avoid hidden dangers (*escollos*, literally "sunken rocks") in the future.

I am, etc.

M. ROMERO.

[Inclosure 1.]

Article 186 *of the Mexican penal code of December* 21, 1871.

Any crimes committed on the territory of a foreign state by a Mexican against Mexicans or against foreigners, or by a foreigner against Mexicans, may be punished in Mexico in conformity with the laws of the country, under the following provisions:

I.

That the accused should be in Mexico, whether of his own free will or by having been extradited.

II.

That if the offended party is a foreigner a complaint should be made by a legitimate party.

III.

That the accused has not been finally tried for the crime in the country in which the crime was committed, or, if he was tried, has not been either acquitted, pardoned, or included in an amnesty.

IV.

That the violation of which he is accused should be considered a misdemeanor, both in the country where it was committed and in Mexico.

V.

That under the laws of the Republic the misdemeanor charged is punishable with more than *arresto mayor*.

[Inclosure 2.]

ARTICLE 124.

Arresto menor shall last from three to thirty days. *Arresto mayor* shall last from one to eleven months, and when, by accumulation of two penalties, it shall exceed from eleven months, it will constitute prison.

No. 494.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, August 30, 1886. (Received September 1.)

Mr. SECRETARY: I have the honor to send to you herewith copies of two notes I have received from Señor Mariscal, secretary of foreign relations of the United Mexican States, dated in the City of Mexico on the 12th and 13th instant, respectively, in which are set forth the ideas of the Mexican Government with respect to several points connected with the incidents which arose from the arrest in Paso del Norte, in the State of Chihuahua, of Mr. Augustus K. Cutting, a citizen of the United States of America, and his subsequent trial by the courts of that State. I likewise inclose to you a copy of the annex No. 1 to the second note of Señor Mariscal and a copy of No. 27, Year XIV, Vol. XXVII of the periodical of legislation and jurisprudence entitled El Foro, published in the City of Mexico on the 6th instant, which contains the article of Señor Don José M. Gamboa upon the same subject, cited in the second note of Señor Mariscal.

Be pleased, etc.,

M. ROMERO.

[Inclosure 1.]

Mr. Mariscal to Mr. Romero.

OFFICE OF SECRETARY OF STATE AND FOREIGN AFFAIRS,
Mexico, August 12, 1886.

I have carefully made myself acquainted with your note No. 885, dated 24th ultimo, in which you report the conference which you held that day with Mr. Secretary Bayard concerning the case of A. K. Cutting. You therein observed that you only knew the case through the publications in the newspapers of the United States and certain telegrams of mine which gave no details. This was so in fact, since there had not been time to furnish you with the correspondence exchanged with the American legation; neither was it possible to give you details of what had occurred before the judge of Paso del Norte, there being no complete information thereof in this department (which, moreover, was not charged with possessing them) until now that the sentence has been pronounced, which, together with the notes and further data in the case, you will see published in the Diario Oficial of this date.

It has seemed expedient to make this publication in order to satisfy the natural anxiety of the Mexican people, especially as the correspondence in question has already appeared in the newspapers of the United States. By the text of the sentence, in particular, you will see that certain assertions of Mr. Bayard, due, doubtless, to reports at variance with the truth which he had received from biased persons, were not exact. Among these are, that the proceeding had been a public prosecution and not on the suit of a party, the fact being that it was instituted and carried on upon the formal complaint of the injured party, and that he (Cutting) was not permitted to name advocate or counsel, when he named those whom he saw fit, and, when two of these had withdrawn from the case, he not wishing to name another, counsel was assigned to him. As to the complaints that he was badly treated in the prison, you will see by the published telegrams that the treatment he there received was as good as was possible, and much better than that given to the other prisoners.

With respect to the jurisdictional question, or touching the competence of the Mexican judge of Paso del Norte to try Cutting, who at least in his second act of defamation committed an offense in Texas, that is, in a foreign country, I deem it necessary to proffer some observations at length. Upon this point, as it appears, Consul Brigham, who resides in that city, rests, and there is no doubt that Mr. Secretary Bayard relies upon it for deeming the imprisonment of Cutting illegal. I will here remark that even though the consul should deem the court incompetent, even though it should

appear perfectly clear to him, he should not have counseled the prisoner to refuse to testify and defend himself, as it is said he has done; for to do so was to counsel a failure of respect and resistance to justice. Neither had he reason to complain at once to his Government, giving rise to the excitement and alarm which such action has produced. His duty in such a case was to advise Cutting to deny the jurisdiction, and to furnish him with the means of proving the incompetence of the court, which was at least competent to take cognizance of such an allegation, since it is clear that every agency for the exercise of judicial authority is competent to decide touching its own jurisdiction when any one may deny it. A decision on the point of competence could have been appealed from, and only when after exhaustion of the legal means of redress there remained a decision contrary to the profound convictions of the consul, could that functionary have imagined that there existed a notorious denial of justice.

Returning to the question set forth concerning the jurisdiction of a country to take cognizance in certain cases determined by law of offenses committed in foreign parts, it would not be surprising if there were contradictions between the opinions of jurists and well-informed persons in the United States and that which prevailed in drawing up the penal code of the Federal district, which is also in force in Chihuahua. Our method of determining that question, which in the absence of precedents of positive law is simply one of private international law, is in conformity with the principles adopted by the majority and with the legislation in force in a great many civilized nations—in almost all those which have adopted the system of Roman jurisprudence in contradistinction to the so-called *common law* of England. This is recognized by an American authority, Wheaton, in these words: "By the common law of England, which has been adopted on this point by the United States, criminal offenses are considered local, and are justiciable only by the courts of that country where the offense is committed. But this principle is peculiar to the jurisprudence of Great Britain and the United States, and even in these countries it has frequently been disregarded by the positive legislation of each."

It is evident, therefore, that the absolute principle that offenses can never be punished but in the country where they were committed, is not admitted by the generality of nations and belongs only to the jurisprudence of the Anglo-Saxon countries, where, notwithstanding its adoption, it is often disregarded in positive legislation. All this is likewise taught by an English writer, Phillimore, who, moreover, observes that the doctrine of the common law is open to very conspicuous inconveniences, especially in the case of frontier settlements (Phill. International Law, Vol. V, sec. 985). The inconvenience which thereby occurs in the neighborhood of a frontier consists in the ease of crossing it and injuring in another territory the nation which has been temporarily quitted, or the subjects thereof, and immediately returning thereto in defiance of the offended party and of the national justice. Such would be for us the result of declaring our courts incompetent to take cognizance of offenses committed in the neighboring nation against our country or its citizens.

The two writers above cited confirm the preponderance which exists in the opinions of public law in favor of extraterritorial jurisdiction for the punishment, in certain cases, of determinate crimes; and even though it be confined to offenses committed outside of the country by its own citizens, Phillimore notes that by the legislation of France (we shall see further on that it is also by that of several other countries) a foreigner is justiciable who is found in the nation after having committed an offense without its limits against that nation *or against one of its subjects*. The punishment of the foreigner in such a case depends upon the principle which may have been adopted touching competence in general over certain offenses perpetrated abroad; since it does not seem just to impose penalties therefor upon the citizens and leave the foreigner in like circumstances unpunished. Such is the opinion of Dana, the annotator of Wheaton, who thus expresses himself: "The question whether a state shall punish a foreigner found within its limits for a crime previously committed abroad against that state or its subjects, also depends upon its system respecting punishing generally for crimes committed abroad." "Great Britain and the United States, respecting strictly the principles of the territoriality of crime, leave them unpunished. France follows the analogy of its treatment of its own subjects under like circumstances." (Dana's Wheaton, 8th ed., note 77, par. 120.)

Having thus ourselves adopted the system of punishing our own citizens for the offenses they commit in foreign parts, even when committed against foreigners, it was natural that we should legislate for the punishment of the foreigner who in a foreign country shall offend our Republic or against a Mexican. So in fact it is prescribed by the penal code which in this particular is in force throughout the country, by its articles 184 to 187. In the edition of that code prepared by the licentiate A. Medina y Ormaechea, the following is found in a note: "The commission made a careful examination of this matter and decided to adopt the principles generally admitted, which are those described in the aforesaid article (184–189). It was not unknown to it that England and the United States only punish offenses committed in their terri-

tory, but it appeared to the commission more proper and just to punish those committed abroad against the Republic, as well as those committed abroad by Mexicans against Mexicans or foreigners or by the latter against Mexicans; for in such cases the principle upon which the right to punish rests is fully applicable—that is, justice joined to utility * * *."

In the United States themselves the practice of regarding as not punishable offenses committed in a foreign country is not so constant and uniform as might be supposed. We have already seen that, according to Wheaton, this principle is frequently overlooked in positive legislation. The learned jurist Edward Livingston *proposed* for the penal code of Louisiana the following provision: "Citizens or inhabitants of the State may be punished for *acts committed out of the limits thereof*, in those cases in which there is a special provision of law declaring that the act forbidden shall be an offense although done out of the State." (Works of Livingston, Vol. II, par. 18.)

It is of record, moreover, that in 1794 the Pennsylvania court proceeded against the French governor of Guadeloupe, who was temporarily in the United States, on account of the unauthorized capture of a vessel beyond the waters of the latter country, and this in the absence of an express law (such as we ourselves have) authorizing it to try an alien for any acts which had taken place abroad. It is true that it does not appear that the competence of the court was brought in question, although there was a complaint by the French minister; but as it was incumbent upon the court to examine in the first place whether it could take jurisdiction of such proceedings, and as Attorney-General Bradford made no allusion whatever to this point (Opinions of Attorney-General, vol. 1, par. 45), this at least proves that there is a natural belief in the justice of punishing an act committed in a foreign country, whatever be the nationality of its author, if it attacks the interests of the country, or of the citizens of the country, where the person who committed it may subsequently be found. Thus the ground on which our criminal legislation in this particular rests is clear.

Under that legislation the offenses committed abroad by a foreigner are not punished save when they injure Mexico or a Mexican. "No society takes concern in any crime but what is hurtful to itself"—as Lord Kames has said: (Kames on Equity, B. 3, ch. 8, sec. 1). A further condition is demanded by our code, and therein we have to admire the prudence of the lawgiver who in this manner reconciled the respect due to these principles: "There is no offense where there is no infraction of a law," and "the law prescribed by a sovereign is not binding on those who are not subjects, save in his own territory." Our legislation is in this way reduced to one of the alternatives which have been adopted by modern nations, as Fiore observes (Droit Inter. Privé, cap. 5), avoiding in the question the two opposing extremes. The condition referred to is thus expressed in our code; "That the infraction of which the party is accused, be he Mexican or foreigner, shall possess the character of an offense *in the country where it was committed* and in the Republic." (Art. 186, par. 4.)

To the American authorities which I have cited to prove that even in the United States (notwithstanding the allegation that they have adopted the principle of the common law) this point, as a doctrine of public or international law, is sometimes controvertible, I must add all that Story says in his Conflict of Laws, chapter 16, and especially what his commentator Redfield says (6th edition of that work, sec. 625 b) with reference to a decision given in the State of New York. He thus decidedly expresses himself: "Although the penal laws of every country are in their nature local, yet an offense may be committed in one sovereignty in violation of the laws of another, and if the offender be afterwards found in the latter State he may be punished according to the laws thereof, and the fact that he owes allegiance to another sovereignty is no bar to the indictment."

Now, then, our legislation, and especially article 186 of our penal code, *as respects the punishment of some offenses by foreigners committed outside of the country*, is in accord not only with the most authoritative doctrines of private international law (of Foelix, Voet, Boehmer, Martens, Saalfeld, and Pinheiro Ferreira, to whom Fiore might be added by reason of his general theories), but also with the positive legislation of several nations which command profound respect in such a matter, such as France and Austria, where such offenses are punished if they have been committed against the nation; Prussia, where they are all punished in conformity with the law of the country wherein they are committed; Bavaria and Norway, without this characteristic and without the requisites and conditions exacted by our code. You will find this demonstrated in the essay upon the case of Cutting, published by an intelligent judge of this capital, in the number of El Foro which I send you under separate cover.

It is clear, therefore, that our law-makers not only exercised the right they had to define the point of international law to which I refer, in one or the other sense, because it is a matter open to discussion, but that they adopted the interpretation which finds the greatest number of adherents among civilized nations, and which, moreover, was in harmony with the system of jurisprudence which obtains in our Republic.

I am thus urgent in defending article 186 of our penal code, to which I called your attention in a telegram as being applicable to the case of Cutting, not because I

deemed it indispensable in order to prove the competence of the Mexican courts in this case, since, as you will see by the sentence of the court which is annexed to this note, the offense committed in Texas by Cutting may also be taken, and is taken with good ground, as a continuation of the offense which he had committed in Paso del Norte, whither he subsequently came to render it complete by circulating what he had published in El Paso. It has not at this time been my principal desire to uphold the justice of the action of the court in assuming competence, but to make reply to certain observations, entitled to respect because coming from Mr. Secretary Bayard, against our penal legislation, and to defend the good name of Mexico, because I am interested in not having its laws thought singular and contrary to the principles of international law.

Provided they be found in conformity with those principles as they are understood by many other nations, it is clear that the inconveniences which may result to our neighbors from their application in this country can in nowise be made the basis of a charge against us. If in Mexico the manner of trial is different, if the proceedings in the criminal branch are diverse from those followed in the United States, and if it be possible that the law may sometimes repress in our Republic acts which are permitted in the other, these are evils (supposing that they merit this name) which do not sólely affect the American who may come to Mexico after having injured (in the sense of our laws) this country or one of its citizens; they likewise affect every one who comes to our territory without having done such wrongful acts, *if he do not care, as every foreigner should, to ascertain what are the principal points of difference between the legislation of his country, with which he is familiar, and the new legislation to which he becomes subjected.*

The inconveniences of this natural difference between the two systems of law are not, moreever, so very grave; because there must ever be, in their main aspects, a *similarity between the guaranties accorded to an accused person in Mexico and those accorded to him in the United States*—a similarity which, in this regard, is noticeable among civilized nations, and becomes greater when they are governed by the same institutions. As for the definition of certain acts as offenses, there does not seem to be diversity or conflict between the two countries; and even if there should be in some future case, it could never occasion any inconvenience to American citizens, since article 186 of our penal code, which has called forth these remarks, does not declare punishable (as has already been seen) the act committed by a foreigner abroad, except when such act is "of a criminal character *in the country wherein it was committed and in the Republic.*" Neither is there any noticeable difference between the penalties with which the offenses are punished within the one country or the other country. The proof of this is that in the case of Cutting, for example; the maximum of the penalty which may be applied in conformity with article 646 of our code is the same, with a slight difference in the amount of the fine, as might have been applied in conformity with article 617 of the code of Texas.

I think, therefore, that the observations made by Mr. Bayard, in his message to the Congress of the United States, based upon the supposed inconveniences which I have noticed and which that gentleman fears may result from our legislation, have been the result of erroneous reports received by him concerning our country.

For the rest, I am convinced of his high enlightenment and perfect uprightness as evidenced by the prudent conduct he has observed after being informed, through my note to Mr. Jackson, that it was impossible for our Government to order the immediate release of Cutting. I also regard as sincere the assurances he has conveyed to you, in this relation, of his friendly consideration toward Mexico. On our side we have a like sincere and profound consideration for the Government of the United States, upon whose wisdom and sense of justice we rely with the fullest confidence for the hope that if in any event, being misinformed, it does not speedily recognize the right which is on our side, it will never refuse to hear us, and if it knows the whole truth, to do us justice, recognizing our disposition, inspired by sentiment and conviction joined to our mutual convenience, to strengthen the most cordial relations between the two countries.

You are authorized to make use of this note in the manner which your prudence may suggest and according to circumstances.

I repeat, etc. MARISCAL.

[Inclosure 2.]

Mr. Mariscal to Mr. Romero.

DEPARTMENT OF STATE AND OF FOREIGN RELATIONS,
Mexico, August 13, 1886.

In my note No. 977, bearing date of yesterday, I informed you that I would send an examination of the Cutting case, which had been published by the licentiate José M. Gamboa, judge of this capital. I now send it in the inclosed copy of El Foro, a

journal which is devoted to legal matters. In doing this, while recognizing the merit of this examination, I must add some explanations of my own to those contained therein on the subject of the laws of other countries, as being more or less similar to the provisions contained in article 186 of our penal code.

The French law in the matter of punishing foreigners found in the country after they have committed a crime outside of its territory, is almost the same as the provision contained in the code of 1808 relative to the preliminary examination of criminals. The law of July 3, 1866, introduces a few modifications only in the portion relating to crimes and offenses committed by French subjects in foreign countries.

I must now devote some special attention to a fact which is highly important in connection with our aforesaid article 186. The fact to which I allude is that that article agrees in all its essential points with the provisions of the last penal code adopted in Italy. This is highly honorable to those jurists who prepared our own penal code six years previously. That honor is based not only upon the fact that Italy is a nation that has made very great advances in legal science, that she is the cradle of Roman law, and in a country that has ever been distinguished for its profound lawyers; it is based, moreover, upon special circumstances which I will state hereafter. The code to which I refer was laid before the Italian Chamber of Deputies by that eminent statesman and professor of law, P. S. Mancini, then minister of justice, and chairman of the committee that put the code in its final shape. In his statement of reasons which preceded it Mr. Mancini, after mentioning the numerous commissions and scientific or public bodies that had successively revised it, expressed himself as follows:

"Hereafter no one person in Italy can claim the authorship of the penal code. Being the fruit of fifteen years of reflection and constant study, it is the collective work of the most trustworthy and authoritative depositaries of the traditions of the Italian school, of the most competent representatives of legal science and medical jurisprudence, of the practical experience of the magistrates and courts of Italy, and of the most vigorous minds of the country. It may well be called a national work."

Now, then, this code, whose first book, as far as article 119 (110?) was approved by the aforesaid chamber in 1877, contains the following provisions, which I translate literally:

"ARTICLE 5. A native citizen or a *foreigner* who commits a crime on foreign soil against the safety of the state, or the crime of counterfeiting money having a legal circulation in the kingdom, or that of counterfeiting the seal or the bonds of the public debt of the state or of documents of the public credit, shall be tried and sentenced according to the laws of the kingdom.

"ARTICLE 6. (Refers to other crimes and offenses committed by Italians in foreign countries.)

"ARTICLE 7. Crimes or offenses committed in foreign countries not included in the cases mentioned in article 5 by *a foreigner* to the detriment of a citizen or of the state of Italy, and punishable by the laws of the Kingdom as well as by those of the state in which they are committed, when the guilty party has come in any manner into the state, and when offenses are concerned in which a complaint has been made by the injured party, may be tried by the courts of the Kingdom, the mildest law being enforced. * * *

"ARTICLE 8. The provisions of Articles 6 and 7 are not applicable:

"(1) When, according to either law, penal action is no longer admissible.

"(2) When crimes are concerned for which, according to the second paragraph of the ninth article, extradition is not permitted (political crimes or crimes connected therewith).

(3) "When the prisoner, having been accused in a foreign country, has been acquitted, or if he was convicted, when he has suffered the penalty, or when the time for inflicting the same has passed. If he has not suffered the full penalty the trial may be renewed by the courts of the Kingdom, allowance being made for the portion of the penalty already suffered."

These quotations are sufficient to show that, with the exception of the provision directing the enforcement of the lightest penalty by both laws, and with the exception of merely political crimes, article 5 of the Italian code is substantially article 185 of ours, and that article 7 is substantially 186 of our code, which latter article has occasioned so much talk in the Cutting case. There is another difference, which is that the Mexican code requires, in its fifth division, that the offenses with which a foreigner is charged should render him liable to a severer penalty than imprisonment for eleven months, whereas that of Italy establishes no such limit. The general provision of our article and four of its five requirements are produced in that which I have cited. This is a very remarkable coincidence in such a matter, in which a nation may freely choose, without rendering itself liable to censure, between two rival doctrines, paying due attention to territoriality, personality, or the extraterritoriality of the penalties.

Let us now examine, although very briefly, the reasons which Mr. Mancini had to adopt the provision contained in article 7 of the Italian penal code. "I have exam-

ined the subject," says he, "taking as my guides *the sound and generally accepted principles of international law.* The first among these is that of the reciprocal independence of nations and of the political sovereignties which rule them.

"This principle intrusts the guardianship of public order in every country to the action of the national Government exclusively, and prohibits, with jealous care, any interference on the part of any foreign Government. It is difficult to reconcile with this principle that which grants to any sovereignty, without any special legal title, promiscuous jurisdiction for the repression of disturbances of public order committed in foreign countries, when the disturbers are not citizens of the country inflicting the punishment. * * * It is, however, necessary to seek a special title, one that will put in motion, in determinate cases, the penal jurisdiction of a state in the case of crimes committed in foreign countries. This title can not be the same in the case of crimes committed by our citizens and in that of those committed by foreigners.

"In none of these cases, however, should the authority of the law-maker be confounded with the jurisdictional competency of the judge."

Mr. Mancini then goes on to show that the origin of the right of a country to punish one of its citizens, when he has committed a crime in a foreign country and has returned to his own, is not only the *personal statute,* but also the public weal; and after various considerations he adds:

"On the other hypothesis, viz, that the person who has committed a crime in a foreign country is a *foreigner* in a case in which his offense has done injury to one of our citizens, or in general to the state and the Italian Government, and when, moreover, the act committed is regarded as a crime by both nations, it is understood that society in both countries is interested in having the offender brought to justice so that social order may be maintained; hence arises a legitimate promiscuousness, both in the exercise of legislative authority and in the jurisdiction of the courts, although with the same order of prejudice and preference."

I will not prolong my quotations, it being my object simply to call your attention to Mr. Mancini's statements, since by his authority and by the reasons adduced by him, it is shown that our article 186 is not at variance with the first principles of law. That it mainly resembles the provisions contained in the latest penal code of Italy, as you very correctly stated to Mr. Bayard, is shown by the quotations made in the present note; and although it is true that that code is not yet in force, that fact is owing to difficulties connected with its second part, which has not yet been revised by the chamber of deputies of that country, not on account of anything connected with Book 1, which was definitely approved in 1877, as I have already remarked. Our article likewise bears a resemblance to the laws of various other European nations, on the general point of the punishment of crimes committed by foreigners in foreign countries, when such foreigners afterwards come to the country, and thus become amenable to its laws. This is seen by the quotations made from foreign codes in the examination of the Cutting case, made by Judge Gamboa. It must not be thought, therefore, that it is at variance with international law, whatever allegations have been made against it.

I herewith send you a list of the principal countries whose laws punish crimes committed in foreign countries by subjects of the state, and also of those whose laws declare them liable to punishment even when they have been committed by foreigners.

I reiterate to you, etc.,

MARISCAL

[Inclosure 3.]

Nations that punish crimes committed in foreign countries by their own subjects.

France: Code for the preliminary examination of criminals and law of July 3, 1866.
Bavaria: Penal Code of 1861.
Austria: Penal Code of 1872.
Prussia: Penal Code of 1851.
Wurtemberg: Penal Code of 1839.
Saxony: Penal Code of 1838.
Italy: Penal Code of 1859.
Belgium: Law of October 30, 1836.
Portugal: Penal Code of 1852.
Baden: Penal Code of 1845.
Grand Duchy of Oldenburg: Penal Code of 1814.
Greece: Penal Code of 1834.
Holland: Code regulating the preliminary examination of criminals.
Brunswick: Penal Code of 1840.
Grand Duchy of Hesse: Penal Code of 1841.
Ionian Islands: Penal Code of 1841.
Norway: Penal Code of 1841.
Russia: Penal Code.
German Empire: Penal Code enacted by the law of May 15, 1872.

Nations that punish, more or less, crimes committed in foreign countries by foreigners (when such foreigners enter their territory.)

France: Code regulating the preliminary examination of criminals, and law of July 3, 1866.
Austria: Penal Code.
Prussia: Penal Code.
Portugal: Penal Code.
Italy: Penal Code of 1859, and Book 1, approved in 1877, of the code introduced by Mr. Mancini.
Belgium: Penal Code.
Bavaria: Penal Code.
Norway: Penal Code.
Wurtemberg: Penal Code.
Saxony: Penal Code.
Baden: Penal Code.
Oldenburg: Penal Code.
Brunswick: Constitution, article 205.
Hanover: Penal Code.
German Empire: Penal Code enacted by the law of May 15, 1872.

[Inclosure 4.—Translation.—Editorial from El Foro, a journal of legislation and jurisprudence, August 6, 1886, published in the City of Mexico.]

THE CUTTING AFFAIR.

In the general expression whereby the whole press has put forth its unanimous opinion as to the justice which, in this matter, is on the side of Mexico, El Foro has not permitted its voice to be heard, because it desired to speak with perfect knowledge of the case in order to treat it in a manner befitting the character of our journal, and from a purely scientific point of view. Now that we have obtained the fullest details of the incident, it enters into the field of discussion, and does so with positive pleasure, for our course as Mexican journalists would be unseemly did we not raise our voice in favor of our country, and the more so as the case comes within the legitimate province of our journal, being a question of private international law.

The facts of the case, separated from those which lack importance, are very simple.

Señor Medina was insulted by Mr. Cutting in a publication made by the latter in Paso del Norte, and made complaint thereof, accordingly, before the local judge. Thereupon an amicable composition (*conciliacion*) was effected, whereby the affair was terminated through the formal offer of Cutting to apologize to Medina in the same publication which had served as an organ for defaming him.

This, in fact, he did, although putting the apology (*retractación*) in microscopic type; but shortly after Cutting crossed the Rio Grande and in El Paso, Tex., caused to be inserted in the newspaper El Centinela† the same attack and the same insults which had been retracted before the judge of Paso del Norte when the act of composition was made effective.

Being in favor of clearness of statement in such questions we intentionally refrain from engulfing ourselves in the difficult field (*sic*) of metaphysics, and consequently we do not in any way connect the composition of which we have just spoken, the origin of which was an offense *committed in Mexico*, with the injuries inflicted through the means of El Centinela (he means, the El Paso, Tex., Herald); and in order to enter at once upon the question with all its apparent difficulties, we will take it for granted that not even the remotest relation exists between the two acts stated.

We set out, therefore, with those which took place on American soil, which we set forth in the following terms in order to leave the question completely clear and simple: A certain Mr. Cutting who did not even personally know a certain Señor Medina, attacked the latter by means of El Centinela (the El Paso, Tex., Herald), a journal published in El Paso, Tex., carrying his attack to the extreme of calling him "a fraud" (*estafador, which literally means a swindler*) or, in other words, *defaming him*, on the assumption that, as defined by article 642 of the Mexican penal code, "defamation consists in communicating with malicious intent (*dolosamente*) to one or more persons the imputation that another has done an act, whether true or false, specified or vaguely expressed, which may occasion him dishonor or discredit or expose him to the contempt of any one."

Señor Medina, who is a Mexican and a resident in Paso del Norte, went before the judge of that place accusing Mr. Cutting of defamation; and as it seems that Cutting came to Paso del Norte, the Mexican judge arrested him and put him in jail.

Cutting without in any way defending himself before the judge who conducted the proceedings, applied to Mr. Brigham, the American consul in Paso del Norte, who,

*Insertions in and additions to this list are made from pages 39 and 40 of the Mexican official publication on the case of A. K. Cutting.

†This is a mistake. The second publication was in the El Paso (Texas) Herald. El Centinela was Cutting's paper, published at Paso del Norte, Mexico.—TRANSLATOR.

in turn, addressed himself to the Secretary of State, at Washington, Mr. Bayard, who, giving ear to the complaint, initiated a complaint, in the diplomatic channel, through the American minister in Mexico, Mr. Jackson.

These facts being stated, we will now reply to the questions of law involved therein, which are as follows:

Has the conduct of the authorities of the State of Chihuahua been legal and proper?

Is the diplomatic resort admissible in the case?

In the United States, as in Mexico and as in every cultured nation, is understood by *trial* (*juicio*) the lawful contention of the plaintiff and the accused *before a competent judge;* and from this definition it follows that *the competence* of the judge before whom the debate takes place is one of the essential requisites for the existence of the action. For this reason, jurists designate the question relative to the competence of the judge as preliminary or anteceding procedure.

As respects the case under consideration, the meaning of this word *competence* has been confounded with that of the phrase *jurisdiction.* The truth is there are radical and profound differences between them. "It is necessary," say several celebrated commentators*, "not to confound jurisdiction with competence. The former is the power wherewith judges are invested to administer justice; and the latter is their capacity (*facultad*) to take cognizance of certain matters, either from the very nature of the thing or by reason of the persons—the first is generic, the second specific. * * *"

But these same differences, the shade of meaning of which is admirably expressed in the doctrine cited, do not exhibit any importance in cases like the present, in which it is much the same whether we speak of the genus or the species, and therefore, in this paper we shall indifferently make use of the words *competence* and *jurisdiction.*

It is indubitable that the local judge of Paso del Norte possessed competence to order and carry into effect the arrest (*detencion preventiva*) of Mr. Cutting. Why? By reason of the provision of article 186 of the penal code of the district, which is in force in the State of Chihuahua.

The text of this provision is as follows:

"Offenses committed in foreign territory by a Mexican against Mexicans or against foreigners, *or by a foreigner against Mexicans,* may be punished *in the Republic* and in conformity with its laws, if the following conditions are found joined in the case:

(1) "That the accused party should be in the Republic, whether because of having voluntarily come hither, or by reason of having been extradited.

(2) "That, if the injured party be a foreigner, complaint shall have been made by the legitimate party.

(3) "That the accused shall not have been finally tried in the country where he offended, or, in case he has been tried, that he shall not have been acquitted, amnestied, or pardoned.

(4) "That the breach of law whereof he is accused shall be considered an offense in the country where it was committed and in the Republic.

(5) "That in conformity with the laws of the latter the breach of law shall entail a more severe punishment than that of 'greater detention' (*arresto mayor*)."†

An attentive perusal of this express precept of the law, and a knowledge of the facts of the case, are sufficient to enable simple common sense to approve the conduct of the judicial authority of Chihuahua. In effect the concurrence of the five conditions prescribed by the above-cited article 186 is beyond a doubt.

(1) Mr. Cutting came to the Republic voluntarily;

(2) Señor Medina, notwithstanding that he was a Mexican, brought action in due form;‡

(3) Mr. Cutting was not only not tried, but he was not even under accusation in the United States;

(4) The defamation of which Señor Medina complained is considered an offense both in Mexico and in the United States. The penal code of the State of Texas, promulgated July 24, 1879 (Title XVI, article 617), punishes *defamation by means of a printed libel* with a fine of not more than $2,000 and imprisonment in the county jail not exceeding two years. And article 644 of the Mexican penal code, above referred to, reads literally thus: "Insult, defamation, and calumny are punishable, *whatever be the means employed to commit those offenses,* such as spoken words, manuscript, or

* Manresa, Miguel, and Reus—Commentaries on the Spanish Law of Procedure, Mexican ed., vol. 1, p. 4.

†*Arresto mayor* is detention, without labor, for from one to eleven months, as distinguished from *arresto menor,* which lasts from three to thirty days. If the detention exceeds eleven months, it is called in Mexico "prision," *imprisonment.* See article 124, Mexican Penal Code.—TRANSLATOR.

‡In due order that not the slightest doubt may exist as to our good faith, we hasten to say that *the bringing of an action was indispensable,* although not because the offender was a foreigner, but because the offense was defamation.

printed writing, telegrams, engraving, lithography, photography, drawing or painting, sculpture, dramatic representations, and gestures."

Finally the penalty assigned to the defamer who imputes a criminal offense to the person defamed* is greatly in excess of "arresto mayor,"† since article 646 of our penal code prescribes that "Defamation shall be punished with the penalty of from six months of detention to two years of imprisonment,‡ and a fine of from $300 to $200, *when the imputation is of a criminal offense*, or of some deed or vice, which may occasion to the offended party dishonor or serious prejudice."

After this, can any one rationally doubt the justice of the proceedings of the judicial authority of Chihuahua?

The provision of article 186 of our penal code is not in discord with the principles of international law. This article 186 being modeled upon articles 5 and 7 of the French code of criminal procedure, let us hear what is said in respect thereto by one of the most distinguished expounders of penal law in that nation.§ "The most conspicuous of these cases (those in which a foreigner is punished for an offense committed in a foreign country) are: First, those where the crime, although committed beyond the frontiers of the state, is against the state itself, attacking its existence or its domestic or foreign security or its public wealth; secondly, *those of the nature of common crimes against individuals, where the guilty party, coming into the national territory, brings with his person the danger of repeating the crime (reincidencia), a menace to public order, a provocation to contention, and the peril of bad example. The social interest of the state is even greater if the guilty party is one of its own citizens, or if the offense has been perpetrated against one of its citizens.*"

The authoritative publicist, Mr. Foelix, in approving the provisions of articles 5 and 7 of the French penal code of criminal procedure and in giving his opinion in the same sense as we have seen that Ortolan has done, cites five notable writers who belong to the same communion of ideas in this respect: Voet, Boehmer, Martens, Saalfeld, and Pinheiro Ferreira;‖ and when he takes up the positive laws which have been enacted on the subject, he shows us that article 186 of our penal code is not alone in agreement with the French code, but also with those of the Italian countries, of the German States, and of Norway.¶

It being thus demonstrated how much in conformity is the Mexican law with the principles of international law, as well as the justness of the proceedings of the authorities in Chihuahua, which proceedings were in strict subjection to the text of

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* Cutting called Medina *estafador* (swindler), and swindling is considered a criminal offense in article 414 of our penal code, and punished with the penalty assigned to theft (*robo*) in the succeeding article 415.

† "*Arresto mayor*," says article 124 of our penal code, "shall last from one to eleven months, and when by accumulation of two penalties it exceeds the latter term, it becomes converted into imprisonment (*prision*)."

‡ Article 66 of our penal code says: "Every temporal punishment shall be of three degrees, namely: *Minimum, medium, and maximum, except when the law fixes only the first and the last. In such a case the judge may apply the penalty he deems just, within the two limits assigned.*"

§ Ortolan.—Eléments de droit pénal, No. 377.

‖ Foelix.—Traite de droit international prive, No. 574.

¶ Foelix, Op. cit., Nos. 578 to 596. The following is the text of some of those codes:

"If a foreigner has committed a crime or offense, outside of our states, against the constitution of the monarchy or to the prejudice of the public effects or the moneys of our states, he is treated as a subject and punished according to the present law. If the crime or offense do not come within the categories specified in the foregoing article, *the foreign offender shall be arrested*, and concerted action shall be promptly taken with the state in whose territory the crime or offense was committed, for his extradition. *If this state refuses to receive him or to proceed against him in some other way than the present law prescribes, then proceedings in conformity with the present law shall be had against the offender.* * * *" (Sections 32, 33, and 34 of the penal code of Austria.)

"*Foreigners under prosecution for crimes or offences committed outside of the Kingdom shall be punished in conformity with the law of the place where the crime or offense was committed.*" (Section 14, part II, title 29, of the criminal code of Prussia.)

"Foreigners shall be tried, in conformity with the provisions of the present code, for any crime or offense which they may commit within the territory of the Kingdom; they shall not be so tried for breaches of law committed in a foreign country, unless such infractions injure our person, or the State of Bavaria, or one of our subjects." (Article 4 of the penal code of Bavaria.)

"Foreigners shall be tried according to the laws of the Kingdom, and by its courts, on account of the crimes or offenses which they may commit, in the Kingdom *or outside thereof*, if they thereby injure Norway, or Norwegian subjects, or lastly, foreigners who are found upon Norwegian vessels." (Section 2 of the penal code of the Kingdom of Norway.)

the law, it is opportune to analyze, although briefly, the conduct of Mr. Cutting and of his consul, Mr. Brigham.

All civilized nations, according to the authoritative declaration of the publicist we have just cited (Foelix), agree that, in the matter of the proceedings of courts, that is to say, in trials (*enjuiciamiento*), the sole applicable law is *that of the place* in which the trial is conducted. "The competence of the authorities and *the form* of procedure before them are controlled by the law of the country where the action is instituted, whatever may be the law under whose empire have occurred the acts which give rise to such action. In effect, it follows from the principle of the independence of states that the organization and the competence of the authorities of each one of them cannot be dependent upon the laws of another state; and, likewise, the formalities to be observed by the parties for the institution and conduct of an action before the authorities, as well as the rules to be observed by these latter in rendering a judgment, can not derive their sanction except from the law of the same territory; otherwise these authorities would depend in fact upon the state whose laws laid down the rules of their conduct. *No example is found of a nation having accorded any effect whatever, in its own territory, to foreign laws concerning the competence of the authorities and the form of procedure before them.*"

"The formalities of which we have spoken are comprised under the designation of acts *ordinatoriae litis*, as distinguished from such as belong to the basis of the action itself, which are called *decisoriae litis.* * * *

"The authorities are unanimous in admitting the principle thus enunciated in this section. We refer to Fabre, Paul, Voet, Sande, Burgundus, Rodenburg, Boullenois, Bouhier, Mevius, Hommel, Hert, Weber, Glück, Danz, Tittman, Meier, Merlin, Messrs. de Linde, Mühlenbruch, Mittermaier, Wening-Ingenheim, Pardessus, Henry, Kent, Wheaton, Rocco, and Burge."*

Now then, the law of criminal procedure of Chihuahua provides and regulates the manner of substantiating a question of competence.

Articles 286 and 410 to 413 of the Code of Criminal Procedure in force in Chihuahua are as follows:

"ARTICLE 286. If the accused party desires to found an *exception upon the incompetence*, or any other exception which extinguish the penal action in conformity with title vi, book 1, of the penal code, a separate proceeding shall be followed in conformity with articles 410 to 413.

"ARTICLE 410. Any of the exceptions mentioned in the preceding article having been set up, the judge shall appoint a day for hearing the same, and order the parties to be summoned. The hearing shall take place within eight days thereafter.

"ARTICLE 411. The day of the hearing, the accused party being present, if he so desire, the defending counsel shall present his exceptions, the civil party shall set forth whatever he may deem conducive to his rights, and the public ministry shall present and argue its conclusions.

"If testimony be demanded, and the judge decide the demand in order, it shall be taken in the said hearing.

"ARTICLE 412. The judge shall render a decision upon the exceptions within three days at the furthest.

"ARTICLE 413. *The decision to which the preceding article refers may be appealed from by either side.* The motion for appeal shall be made at the time the decision is made known, or at latest within three days thereafter, *and shall be heard in the superior court*, following there the same procedure as is prescribed in the three preceding articles. The decision in the second instance shall be executory."

The task of Mr. Cutting and his consul was, consequently, easy and simple. Instead of engaging Mr. Bayard's attention, it would have sufficed for them to raise the question of competence (if they believed the judge of Paso del Norte to be incompetent) *by refusing to acknowledge his jurisdiction.* The decision of that judge, if they considered it contrary to their rights, *was open to appeal for all its effects*, and for that reason the case would have been passed upon in review by the (*superior*) court of Chihuahua, where it was certain to have all the enlightenment of magistrates learned and expert in the science of the law.

Our laws have wisely foreseen the cases where diplomatic intervention is admissible. The new alien law, of the 28th of May of this year, has provided that:

"ARTICLE 35. Foreigners are obliged to contribute to the public expenses in the manner prescribed by the laws, and to obey and respect the institutions, laws, and authorities of the country, *submitting themselves to the decisions and judgments of the courts*, without attempting any other resorts than are conceded to Mexicans. *They can only appeal to the diplomatic channel in case of denial of justice or intentional delay in its administration after having exhausted in vain the common resorts created by the laws and in the manner determined by international law.*"

*Foelix, op. cit. No. 125. (Foelix's text has been translated from the original, volume 1, pages 275–277. where reference is shown to each of the authors cited.—TRANSLATOR.)

The same spirit inspired the law of November 26, 1849;* and it is even more explicit in its declarations.

And the doctrines taught by international law are identical with the laws just quoted.†

When there could have been no denial of justice nor delay in its administration, since the law had begun to take its first steps and the first pages of the proceedings were already recorded, was recourse to the diplomatic channel authorized?

We have concluded for to-day, and although—we say it with sincerity—we put forward no pretension of our own merit, so abundant and great is the justice of the cause of Mexico that we trust we have begotten in the minds of our readers the following deep convictions:

The authorities of Chihuahua have proceeded legally.

Mr. Brigham and Mr. Cutting mistook the path they should have followed, since, instead of subjecting themselves to the law *ordinatoriae litis* and denying the jurisdiction of the judge, they applied to Mr. Bayard.

It can not be said that even most remotely had the case become fit for diplomatic treatment.

We say it without vainglory, every nation which boasts of culture—and among them we are pleased to count the United States—must reach this conclusion: That in Cutting's case the right is on the side of Mexico.

JOSÉ M. GAMBOA.

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*"When, upon the complaint of a commercial agent, or without the intervention of such agent, a reclamation is presented to the General Government concerning matters which, according to the laws of the country, should be decided by the Federal or State courts, the following points are to be borne in mind in disposing thereof:

"1. That, according to the general principles of international law, according to the express stipulations of the treaties which bind the nation, and according to the provisions of the Federal Constitution, all foreigners enjoy the same guarantees and rights as native citizens as far as the administration of justice is concerned.

"2. That it is the duty of the Government to use all the means placed at its disposal by the Constitution and the laws, in order to make this principle of equality and justice a reality for them.

"3. That consequently, neither with a view to injuring nor favoring foreigners, can any measure be adopted impeding or delaying the institution or the continuance of the legal proceedings whereby the case is to be decided, nor any measure looking to the appointment of extraordinary investigating judges, or designating courts other than those which are competent according to the laws of the country.

"4. That, according to an elementary rule of the common law, the last sentence pronounced in a legal case is regarded as being just, and as being proper to be executed in the country in which it is promulgated.

"5. That when, in cases determined by international law, a reclamation or complaint is made on account of denial of justice or intentional delay in the administration thereof, it must be fully proved that such outrages are real and manifest, that the laws of the country have been notoriously violated, and that, in order to obtain justice, proper and sufficient allegations, petitions and appeals have been made and sustained at such time and in such manner as the said laws prescribe, according to their provsions, in order to secure judicial correction of these abuses, or lawful redress for the damage thereby occasioned without these steps having produced their legal effects through the manifest fault or negligence of the judicial authorities which took cognizance of the case.

"6. That, the same proof being presented, the Government shall use the means placed at its disposal by the constitution and the laws, to the end that complaints concerning the execution of sentence from which there is no appeal may receive proper attention. Those, however, which provide for a payment for which the Government is responsible, can not impair the exact execution of the conventions relating to the public debt, nor the laws concerning the execution of awards made against the federal treasury." (Article 13 of the law of November 26, 1859.)

† We quote from the celebrated *Repertorio* of Dalloz the following ideas (under the heading of "*Denial of Justice*"): "There is a denial of justice whenever the judicial authority refuses to pronounce a formal judgment upon the main case or upon any of its incidents in the proceeding before it; but, standing alone, the fact of deciding upon either the main or the incidental question, *in whatever sense it be*, can not be alleged as a denial of justice, even though it may be said that the decision is iniquitous or contrary to express law. As for delay in the administration of justice, it ceases to be intentional if the judge bases it upon any reason of law, or upon any physical impediment which he is unable to avoid."

No. 495.

Mr. Romero to Mr. Bayard.

[Translation.]

LEGATION OF MEXICO,
Washington, December 4, 1886. (Received December 4.)

Mr. SECRETARY: I have the honor to inform you that I have received instructions from my Government, by telegraph, to apply to that of the United States for the extradition of a German named M. R. Mayer, who has been guilty of a swindling operation in the City of Mexico, having represented himself to be Mr. Abbey's agent for the sale of season tickets for the opera of Madame Adelina Patti's company, and having absconded from that city after fraudulently securing upwards of $20,000. To-day's papers have published the particulars of this swindle.

Mayer appears to have gone in the direction of El Paso, Tex., on his way to this country. He is a short and stout man, of light complexion, with black hair, heavy moustache, and about forty years of age.

Pending the receipt of the necessary documents from the Mexican authorities, making application for his extradition, I will thank you, Mr. Secretary, if you have no objections, to cause orders to be issued for Mayer's arrest, so that the ends of justice may not be defeated by his escape.

Be pleased, etc.,

M. ROMERO.

No. 496.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 8, 1886.

SIR: Referring to your note of the 4th instant, stating that a German, named M. R. Mayer, who has been guilty of a swindling operation in the City of Mexico, having fraudulently obtained upwards of $20,000 by representing himself to be the agent of Mr. Abbey for the sale of season tickets for an operatic performance by the company of Madame Adelina Patti, is believed to have fled to the United States, and requesting this Department to cause orders to be issued for Mayer's arrest, so that the ends of justice may not be defeated by his escape, I have the honor to inform you that, in the opinion of the Department, the provisions of section 5270 of the Revised Statutes of the United States are sufficient for the purpose of obtaining the fugitive's arrest, and that the Department is not authorized to take any action in the present stage of the case. It may not, however, be improper to observe that there is no specification in your note of any of the extraditable offenses enumerated in the treaty of December 11, 1861, which regulates the subject of extradition between the United States and Mexico.

Accept, etc.,

T. F. BAYARD.

No. 497.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, December 8, 1886. (Received December 9.)

Mr. SECRETARY: I have had the honor to receive your note of this date, wherein, referring to my note of the 4th instant, in which I asked the arrest of an individual who assumed in the City of Mexico the name of Mr. Marcus R. Mayer, agent of Mr. Henry E. Abbey, and who, according to reports published by the papers of New York, appears to be really named Charles Bourton, and who in that city fraudulently obtained a considerable sum of money through the sale of tickets for the operatic performances of the company of Signora Adelina Patti, you were pleased to state to me that, in the opinion of your Department, the provisions of section 5270 of the Revised Statutes of the United States are sufficient for the purpose of obtaining the arrest of the fugitive, at the same time remarking that my note did not express any offense enumerated in the treaty of December 11, 1861, between Mexico and the United States, as having been committed by the person in question.

Although, because sufficient time therefor has not supervened, the data to enable a judgment to be formed of the precise nature of the offense have not yet been received, I deem it to be comprised in that of forgery mentioned in the third article of the convention of December 11, 1861, since Bourton assumed in Mexico the name of Marcus R. Mayer, who is the real agent of Mr. Abbey, and under that name issued tickets and gave receipts for the money which was paid to him.

I have already given instructions to the Mexican consuls at El Paso and Laredo, Tex., and in the cities of New York and New Orleans, to go before the judge of the respective district for the purpose of procuring the arrest of Bourton, in compliance with the provisions of section 5270 of the Revised Statutes of the United States; but these instructions will be insufficient if the aforesaid consuls be not aided by the police of the respective localities, since as the guilty fugitive comes in disguise it will be very difficult for the consuls mentioned to know when he arrives in or passes through the cities named, and only the vigilance of the police can discover this. For this reason, the recommendation which I made in my note of the 4th instant had also for its object that the police should be advised, that they might exert their vigilance in order to be able to apprehend the fugitive, if the Department should deem itself authorized to do so.

Be pleased, etc.,

M. ROMERO.

No. 498.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, December 15, 1886.

SIR: Referring to your note of the 8th instant, relative to the case of Marcus R. Mayer, alias Charles Bourton, charged with obtaining money in the City of Mexico by the fraudulent sale of tickets for the operatic

performances of the company of Madam Adelina Patti, I have the honor to inform you that this Department, while desirous of aiding in every proper way the execution of the treaty of the 11th of December, 1861, is not, in my judgment, authorized to advise or instruct the police in the various localities named in your note to exert vigilance in the apprehension of the fugitive.

As has already been pointed out, the provisions of section 5270 of the Revised Statutes are deemed sufficint for the purpose of obtaining the fugitive's arrest, and unless some other way is prescribed by treaty those provisions contain the only method prescribed by the laws of the United States for the institution of proceedings in extradition. Under that law extradition proceedings are initiated, like any other criminal prosecution, by the issuance of a warrant of arrest by a competent magistrate upon evidence required by statute of the commission of the offense charged.

The arrest of the fugitive upon this warrant is the duty of local police authorities, over whom this Department exercises no supervision, and whom it is not competent to advise or instruct.

Accept, etc.,

T. F. BAYARD.

No. 499.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,

Washington, December 15, 1886. (Received December 16.)

Mr. SECRETARY: I have had the honor to receive your note of today, in which, acknowledging that from this legation of the 8th instant concerning the case of Marcus B. Mayer, alias Charles Bourton, accused of fraudulently obtaining money in the City of Mexico by means of the sale of counterfeit tickets for the concerts of Madam Adelina Patti, you were pleased to inform me that it was not in the power of your Department either to advise or instruct the police authorities in the places at which it seemed likely that Bourton would cross from Mexico into the United States, and that the only method of obtaining his arrest, in the absence of a special provision prescribed by treaty, was contained in section 5270, Revised Statutes of the United States.

I am convinced that the Department of State has no power to intervene in this matter, conformably with the laws of this country, and consequently I withdraw the requests I made of you in my notes of the 4th and 8th instant concerning this affair.

I have instructed the Mexican consuls at the points mentioned in the second of my notes above referred to to supply the place of, the case arising and in so far as they may be able, the intervention of your Department requested in my two notes.

Be pleased, etc.,

M. ROMERO.

No. 500.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, March 18, 1887.

DEAR MR. ROMERO: Referring to the conversation I had the pleasure to hold with you on the 8th instant, in relation to the recent occurrence at Nogales, I deem it proper to advert to a report which I have just received from Mr. Manning, and which seems to indicate a wide misapprehension by the Mexican authorities of the views and expressions of this Department.

I communicated to you the purport of my telegraphic instruction of the 7th instant to Mr. Manning, in which, recognizing the good disposition of which you had assured me in the name of your Government, I stated that the prisoners rescued should at once be restored to the American jurisdiction and their Mexican rescuers punished by that Government, or else extradited.

I sent that instruction to Mr. Manning on the 7th instant, and the following afternoon received his reply, conveying Señor Mariscal's assurance that the Mexican Government had ordered the immediate restoration of the rescued prisoners and the punishment of the rescuers; thus clearly showing a perfect and gratifying agreement of views.

On the following day, the 9th, Mr. Manning visited the foreign office, at Señor Mariscal's request, and was informed that a telegram had been received from you, dated the 8th, in which it was stated that I "had given the Mexican Government the option to deliver the offenders at Nogales to the American authorities for punishment, or for the Mexican Government itself to inflict adequate punishment;" that the Mexican Government had determined to follow the latter alternation, "and would punish the perpetrators of the outrage promptly and adequately;" and further, that Lieutenant Gutierrez, who, it was explained, had been arrested on the American side, and there rescued by the Mexican soldiery, was still at large, but that the Mexican Government "is on his track, and will catch and *punish him.*"

No such "option" was created or tendered by me to the Mexican Government as to the punishment of the prisoners rescued from the jurisdiction of the United States authorities. Having in mind the provision of our extradition treaty which relieves Mexico from the obligation to extradite her own citizens, I refrained from formal demand for the surrender of those Mexican soldiers who had invaded our territory and forcibly rescued a prisoner then in legal custody, and intimated that if Mexico did not herself assert the right she claims in respect of punishing her own citizens, the extradition of the rescuers might reasonably be expected. As to the prisoners so rescued from the custody of the United States officials in Arizona, no such alternative was contemplated or suggested by me. Armed invasion of our territory and rescue of a prisoner from our lawful jurisdiction could confer upon the rescued person no asylum in Mexico, nor bring him within the formalities of extradition. It becomes, under such circumstances, the simple international duty of the Mexican Government to undo the wrong committed by the officers and soldiers of its own army by restoring the rescued prisoners to the jurisdiction from which they had been wrongfully taken, and the obligation to do so was cheerfully admitted by the Mexican Government on the 8th instant by Senor Mariscal before the receipt of your telegram to him.

I have telegraphed to Mr. Manning, correcting the evident misapprehension which has arisen; and I have the honor to beg that, if it is due to any misconception on your part of our conversation on the 8th instant, you will at once aid me in its correction.

I am, etc.,

T. F. BAYARD.

No. 501.

Mr. Romero to Mr. Bayard.

[Translation.]

LEGATION OF MEXICO,
New York, March 19, 1887. (Received March 22.)

MY DEAR MR. BAYARD: I have to-day had the honor to receive your note of yesterday, in which, referring to our conversation of the 8th instant, relative to the punishment of the parties who are responsible for the occurrences which took place at Nogales, Ariz., on the 3d, you are pleased to inform me that there has been a misunderstanding on my part of the sense of the aforesaid conversation, and request me, if such was the fact, to assist you in correcting that misunderstanding.

I gladly telegraphed, without delay, the contents of your note to which I am now replying to Mr. Mariscal, and on the 11th instant I had communicated to him, likewise by telegraph, your views on this subject, as you are pleased to express them to me in your aforesaid note.

Desiring to keep you informed of the views and intentions of my Government concerning those who are responsible for the incident at Nogales, I called, on the 8th instant, at the Department of State for the purpose of informing you of the contents of two telegrams which I had received from my Government, dated respectively City of Mexico, March 5 and 7, and a written memorandum of which I left with you.

From the conversation which you had with me on that day I understood that, in your opinion, that question might be settled either by the Mexican Government's surrendering the persons responsible for those occurrences to the competent authorities of this country in order that they might be punished here, or by their trial and punishment by the Mexican authorities. This was the understanding which I communicated to Mr. Mariscal by my telegram of that date.

From the conversation which I had with you on the 11th instant, in which you were pleased to show me the telegram you had received from Mr. Manning, bearing date of the 8th, and informing you that Mr. Mariscal had offered to surrender Gutierrez, I saw that either there had been a misunderstanding on my part of our conversation of the 8th or that your views had undergone some modification, since on the 11th you were pleased to state more definitely the views contained in your note of yesterday. I consequently, on that same day, sent a telegram to Mr. Mariscal, informing him that you thought that the question ought to be settled by the surrender of Gutierrez to the authorities of Arizona and the punishment by Mexico of the persons who took him by force from the possession of said authorities, and by another telegram of to-day I give him a summary of the contents of your note to which I am now replying.

I should be exceedingly sorry if my telegram of the 8th to Mr. Mariscal had been instrumental in causing a change in the decision of the

Mexican Government with regard to the punishment of the persons who are responsible for the occurrences at Nogales; but I can assure you that I am certain that this has not been the case, because in all the telegrams that it has addressed to me (the contents of which I have brought to your knowledge), it has uniformly said that they will be punished by the Government of Mexico, and the misunderstanding that may have existed on my part was rectified as soon as I communicated to it your views on this subject, as stated in your conversation of the 11th.

I am, etc.

M. ROMERO.

No. 502.

Mr. Romero to Mr. Bayard.

[Translation.]

LEGATION OF MEXICO,
Washington, March 26, 1887. (Received March 26.)

Mr. SECRETARY: I have the honor to inform you that I have received instructions from my Government to apprise that of the United States that the governor of Sonora has reported to the Department of Foreign Relations of Mexico that the collector of the frontier custom-house at Sásabe has informed him that the authorities of Arizona claim, as being situated within the territory of the United States—so that they may collect taxes thereon—a ranch belonging to Don Fernando Ortiz, which lies in Mexican territory.

From a report made to the department by the federal district judge of Sonora, it appears that a person by the name of George P. Roskruge, claiming to be a surveyor, visited Ortiz' ranch in December last, and raised a flag to the south of the Sásabe custom-house. Being asked what was the object of his mission, he replied that he was going to survey some land by order of the authorities of Arizona; whereupon Ortiz told him that his ranch was in Mexican territory, and near to a federal custom-house. Ortiz showed the surveyor a map of his land, which map also showed the situation of the custom-house, and referred to the monuments which mark the dividing line, which were pointed out to the surveyor by a guide who was furnished by the aforesaid custom-house.

The surveyor was informed that those lands had been surveyed according to the laws of Mexico, and had been declared to be wild lands belonging to that country, a title thereto having been issued in due form to Don Fernando Ortiz. The surveyor nevertheless stated that, in his opinion, the lands in question were in the territory of this country.

In another report of the district judge, bearing date of February 25, 1887, it is stated that, according to information furnished by the collector of customs at Sásabe, the common council of Tucson, with the approval of the governor of Arizona Territory, and basing its action on the survey made by Mr. Roskruge, instructed Mariano Samaniego, the official assessor of that Territory, to call at Ortiz's ranch for the purpose of assessing it for taxation.

Mr. Mariscal has instructed me, as this matter comes under the boundary question between the two countries, to communicate the foregoing facts to you, and to beg you, if there are no objections, to issue

such orders as you may think proper to the authorities of Arizona to suspend proceedings relative to the ranch in question until the boundary line shall have been relocated on that portion of the frontier, for which purpose a treaty has already been signed by the two governments, although it has not yet gone into operation—since the documents in possession of the Government of Mexico, together with the situation of the monuments, and the fact that the Sásabe custom-house lies north of the spot where Surveyor Roskruge placed his first mark, show that the ranch of Fernando Ortiz is situated in Mexican territory, and that, consequently, Mr. Roskruge undertook to survey land belonging to Mexico.

Mr. Mariscal also directs me, Mr. Secretary, to call your attention to the fact that the authorities of Arizona appear to have decided, on their own responsibility, that that land belongs to the United States, notwithstanding the knowledge, which they certainly have, of the statements made to Mr. Roskruge by the owner of the land and the collector of customs at Sásabe.

Be pleased, etc.,

M. ROMERO.

No. 503.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, April 5, 1887. (Received April 6.)

Mr. SECRETARY: I have the honor to inform you, referring to my note of the 26th of March last, that I have received reports that on the 29th of the same month the executive officer (marshal) of the United States in Arizona left Tucson with some deputies for the ranch of San Fernando, to arrest its proprietor, Don Fernando Ortiz, accused of resisting the deputy land-surveyor of Arizona, within the limits of the United States, where they say now that that property is, notwithstanding that for a long time it was recognized as being situated in Mexican territory.

With this object I repeat to you the request that I made in my note of the 26th of March, in order that, if there should be no objection, you will give such orders as you consider proper, so that the authorities of Arizona will suspend all proceedings until the division line has been rectified in this part of the frontier.

Be pleased, etc.,

M. ROMERO.

No. 504.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, April 8, 1887.

SIR: I have the honor to acknowledge the receipt of your notes of the 26th ultimo and 5th instant, relative to the case of Don Fernando

Ortiz, whose ranch is situated in disputed territory, and to say that copies of your two notes have been communicated to the governor of Arizona Territory, the Hon. C. Meyer Zulick, at Prescott, for his information. It has also been suggested to Governor Zulick that all proceedings arising out of the controversy in this case be suspended, pending a final and satisfactory relocation of the boundary line between the United States and Mexico, pursuant to the treaty of July 29, 1882.

Accept, etc.,

T. F. BAYARD.

No. 505.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, April 11, 1887. (Received April 11.)

Mr. SECRETARY: Referring to my notes of the 26th March last and of the 5th instant, and to your reply of the 8th instant, relative to the occurrence at the ranch of Don Fernando Ortiz, a Mexican citizen and director of the revenue of stamps and mails at San Fernando, near Sásabe, I have the honor to inclose to you, for the purpose mentioned in my two aforesaid notes, a copy of a statement which Ortiz addressed to the governor of the State of Sonora on the 2d instant, from which it appears that on the 30th of last March he was arrested by the marshal of Tucson, and that on the 1st of the present month he was made to appear before the court, which postponed his case to the 11th instant, exacting a bail of $1,000 to enable him to remain at liberty.

Be pleased, etc.,

M. ROMERO.

[Inclosure.]

Don Fernando Ortiz to the Governor of Sonora.

I have the honor to communicate to you that on the 30th of March last I was arrested at my ranch of San Fernando, Mexican Territory, by the marshal of this city on account of having been accused before the court with having opposed the measurement of said ranch. I have full assurance of my perfect right in regard to the fault of which I am accused, I possessing my land within the territory of Mexico by legal title from the Supreme Government.

On the first day of this month I was made to appear before the court, and I applied to the vice-consul, begging him to accompany me and to do what he could in my behalf, but I did not succeed in this, and I appeared with my attorney. The court postponed my case until the 11th instant, and a bail of $1,000 was exacted from me in order that I might retain my liberty and appear on the day mentioned.

I return to-day to my ranch, and I bring this statement to your superior knowledge, requesting very respectfully the support of the laws (*autoridades*) that my country may grant me in the defense of my rights as a Mexican citizen.

I assure you, etc.,

FERNANDO ORTIZ.

TUCSON, *April* 2, 1887.

No. 506.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, May 28, 1887.

SIR: In connection with your recent notes, relative to the claim of Don Fernando Ortiz, that his ranch lies within the Mexican and not within American jurisdiction, I have now the honor to apprise you that, in deference to the expressed wishes of the Government of Mexico, the United States authorities in Arizona Territory have been directed to suspend all further action in the matter of the survey of the realty in question, and all proceedings thereunder, pending a definite relocation of the boundary line pursuant to the treaty of July 29, 1882, between the United States and Mexico.

I deem it proper to state, however, that by a dispatch No. 72, of the 12th ultimo, the consul of the United States at Paso del Norte reports that he is credibly informed that the Mexican authorities—presumably those of the State of Sonora, whence arose the original complaint—have abandoned all claim to the territory "on which was located a Mexican custom-house, as also the Ortiz ranch in Arizona."

Mr. Brigham intimates that, should his information be unfounded, he will advise the Department to the contrary. Meanwhile I beg that you will have the kindness to ascertain the truth of the statement and inform me accordingly.

I can not close this note, since the Government of Mexico can not possibly be less concerned than the United States in obtaining all reliable data bearing upon the disputed question, without transmitting for your own and Mr. Mariscal's information a copy of a letter from the governor of Arizona, dated the 26th ultimo, with its accompaniments, one of which, you will perceive, is a sworn statement by George James Roskruge, a United States deputy land surveyor for the district of Arizona, and who made the survey of the lands within the disputed belt. Without wishing for the present to alter the situation, as previously stated, in advance of a formal and final relocation of the boundary line, unless Mexico should voluntarily renounce her claim to jurisdiction over the Ortiz ranch, or intending to reflect upon the character of the information furnished the National Government of Mexico, I can do no less in justice to both Governments than submit for your perusal and action a copy of Mr. Roskruge's sworn statement, which details the circumstances of the complaint and places it in an entirely different aspect, particularly as regards several of its material allegations.

Accept, etc.,

T. F. BAYARD.

[Inclosure 1.]

Mr. Zulick to Mr. Bayard.

PRESCOTT, ARIZ., *April* 26, 1887.

SIR: I have the honor to inclose herein for your consideration a letter from the United States surveyor-general, district of Arizona, and sworn statement of United States Deputy Land Surveyor Roskruge, relative to the case of Don Fernando Ortiz. Also to acknowledge receipt of your letter of the 16th instant, respecting the same, and to state my information is that Mr. Ortiz' arrest was based upon an indictment found by the United States grand jury at Tucson.

I have, etc.,

C. MEYER ZULICK,
Governor.

[Inclosure 2.]

Mr. Hise to Mr. Zulick.

OFFICE OF UNITED STATES SURVEYOR-GENERAL,
DISTRICT OF ARIZONA,
Tucson, April 22, 1887.

SIR: I have the honor to acknowledge the receipt of your letter, with documents inclosed, of the 16th instant. I have endeavored to comply with your request. Immediately on the receipt of the same I requested Surveyor Roskruge to prepare a paper setting forth all the facts in detail in regard to the controversy respecting his survey in connection with the international line between the United States and Mexico, which is herewith inclosed.

I thought it best that you be fully posted as to the facts, in order that the Hon. Secretary of State may have reliable information in connection with this controversy.

I have, etc.,

JOHN HISE,
United States Surveyor-General, Arizona Territory.

[Inclosure 3.]

Deposition of G. J. Roskruge.

George James Roskruge, being duly sworn, upon oath deposes and says the following are the facts connected with the location of the ranch of Fernando Ortiz in the United States.

I am a United States deputy land surveyor for the district of Arizona. On the 16th day of June, 1886, I entered into a contract with John Hise, United States surveyor-general of Arizona, for the surveys of townships located in the southern portion of Pima County, Ariz., including township No. 22 south, range No. 8, east of the Gila and Salt River meridians; said contract known as contract No. 2, and duly approved by the honorable Commissioner of the General Land Office.

On the 9th day of December, 1886, I was engaged in running the section line between sections 19 and 30 in said township 22 south, range 8 east, and while engaged in placing the one-fourth section corner between sections 19 and 30, I observed a man issuing from a house about one-fourth of a mile north of said corner. As he approached, buckling on a revolver, I went to meet him and he told me to come up to the house. I went with him, and on entering was met by a gentleman whom I afterwards found to be the captain of the guard of a Mexican custom-house. He asked me if I spoke Spanish. I informed him I understood very little of the language. He then told me that an interpreter would be there presently. On looking around I saw to my surprise that I was in a Mexican custom-house. In a few minutes the interpreter came in and asked me what I was doing there. I replied that I was a United States deputy surveyor making a survey of Government land. He replied, Do you not know that you are in Mexican territory? I told him I knew exactly where I was, and that I was at least one-half a mile in the United States, and that the national boundary line was south of us. He then went into another office, I following him, where he pointed out on a large map of Mexico, which was hanging on the wall, the national boundary line. I naturally asked him the question, Well, what does that amount to? and informed him that I had data to prove that I was right, showing him sketches of the location of the several boundary monuments along the national boundary in that vicinity, taken from Major Emory's report, at the same time telling him that the survey had been made by a joint commission appointed by Mexico and the United States and approved of by the Governments of both countries, asking to be allowed to send for my instruments, and I would, from the custom-house, show the officers the national boundary monuments, which were plainly in sight on the mountains east and west. To this request I received the answer of "No." I then asked that they send some of their guard or go themselves, and I would show them the line, or that they go with me and show me what they called their line; but still the answer "No, sir." Through the interpreter I was then asked why I had dared to come into Mexican territory with my flag, wagon, mules, and instruments, without coming to the custom-house. I informed them that, being as I was in the United States, I had no idea of a Mexican custom-house being on American soil, and that I had seen nothing on the outside of the house to indicate that it was a custom-house, there being no flag of any

kind displayed on the flag-pole. The interpreter thereupon informed me that they had a flag all the time, but they did not show me one. I desired him to ask the officers to give me a pass, so that should occasion require in the the prosecution of my survey, I and my wagon and men might go into Mexican territory, as we would necessarily have to do in placing the closing corners of the township and section lines on the international boundary line, not wishing to have any trouble with the Mexican authorities, but still the same answer came of "No, sir." I again asked that they send or go with me and show me what they called the line, and at last the interpreter brought to me a Papago Indian, who, he said, would show me some of the monuments along the national boundary line, and I was to pay him the sum of $10 for such service. This being the only act of civility I could get, I accepted it. I was then informed I might go. I called my men together and went to my camp, which was located about 4 miles north of the line. About an hour afterwards the Papago Indian came into camp, and on my interpreter, McDonald (my cook), asking him where he was going to take me to show me the boundary monuments, he replied he was going to take me to Cobita, a distance of 50 miles, to, as he said, cheat me; in fact to show me a wrong monument, to mislead me. On being asked what remuneration he was to get, he said 75 cents. Having no desire to go to Cobita, I paid him the 75 cents, and sent him home. I then proceeded to write the facts of the case to John Hise, esq., the United States surveyor-general, and H. D. Underwood, United States deputy marshal at Tucson, and the next morning I went to the house of Mr. Pedro Aguirre, about one mile from my camp, and on the main stage road from Tucson to Altar, intending to have him send my letters by first conveyance to Tucson, but on my relating the circumstance to him and describing the interpreter, he informed me that the interpreter was Fernando Ortiz, and the owner of the ranch where the custom-house was located; that he was satisfied there would be no trouble if the custom-house officers were rightly made acquainted with the circumstances of the case. I therefore decided not to forward the letters until I had another interview with the officers, and requested Mr. Aguirre to accompany me as my interpreter, which he promised to do, and on the following day we went to the custom-house, saw the officers, and elicited from them the fact that, after I had left, they had consulted together and had come to the conclusion that an injustice had been done to both myself and themselves, I not understanding Spanish and they not understanding English, and that, as far as they were concerned, the interview of the previous day was to them apparently an argument between Ortiz and a surveyor, of the purport of which they knew little or nothing. Mr. Aguirre explained the case to them, and they said, "We offered the gentleman a pass and he refused it." Mr. Aguirre said, "Mr. Roskruge asked you for a pass through your interpreter, Mr. Ortiz, and you refused him one." So it appears that Mr. Ortiz was running the business to suit himself, and winding up the farce by sending one of his Papago peons along with me, to, as the honest Indian said, take me to Cobita, a distance of 50 miles, to cheat or mislead me, for which he was to get 75 cents, the balance, I suppose, going to Mr. Ortiz for his polite accommodation.

The custom-house officers made ample apology, and gave me a pass for 15 days. I left the custom-house and went on with my survey, and whilst placing the closing corner to sections 29 and 30 on the national boundary line, word was brought to me that I was wanted up at the custom-house. I, with my men, went to the place, and on our approach, Ortiz came towards me and spoke to me in Spanish, a language he well knew I spoke very little of. I told him to come to my wagon-driver, who was then in front of the custom-house and who spoke Spanish, when Ortiz, who speaks good English, said, "This is my land; you must have higher authority before you can survey it. I object to your making any survey of this land," or words to that effect. I immediately asked if that was what he had sent for me for, and it appearing to me to be so absurd that it caused me to laugh outright. So I bid (?) him good-day, turned on my heel and walked to my camp. On my return to camp I found there the captain of the guard, who had come to inform me that from the custom-house officers I had nothing to fear; having their pass, I could go where I pleased, but from Ortiz I might expect trouble. I informed him through my interpreter that I was entirely satisfied with the conduct of the officers towards me, and he could inform Ortiz that if he attempted in any way to interfere with my survey that I should have him arrested by the United States marshal. From the information thus received, fearing that Ortiz might give me trouble, there being no protecting authorities nearer than Tucson, a distance of 60 miles, I procured rifles from Mr. Aguirre, and armed a portion of my assistants, and without any further trouble or delay I completed the survey of said townships, 22 south, range 8 east, placing closing corner-monuments along the international boundary line.

I have read the letter from Hon. M. Romero to Hon. Thomas Francis Bayard, dated March 26, 1887. In the letter mention is made of my having "raised a flag to the south of the Sásabe custom-house." In answer I will state that the flags were little red and white flags ordinarily used by surveyors as sight or guide flags, one being

carried by my flagman, and the other on a short pole on my wagon, the better to enable us to see it in brushy or wooded country.

Again, it is written:

"On being asked the object of his mission, he replied that he was going to survey some land by order of the authorities of Arizona."

In answer to the above, I will state that I informed the custom-house officers that I was a United States deputy land surveyor, surveying United States land, acting under instructions from the Commissioner of the General Land Office.

Again, it says:

"Ortiz showed the surveyor a map of his land, which map also showed the situation of the custom-house, and referred to the monuments that mark the dividing line, which were pointed out to the surveyor by a guide who was furnished by the aforesaid custom-house."

In answer to the above, I will say, that the only map Ortiz ever attempted to show me was the general map of Mexico that was hanging on the wall of the office at the custom-house; and on this map I failed to see either the location of the Ortiz ranch and custom-house, or of any of the boundary monuments, and the guide so kindly said to be furnished me by the custom-house and for the use of whom I was to pay $10 and he to get 75 cents, was the Papago Indian who was to take me 50 miles into a desert country to show me a wrong monument, as he said, *to cheat me.* The guide was honest, anyway, and some one failed to get $9.25.

Mention is made in the letter of the land being surveyed according to the laws of Mexico, and title issuing to Ortiz. Of this fact I received no information either at the custom-house or elsewhere, until I saw it mentioned in the above letter, and if it is so surveyed, the Mexican surveyor must certainly have forgotten all about the national boundary line when he ran his line into the United States.

The letter further says:

"According to information furnished by the collector of customs at Sásabe, the common council of Tucson, with the approval of the governor of Arizona Territory, and basing its action on the survey made by Mr. Roskruge, instructed Mariano Samaniego, the official assessor of that Territory, to call at Ortiz ranch for the purpose of assessing it for taxation."

With all due respect to the writer of the above, to me, rather curious paragraph, I will state that Mr. Samaniego is the assessor of Pima County, and that neither the common council of Tucson nor the governor of the Territory of Arizona has anything whatever to do with his duties as such assessor.

That I have correctly closed my surveys on the international boundary line as surveyed by the joint commission of Mexico and the United States and approved by the Governments of both countries, is beyond the question of a doubt.

That the ranch house and outbuildings of Fernando Ortiz are in section 19 of township 22 south, of range 8 east, Gila and Salt River meridian, is also beyond the question of a doubt.

When the civil engineers, Messrs. Sidney R. De Long and Lorenzo D. Chilson, were making the preliminary survey for a railroad from Tucson, Ariz., to Port Lobos, on the Gulf of California, in the State of Sonora, they retraced the national boundary line from the Parjarito Mountains to the Poso Verde Mountains, and in doing so left the Ortiz ranch-house and outbuildings in the Territory of Arizona, and on coming to the main road from Tucson to Altar they planted a post by the side of the road, thus marking the boundary line at that point. This post, I am credibly informed, was shortly afterwards removed.

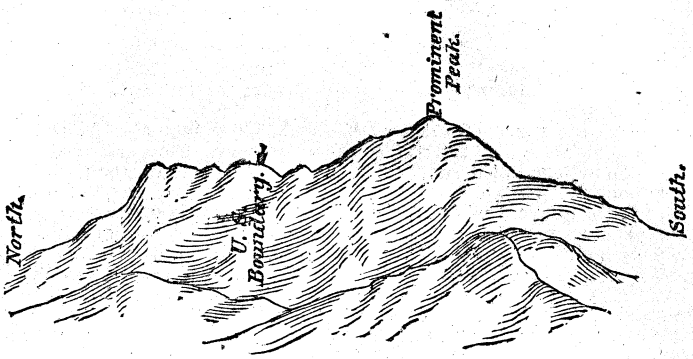
The custom-house was originally located at Sásabe, a point on the main road from Altar to Tucson, and about 5 miles south of the national boundary line, but was, in the month of November, 1886, moved to the ranch of Fernando Ortiz.

Mr. Aguirre and others whom I met in the neighborhood, both Mexican and American, knew that the Ortiz ranch was in the United States, and could also point out to me the monuments on the national boundary line.

I found the country in the valley between Poso Verde and the Sierra de Sonora well marked with small monuments, some with posts, others again with ocotillo sticks having rags on them, and in one or two instances the trees were blazed, the whole line showing conclusive evidence of having been run and marked by some person or persons using an instrument and understanding their business.

Every time I closed my lines on the national boundary I found my instrument to read the same bearing as given by the Boundary Commission, viz, S. 69° 19′ 45″ W., or rather S. 69° 20′ W., being very careful in reversing my telescope from the monument on the Sierra de Sonora on the east to the monument on the Poso Verde Mountains on the west. The monument on the Sierra de Sonora is on the ridge at the foot of a prominent peak. In the Boundary Commission report it says, referring to the location of this monument: "A few feet south of the line is a prominent peak of the Sierra de Sonora, which serves as a good natural monument to mark it." The

following is a correct copy, taken from the report of the Commission, showing the location of the monument and the prominent peak above described:



From XV on Sierra Verde, looking east towards XVI and XVII.

If Mr. Fernando Ortiz had made a correct interpretation on my first visit to the custom-house, I no doubt would have received the pass so courteously offered by the custom-house officers, and thus have suffered no delay or annoyance in the prosecution of my work, and had it not been for the kindly intervention of Mr. Pedro Aguirre and the gentlemanly conduct of the officers at the custom-house a very serious misunderstanding might have arisen between two friendly nations through the false interpretation of Mr. Ortiz.

GEORGE J. ROSKRUGE.

Sworn to and subscribed before me this 21st day of April, 1887.
[NOTARY'S SEAL.] WILLIAM J. OSBORN,
A Notary Public in and for Pima County, Ariz.

No. 507.

Mr. Romero to Mr. Bayard.

[Translation.]

MEXICAN LEGATION,
Washington, June 1, 1887. (Received June 3.)

Mr. SECRETARY: I have had the honor to receive your note of May 28 last, in which, referring to the one from this legation of March 26 last in regard to the complaint made to the Mexican Government that the ranch of Don Fernando Ortiz, a Mexican citizen, which was declared to be situated on Mexican territory, had been surveyed by a United States surveyor as if lying within the territory of that Government, and that the corresponding tax had been levied on it, you were pleased to inclose to me a copy of a letter from the governor of the Territory of Arizona to you of April 26, covering copy of another from Mr. John Hise, surveyor-general of the United States, dated on the 22d at Tucson, to which was annexed copy of a declaration sworn to by Mr. George James Roskruge, deputy surveyor of the United States for the district of Arizona.

In this declaration the statements made in my above-mentioned note of March 26 last are alleged to be thoroughly incorrect and unfounded. It is asserted that Ortiz falsely translated the conversation between Deputy Surveyor Roskruge and the officers of the Mexican custom-

house of Sásabe, and that he intended to cheat him and to defraud him of a sum of money.

I have the honor to say to you in reply that I have without delay transmitted to my Government copies of the documents annexed to your note, which I now answer, and that I have no doubt that it will order a thorough investigation into the facts in order that the complaint made by this legation to your Department may not only be withdrawn, if the statements on which it is based prove incorrect, but that the persons, whether private citizens or public officers, who knowingly made false assertions to the Government concerning official matters, particularly those relating to international questions, may be duly punished.

In accordance with your recommendation I have requested Mr. Mariscal to direct an investigation as to the degree of accuracy contained in the statements made in dispatch No. 72, of March 12 last, from the United States consul at El Paso del Norte, concerning the fact that the Sonora authorities had abandoned all claim that the Mexican custom-house of Sásabe and the ranch of Ortiz were situated within Mexican territory.

The United States Government having accepted the proposition made to it by the Mexican to defer the decision of the matter till the new boundary line be laid off between the two countries, in conformity with the provisions of the treaty of July 29, 1882, I should have nothing further to say concerning it, were it not for the allusions and comments made by Mr. Roskruge in his sworn declarations concerning the statements made in the note on the subject which, under the instruction of my Government, I transmitted to the Department of State on March 26 last, which induce me to state to you that I only faithfully copied in it the statements made in a communication addressed to me by the department of foreign affairs, under the No. 278, and date of the 15th of March, above mentioned, in which I was instructed to present the complaint to your Department. The correctness of the statement of facts recited in my note above mentioned would appear attested by the approval given to my note by the Mexican department of foreign affairs in its note of April 16 last. If the statements of the said note, or any of them, are incorrect, ambiguous, or unfounded, neither the secretary of foreign relations of the United States of Mexico nor I are responsible for them, seeing that they reached us through official and authentic channels, namely, the governor of the state of Sonora, the district judge of the same state, and the collector of customs of Sásabe. The only thing to be done in this case, as I remarked above, is to carefully ascertain the facts, and to punish those who have deceived their Government, if such prove the case.

Be pleased, etc.,

M. ROMERO.

No. 508.

[Memorandum.]

DEPARTMENT OF STATE,
July 15, 1887.

Mr. Cayetano Romero, Mexican chargé, called in response to a letter sent him this morning in regard to the *coup d'état* in Guatemala. I gave him a paraphrase of the telegram from Mr. Hall. He said he did not think there was any ground for this report. I said I hoped not,

and felt very sure that Mr. Mariscal would simply act in a manner to protect his own people, without invading an adjoining territory.

He promised to let me hear from him as soon as he could get a reply from his Government.

T. F. BAYARD.

No. 509.

Mr. Romero to Mr. Bayard.

LEGATION OF MEXICO,
Washington, D. C., July 17, 1887. (Received July 18.)

MY DEAR MR. BAYARD: Referring to our interview of last Friday concerning the message sent to you by Mr. Hall, I have the pleasure to inform you that I have just received a cablegram from Señor Mariscal, dated at Mexico City yesterday, in reply to the one I sent him on the 15th instant, in compliance with your request, and he desires me to tell you that the Mexican troops ordered to the Guatemalan frontier were not sent there to provoke a collision, but simply to protect Mexican interests.

I am, etc.,

C. ROMERO.

No. 510.

Mr. Bayard to Mr. Romero.

DEPARTMENT OF STATE,
Washington, July 18, 1887.

MY DEAR MR. ROMERO: I am much obliged to you for conveying to me Mr. Mariscal's prompt response to your telegram.

I felt it to be my duty to inform your Government of the rumored apprehensions of Guatemala, and I learn with satisfaction that Mexico contemplates non-interference with the domestic affairs of Guatemala within the line of her own natural self-defense.

I trust that a settled government of law may prevail in Guatemala and am very truly yours,

T. F. BAYARD.

NETHERLANDS.

No. 511.

Mr. Bell to Mr. Bayard.

No. 169.] LEGATION OF THE UNITED STATES,
The Hague, September 8, 1886. (Received September 20).

SIR: I have the honor to transmit herewith, for the information and such action as the Department may deem proper, a copy of a correspondence recently exchanged between this legation and Mrs. Catherine G. Lay, of Brooklyn, N. Y., concerning a supposed estate which Mr. E. B. Humphreys, of 38 East 12th street, New York, is said to be representing to the heirs of one Du Boise as awaiting them in the hands of the Dutch Government.

I have, of course, no means of knowing or determining whether a fraud is being perpetrated in this case.

It is apparent, however, from Mrs. Lay's letters, that she suspects that an imposition is about to be practiced upon the heirs of Du Boise.

As my experience in the investigation of such cases at this post convinces me that it would be wise for the Du Boise heirs to save the money they are about to expend, I have thought it might prove useful to furnish you with a copy of the correspondence relating to this particular case.

I have endeavored to send full and special answers to all inquiries addressed to this legation about such claims, but the letters, as in this case, are usually so vague and indefinite, that they seldom furnish any clew upon which to base an investigation.

In case a fraud is being attempted in this case, I trust the Department may find the means to prevent it.

I have, etc.,

ISAAC BELL, Jr.

[Inclosure 1 in No. 169.]

Mrs. Lay to Mr. Bell.

BROOKLYN, *July* 20, 1886.

SIR: I write you if you could give me any information in reference to a claim under the name of Du Boise, which is held by the Government of Netherlands awaiting claimant.

The reason why is that a party in New York is representing to the decedent's heirs that such is the case, and I would like to know if there is any thing in it.

By doing so I shall esteem it a great favor.

I remain, etc.,

CATHERINE W. LAY.

[Inclosure 2 in No. 169.]

Mr. Bell to Mrs. Lay.

LEGATION OF THE UNITED STATES,
The Hague, Netherlands, August 4, 1886.

MADAM: In your letter of July 20, 1886, you represent that a party in New York has represented to the heirs of one Du Boise that an estate is awaiting them in Holland.

In order that I may fully investigate the matter I desire to be furnished with a statement in writing from the party to whom you refer, giving the details of the inheritance so far as they may be known,

In case you can not furnish me with such a statement, kindly give me the name and address of the party to whom you refer.

The records of this legation afford ample proof that impositions have been practiced by designing persons in the United States in connection with the circulation of rumors about the existence of unclaimed estates in Holland.

I have, therefore, to suggest that if you can obtain a written statement from the party circulating the rumor in the Du Boise case, I may be able to give the heirs authoritative data which will set the matter at rest.

I am, etc.,

ISAAC BELL, Jr.

[Inclosure 3 in No. 169.]

Mrs. Lay to Mr. Bell.

BROOKLYN, *August* 14, 1886.

DEAR SIR: Thanking you for your kind letter, I feel very much obliged to you for the trouble you have taken in my case. In reference to the Du Boise claim, I will state all that I know about it:

Mr. E. B. Humphreys, of 38 East 12th street, New York City, is the agent through whom this claim is being pushed, and that he has had papers made out that are supposed to be citation papers, for which he charges $7.50, for the purpose of having them certified.

The Du Boise claim, as he tells me, was money left by one Du Boise, about the year 1630 as far as I can remember, to his heirs in New Netherlands at that time, and amounted to 1,600 pounds.

This is as far as I have gone in this matter, and if I could get a written statement from him I would do so, but I think if I asked him he might not like it, and perhaps it is just as well for him not to know it yet.

He tells me he is going to Europe in a week or so. I have not paid any assessment yet, as he has not proposed one, and will not until I hear from you.

This is all the information that I can give you now, and if I hear anything more will let you know.

I am, etc.,

CATHARINE W. LAY.

No. 512.

Mr. Porter to Mr. Bell.

[Extract.]

No. 75.] DEPARTMENT OF STATE,
Washington, September 22, 1886.

SIR: Your dispatch No. 169, of the 8th instant, inclosing a copy of the correspondence between your legation and Mrs. Catherine W. Lay, of Brooklyn, N. Y., respecting an alleged estate in Holland, has been received. Your course in regard to the matter is fully approved by the Department.

I may add that Mr. Birney's No. 119, of the 29th of August, 1879, will give you some insight into the alleged "estates in Holland."

I am, etc.,

JAS. D. PORTER,
Acting Secretary.

No. 513.

Mr. Bell to Mr. Bayard.

No. 191.] LEGATION OF THE UNITED STATES,
The Hague, October 26, 1886. (Received November 9.)

SIR: The minister of the colonies has presented to the second chamber of the States-General two projects of law providing measures to favor the maintenance of the culture of sugar in Java.

The considerable fall in the price of cane sugar has long since threatened a crisis in the sugar industry of the Dutch East Indies.

For some time the price of sale has remained much below the actual cost of manufacture.

On account of this condition of affairs many financial institutions of this country, which have heretofore made important advances to the sugar interests, are no longer willing to extend their aid; consequently the industry finds itself upon the verge of complete ruin. Many petitions have from time to time been addressed to the chambers as well as to the Government by the sugar interest soliciting relief.

These petitions have usually demanded:

(1) The reduction or complete temporary abolition of the rents due from the manufacturers to the colonial government.

(2) A reduction of the cost of transportation of sugar in Java by the state railways.

(3) Advances to be made by the state to the manufacturers.

In the opinion of the minister of the colonies it cannot be a question of any donation whatsoever to be made by the treasury to the sugar interest.

Therefore it should neither reduce nor abolish the rents, nor reduce the expense of transportation by the railways of the state.

Nevertheless, according to the views of the minister, the Government is convinced that the general interests of the state require the maintenance as far as possible of the culture of cane sugar.

It is for this reason that the Government has submitted for the action of the States-General two projects of law.

According to the first project of the Government the governor-general will be authorized to grant to the manufacturers who have a contract with the colonial government a delay in the payment of their rents in consideration of the payment of an annual interest of 6 per cent. on the amount due.

By the second project the governor-general is authorized to make advances to the manufacturers who freely follow the culture of sugar.

This advance can not, however, exceed the sum of 1½ florins for each 100 kilograms, estimated upon the harvest of 1886.

These projects of law will be discussed simultaneously with the budget of the Indies for 1887 during the coming month.

The extent of the depression in the sugar trade of this country will be understood when it is known that in 1870 the imports of raw cane sugar from Java were 108,000,000 kilos, whilst in 1885 it fell off to 10,000,000 kilos.

I have, etc.,

ISAAC BELL, Jr.

No. 514.

Mr. Bell to Mr. Bayard.

No. 196.] LEGATION OF THE UNITED STATES,
The Hague, December 6, 1886. [Received December 20.]

SIR: I have the honor to report that Mr. Heemskerk, the chief of the cabinet, has presented on behalf of the Government, to the second chambers of the States-General, a new project for revision of article 76 of the constitution, respecting the electoral franchise. The proposed project requires that the electors shall have certain property qualifications and imposes other restrictions, which will be defined in an electoral law to be introduced later.

Mr. Heemskerk, in explaining the motives which prompted the Government to present the proposed modifications, expressly declared that it was the intention of the Government to preclude the possibility of the introduction of universal suffrage, adding that to be an elector a person should be of a certain capacity and of a certain well-being.

For the purpose of giving immediate application to the new condition the Government added to the proposed project a provisional electoral bill based on an extension of the present franchise, by which the number of members of the second chambers will be raised from 86 to 100, and of the first chamber to 50.

The number of electors will be increased from 136,000 to 300,000.

I have, etc.,

ISAAC BELL, JR.

No. 515.

Mr. Bell to Mr. Bayard.

No. 203.] LEGATION OF THE UNITED STATES,
The Hague, December 16, 1886. (Received December 28.)

SIR: I have the honor to report that the minister for the colonies has presented to the second chamber of the States General a project of law tending to so modify the provisions of existing laws as to suppress for a period of two years from and after June 1, 1887, the export duty on sugar exported from Java.

The minister of the colonies, in explaining the motives for the presentation of the project, stated that in order to meet the emergencies arising from the low price of sugar the sugar industry was compelled to put into execution every possible means to reduce the expense of production.

Under the circumstances, the minister maintained that the legislature should show a disposition to favor those efforts by temporarily suppressing, at all events during the trying epoch, the burden which the sugar

industry bears in favor of the treasury in the form of an export duty.

The date of suspension is said to have been fixed for June 1, 1887, in order that the industry may have the benefit of the suspension for the harvest of the year 1887.

I have, etc.,

ISAAC BELL, JR.

No. 516.

Mr. Bayard to Mr. Bell.

No. 78.] DEPARTMENT OF STATE,
Washington, December 23, 1886.

SIR: I transmit herewith two copies of the Congressional Record, Vol. 18, No. 13, reporting the proceedings in the two houses on the 20th instant.

You may communicate one of these copies to the Netherlands minister for foreign affairs, calling his attention to the marked passage on pages 308–310, in relation to a proposition to expand the duty on wrapper tobacco.

In so doing you will say to his excellency that it is handed to him for his information, the subject-matter being one in which his Government has heretofore shown much interest. As a general rule, pending measures of legislation, and the deliberative action taken thereon, are matters of merely domestic cognizance, and are not made the subject of diplomatic expression; but as in this case a public recommendation, found in the annual message of the President, was brought into the debate, and may be presumed to have had its influence on the announced result, its present communication is in the line of enlarging the good relationship which this Government is desirous to maintain with that of the Netherlands.

I am, etc.,

T. F. BAYARD.

No. 517.

Mr. Bell to Mr. Bayard.

No. 204.] LEGATION OF THE UNITED STATES,
The Hague, December 24, 1886. (Received January 6, 1887.)

SIR: Referring to my No. 203, of the 16th instant, I now have the honor to report that, after two days' debate, the second chamber of the States General terminated in its night session of the 16th instant the discussion of the project presented by the Government providing measures to favor the maintenance of the culture of sugar in Java.

The project, as finally adopted, provides:

1. For the provisional abolition of the rent due from private sugar producers.

2. For a delay of five years in the payment of one-half of the rent due from those cultivating under Government contracts.

3. For the suppression of the export duty on Java sugar for five years from June 1, 1887.

I have, etc.,

ISAAC BELL, JR.

No. 518.

Mr. Bayard to Mr. Bell.

[Extract.]

No. 81.] DEPARTMENT OF STATE,
Washington, January 5, 1887.

SIR: Soon after the approval of the so-called "Dingley" shipping act of June 26, 1884, the Governments of several European countries laid claim to an extension to their commerce of the privileges conceded to neighboring navigation under the fourteenth section of that act.

The Government of the Netherlands did not then claim the benefits of the act under the most favored nation stipulations of treaty with the United States.

On the 19th June last an amendatory act was approved, by the eleventh section of which, reciprocal arrangements with foreign countries were authorized, looking to the reduction or abolition of tonnage dues. Since the passage of that act the Netherlands Government has offered to enter into the proposed reciprocal understanding. Copy of Mr. de Weckerlin's note* of the 8th November, 1886, is inclosed for your information.

I am, etc., T.F. BAYARD.

No. 519.

Mr. Bell to Mr. Bayard.

No. 210.] LEGATION OF THE UNITED STATES,
The Hague, January 11, 1887. (Received January 24.)

SIR: I have the honor to acknowledge the receipt of the Department's No. 78 of December 23, 1886, inclosing two marked copies of the Congressional Record, Vol. 18, No. 13, reporting the proceedings in the House of Representatives, on December 20, in relation to a proposition to expand the duty on tobacco of the wrapper class, and instructing me to communicate one of them to the minister of foreign affairs.

Immediately upon its receipt I called upon his excellency, the minister of foreign affairs, and, adhering to the sense of your instructions, handed him one of the marked copies and invited his attention to the marked passages.

At the same time I called his attention to the fact that although the matter was one affecting the legislative action of the Government, it nevertheless afforded the State Department great pleasure to be able to announce a result which may have been influenced by a public recommendation of the Executive and which certainly should tend to enlarge the good relationship which the Government of the United States was at all times anxious to maintain with the Government of the Netherlands.

His excellency seemed greatly pleased at the attention shown to him, and remarked that, although he had heard the result of the action on what he termed the "Hiscock bill," he had not read the particulars of the debates in Congress and that it would give him great pleasure to do so.

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*Printed page 905, *infra*.

He also referred to having read with interest and satisfaction the paragraph in the President's message in relation to the matter.

In conclusion he requested me to convey his sincere thanks to the Secretary of State and his high appreciation of his courtesy.

I have, etc.,

ISAAC BELL, Jr.

No. 520.

Mr. Bell to Mr. Bayard.

No. 214.] LEGATION OF THE UNITED STATES,
The Hague, January 21, 1887. (Received February 3.)

SIR: I have the honor to report to you that as soon as a favorable opportunity presented after the receipt of your dispatch No. 81, of January 5, I called unofficially upon his excellency, the minister of foreign affairs, to communicate to him the gratification of the Government of the United States at the friendly form of the proposal of His Majesty's Government as presented through Mr. Weckherlin's note of the 8th of November, 1886, respecting a reciprocal arrangement looking to the abolition of tonnage dues in the case of vessels engaged in navigation between the two countries.

In compliance with the request contained in your dispatch, I intimated unofficially, in conversation with his excellency, that the Government of the United States was eminently gratified with the good spirit which had apparently prompted the Government of His Majesty in resorting to the channels generously provided by our legislation for drawing closer our relations with other states.

I took occasion at the same time to express my confidence that the Government of the United States fully recognized the soundness of the request made by His Majesty's Government, and that an arrangement would doubtless be speedily reached whereby the benefits of the act of June 19, 1886, would be extended to those ports in the kingdom of the Netherlands and such ports in the Dutch East Indies as fulfill the conditions required by the act in question.

His excellency, after having expressed great pleasure at the information which I communicated to him, replied in substance that he was very solicitous for an early adoption of the necessary measures, as he was constantly in receipt of reclamations upon the subject from interested parties.

His excellency referred especially to the steamship lines plying between the ports of Amsterdam, Rotterdam, and New York, which he said were now struggling for an existence, and, while adding that every extra expense was very hard for them to bear, expressed considerable anxiety to know when it is likely that the necessary arrangements will be consummated.

In conclusion, I may add that my entire interview with his excellency was most cordial, and his expressions of satisfaction were undisguised both at the nature of the communication and the manner of your instructions.

I have, etc.,

ISAAC BELL, Jr.

No. 521.

Mr. Bell to Mr. Bayard.

No. 216.] LEGATION OF UNITED STATES,
The Hague, February 3, 1887. (Received February 18.)

SIR: I have the honor to report that the Staats Courant, the official journal, publishes the following announcement of the minister of foreign affairs, defining the jurisdiction of consular officers in the United States:

The consul-general at New York will have jurisdiction over the States of New York, New Jersey, and Connecticut, with a vice-consul at New York.

The consul at Boston will have jurisdiction over the States of Massachusetts, Maine, Rhode Island, New Hampshire, and Vermont.

The consul at Philadelphia will have jurisdiction over the States of Pennsylvania and Delaware.

The consul at Baltimore will have jurisdiction over the States of Maryland and West Virginia.

The vice-consul at Washington will have jurisdiction over the District of Columbia.

The vice-consul at Norfolk will have jurisdiction over the State of Virginia.

The consul at Charleston will have jurisdiction over the States of North and South Carolina.

The consul at Savannah will have jurisdiction over the State of Georgia.

The consul at Galveston will have jurisdiction over the State of Texas.

The consul at Cincinnati will have jurisdiction over the States of Ohio, Indiana, Kentucky, and Tennessee.

The consul at Chicago will have jurisdiction over the States of Illinois, Michigan, Wisconsin, Minnesota, and Nebraska; also over the Territories of Wyoming, Montana, Idaho, and Dakota, with vice-consuls at Grand Rapids and at Saint Paul.

The consul at Saint Louis will have jurisdiction over the States of Missouri, Iowa, Kansas, Arkansas, and Colorado, and also over the Territories of Utah, New Mexico, and Arizona.

The consul at San Francisco will have jurisdiction over the States of California, Nevada, and Oregon, and also over Washington Territory, with a vice-consul at San Francisco.

The consul at Mobile will have jurisdiction over the State of Alabama.

The consul at New Orleans will have jurisdiction over the States of Louisiana, Mississippi, and Florida, with a vice-consul at Pensacola.

I have, etc.,

ISAAC BELL, Jr.

No. 522.

Mr. Bell to Mr. Bayard.

No. 220.] LEGATION OF UNITED STATES,
The Hague, February 23, 1887. (Received March 8.)

SIR: I have the honor to transmit herewith, for the information of those whom it may concern, and especially for the archives of the Department of State, three volumes containing the legislative history, as well as the proceedings, of the commission of liquidation established in this country in April, 1852, to settle claims against the estate of deceased persons, as well as against the Government of the Netherlands.

Prior to the year 1809 the care of the estates of deceased persons was by statutory authority delegated to orphans' courts, which were from time to time established throughout the country.

The introduction of the French civil law throughout the Kingdom of the Netherlands in 1809 abolished the orphans' courts.

The funds under the care of the various orphans' courts or other officials, and undisposed of in March, 1852, passed into the custody of the above-mentioned commission of liquidation.

The preface in Volume No. 1 contains a full and explicit statement, showing the circumstance and legislation which led to the creation of this commission of liquidation. (Pages I–XXXVIII.)

A list of the orphans' chambers and chambers of guardianship, established in the country, with reference to the dates of the statutes delegating the authority to establish such chambers, will be found on page XLI–L, same volume.

On page 1–3 will be found the decree of April 1, 1835, concerning the liquidation of the property and inheritance, formerly under the charge of the orphans' and guardians' chambers.

On pages 4–10, marked I, will be found the project or rough draught of the law for the regulation of the affairs of the former orphans' and guardians' chambers, presented by the Government to the second chambers of the States-General during the session of 1850–'51, and read on the 1st day of July, 1851, marked II.

On pages 10–30 will be found the report of the committee of the second chamber of the States-General respecting the project of law presented by the Government for the regulation of the affairs of the former orphans' and guardians' chambers made on the 15th day of February, 1852 to the second chamber of the States-General during the session of 1851–'52, marked III.

On pages 31–36 will be found the law of March 5, 1852, proclaimed April 8, 1852, providing for the liquidation of the affairs of the former orphans' and guardians' chambers, marked No. IV.

On page 37 will be found the names of the members of the commission of liquidation, appointed by virtue of the law of March 5, 1852, and named by royal decree of July 29, 1852, proclaimed July 4, 1852, marked No. V.

On pages 37–44 will be found the royal decree of August 25, 1852, proclaimed September 4, 1852, containing instructions for the general commission of liquidation, marked No. VI.

On pages 45, 46 will be found the royal decree of 14th September, 1852, fixing the date of the dissolution of the commission established by the law of March 5, 1852, marked No. VII.

On pages 46–59 will be found the report of the general commission of liquidation, marked VIII.

On pages 60–63 will be found document marked A, which shows the total amount of funds found by the several subcommissions to be subject to liquidation under the law of March 5, 1852, then in the hands of the Government, as well as the manner of its investment and the names and localities of the orphans' and guardians' chambers from which the several sums were originally received.

On page 64 will be found document B, a rough declaration of the nominal amount originally invested, as well as the title of the securities.

These volumes contain a complete history of the legislation respecting the organization of this commission of liquidation, as well as the proceedings of the commission.

This commission, it will be remembered, disposed of all unclaimed estates of deceased persons which were held by the orphans' courts or the Government prior to 1852.

I have been to no little trouble and no little personal expense to obtain the copies inclosed herewith, and I trust they may be of service to

the Department in answering inquiries in the future with regard to unclaimed estates in Holland.

As they contain a full and authentic history of the liquidation of this country upon the subject of unclaimed estates originating prior to 1852, the data contained therein may be used in formulating replies to future inquiries.

I have, etc.,

ISAAC BELL, Jr.

No. 523.

Mr. Bell to Mr. Bayard.

No. 228.] LEGATION OF THE UNITED STATES,
The Hague, March 7, 1887. (Received March 19.)

SIR: I have the honor to transmit herewith for your information a copy of a correspondence recently exchanged between this legation and the foreign office here with reference to a report which has been given very general circulation through the press in the United States in regard to an imaginary estate known as the Graaf, Graff, Graef, Groff, or Grove, which is supposed to have been the subject of recent legislative action in this country.

It will be seen by reference to the reply of the minister of foreign affairs that the report is without foundation.

The following persons who have addressed inquiries to this legation upon the subject of this supposed estate have been advised of the result of my investigation, viz:

(1) John H. Stoutenburgh, esq., attorney and counsellor at law, 115 and 117 Nassau street, New York; (2) J. G. Ogle, esq., attorney, Latrobe, Pa.; (3) Messrs. Baker and Ball, attorneys, Iowa City, Iowa; (4) F. P. Graf, esq., American Hotel, Brookville, Pa.; (5) D. G. Moore, esq., Sheffield, Ill.

I have, etc.,

ISAAC BELL, Jr.

[Inclosure 1 in No. 228.]

Mr. Bell to Mr. Karnebeek.

LEGATION OF THE UNITED STATES,
The Hague, February 22, 1887.

SIR: I have the honor to bring to your excellency's notice the inclosed paragraph, clipped from a newspaper published in the United States, which I have received from an interested party, and by which you will perceive it is represented that the State General of the Netherlands have recently passed an act tending to restore to the heirs of one Graff an estate which is said to have been confiscated by this Government in 1707.

After the correspondence which has passed between the Government of His Majesty and this legation since my arrival here upon the general subject of estates in Holland and from my knowledge of the proceedings of the State General, I can not believe this story.

Since this paragraph was started in its round of circulation in the press of the United States, I have received frequent inquiries with regard to the truth of the report.

The continued circulation of the report, if destitute of foundation, will undoubtedly lead to hardships and injustice in the case of many poor people, and may seriously affect many citizens of the United States.

I beg, therefore, in consequence, to say I should be much obliged to you if you would inform me whether there is any foundation for the report—whether any such estate as that mentioned has at any time been the subject of legislative consideration or departmental action by this Government.

In case there is a total lack of foundation for the report in question it will be exceedingly agreeable to me if your excellency will trouble yourself to furnish me with an official statement to that effect, that I may be able to officially deny the truth of the report.

I seize, etc.,

ISAAC BELL, JR.

[Inclosure 2 in No. 228. Special to the Commercial Gazette.]

WILKES BARRE, PA., *January* 31.

G. S. Groff, one of the oldest residents and alderman of this city, on Saturday received the startling intelligence that he was one of a score of persons who had just fallen heir to an estate in Holland, valued at $76,000,000. The great-great-grandfather of Alderman Groff, the story goes, was a Sixth-Day Baptist, and was so persecuted on account of his belief that he was forced to leave his native land. His estate was confiscated by the Government. He came to America in 1707 and settled in Germantown, this State, and from him descended the Groff family. Recently the Dutch Parliament passed a law restoring to the heirs the land that had been confiscated, together with all improvements and interest up to the date of the passage of the bill. This is said to be worth $76,000,000.

[Inclosure 3 in No. 228. Translation.]

Mr. Karnebeek to Mr. Bell.

MINISTRY OF FOREIGN AFFAIRS,
The Hague, March 4, 1887.

Mr. MINISTER: In reply to your letter of the 22d February last, I have the honor to bring to your knowledge that the communication which has appeared in the American journals relative to the existence in the Netherlands of a considerable succession arising from the name Graff, and of which the proceeds would be held at the disposition of the lawful heirs, is entirely invented.

At several intervals, heretofore, inquiries have been made in relation to a succession Graaf, Graff, Graef, Grove or Groff, but this succession is wholly imaginary, and it appears not improbable that the persons who in good faith believe they may inforce rights respecting such inheritance are the dupes of certain intriguers, as for example appears from the letter, copy herewith, which was addressed some years since to the secretary of the commission of liquidation of the affairs of former orphans' chambers.

I seize, etc.,

KARNEBEEK.

[Inclosure 4 in No. 228.]

Mr. Westwater to Minister of Foreign Affairs.

BALTIMORE, MD., *April* 1, 1879.

MYNHEER: Eleven years ago J. Hervey Ewing, an attorney at law, then of this city, visited Holland and The Hague in the interests of and representing the heirs of Hans Graff or Graaf, who believed themselves entitled to a large sum of money held by your Government, and in proof of which they intrusted their legal representative with certain important evidence (now in my possession), to establish and prosecute their claim. After his return to this country, Ewing declared his mission had been a failure and there was no money or estate held in reversion by the Government for the heirs. Thus the matter rested for a time, but finally Ewing confessed to me, binding me by a solemn promise of secrecy which I have never yet divulged, the whole history of his proceedings at The Hague, of his audience with yourself and King William, and of the arrangements entered into by which he was to forever keep silence and preserve an inviolable secrecy in regard to the matter, in return for which certain stipulated payments (the amount, manner of payment, and by whom payable being known to me) were to be made to him as a recompense.

The whole transaction being known to me and having obtained proofs which establish it clearly for years past, I have been collecting a mass of evidence bearing

on the subject, which establishes to a certainty the existence of the estate, and which no court of justice in the world could gainsay or set aside. By virtue of my office as an advocate, I am prepared to visit the Hague in the interests of the heirs, but before taking the journey desire to confer through you or any accredited agent with the Government, and am prepared to enter into negotiations that will be to the interest of both the Government and myself, and make the same arrangements as were made in the case of Ewing. It would pay me as well to prosecute the case, fortified as it is with the strongest evidence, but I defer visiting your country until I hear what terms the Government is willing to make in order to insure my not taking any further steps.

All communications may be addressed to A. K. WESTWATER.

No. 524.

Mr. Bell to Mr. Bayard.

No. 231] LEGATION OF THE UNITED STATES,
The Hague, March 14, 1887. (Received March 28.)

SIR: I have the honor to report that during the present session of the second chamber of the States General the principal subject under discussion has been and still is the revision of the constitution.

The sections of the constitution are being considered seriatim and some few modifications of but slight importance have been adopted.

On the 2d instant the second chamber, by 43 to 28 vote, adopted the bill amending the clause of the constitution concerning the succession to the throne.

It provides that in fault of a direct heir the throne will pass to Princess Sophie, of Saxe-Eisenach Weimar and her branch, or thereafter to the three branches of the late Marianne of Prussia, or thereafter to the branches of the late Louise of Sweden and of Marie von Wied. This measure as adopted is of practically no significance, as the reading of the section of the actual constitution is claimed to be identical in its meaning, and the present measure has been adopted in this form so as to be more explicit and to relieve the former measure of certain ambiguity which was claimed to exist.

The principal discussion is expected to arise when the question of extending the electoral franchise and increasing the number of members of the States General is presented.

It is impossible to foresee what the final result of the revision will be, as when the present chamber shall have voted the changes their dissolution becomes necessary in accordance with the provisions of the constitution. The new chambers afterward elected will then have to vote on the constitutional amendments as passed, and in order to secure their final adoption, a two-third majority will be requisite, which in the present almost equally divided state of political parties in the Kingdom it is generally considered will be difficult to obtain.

I have, etc.,

ISAAC BELL, Jr.

No. 525.

Mr. Bell to Mr. Bayard.

No. 232.] LEGATION OF THE UNITED STATES,
The Hague, March 15, 1887. (Received March 28.)

SIR: I have the honor to transmit herewith for the information of the Department a copy of a correspondence recently exchanged between

this legation and the Rev. T. J. Kommers, of New York City, with reference to his liability to arrest by the military authorities of this country in the event of his temporary return hither for the purpose of visiting his aged parents. Upon the receipt of Mr. Kommers's request, I presented unofficially to his excellency the minister of war a memorandum containing the substance of the statements embodied in Mr. Kommers's letter of inquiry. The opinion of the minister is fully set forth in his note to me under date of March 10, and may be regarded as an official expression of the views of this Government in cases similar to that of Rev. Mr. Kommers.

I have, etc.,

ISAAC BELL, Jr.

[Inclosure 1 in No. 232.]

Mr. Kommers to Mr. Bell.

257 WEST FORTY-FOURTH STREET,
New York, February 10, 1887.

DEAR SIR: Having vainly sought information in this country, I turn to you, with hope that you will be able to help me in deciding a question of great importance to me.

The question is as follows: In 1873 I left my home in the city of Middleburg Zeeland, being at that time seventeen years old. My parents remained there and when the proper time came I was drafted for the militia. But I intended to stay in the United States and did not return to Holland for military service; soon after, I was declared a deserter by the authorities in the Netherlands, and when a few years ago I wished to revisit my home for a few weeks I found that such a visit would endanger my liberty.

I am now a citizen of the United States and a minister to the Reformed Dutch Church, and would like to visit my parents this summer if possible, if I could be sure that there was no danger of being arrested and placed in the Dutch army for a number of years.

The only ground on which I suppose I would escape arrest would be the fact that I am a clergyman. But even of that I am not sure.

As I have a wife, as well as my work, in this country and am resolved to remain an American citizen, I would not enjoy being put in the Dutch uniform, and be made, say, a drummer or even a chaplain.

If you can kindly give me some information on this question, you will greatly oblige

Yours, respectfully,

T. J. KOMMERS

[Inclosure 2 in No. 232.—Translation.]

Mr. Weitzel to Mr. Bell.

WAR DEPARTMENT,
The Hague, March 10, 1887.

EXCELLENCY: In answer to your memorandum, in which information is requested with reference to the temporary return to this country of Tinis Johannes Kommers, I have the honor to communicate to your excellency the following particulars:

The person aforesaid is not a deserter, but a conscript who neglected to present himself for enrollment in 1876 in the commune of Middleburg.

He neglected to present himself on the 11th of May, 1876, for incorporation in the military service and was in consequence advertised in the Police Gazette of the year 1877, in which he is mentioned on page 165.

Whenever the aforesaid Kommers returns to this country he is liable to the application of article 172 and of the succeeding articles of the law of August 19, 1861, relating to the army, by which it is, in effect, enacted that the conscript who does not attend to the summons for his incorporation shall, as soon as the omission is discovered, be brought before the provincial states of the province to the conscription of which he belongs.

The provincial states inquire into the case and give sentence on it as quickly as possible and at once give notice of it to the burgomaster and "wethouders" of the commune to which the person belongs.

If he is found fit for service he is incorporated for five years, whatever his age may be.

The person thus incorporated is kept to his colors during the whole of this time, unless the provincial authorities have decided that circumstances beyond his control prevented him from complying with the summons.

The provisions above mentioned do not, however, prevent Kommers, in case of his having been incorporated, from being allowed by the King to provide a substitute, by article 10 of the law aforesaid.

From the nature of the case the condition is annexed to such indulgence that the substitute shall remain with the colors during the same period as Kommers would have been kept in actual service by the aforesaid legal provisions.

Accept, etc.,

WEITZEL.

[Inclosure 3 in No. 232.]

Mr. Bell to Mr. Kommers.

LEGATION OF THE UNITED STATES,
The Hague, Netherlands, March 14, 1887.

DEAR SIR: In reply to the inquiry contained in your note of the 10th ultimo as to whether the authorities of this country would molest you upon your temporary return here on account of your failure to appear in May, 1876, when enrolled for military service, I have the honor to inform you that I lost no time in bringing your case to the attention of the minister of war, with whom I personally left a memorandum of the facts in your case. I have now the honor to transmit herewith a translation of the reply received from the minister, by reference to which it will be seen that in case of your placing yourself within reach of the authorities here the provisions of the law will be enforced in your case.

The opinion of the minister of war may be accepted as the official expression of the view of this Government in your case.

I have, etc.,

ISAAC BELL, Jr.

No. 526.

Mr. Bell to Mr. Bayard.

No. 238.] LEGATION OF THE UNITED STATES,
The Hague, March 28, 1887. (Received April 9.)

SIR: I have the honor to report that the second chamber of the States General, after several days' discussion on the proposed revision of the constitution, have reached a conclusion on the question of the regulation of the elective franchise.

After rejecting, by a vote of 62 to 21, the proposition presented by the friends of universal suffrage, the chamber agreed, by a vote of 68 to 12, to adopt the project presented by the Government.

This article extends the electoral franchise to all who possess certain educational and property qualifications to be hereafter fixed by law.

All soldiers below the rank of commissioned officers are excluded from the right to vote.

I have, etc.,

ISAAC BELL, Jr.

No. 527.

Mr. Bayard to Mr. Bell.

No. 86.] DEPARTMENT OF STATE,
Washington, April 2, 1887.

SIR: This Department has been informed through Mr. Hatfield, United States consul at Batavia, under date of January 21 last, that Mr. E. R. Connell, a citizen of the United States, who is temporarily residing, but not domiciled, in Batavia as agent for an American house, is subjected to compulsory semi-weekly drills, which greatly interfere with his performance of his business duties. Were the object of these drills merely of a police character, or for the purpose of temporary defense, this Department would not interpose to relieve him from such service; but as the drilling complained of appears to be of a permanent character, such as to prepare those subjected to it for incorporation in the permanent military service of the Dutch Government, you will take an early opportunity to lay before that Government the objections of this Department to such a course.

It is important to the business interests of both countries that mercantile houses in the United States should have agents in Batavia who can give their entire time to their principals' affairs; but this can not be done if such agents are subjected to military drill such as that imposed on Mr. Connell.

I am, etc.,

T. F. BAYARD.

No. 528.

Mr. Bayard to Mr. Bell.

No. 87.] DEPARTMENT OF STATE,
Washington, April 6, 1887.

SIR: Your dispatch No. 232, of the 15th ultimo, inclosing copies of correspondence in relation to the liability of Mr. Kommers, a naturalized American citizen of Dutch birth, to military service in the event of his return to the Netherlands, has been received and read with interest, and your course in reference to the matter is approved.

I am, etc.,

T. F. BAYARD.

No. 529.

Mr. Bell to Mr. Bayard.

No. 243.] LEGATION OF THE UNITED STATES,
The Hague, April 16, 1887. (Received April 30.)

SIR: In obedience to instructions contained in your dispatch No. 86, of the 2d instant, I have addressed a note to his excellency the minister of foreign affairs, a copy of which is herewith transmitted, calling attention to the case of Mr. Connell, an American citizen resident in Batavia, who complains through Mr. Hatfield, the United States consul at

that place, of illegal enrollment for military duty. It is not probable that a reply will be given before the authorities here can communicate with the colonial authorities at Batavia.

I have, etc.,

ISAAC BELL, Jr.

[Inclosure in No. 243.]

Mr. Bell to Mr. Karnebeek.

LEGATION OF THE UNITED STATES,
The Hague, Netherlands, April 16, 1887.

SIR: I am directed by the Government of the United States to apprise you that Mr. E. R. Connell, a citizen of the United States, who is temporarily residing, but not domiciled, in Batavia, as agent for an American house, is subject to compulsory semi-weekly drills, which greatly interfere with the performance of his business duties.

As the object of those drills is not merely of a police character, nor for purposes of temporary defense, but of a permanent character, such as to prepare those subjected to it for incorporation in the permanent military service of the Dutch Government, I am instructed to represent to His Majesty's government that the Government of the United States can not assent to such an interference with the unquestionable rights of Mr. Connell.

I need not suggest to your excellency that the injustice complained of not only exposes the commercial interest of the American house which Mr. Connell represents to vexatious losses and prevents the agent from complying with his engagements, but also tends to hamper and interfere with commerce, and is certainly not suited to give security to trade. I trust, therefore, that you will move the proper colonial authorities of His Majesty to take this complaint into consideration without delay with the view that measures may be adopted that will not only relieve Mr. Connell of the military duty which has been imposed upon him, but will enable him to feel some security as to his future position.

I seize, etc.,

ISAAC BELL, Jr.

No. 530.

Mr. Bell to Mr. Bayard.

No. 244.] LEGATION OF THE UNITED STATES,
The Hague, May 9, 1887. (Received May 21.)

SIR: Referring to the Department No. 86, of the 2d ultimo, I have the honor to report that the minister of foreign affairs here, in reply to my note of the 16th ultimo, informs me that the necessary information looking to a proper consideration of the case has been demanded by the home Government of the Government of the Dutch Indies respecting the complaint of Mr. Connell, who is reported to be subjected to military service by the authorities at Batavia.

I have, etc.,

ISAAC BELL, Jr.

No. 531.

Mr. Bayard to Mr. Bell.

No. 93.] DEPARTMENT OF STATE,
Washington, May 13, 1887.

SIR: I inclose herewith for your information a copy of a letter to this Department from John H. Flagg, esq., attorney for the Devoe Manufacturing Company, of New York, in relation to the alleged action of Messrs. Engelhard & Co., of Java, in fraudulently filing the Devoe Company's trade-mark for registration in Java and the other Dutch colonies.

I will thank you to bring this matter to the attention of the foreign office, with the request that the necessary steps may be taken for the protection of the rights of the Devoe Manufacturing Company in the premises.

I may add that Mr. Flagg is in error in his statement that this Government adhered to the international convention on the 19th of March last.

The formal date of our assent is not yet determined, but will probably be about the end of this month.

I am, etc., T. F. BAYARD.

[Inclosure in No. 93.]

Mr. Flagg to Mr. Bayard.

NEW YORK, *May* 6, 1887.

SIR: I have the honor to submit the following statement of facts touching the business of the Devoe Manufacturing Company, which is now seriously imperiled (so far as its exports to the Dutch East Indies are concerned) by reason of a recent law of the Netherlands Government relating to the registration of trade-marks. It appears that the Devoe Manufacturing Company is a corporation existing under the laws of the State of New York, whose business is the refining and packing of petroleum wholly for export; that for many years it has exported annually a large quantity of refined petroleum, and especially to the Dutch East Indies, to which were exported cases of 10 gallons each (according to figures given by the United States consul at Batavia):

In 1883	1,417,547
In 1884	1,859,643
In 1885	1,439,173
In 1886	1,863,331

Whereas the total consumption of these colonies for the same period was (cases of 10 gallons each):

1883	1,976,281
1884	2,094,238
1885	1,960,874
1886	2,106,163

Thus showing the exceeding popularity of the Devoe brand of oil in the colonies, which constituted a very large portion of all the refined oil of every description consumed therein. That for many years, and during all the period covered by the exportation above referred to, the Devoe Company has had its own exclusive trade-mark or brand, legally authorized in the United States and everywhere recognized, and that each case of oil exported has been branded therewith, as follows:

Devoe's

Pat'd June 23rd, 1863.

Brilliant oil.

Improved.

Pat'd June 28th, 1864.

Patent can.

The Devoe M'f'g Co.,

New York.

65 pounds of oil.

That owing to the high grade of oil known as this brand and the long period of time during which it has been supplied, it has become well known by all consumers, and is in large demand, far in excess of any and all other brands known to the trade throughout the Dutch East Indies. That on the 18th of February last the Devoe Company received by cable from Mr. Hatfield, the United States consul at Java, information that the firm of Englehard & Co., of Java, had there filed their (the Devoe Company's) trade-mark for registration in the colonies, and asking if such action on the part of E. & Co. was by authority of the Devoe Company. Whereupon the Devoe Company immediately cabled in reply that such registration was entirely unauthorized, and requesting the consul to take steps to protect the company's interests, and, if needful, to employ counsel. This was supplemented by a letter to Mr. Hatfield, giving him ample authority to draw on the company for all needful expenses to insure a vigilant and, if possible, successful opposition to this action of E. & Co.

That in point of fact no authority had ever been given to said Engelhard & Co., or any other person or firm to register the said trade-mark in behalf of the Devoe Company. That on investigation, the Devoe Company soon thereafter learned that E. & Co. claimed that their action was authorized by a recent law of the Netherlands Government, known as "Staatsblad No. 109," officially made known in the colonies on the 8th of June, 1885, but of the existence of which the said Devoe Company had previously had no knowledge, E. & Co. asserting the lawful right under said law to register the trade-mark of any other person as their own without authority of that person and notwithstanding his protest against such action, thereby depriving the lawful owners of the valuable benefits, advantages, and commercial facilities which rightfully belonged to them, as in the case of the Devoe Company, after the establishment of a large and profitable business and the uninterrupted enjoyment of these privileges for a period of many years.

That if the said E. & Co. succeed in wresting the Devoe Company's brand and trade-mark from the said company, no other person, save E. & Co., can thereafter sell or offer for sale the Devoe brand in the colonies, Article X of the said law providing that "He who sells, offers, delivers, distributes, or has for sale or distribution such merchandise, which itself or on its packing bears the trade-mark to which another one is entitled, is condemned to imprisonment or to public works, according to his nativity, from eight to three months, with or without a fine, from twenty-five to six hundred guilders." And by Article XI "said marks are to be destroyed, and, if not feasible, the goods themselves are to be destroyed."

That the motive of the said E. & Co. in thus seizing upon and attempting to register the trade-mark of the Devoe Company clearly appears to have been for the purpose and with the sole object of depriving the lawful owners thereof of the right to its use and to exclude from importation into the colonies the brand of oil covered thereby, it appearing that the said E. & Co. are interested in another brand of oil which they desire to promote by these bold and high-handed proceedings—all of which is fully shown by the official dispatches of the United States consul hereinafter referred to.

That judicial proceedings have been commenced through the timely intervention of Mr. Hatfield, the United States consul at Batavia, to prevent the issuance of the said trade-mark to E. & Co. under their said application, on the ground that to issue the same to them would be to defraud the lawful owners of their rightful property long recognized and enjoyed.

That the suit is soon to be tried, the main question involved being whether under said law any person not interested can thus seize upon and appropriate to himself and to the exclusion of the legitimate owner an established and well-known trade-mark, under which, as in the present instance, millions of dollars of American exports have for many years been annually sold throughout the colonies.

Should the decision vest this trade-mark in E. & Co., the large and profitable business of the Devoe Company, which it has taken years to establish, will not only be irreparably ruined, but, as we have seen, any agent of the company attempting to sell its distinctive brands of oil is liable to fine and imprisonment and to have his goods condemned and destroyed.

Such a result would be manifestly repugnant to the friendly feeling of the two countries, which would seek to promote and extend their mutual commerce rather than to impair or destroy it (without hope of gain in any direction by so doing), and it is to be seriously doubted whether any such construction of the new statute as is contended for by E. & Co. was ever contemplated by the law-making power of the Netherlands Government.

In consideration of the foregoing facts we earnestly request you to invoke the intervention of the Netherlands Government, to the end that the said statute may be at once repealed, or essentially modified, so as to secure substantial justice to American exporters in the use of their own established brands and trade-marks, and also that said Government may cause a delay in the judicial proceedings now pending until such modification of the law shall have taken place, or until such other steps shall be

taken as will avert the serious consequences of a decision adverse to the Devoe Company.

All the essential facts herein stated are more explicitly set forth in dispatches of the United States consul at Batavia to the Department (Nos. 203 and 207) dated, respectively, February 27, 1887, and March 9, 1887, and that of the United States consul at Padang (No. 3), dated February 18, 1887, to which, of course, considerate attention will be given by the Department.

The convention for the protection of industrial property, made at Paris March 20, 1883, to which the Netherlands Government is a party, and to which the United States *assented on the 19th of March last,** would seem to give every assurance of the earnest desire of each Government to countenance no such spoliation of private property as herein complained of, and it may be questionable whether this convention itself does not extend to the colonies of the Netherlands Government, and would not be decisive of the case presented, had ratifications been exchanged prior to the action of E. & Co. in filing our trade-mark on or about February 7 last. Not only has the trade-mark of the Devoe Company been seized by unauthorized parties, but, following this adventure, many other trade-marks of other importers have since been appropriated in like manner, and there is great apprehension in commercial circles throughout the colonies owing to these high-handed proceedings. A large number of respectable and well-known merchants have already petitioned the local authorities to recommend a repeal or modification of the law, as being unfair and dishonest toward the lawful owner of trade-marks, and as injurious to the consumer, who has no protection against fraud and imposition, while at the mercy of any monopoly that may be established to supply the demand for goods which, under fair and open competition, can no longer be furnished without incurring the risk of the penitentiary and the imposition of heavy fines and forfeitures.

While we have ventured to suggest such action as we think would result in averting the impending injury to this important market for petroleum exports, we nevertheless desire to leave the Department absolutely free to exercise its own better discretion as to the steps needful to be taken, only adding that it seems imperative to act at once, and by cable, since the pending case may otherwise be determined against us before the Home Government of the Netherlands can be advised of the gross denials of commercial privileges to the injury of American citizens, which are sought to be sanctioned under the forms of law in the colonies.

Respectfully, yours,

JNO. H. FLAGG,
Attorney for The Devoe Manufacturing Company.

No. 532.

Mr. Bell to Mr. Bayard.

No. 249.] LEGATION OF THE UNITED STATES,
The Hague, Netherlands, June 16, 1887. (Received July 2.)

SIR: I have the honor to acknowledge the receipt of the Department's No. 93 of the 13th ultimo, covering a copy of a letter addressed to the Department by John H. Flagg, esq., attorney for the Devoe Manufacturing Company of New York, in relation to the alleged action of Messr. Engelhard & Co., of Java, in fraudulently filing the Devoe Company's trade-mark for registration in the Dutch East Indies.

In accordance with your instruction, I at once brought the subject to the attention of His Majesty's Government in a note addressed to his excellency the minister of foreign affairs, a copy of which is herewith inclosed and marked No. 1.

In this connection I beg to inclose herewith, as of possible interest to the Department, a clipping from the London Times of June 8 in relation to British trade-marks in the Netherlands Indies.

I have also to report that the journals of Batavia of the 14th May, recently received here, represent that the judicial authorities of Batavia have denied the application of Engelhard & Co. to file for registration the trade-marks used by the Devoe Manufacturing Company.

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*Date of assent, May 30, 1887.

This decision is represented to have been prompted by the consideration that the marks or brand used by the Devoe Company can not be recognized as a trade-mark.

It is also represented that for the same reason the Devoe Manufacturing Company will be denied the right to register the brand as a trade-mark.

I have as yet no official information upon the subject.

I have, etc.,

ISAAC BELL, Jr.

[Inclosure 1 in No. 249.]

Mr. Bell to Mr. Karnebeek.

LEGATION OF THE UNITED STATES,
The Hague, Netherlands, May 31, 1887.

SIR: I have the honor to apprise your excellency that I have been instructed by the Government of the United States to bring the following facts to the attention of His Majesty's Government, and to request that the necessary steps may be taken for the protection of the rights of the Devoe Manufacturing Company.

The Devoe Manufacturing Company is a corporation existing under the laws of the State of New York, whose business is the refining and packing of petroleum wholly for export. That for many years it has exported annually a very large proportion of all the refined oil of every description consumed in the Dutch East Indies. That during the entire period covered by the exportations the Devoe Company has had its own exclusive trade-mark or brand legally authorized in the United States.

Owing to the high grade of oil known under the brand used by the Devoe Company, it has become well known to consumers, and is in greater demand than any other brand known to the trade. It appears that in February last that the firm of Englehard & Co., of Java, filed the Devoe Company's trade-mark for registration in the colonies without the knowledge, consent, or authority of the Devoe Company.

It is represented that Englehard & Co. claim that their action was authorized by a recent law of the Netherlands Government (Staatsblad, 109), which appears to have been officially promulgated in the colonies June 8, 1885, and which Englehard & Co. assert gives them the right to register the trade-mark of any other person as their own, even without the authority of such person, and notwithstanding his protest against such action.

The motive of the said Englehard & Co. in thus seizing upon and attempting to register the trade-mark of the Devoe Company clearly appears to be for the purpose and with the sole object of depriving the lawful owners thereof of the right to its use, and to exclude from importation into the colonies the brand of oil covered thereby, the said Englehard & Co. being interested in another brand of oil, which they desire to promote by this bold proceeding.

Should the effort of Englehard & Co. prove successful, the business of the Devoe Company, which has taken years to establish, will be irreparably ruined, as any agent of that company who attempted to sell its brand of oil is liable to fine and imprisonment.

Such a result is so manifestly repugnant to the commercial interests of the two countries that it is believed that the construction given to the new statute by Englehard & Co. was never contemplated by the law-making power of His Majesty's Government. If Englehard & Co. are permitted to seize upon and appropriate to their own use, to the exclusion of the legitimate owner, a well-established trade-mark, the trade will have no protection against fraud, and will be placed entirely at the mercy of a monopoly, which will deprive the lawful owners of the valuable benefits, advantage, and commercial facilities which rightfully belong to them. I venture, therefore, to request that His Majesty's Government will take such steps as may avert the impending injury to the commerce of the two countries.

I seize, etc.,

ISAAC BELL, Jr.

(Inclosure 2 in No. 249.)

British trade-marks in the Netherlands Indies.

Her Majesty's consul at Batavia reports that in certain instances unauthorized persons have registered and used in the Netherlands Indies trade-marks the property of British firms. To prevent these proceedings Her Majesty's consul recommends Brit-

ish owners to empower their agents in the Netherlands Indies to register on their behalf such trade-marks as they wish protected, and to protest against the registration, if it has already been effected, by others. The documents necessary are as follows:

(*a*) Power of attorney in favor of the owner's agents, authorizing them to register their trade-marks and to protest against others registering it. Power of attorney must first be legalized by a Dutch consular official in the United Kingdom, and afterward by the foreign and colonial ministers at The Hague.

(*b*) Certificate proving the ownership of the trade-mark, and that it is duly registered in England.

(*c*) Three copies of any trade-mark the owner may wish to have registered, with particulars of the class of goods on which same is used. Protests against registration have to be lodged within a year of the original registration.

No. 533.

Mr Bell to Mr. Bayard.

No. 252.] LEGATION OF THE UNITED STATES,
The Hague, July 27, 1887. (Received August 6.)

SIR: Referring to my No. 249, of the 16th June last, I have now the honor to inform the Department that his excellency the minister of foreign affairs, under the date of the 24th instant, copy of note inclosed herewith, informed me that the tribunal of Batavia, by a judgment under date of May 11th last denied the application of Englehard & Company to register a trade-mark bearing among other words "Devoe Manufacturing Company."

I have, etc.,

ISAAC BELL, JR.

[Inclosure in No. 252.—Translation.]

Mr. Karnebeek to Mr. Bell.

MINISTRY OF FOREIGN AFFAIRS,
The Hague, July 24, 1887.

Mr. MINISTER: By your note of the 31st of May last you called my attention to the fact that the house of Englehard & Co., of Java, in order to obtain the registration for its own profit of the trade-mark of the Devoe Manufacturing Company, had made an application to that effect without the knowledge of that company, and to the disagreeable consequences which would result therefrom.

Having hastened to consult upon this subject the minister of the colonies, I have the honor to bring to your knowledge that in effect the house of Englehard & Co. has deposited or made application for a mark, upon which was found, among others, the words "Devoe Manufacturing Company."

However, the tribunal of Batavia, by a judgment of the 11th of May last, denied the registration of this mark, which is probably that referred to in your before-mentioned note, as not being permitted by the provisions of the royal decree of April 6, 1885, regulating the registration in our colonies of trade-marks, but which prohibits the inscription of marks composed exclusively of letters, figures, or ordinary words.

Accept, etc.,

KARNEBEEK.

No. 534.

Mr. Bell to Mr. Bayard.

No. 259.] LEGATION OF THE UNITED STATES,
The Hague, August 16, 1887. (Received August 27.)

SIR: I have the honor to report that for several months past the states-general have been engaged in the discussion of the bill revising the constitution.

The bill as finally adopted has now received the royal assent, and under the provisions of the present constitution new chambers will have to be elected to ratify this revision.

Four important questions were considered during the discussion:

(1) The succession to the throne.

(2) The organization of the army.

(3) Primary instruction.

(4) Parliamentary franchise.

Article 12 of the existing constitution has been so modified as to permit the Crown to pass to all the descendants of a collateral line in case it has once passed into the house of the same collateral line.

The organization of the army will henceforth be subject to parliamentary control.

The third question, relative to the proposition respecting primary instruction, gave rise to a long debate between the partisans of neutral public schools and the partisans of private schools.

During the discussion the Government did not pronounce in a positive manner upon the proposition, which had for its object the abolition of neutral public schools.

The proposition was rejected by a majority of 27 against 11.

The proposition to extend the parliamentary franchise was adopted by a vote of 26 against 11, the number of electors being so increased from about 140,000 to 300,000.

The chambers of the states-general adjourn to-morrow, and elections take place in early September.

In event of the new chambers ratifying the revision I will forward a complete copy of the constitution.

I have, etc.,

ISAAC BELL, JR.

No. 535.

Mr. Bell to Mr. Bayard.

No. 266.] LEGATION OF THE UNITED STATES,
The Hague, September 20, 1887. (Received October 1.)

SIR: I have the honor to transmit herewith, for the information of the Department, two copies,* in the Dutch text, of the speech pronounced by His Majesty the King on the opening of the session of the States-General on the 19th instant.

It will be seen that His Majesty, after thanking the people for the loyalty and devotion shown on the occasion of the celebration of the seventieth anniversary of his birth, expressed the hope that the constitutional revision bill would be sanctioned by the chambers.

He declared his relations to be most satisfactory with all foreign powers, and expressed satisfaction at the condition of the army and navy, as well as the finances of the country.

He announced that measures would be submitted for the consideration of the chambers tending to advance the agricultural and commercial interests of the country.

I have, etc.,

ISAAC BELL, Jr.

* Not published.

CORRESPONDENCE WITH THE LEGATION OF THE NETHERLANDS AT WASHINGTON.

No. 536.

Mr. de Weckherlin to Mr. Bayard.

[Translation.]

LEGATION OF THE NETHERLANDS,
New York, November 8, 1886. (Received November 10.)

Mr. SECRETARY OF STATE:

As you are aware, section 11 of the act of Congress approved June 19, 1886 ("Public" No. 85), and entitled "An act to abolish certain fees for official services to American vessels, and the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," after fixing the rates of tonnage duties to be paid by all vessels entering a port of the United States of America, provides as follows:

Provided, That the President of the United States shall suspend the collection of so much of the duty herein imposed on vessels entering from any foreign port as may be in excess of the tonnage and light-house dues, or other equivalent tax or taxes, imposed in said port on American vessels by the Government of the foreign country in which such port is situated, and shall, upon the passage of this act, and from time to time thereafter, as often as it may become necessary by reason of changes in the laws of the foreign countries above mentioned, indicate by proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension.

Provided further, That such proclamation shall exclude from the benefits of the suspension herein authorized the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels; and sections 4223 and 4224, and so much of section 4219 of the Revised Statutes as conflict with this section, are hereby repealed.

In view of these provisions, I take the liberty to call your attention to the fact that Article I of the law of the Netherlands, which bears date of June 3, 1875, No. 101 (the said law still being in force), abolished light-house and light dues, tonnage dues, and beacon and buoy dues in the Kingdom of the Netherlands.

I will add that my Government does not impose any other equivalent tax upon foreign vessels, no matter under what flag they may sail.

It is probably superfluous for me to remind your excellency that vessels belonging to the United States of America, and their cargoes, are not required in the Netherlands to pay any "fee or due of any kind or nature," or any import duty higher or other than would be payable by vessels of the Netherlands or their cargoes.

As to export duties, which are likewise mentioned in the act of June 19, 1886, you know that none exist in the Netherlands.

The same is the case in the free ports of the Dutch East Indies, a list of which you will find herewith, and in which not only are vessels subjected to no fiscal tax, but no import or export duties are levied there.

My Government thinks, Mr. Secretary of State, that the ports of the Netherlands which I have just mentioned, viz, those in the Kingdom of the Netherlands (in Europe) and the free ports in the Dutch East Indies, fulfill the conditions required by section 11 of the act of June 19, 1886, and I am consequently instructed to beg you to be pleased,

with your accustomed kindness, to cause such measures to be adopted that the collection of tonnage dues in the United States of America may be suspended in the case of vessels coming from the ports in question.

Be pleased to accept, etc.,

G. DE WECKHERLIN.

[Inclosure.]

Lists of free ports in the Dutch East Indies.

Island of Riouw:
Riouw.
Island of Bali:
Pabean.
Sangrit.
Loloan.
Tamboekoes.
Island of Timor:
Koepang.
Island of Celebes:
Makassar.
Menado.
Kema.
Island of Celebes:
Gorontalo.
Moluccas:
Amboina.
Saparoa.
Banda.
Ternate.
Kajeli.
Island of Sumatra.
Oleh-leh.
Bengkalis.

No. 537.

Mr. Bayard to Mr. de Weckherlin.

DEPARTMENT OF STATE,
Washington, April 22, 1887.

SIR: I had the honor on the 10th of November last to receive your note of the 8th of the same month, in which you were pleased to advert to section 11 of the shipping act, approved June 19, 1886, and, after citing its provisions, to advise me that neither in the Kingdom of the Netherlands nor in the free ports of the Dutch colonies, of which you append a list, are any light dues, tonnage dues, or beacon or buoy dues imposed, neither is any other equivalent tax here imposed upon foreign vessels; and, further, that no export duties exist in the Netherlands or their free ports, and that where an import duty is levied on cargo brought by foreign vessels it is no higher or other than would be payable by vessels of the Netherlands or their cargoes. In view of this recital, you state it to be the opinion of your Government that the European ports of the Netherlands and the free ports in the Dutch East Indies (mentioned in your aforesaid list) "fulfill the conditions required by section 11 of the act of June 19, 1886," and consequently, under your instructions, you request me "to cause such measures to be adopted that the collection of tonnage dues in the United States may be suspended in the case of vessels coming from the ports in question."

Circumstances have (as I have stated to you in verbal conferences) interfered to prevent an earlier consideration of your note, but I beg you to believe that the delay has been due to no want of appreciation of the good-will which prompts the offer, and of the evident desire of the Royal Government to develop in every possible way the commercial and friendly ties between the Netherlands and the United States—a desire equally cherished by the Government I have the honor to rep-

resent, and for the expression of which it provides and seeks every appropriate channel.

I am happy to inform you that the President, accepting the declaration contained in your note as a satisfactory notification of entire reciprocity of treatment in the ports of the Netherlands, has, in the exercise of the authority conferred upon him by the said eleventh section of the statute of June 19, 1886, issued his proclamation (copies of which are herewith inclosed for your information) suspending the collection of the whole of the duty of 6 cents per ton imposed by said section on vessels entering the ports of the United States from any port of the Netherlands in Europe, or from any free port of the Dutch colonies named in the list appended to your note; but, in equal obedience to the statute named, excluding from the benefits of such suspension in favor of vessels coming from said ports the vessels of any foreign country in whose ports the fees or dues of any nature imposed on vessels of the United States or the import or export dues on their cargoes are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels.

It has afforded me great pleasure to observe that the proposal of the Government of the Netherlands adheres to the principle of reciprocity which pervades the treaties between the two countries, and which it has ever been the equal aim of the respective Governments to follow.

The twelfth section of the statute of June 19, 1886, provides—

That the President be, and hereby is, directed to cause the governments of foreign countries, which at any of their ports impose on American vessels a tonnage tax or light-house dues, or other equivalent tax or taxes, or any other fees, charges, or dues, to be informed of the provisions of the preceding section, and invited to co-operate with the Government of the United States in abolishing all light-house dues, tonnage-taxes, or other equivalent tax or taxes on, and also all other fees for official services to, the vessels of the respective nations employed in the trade between the ports of such foreign country and the ports of the United States.

The declarations made in your note of the 8th ultimo would appear to remove the Netherlands from the class of foreign governments the invitation of which is contemplated by the statute, but inasmuch as it is not clear from your note that the appended list comprises (with the European ports of the Netherlands) *all* the ports under the administration of the Dutch Government with which vessels of the United States may trade, and moreover, as the section in question proposes the mutual abolition of "all other fees for official services to the vessels of the respective nations," it is proper that I should extend, as I now hereby do, the authorized invitation in the name of the Government of the United States to the Royal Netherlands Government, in order that such an understanding may be conventionally reached as may insure the absolute reciprocity and equality of the respective navigation between the two countries in the ports of the other, as to all official charges of any nature whatsoever.

Accept, etc., T. F. BAYARD.

[Inclosure.]

BY THE PRESIDENT OF THE UNITED STATES.

A PROCLAMATION.

Whereas satisfactory proof has been given to me by the Government of the Nether lands that no ligh-thouse and light dues, tonnage dues, or beacon and buoy dues are imposed in the ports of the Kingdom of the Netherlands; that no other equivalent

tax of any kind is imposed upon vessels in said ports, under whatever flag they may sail; that vessels belonging to the United States of America, and their cargoes, are not required, in the Netherlands, to pay any fee or due of any kind, or nature, or any import due higher or other than is payable by vessels of the Netherlands or their cargoes; that no export duties are imposed in the Netherlands; and that in the free ports of the Dutch East Indies, to wit, Riouw (in the island of Riouw), Pabean, Sangrit, Loloan, and Tamboekoes (in the island of Bali), Koepang (in the island of Timor), Makassar, Menado, Kema, and Gorontalo (in the island of Celebes), Amboina, Saparoa, Banda, Ternate, and Kajeli (in the Moluccas), Oleh-leh, and Bengkalis (in the island of Sumatra), vessels are subjected to no fiscal tax, and no import or export duties are there levied;

Now therefore, I, Grover Cleveland, President of the United States of America, by virtue of the authority vested in me by section 11 of the act of Congress entitled, "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," approved June nineteenth, one thousand eight hundred and eighty-six, do hereby declare and proclaim that from and after the date of this my proclamation shall be suspended the collection of the whole of the duty of six cents per ton, not to exceed thirty cents per ton per annum (which is imposed by said section of said act) upon vessels entered in the ports of the United States from any of the ports of the Kingdom of the Netherlands in Europe, or from any of the above-named free ports of the Dutch East Indies:

Provided, That there shall be excluded from the benefits of the suspension hereby declared and proclaimed the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of such foreign country, or their cargoes, or of the fees, dues, or duties imposed on the vessels of the country in which are the ports mentioned in this proclamation, or the cargoes of such vessels.

And the suspension hereby declared and proclaimed shall continue so long as the reciprocal exemption of vessels belonging to citizens of the United States, and their cargoes, shall be continued in the said ports of the Kingdom of the Netherlands in Europe and the said free ports of the Dutch East Indies, and no longer.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and eleventh.

[SEAL.]

GROVER CLEVELAND.

By the President:

T. F. BAYARD,
Secretary of State.

No. 538.

Mr. de Weckherlin to Mr. Bayard.

[Translation.]

LEGATION OF THE NETHERLANDS,
Washington, May 3, 1887. (Received May 4.)

MR. SECRETARY OF STATE:

I have the honor to offer you my sincere thanks for the letter you were pleased to write to me on the 22d of April last, and through which I learned with satisfaction that the President of the United States of America has, in conformity with the provisions of section 11 of the shipping act of June 19, 1886, No. 85, suspended tonnage dues in regard to vessels arriving in the United States from a certain class of ports in the Netherlands.

With respect to the invitation, which in the same paper you had the kindness to address to my Government, in consequence of the contents of section 12 of the said "shipping act," I hasten to inform you that I have not failed to take the steps necessary to insure its reaching its destination.

Accept, etc.,

G. DE WECKHERLIN.

No. 539.

Mr. de Weckherlin to Mr. Bayard.

[Translation.]

LEGATION OF THE NETHERLANDS,
New York, June 28, 1887. (Received June 29.)

MR. SECRETARY OF STATE:

I did not fail to inform my Government of the letter which you were good enough to address to me on the 22d April, to inform me that the President had suspended the tonnage dues on ships arriving in the United States from a certain category of ports of the Netherlands.

The minister of foreign affairs at the Hague received this information with pleasure, and desires me now to express to you how much he appreciates the decision of the United States Government in the matter in question.

In accordance with those instructions I have, therefore, the honor to offer you the thanks of Mr. Karnebeek, and I hope that you will permit me at the same time to inform you as regards the invitation to later negotiations, conveyed in your above-mentioned note, under section 12 of the shipping act of the 19th of June, 1886, that my Government will hasten to examine the question with all the interest it merits.

Accept, etc.,

G. DE WECKHERLIN.

CORRESPONDENCE WITH THE LEGATION OF NICARAGUA AT WASHINGTON.

No. 540.

Mr. Guzman to Mr. Bayard.

[Translation.]

LEGATION OF THE REPUBLIC OF NICARAGUA,
Washington, July 30, 1887. (Received July 30.)

SIR: I have the honor herewith to inclose a copy of the convention* relative to arbitration which was signed at Guatemala on the 24th of December, 1886, by plenipotentiaries of Nicaragua and Costa Rica, through the friendly mediation of the Government of Guatemala, in which document it is stipulated that both nations shall submit the question of the validity or invalidity of the boundary treaty concluded by them April 15, 1858, to the decision of the President of the United States of America, as arbitrator.

In the name of, and in obedience to special instructions received from, the Government of Nicaragua, I beg your excellency to be pleased to use your good offices with his excellency the President, to the end that that high functionary may deign to do my country the eminent favor in question.

My Government entertains the hope that this signal service will be rendered to it, well knowing, as it does, the sentiments of the great American nation, and the interest which it takes in promoting the peace and welfare of its sister nations of the New World.

With the assurance, etc.,

H. GUZMAN.

No. 541.

Mr. Bayard to Mr. Guzman.

DEPARTMENT OF STATE,
Washington, July 30, 1887.

SIR: I have the honor to acknowledge your esteemed note of to-day, inclosing a copy of the convention which was signed at Guatemala on the 24th December, 1886, by the respective plenipotentiaries of Nicaragua and Costa Rica through the friendly mediation of the Government of Guatemala, stipulating that the question of territorial boundary between these two Governments under their treaty dated April 15, 1858, should be submitted to the arbitration of the President of the United States.

The President has been duly informed of the proposed submission of the question at issue between the Governments of Nicaragua and Costa

* Printed page 90, *supra*.

Rica to his arbitrament, and I am instructed to communicate to you his willingness to accept the execution of the responsible trust to which he is thus invited by both of the parties interested.

The President will be prepared to proceed in the execution of the duty thus proposed to him, and to that end will receive their respective proofs.

Accept, etc.,

T. F. BAYARD.

No. 542.

Mr. Guzman to Mr. Bayard.

[Translation.]

LEGATION OF THE REPUBLIC OF NICARAGUA,
Philadelphia, September 1, 1887. (Received September 2.)

SIR: I have received a communication from my Government whereby I am informed that during the interview recently had by the President of Nicaragua and the President of Costa Rica it was agreed to conclude a new boundary treaty, to be submitted by each executive to the congress of his country for ratification. I do not doubt that this matter has already come to the knowledge of your excellency's Department.

If the treaty in question is ratified, as is to be hoped, by both legislative bodies, the whole question between the two states will be settled, and there will be no occasion for the arbitration provided for by the convention signed at Guatemala on the 24th of December, 1886. In that case, all that will remain for me to do will be to return the thanks of my Government to his excellency the President of the United States for the cordial and friendly manner in which he was pleased to accept the office of arbitrator.

As it is possible, however, that the treaty to which reference has been made may not be ratified by one or both of the congresses, my Government instructs me not to suspend the course of the arbitration concerning the validity or invalidity of the treaty of April 15, 1858, since, in case the convention just signed is not ratified, the question will be in the same condition in which it was previously, and both Nicaragua and Costa Rica will then await the decision which His Excellency President Cleveland may see fit to render.

In bringing the foregoing to your excellency's notice, I have the honor to sign myself, etc.,

H. GUZMAN.

No. 543.

Mr. Bayard to Mr. Guzman.

DEPARTMENT OF STATE,
Washington, September 5, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, concerning the new treaty concluded between the Governments of Nicaragua and Costa Rica, for the adjustment of their present boundary difficulties.

As you correctly surmise, the Department has already been advised of the negotiation of this treaty, and I but express the hope that by whatever means the territorial differences that now exist between those two Republics may be adjusted, the outcome may establish a permanent basis of accord.

Accept, etc.,

T. F. BAYARD.

No. 544.

Mr. Guzman to Mr. Bayard.

[Translation.]

LEGATION OF THE REPUBLIC OF NICARAGUA,
Washington, D. C., October 1, 1887. (Received October 1.)

SIR: My Government informs me that the treaty which was recently signed by the Presidents of Nicaragua and Costa Rica was not ratified by the Congress of my country.

This result leaves undetermined the boundary question between the two Republics, and consequently its decision by arbitration will have due course in regard to the validity or instability of the treaty of April 15, 1858.

I beg your excellency to make known this statement to his excellency the President of the United States, and to accept the assurances, etc.,

H. GUZMAN.

No. 545.

Mr. Bayard to Mr. Guzman.

DEPARTMENT OF STATE,
Washington, October 4, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, saying that the treaty lately signed by the Presidents of Nicaragua and Costa Rica, for the settlement of their boundary dispute, had not been ratified by the Nicaraguan Congress, and that consequently recourse to the friendly arbitration of the President of the United States might yet be required to effect a satisfactory and permanent adjustment of the matter.

Accept, etc.,

T. F. BAYARD.

PERSIA.

No. 546.

Mr. Pratt to Mr. Bayard.

[Extract.]

No. 9.] LEGATION OF THE UNITED STATES,
Teheran, November 29, 1886. (Received January 12, 1887.)

SIR: In my dispatch No. 8, diplomatic series, I had the honor to inform you of my official reception by His Majesty the Shah on the 24th instant, and beg now to report that, acting upon the suggestions contained in your circular of the 20th September, concerning the advancement of our commercial and industrial interests abroad, I questioned the minister of foreign affairs as to the attitude his Government was likely to assume towards American enterprise, and on learning from him it would be in all respects a most friendly one, but that to more satisfy myself on this score, it might be well to confer with his sovereign personally, I sought and was promptly accorded an interview with the Shah yesterday morning.

His Majesty retained me in conversation for over an hour discoursing upon the great and valuable deposits in Persia of iron, coal, copper, sulphur, and numerous other useful ores and precious minerals, and the fertility of the soil on the vast table lands, which required but improved means of irrigation to be made to return unfailing and abundant crops of wheat, maize, sugar-cane, tobacco, and rice, as well as cotton and other fiber-yielding plants, to say nothing of the tropical and semi-tropical fruits and vegetable medical products.

"The field," he said, "is opened to American capital and industry, which have but to come here and reap its fruits."

Hereupon I directly asked His Majesty if it was his wish that the development of the industrial and commercial resources of Persia should be undertaken by Americans, and if in such undertakings our people would receive his full protection and support.

To this he replied in the affirmative, assuring me that not only would their rights be guarantied and their interests promoted in every possible way, but that I had his authority to inform my Government that through me extraordinary concessions would be granted American capitalists coming here for the purpose of constructing lines of railway, cutting canals for irrigating and draining purposes, opening up mines, and establishing manufactories, or entering upon large farming or planting operations, or other legitimate industrial or agricultural enterprises.

His Majesty also said that understanding I had a practical knowledge of railway and mining engineering, as well as of cotton and cane culture as practiced in the Southern States of America, he would very much like to have me examine into and report upon the resources and possibilities of the Empire.

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In closing, His Majesty requested that I should convey to my Government his earnest desire to see this raised to the level of the higher grade of missions in our diplomatic service.

I have been here too short a time to be able to give a definite opinion of my own on the subject treated of in the main body of this dispatch, yet, judging from the writings of the best modern authorities and from the most reliable information to be obtained on the spot, I can but believe in the great native wealth of this land and of the profits that must result from its development.

I have, etc., E. SPENCER PRATT.

No. 547.

Mr. Bayard to Mr. Pratt.

No. 11.] DEPARTMENT OF STATE,
Washington, January 14, 1887.

SIR: I have received your No. 9 of the 29th of November last, touching the desire of the Shah to have his country developed by Americans, and the present diplomatic mission at Teheran elevated in rank.

A copy of your dispatch has been sent to the chairmen of the Committees on Foreign Relations of the Senate and Foreign Affairs of the House of Representatives, for their information.

I am, etc., T. F. BAYARD.

No. 548.

Mr. Pratt to Mr. Bayard.

[Extract.]

No. 22.] LEGATION OF THE UNITED STATES,
Teheran, January 17, 1887. (Received March 5.)

SIR: I have the honor to report that permission has just been granted by His Majesty the Shah for the erection of a hospital in Teheran, under the direction of Dr. W. W. Torrence, missionary physician of the American Presbyterian Board.

In my next dispatch I shall furnish you particulars as to the hospital and granting of the concession.

I have, etc., E. SPENCER PRATT.

No. 549.

Mr. Pratt to Mr. Bayard.

[Extract.]

No. 23.] LEGATION OF THE UNITED STATES,
Teheran, January 21, 1887. (Received March 7.)

SIR: In my dispatch No. 22, diplomatic series of the 17th January, I had the honor to give notice that the Shah had granted the concession for the erection of a hospital here under the direction of Dr. W. W.

Torrence, missionary physician of the American Presbyterian Board, and now beg to report more fully on the subject. In the summer of 1885, the late prime minister offered Dr. Torrence a decoration and about $1,000 on account of medical services rendered. As Dr. Torrence was then vice-consul-general of the United States at Teheran, he declined the decoration and money, saying that he was thankful for this expression on the part of the first man in the state, but he would prefer his giving a site of land for the erection of a hospital where all classes could receive medical and surgical treatment. Early in October of the same year, in an audience had with the prime minister, his excellency offered 10,000 square zarurs or about 11,500 square yards, in any one of three localities that Dr. Torrence might designate.

As usual in Persia, the carrying forward of this plan was left to a relative of the prime minister's, who had instructions to make out all necessary papers and close the matter.

In the mean time the prime minister died. His death was a serious blow to the hospital enterprise. Yet, in spite of opposition of various sorts, through the kindness of his excellency Emin l'Doulat, minister of posts and of the Fakr l'Mulk, member of the imperial council of state, the affair has at last been satisfactorily arranged.

The hospital as planned will be able to accommodate eighty to one hundred patients, but will begin with six to eight only. The plan is executed by Mr. Ernest Turner, of London, who is understood to have had a large experience in this line. According to the conditions the construction of the hospital, its management, etc., is left entirely to Dr. Torrence, who, from his reputation here and the standing he occupies, both among Christians and Mussulmen, is, I feel, particularly well qualified for the undertaking.

This institution is to be opened to all, irrespective of caste, nationality, or religion.

The site will embrace an area of about 24,000 square yards, upon which it is hoped to erect a plain but substantial building this coming summer.

For the hospital a sum of nearly $4,000 has already been received from Madam W. H. Ferrey, of Lake Forest, Ill., which has been increased by the Presbyterian Board to $5,000.

As the site has to be paid for, walls, buildings, and baths erected, it will be seen at once that the amount in hand is altogether inadequate for the purpose. Since the enterprise is a most worthy one, I thought the Department of State might see proper to bring it to the attention of the American public, and thus lead to its promotion through assistance from home.

I have, etc., E. SPENCER PRATT.

No. 550.

Mr. Bayard to Mr. Pratt.

[Extract.]

No. 19.] DEPARTMENT OF STATE,
Washington, March 9, 1887.

SIR: Your No. 23, of January 21 last, has been received.

The portion referring to the concession made by the Shah for the erection of a hospital under the direction of Dr. Torrence, missionary

physician of the American Presbyterian Board, has been communicated to the press.

The Government of the United States is much pleased at the evident disposition of His Majesty the Shah and his ministers to deal promptly and justly, as well as kindly, with all questions affecting American interests, and you are instructed to lose no fitting opportunity to testify its gratification and good will.

I am, etc.,

T. F. BAYARD.

No. 551.

Mr. Pratt to Mr. Bayard.

No. 49.] LEGATION OF THE UNITED STATES,
Teheran, April 25, 1887. (Received June 4.)

SIR: I have the honor to report to you that there are no American houses doing business here, and that in order to protect themselves against imposition our merchants and manufacturers desiring to enter this market should be represented on the spot, either singly or collectively, by an agent or agents, sent out by them from America for the purpose.

The numerous communications that are addressed to me by producers and exporters asking to be recommended reliable parties with whom they can enter into trade relations, the impossibility of the legation furnishing such information, and the danger to be apprehended from European adventurers in the East, seeking as a last resource to obtain the agency of established American firms, makes me feel that at this time it will only be due the manufacturers and merchants in the United States to give them a word of warning and advice.

For that purpose I would therefore respectfully request, should such a course meet with your approval, that you have the contents of the present dispatch published in our leading journals, so that it may be brought to the immediate attention of the trade.

At the same time I should like it to be stated that from observation I am firmly inclined to the belief that a reliable American agency in Persia, established from America, by Americans, and exclusively under American control, would, with due economy and proper management, soon prove a commercial success, and that, in my opinion, of our home manufactured products, hardware, wall-papering, oil-cloths, coarse, strong cotton goods, sewing-machines of low price, good cheap watches, and ordinary mechanics' tools are those most likely to meet with ready sale here.

I have, etc.

E. SPENCER PRATT.

No. 552.

Mr. Pratt to Mr. Bayard.

No. 52.] LEGATION OF THE UNITED STATES,
Teheran, May 4, 1887. (Received June 21.)

SIR: I have the honor to report to you that I have received a letter from Dr. E. W. Alexander, local physician to our missionaries established at Hamadan, complaining that, at the supposed instigation of

certain fanatical Jews, one Mohammed Hossein Khan, recently appointed ruler over the Jews and Armenians in that district, was attempting, in an arbitrary manner, to prevent the Armenian and Jewish children from further attending the missionary schools.

A copy of Dr. Alexander's letter I have the honor to inclose you herewith. You will observe that it has no reference to an attack, direct or indirect, upon our citizens themselves.

Taking this into consideration, and finding no such orders as those referred to by Dr. Alexander among the archives of the legation, I did not feel justified in making the matter the subject of official correspondence with the foreign office, but in the interest of the good work the American missionaries were so zealously engaged in and in order to arrest in its incipiency anything like an organized system of sectarian persecution instituted against them, I deemed it best to see his highness Muchir-in-Doulih, minister of foreign affairs, personally, and after laying the case before him, expressed the hope that he would not allow a subordinate official to pursue a policy so directly opposed, as I was satisfied, to his own and so prejudicial to the well being of such a number of His Majesty's subjects.

His highness listened most attentively to all I had to say, and not only disclaimed any intention on the part of the Persian authorities to interfere with the teachings on the part of our missionaries of Jewish or Armenian children, but assured me that direct instruction would be sent the said Mohammed Hossein Khan to neither permit nor sanction such proceedings in the future.

His highness further thanked me for representing the case to him as I had done, and said that my endeavors to settle all differences in a conciliatory manner were the best proofs of the friendship of my Government for that of His Majesty the Shah.

I have, etc.,

E. SPENCER PRATT.

[Inclosure in No. 52.]

Dr. Alexander to Mr. Pratt.

HAMADAN, PERSIA, *April* 29, 1887.

DEAR SIR: I beg leave to address you a few lines. During the past winter we have lived here in harmony with all around us, the old prince governor being particularly friendly.

However, I must tell you that Mohammed Hossein Khan, sent down here lately by the minister of foreign affairs to rule over the Jews and Armenians, has orders from his master to prevent any one from sending their children to our schools, said orders defaming American missionaries in unsparing terms.

This Hossein Khan, in conversation with our people, says he does not wish to interfere with our work, but he has imperative orders to do so, and if he does not carry them out his enemies here (old fanatical Jews, etc.) will telegraph to the minister of foreign affairs that he is an inefficient ruler and have him removed. He wishes us to write to your excellency and get orders through you from the minister of foreign affairs counteracting his orders, which would release him and allow the children of both Jews and Armenians to continue their studies.

Your excellency may deem it better to wait until some direct move is made against us.

If such a move is made I will inform your excellency by telegraph. I think orders from the minister of foreign affairs sufficient for present emergency will be found recorded in the books of the legation.

I am, etc.,

E. ALEXANDER.

No. 553.

Mr. Pratt to Mr. Bayard.

No. 64.] LEGATION OF THE UNITED STATES,
Teheran, June 21, 1887. (Received August 1.)

SIR: I have the honor to report that I am constantly receiving letters from merchants and manufacturers in the United States asking to be recommended to reliable parties here with whom they can enter into business relations.

This legation knows of none such that it can take the responsibility to so recommend and in this connection I personally and officially consider it my duty to state that I am earnestly requested by Persians in the highest position, who sincerely desire to see the commercial relations between the two countries established on a sound basis, to advise that firms in the United States desiring to enter this market send over their own agent, or agents, to represent them, and that they, under no circumstances, choose as their representatives foreign or European adventurers on the spot, who, under the pretense of possessing peculiar facilities for doing business, and especially for obtaining contracts from the Government, shall, for the purpose of promoting private schemes of their own, seek to obtain the use of the names of the said firms as a sort of guaranty of respectability. That a lucrative trade can be established between the United States and Persia I am confident, but I am equally confident that to make it successful it must be originated and controlled by our own people at both ends of the line.

In the interest of American commerce I now, therefore, respectfully request, if approved by you, that the Department give the contents of the present dispatch to the press for publication.

I am, etc.,

E. SPENCER PRATT.

No. 554.

Mr. Bayard to Mr. Pratt.

No. 42.] DEPARTMENT OF STATE,
Washington, June 24, 1887.

SIR: I have received your No. 52 of May 4, 1887, concerning the letter of Dr. W. E. Alexander, physician to the American missionaries at Hamadon, complaining of the present local ruler, Mohammed Hossein Khan, over Armenians and Jews, interfering with the children of the latter attending missionary schools.

Your course in reference to the American missionaries in Persia, as narrated by you, is approved. On the general question of the rights of missionaries and of American citizens in oriental lands I have lately had occasion to instruct at full length our minister at Constantinople. These instructions will before long be placed in your hands and will serve to guide you, it may be, in your future action in relation to these important questions.

I am, etc.,

T. F. BAYARD.

No. 555.

Mr. Pratt to Mr. Bayard.

No. 114.] LEGATION OF THE UNITED STATES,
Teheran, September 20, 1887. (Received November 2.)

SIR: I have the honor to report that the real estate owned by United States citizens in Persia is estimated by the most reliable authorities as representing between $115,000 and $120,000 in money originally invested, its actual value being far above those figures and steadily increasing.

The property in question is held almost exclusively by our missionaries, who annually expend here not less than $70,000.

The work of these noble men and women appears from all indications to be at present in a most flourishing condition, and it affords me particular gratification to report to you that they are accomplishing a vast amount of good in this land, not only in the way of elevating and educating the native Christian element, but also by the beneficial moral effect of their example upon the community generally.

I have, etc.

E. SPENCER PRATT.

PERU.

No. 556.

Mr. Buck to Mr. Bayard.

[Extract.]

No. 138.] LEGATION OF THE UNITED STATES,
Lima, August 12, 1886. (Received September 3.)

SIR: On the 6th instant the House of Deputies by a vote of 44 to 33 rejected article 1 of the judicial bill, which proposed annulment of all appointments made in the department of the judiciary by the late council of ministers, while they approved without discussion annulment of all appointments made in the same department under the governments of Pierola and Iglesias from December 21, 1879, to December 2, 1885.

Also a bill has been introduced in the Deputies to annul all interior acts of the Pierola and Iglesias governments. Were such a measure to pass, it would, I apprehend, be construed here to reach with disintegrating touch contracts of the greatest importance heretofore entered into with foreigners, especially the railroad contracts by which the three most important railroads in Peru were placed under lease to Americans, and the Callao Muelle y Darsena contract.

In advance of definite outcome in the direction of the proposed action of the Peruvian Government disregarding or annulling contract rights of American citizens in properties perhaps worth more than $100,000,000, which would in effect be confiscation, it seems desirable that I should be advised in an instruction of the views of our Government.

I make this suggestion in a spirit of that precaution which the importance of the interests involved may seem to require as "due vigilance."

I have, etc.,

CHAS. W. BUCK.

AUGUST 14, 1886.

P. S.—Since writing the above, the House of Deputies have unanimously adopted the report of a special committee appointed to investigate the "Muelle y Darsena" contract, by which the approval of Congress is refused to the renewal made by the Iglesias Government, April 10, 1885, and it is declared null.

It seems the abrogation will pass in the Senate also. The committee claim that, as the original contract, made August 16, 1869, was approved by Congress, the renewal should likewise be so approved; and, further, that the contract was not only in violation of the laws of 11th and 28th of January, 1869, but also of articles 23 and 27 of the constitution of of 1860, which articles were confessedly in force under the Iglesias Government, but refers to the constitutional articles in connection with that Government, without prejudice to the right of Congress to annul or validate its acts.

On the other hand, it will be claimed, presumably, that subsequent action of the Iglesias Congress (whose Government at the time was recognized as that of Peru by France and other countries) of the 26th of March, 1884, and resolution of the same assembly, 2d April, 1885, conferring powers to raise money for the pacification of the country, and perhaps, also, the general dictatorial powers conferred on Iglesias by Congress covered and made valid the contract.

This action of Congress, it will be observed, is special, and does not relate to the proposition to which I have referred, to annul all acts generally of stated preceding Governments. And so long as the action is special, and limited in its intent to the "Darsena," I see no such imminent danger to American interests as to require from me official expression upon principles which might associate those interests which exist under different facts with the Darsena.

I have, etc.,

CHAS. W. BUCK.

No. 557.

Mr. Bayard to Mr. Buck.

[Extract.]

No. 97.] DEPARTMENT OF STATE,
Washington, September 23, 1886.

SIR: I have received your No. 138, of the 12th of August last, in which you report certain proceedings of the Peruvian Congress which seemed to cast a doubt upon the obligation of the present Government of Peru to keep engagements entered into by the Pierola and Iglesias Governments. Your apprehension that the present Government may contemplate a general denial of such obligations seems to have been aroused mainly by two bills introduced in the House of Deputies, one of which proposed to annul all appointments made in the judiciary departments under the Governments of Pierola and Iglesias, and the other to annul all interior or domestic acts of those Governments. The former bill, you state, has been passed by the House without discussion, The latter measure has not been acted on; but, inasmuch as if it should receive the approval of the Congress it might seriously affect extensive interests of citizens of the United States which have grown up under contracts with the Pierola and Iglesias Governments, especially in connection with the construction and operation of railways, you ask to be instructed as to the course you should pursue in the contingency you suggest.

Upon the general question of the binding effect upon Peru of contracts made by the Pierola and Iglesias Government in accordance with the constitution and laws of that country, the opinion of this Department is that the performance of such engagements is obligatory upon the present Peruvian Government; and that the attempt on the part of that Government to avoid such contracts, thus denying the capacity of the Pierola and Iglesias Government to contract, in violation or disregard of the vested rights of citizens of the United States, would afford just ground for complaint. For the greater part of six years, from 1879 until 1885, either the Pierola or the Iglesias Government was recognized by foreign powers as the Government of Peru. The United States, in common with other nations maintaining diplomatic and com-

mercial relations with that country, took no part in the civil conflict which raged from time to time during that period, but acted upon the principle of recognizing as the lawful Government of Peru that political organization which was able to maintain the diplomatic and commercial relations of the country with foreign nations. The acts of such a government are universally admitted as binding upon the country which it represents. This principle holds even where a change in the form of a government occurs; and it applies still more strongly where the change is merely in the personnel of the government. Contracts made by a government are to be regarded as the obligations of the nation it represents, and not as the personal engagements of the rulers. Hence, although the government may change the people remain bound.

It is hardly to be supposed that the Government of Peru would entertain a disposition to declare void all contracts made by the Pierola and Iglesias Governments; and what is herein said on that subject is intended to inform you of the views of this Government upon the questions of international law which are involved, and not to direct you to take any anticipatory action.

Any case arising in which American interests are found to be affected will require to be examined on its merits, to determine how far the general principle applies. But, as to the general principle, the present Government of Peru should know our position.

I am, etc.,

T. F. BAYARD.

No. 558.

Mr. Buck to Mr. Bayard.

[Extract.]

No. 171.] LEGATION OF THE UNITED STATES,
Lima, October 28, 1886. (Received November 20.)

SIR: I have received Department's No. 97, of September 23, 1886, and I have to report that Congress, on the 24th instant, passed an act similar to the one referred to in that number, annulling all the interior acts of the Piérola and Iglesias Governments. I inclose a newspaper copy of the act, not yet signed or officially published, and translation. As the President has not the veto power, the signing and putting into effect is perfunctory.

The President has also signed the act annulling the Darsena contract. * * *

It will be observed the terms of the general act, referring to the Piérola and Iglesias Governments, at least ostensibly, are sweeping in their effect, and how far the act may reach, and whether it will affect foreign interests generally, will depend upon the construction given it. * * *

I concluded that I had best put into writing the substance of what I had to say to the minister of foreign relations on the subject. This I did, heading it "Memorandum," as see copy herewith sent; and when I met him yesterday evening, per appointment, I had it read to him, and then left with him a copy. He said that the general principles announced were correct, and no one with the least knowledge of international law would deny them; but as no American interest was as yet infringed, he thought it premature that I should pass to him the

note. I replied that the act of Congress was in its terms general and sweeping, and I thought my Government desired that he should be advised of its view of the international principles involved in the abstract; but since he had expressed full agreement with the views I had presented, I did not demand an answer, but would leave the paper as a "memorandum" of what I had said, so he might have it translated at his leisure, and I should send a copy to Washington, in a report to my Government. He then again expressed agreement with the general principles; but said he would reserve the right to reply if it should seem proper upon more careful consideration, but thanked me for relieving him of the necessity of answering. The whole interview, as was the previous, was perfectly agreeable and cordial.

After my interview of Monday my colleagues of England, France, Germany, and Brazil called to see and consult with me relative to the proper course, in view of the action of Congress, whether there should be joint diplomatic expression or not. I advised that I thought joint expression was not required; that I had already myself seen the minister of foreign affairs and should, perhaps, embody my views in a "memorandum."

But the French minister afterwards asked General Salazar, the dean of the diplomatic corps, to call a meeting of the body, which he did for yesterday evening. I then expressed to my colleagues, collectively, the view somewhat more strongly, which I had previously presented at my own house, that it did not seem to me advisable that there should be joint expression; indeed, that I had taken such separate action as I thought best, and had an engagement for a future personal interview, made at the minister's request, and I could neither join in a united expression nor permit any one else to speak for my Government in the premises; that I thought it would both be more friendly to the Government here, and more effective that each representative should act separately, according as the interests and the views of his Government should suggest.

So, when the question was put, whether it was proper that there should be joint diplomatic action, it was unanimously determined in the negative.

However, the English minister had already directed a note to the Government here, stating that England would never admit the nonresponsibility of the present Government of Peru for the acts of its predecessors, and he sent a long cablegram to London announcing the fact.

The French minister had also addressed a short note to the Government here.

The Spanish minister had presented his views in a personal interview, and the German minister had expressed some intention of doing likewise, and the Chilian minister cabled for instructions.

But I think there is no difference of opinion among the members of the corps concerning the principle of responsibility. It did not seem to me worth while to cable at a considerable cost, as I know no immediate necessity for doing so.

I have, etc.,

CHAS. W. BUCK.

[Inclosure 1 in No. 171.—Translation.—From "The Commercial," October 25, 1886.]

All the governmental interior acts proclaimed by Messrs. Nicolás de Piérola and Miguel Iglesias are declared null, and the latter shall be held responsible according to the military and civil laws. (Sitting of the 24th October, 1886.)

[Inclosure 2 in No. 171.]

Mr. Buck to Mr. Ribeyro.

LEGATION OF THE UNITED STATES,
Lima, October 26, 1886.

Mr. MINISTER:

In view of the recent action of the Peruvian Congress, declaring null all interior acts of certain Governments anterior to the present, recognized by foreign nations; and in consideration of the fact that what were internal acts and what were acts affecting foreign interests may become, under the said action of Congress, matters for executive or judicial construction, I think it proper to advise your excellency of the view entertained by my Government relative to the principles of international law involved, so far as they may affect the interests of United States citizens vested under obligations incurred by the Governments of Peru referred to.

For the greater part of the several years since 1879, the Piérola or Iglesias Government was recognized by foreign powers as the lawful government of this country, and throughout that long period of national strife and varying fortunes which happily terminated in the national peace of last December, when the diplomatic representatives of foreign nations in this capital, prompted by the desire to stay the shedding of fraternal blood, exercised their intermediary good offices in bringing about a peace, under which Generals Iglesias and Cáceres mutually manifesting "there should reign in all political parties complete oblivion of past differences, leaving neither conquerors nor conquered, but Peruvians, bound by the indissoluble tie of love of country" (see the act signed by General Cáceres and the members of the diplomatic corps in the building of Congress of this capital, on the 2d of December, 1885), and under which previously contending parties transferred their powers and arms into the hands of the provisional government, under whose auspices the present executive and legislative powers of this country were elected and installed. During all that anterior period, the United States, in company with other nations diplomatically represented in Peru, acted upon the principle of recognizing that political organization which manifested the ability to maintain international and commercial relations with foreign countries.

The acts of such a government are universally considered binding upon the nation it represents.

This view is considered undeniable from an international standpoint, even when change in the essential form of government is involved, and it applies with greater force still when the change is only in the personnel of the government.

Foreign cabinets can not, as a rule, pass judgment upon questions which may divide a people as pertaining to their internal political condition, nor become partisans in the rights or the wrongs involved in the local political issues of other countries, nor can they question the motives that produce results without also questioning the capacity of a people to influence their own conditions and destinies; they can only accept facts as they appear.

The interests of recognizing nations, as well as both the interest and dignity of the nation recognized, demand this.

Obligations affecting foreign interests, incurred by a government which has been able to secure general recognition from the nations with which it maintains diplomatic and commercial relations, and contracts made by it, in accordance with the then existing laws of the country, are to be regarded as the obligations of the people it represents, and not as the personal engagements of the rulers.

The latter may change with the currents of popular impulses, with the ebb and flow of varying influences, and the mutations of public opinion, or with the fluctuation of circumstances, or with the fortunes which a people may suffer or create for themselves, but the people remain bound.

It results, as I think your excellency will see, that my Government could not consent that the interests of her citizens should be prejudiced through the instrumentality of decrees, whether they be legislative or executive, which proceed merely upon the assumption that some former government which has been internationally recognized as the lawful Government of Peru, was not such government.

I do not anticipate that the action of the Peruvian Congress will be construed to have held in its contemplation a disclaimer or repudiation of responsibility for the acts of any former duly recognized government, as affecting the interests of United States citizens.

But it seems to me proper the present Government of Peru should understand the views, based upon international principles, which have actuated the United States Government in its relations with this Republic, and the bearing of those views upon the interests of United States citizens.

With this frank and friendly presentation of what I understand in this connection to be the position of my Government, I take pleasure in presenting again to your excellency, etc.,

CHAS. W. BUCK.

No. 559.

Mr. Bayard to Mr. Buck.

No. 112.] DEPARTMENT OF STATE,
Washington, November 30, 1886.

SIR: I have received your No. 171, of the 28th of October last, inclosing a copy of an act of the Peruvian Congress, passed on the 24th of that month, declaring void all "interior acts" of the Pierola and Iglesias Governments, and have to approve your note or "memorandum" of the 26th of the same month to the minister for foreign affairs, in which you set forth in accordance with your instructions the views of this Department on the responsibility of nations for the acts of their *de facto* Governments.

I have also to approve your course in declining to join the representatives of certain foreign powers at Lima, in diplomatic representations to the Government, concerning the law in question.

Not only are the interests of all the various Governments at the present conjuncture diverse in their character, but there are special questions at issue between those Governments and Peru, such as the controversy with France respecting the Darsena contract, in the solution of which this Department does not think it proper to interfere.

The only desire of the Department in this connection is, that all such questions may be settled honorably, and to the satisfaction of both parties.

Should a case arise involving interests of citizens of the United States, the Department will then determine upon such action as may seem proper for the protection of those interests.

I am, etc.,

T. F. BAYARD.

No. 560.

Mr. Neill to Mr. Bayard.

No. 188.] LEGATION OF THE UNITED STATES,
Lima, December 20, 1886. (Received January 18, 1887.)

SIR: I have the honor to report to the Department of State the death of José Sevilla, esquire, on the 9th of the present month, at Lima, Peru. He was a naturalized citizen of the United States at the time of his death, and was about eighty years of age. He was a gentleman of large wealth, and well known in Peru as a great philanthropist. He was born at San Pedro de Lloc, in the province of Pacasmayo.

Mr. Sevilla's estate is estimated at between $4,000,000 and $5,000,000. He bequeaths the sum of 500,000 silver soles for the establishment of a benevolent institution in New York City, to be called the "Sevilla Home for Girls." I inclose a translation of several of the clauses of the will taken from "El Comercio."

I have, etc.,

RICHARD R. NEILL.

[Inclosure in No. 181.—From El Comercio of December 20, 1886.—Translation of part only.]

Will of José Sevilla.

1. We believe it indispensable that the public be acquainted with the will of the great Peruvian philanthropist, José Sevilla, who after many years of hard and honest labor, accumulated a fortune, of which he bequeaths the greater part to benevolent institutions and works of public interest.

* * * * * * *

2. *Clause* 3.—He declares that in the year 1884 he made a will in the United States, in which he establishes a benevolent institution in New York; he desires still that said institution be established and named "The Sevilla Home for Children," but not as indicated in said will, but as determined in this one.

Clause 4.—Establishes the manner in which the preceding institution shall be established and administered. In it will be received from fifty to one hundred poor girls. The representative of Peru in the United States will have intervention in said institution. Peruvian children to have the preference. He likewise indicates who are to be the administrators, they being several heads of respectable business houses and banks in New York.

Clause 5.—For the establishment and support of the mentioned institution, he bequeaths the sum of 500,000 soles ($500,000).

Clause 6.—Makes recommendations and gives instructions to his executors and the municipality of New York, referring to said institution.

3. *Clause* 28.—Prohibits the intervention of the Government or of the political authorities of Peru in the accomplishment of the dispositions of his will; ordering that by the mere act of pretending to do so, all that concerns the establishment of colleges, schools, and other institutions that he founds in Peru is thereby annulled, and in that case, said legacies shall go over to the philanthropic executors in New York, so that his wishes in that reference be carried into effect there.

* * * * * * *

4. *Clause* 37.—Explains that the word *soles* that he employs should be understood to mean silver soles; and further revokes all preceding wills, and especially the one made at New York in the year 1884.

* * * * * * *

ADDITIONAL CLAUSES.

5. *Clause* 4.—Ordains that if any of the legatees oppose themselves or provoke obstacles in the execution of the will, they shall lose their rights, and these are to go over to the Lima Benevolent Society; and if this one should be in opposition, it shall likewise lose its rights, and these are to pass over to the United States legation at Lima, to be employed in benefit of the poor of New York.

Clause 5.—Indicates the manner in which his executors and heirs shall pay the legacies, as they take partial or entire possession of his fortune.

Clause 6.—Bequeaths the remnant of his fortune to the Benevolent Society of Lima.

Clause 7.—Indicates the manner to proceed in cases of doubt as to the accomplishment of his last wishes.

No. 561.

Mr. Neill to Mr. Bayard.

No. 189.] LEGATION OF THE UNITED STATES,
Lima, December 22, 1886. (Received January 8, 1887.)

SIR: I have the honor to acknowledge receipt of your communication No. 112, dated November 30, 1886, as being in receipt of dispatch No. 171, of the 28th of October last, from this legation, in reference to an act of the Peruvian Congress, declaring null and void all "interior acts" of the Pierola and Iglesias governments.

I beg leave to state that the "decree" appeared in "El Comercio" of the 21st instant, signed by the President, Andres A. Caceres, and by Manuel Velarde, the then minister of government, and dated the 26th of October, 1886.

I have, etc., RICHARD R. NEILL.

No. 562.

Mr. Buck to Mr. Bayard.

No. 210.] LEGATION OF THE UNITED STATES,
Lima, February 19, 1887. (Received March 16.)

SIR: I received last night a long note from the minister of foreign affairs, taking exceptions to my "memorandum" of October 26, 1886, copy of which was forwarded in my No. 171, of October 28, 1886, and approved in Department's No. 112, of November 30, 1886, relative to action of the Peruvian Congress annulling the acts of the Pierola and Iglesias governments.

There are some sixteen pages of the document, and from such attention as I have been able to give, its intent is to claim the right of Congress to take the designated action under article 10 of the constitution of 1860, and while stating that Congress, in order to act strictly within its powers, expressly directed the annullment only against interior acts, yet virtually assuming for the Peruvian Government the right to decide what are "external and what internal acts."

It will be remembered that my "memorandum" was read to Señor Ribeyro, then minister of foreign relations, October 26, 1886, and he admitted the propositions laid down were such as no one the least acquainted with international principles would contest (see my said No. 171), but regarded my action as premature, and reserved the right to reply, if reply was considered desirable.

About four months having elapsed without any reply, during which there had been a change of ministry, I supposed, of course, there would be no further answer made. * * *

I have not fully determined what course I shall take respecting the matter. Probably I shall answer the note as briefly as possible, correcting some erroneous assumptions referring to my "memorandum," and saying in substance that, having announced the views of the Department in my "memorandum," I regard those views as conclusive; and while I will not anticipate a violation of the rights of United States citizens, and give due regard to the assurances the minister expresses, I must yet reserve to my Government the right to judge, as concerning its own citizens, whether any future action affects adversely their international rights.

That saying thus much, I can not enter upon further discussion of the matter unless in future otherwise advised by instructions from my Government, to which meanwhile I will forward copy of the foreign office note for its consideration.

It is entirely impossible to have copy or translation made for the mail leaving to-day, and there is no other for two weeks, when I shall forward copy, etc. I write this in much haste in order to get it off.

I have, etc.,

CHAS. W. BUCK.

No. 563.

Mr. Buck to Mr. Bayard.

[Extract.]

No. 212.] LEGATION OF THE UNITED STATES,
Lima, February 28, 1887. (Received April 4.)

SIR: Referring to my No. 210, of the 19th instant, I now inclose copy of the note of Señor Chacaltana, minister of foreign relations, replying to my "memorandum" of October 26, 1886, and with it a translation.

I also send copy of my note, dated the 26th instant, in answer, which was delivered to the foreign office this morning.

Since the present minister refers to and has treated my said "memorandum" as an official note, I think it best there should be on the files of the foreign office an account of the interview, reading of the paper, and the then minister's (Señor Ribeyro's) comments as they really happened and were reported at the time.

In view of Department's approval of my indicated "memorandum" in its No. 112, of November 30, 1886, seemingly making clear its attitude on the subject, and having in mind the present interrupted mail conditions, I have without delay replied to the minister's note, endeavoring to do so with sufficient emphasis to meet present requirements, and yet with due conservatism, as well as with a certain deprecation as to any anticipation of differences.

I have, etc.,

CHAS. W. BUCK.

[Inclosure 1 in No. 212.—Translation.]

Mr. Chacaltana to Mr. Buck.

LIMA, *January* 25, 1887.

SIR: Your excellency's dispatch relative to the law enacted by the last Congress, in virtue of which the interior governmental acts of Messrs. Pierola and Iglesias were annulled, has been received at this office. In it your excellency declares the opinion of your Government in reference to the principles of international law violated by the said legislative act respecting the interests of citizens of the United States, in consequence of obligations contracted with them by the different governments of Peru.

Notwithstanding, your excellency, as appears from the tenor of the dispatch I have the honor to answer, only proposes to make a frank and amicable declaration of principles in defense of the aforesaid interests, the undersigned considers himself obliged to point out the reasons that prevent him from accepting some of the ideas expressed in the said declaration.

Your excellency commences by alleging the circumstance of the recognition by foreign powers of the governments of Messrs. Pierola and Iglesias, in order to make it appear that their acts have been universally considered as obligatory upon the Peruvian nation, and to deduce from this the conclusion that the engagements entered into by said gentlemen can not cease to be considered as having force under the action of any government.

Your excellency will permit me to observe that if such reasoning were to be accepted by this office, Peru would be obliged in future to depend for the legitimacy or illegitimacy of its governments and their stability or instability not so much on the exercise of inherent rights of national sovereignty as on the recognition that other nations with which it cultivates amicable relations would give them. Nevertheless, your excellency is perfectly aware that the powers of the state in a country entirely as free as Peru is can not be constituted or legitimized, save under the direct influence of exclusively national elements.

Your excellency himself, on interpreting, in another part of your dispatch, the wise and just international doctrine in this matter, relieves me of the labor of entering into more extensive consideration of this point.

"Foreign cabinets," your excellency says, "can in no manner give their judgment in matters that divide a nation internally, and that are only under the dominion of its internal political condition, nor take sides for or against one of two elements born of the local politics of other countries; in the same way they can not question the motives that produce results without questioning at the same time the right of a nation to direct its own circumstances and destinies; they can only accept the facts as they present themselves."

Nevertheless, foreign cabinets would judge in matters of the internal political government of Peru; they would declare themselves partial in regard to the elements born of local politics, and would discuss the Government's own right to lead the Republic on the road of its immortal destinies, if, as your excellency insinuates, the validity or nullity of governmental acts did not depend on that which is established by the laws regulating said acts, but on the action of powers completely foreign to the

growth of our political government, and to the authorities charged with giving it practical life.

In this respect it is appropriate that your excellency should recall a most essential circumstance for the due appreciation of the principles strenuously expressed in said law of nullity, that is to say, that this law is nothing but the faithful expression of article 10 of the political constitution of the state, in virtue of which are declared null the acts of those who usurp public functions.

Now, then, when the aforesaid constitution was proclaimed neither your excellency's worthy predecessors nor the citizens of the nation so well represented by your excellency considered that the said article compromised the interests placed under its protecting safeguards.

On the contrary American citizens on establishing their residence in Peru did it naturally with the purpose of submitting themselves to the government of the existing laws, for it is impossible to suppose that they believed themselves placed in an exceptionally favorable position.

If they accepted and submitted themselves to the constitutional principle referred to; if under its protection they have lived during all the time of the independent life of Peru; if many foreigners have taken refuge under that principle when they have become victims of arbitrary proceedings of subaltern authorities, the undersigned does not see the reason why a law that has merely been the faithful translation of the aforesaid constitutional principle can be objected to and engender distrust when its application is only to certain determined epochs in which the public power was usurped by citizens who received no mandate from the people.

To consent to that constitutional law, and at the same time to object to the last decree is equivalent in fact to accepting a principle and rejecting its consequence, or to desiring that a given cause should not develop its natural and spontaneous results.

In order to strengthen the force of your argument your excellency is pleased to remember that, being grateful for the good offices interposed by the diplomatic corps in December, 1885, Generals Cáceres and Iglesias declared "that in all political parties there should reign the most complete oblivion of past dissensions, there existing no vanquished nor conquerors, but Peruvians bound by the indissoluble tie of love of country."

This opportune recollection of the events that preceded the establishment of the Government to which the undersigned has the honor to belong, properly completed, as I propose doing, upholds the opinions maintained in this dispatch.

The understanding of the honorable diplomatic corps in those moments of true affliction to the Republic was a basis for another agreement that on the same day was arrived at by the delegates of Messrs. Cáceres and Iglesias, who, interpreting the voice of public opinion, decided upon the formation of a provisional government, which was to serve as a foundation for the definite establishment of the anxiously-looked-for constitutional régime.

In virtue of the second clause of said agreement, the constitution of 1860 was at the moment proclaimed.

The force and vigor of said constitution was felt through the decree in virtue of which the executive power was assumed by the council of ministers, and the circular that was opportunely handed to the diplomatic and consular corps residing in Lima. Under the auspices of said constitution elections for president, vice-president, senators, and deputies were called for; and under the auspices of the same fundamental law, the Government of his excellency General Cáceres was established. Therefore, that constitutional law, consented to and applauded by all parties as the saving anchor of the institutions and future welfare of Peru; that law, which arose from the abyss of the national disasters as the true and only ensign of the reconciliation of the Peruvian family; that law, whose empire was restored with the powerful moral aid of the honorable diplomatic corps, of which your excellency formed part—that is the law which establishes in its tenth article the nullity of the acts of those that usurp public functions.

Consequently, if that constitutional law is, as it can not but be, the true mandate conferred on the powers constituted by the popular will to terminate the grand work of the political reorganization of the Republic, obeying it, the national congress has not only been able, but has found itself in duty bound, to declare the nullity of the interior governmental acts of Messrs. Pierola and Iglesias.

And thus proceeding, it has justly believed that it did it with the moral concurrence of all those who, yielding guidance to noble, generous, and high sentiments, as your excellency and colleagues of the honorable diplomatic corps placed at the service of Peru their prestige and good offices, in order to re-establish the government of the political constitution in which are annulled the acts of those who usurp public functions.

Notwithstanding these observations, the national congress, proceeding with scrupulous consideration for the interests that might be found under the exclusive pro-

tection of international rights universally recognized, has limited the sphere of action of said law to interior governmental acts, leaving by implication the exterior ones in force; that is to say, those that refer to the international relations that Peru cultivates with friendly nations.

Under this point of view, the law embraces the acts that pertain to the exclusive dominion of the interior politics of Peru, and refers to the exercise of rights appertaining to the national authority. And if the exercise of this right should in any way affect the interests of foreign subjects, that should not surprise your excellency, because the interests of all those who reside in a nation, however advanced she may be, can not but be affected by the fluctuation of her local politics and the various incidents arising out of the passionate struggles of parties. And the said interests are still more exposed to suffer serious damages, when the said foreign subjects, taking advantage of the abnormal situation of the Republic and the easy condescension of the usurpers of public powers, pretend to obtain advantages ruinous to the country that would not be consented to under the healthful influence of governments regularly established.

I do not believe that citizens of the nation your excellency represents are found in this case, and therefore it will not be possible that they fall under the rigor of the referred-to law, especially in the sense that your excellency fears.

I must likewise point out to your excellency that if only the interests of foreign subjects are to be considered worthy of protection by international law, in so far as they are connected with the acts of governments reputed legitimate, or recognized by foreign nations, it would follow that the claims founded on acts of chiefs (*caudillos*) who had not been recognized as chiefs of government, notwithstanding the popularity that might surround them, ought to be dismissed at once. This has not been, however, the rule of conduct observed by the Government of the undersigned, which neither accepts nor repels diplomatic claims without ascertaining beforehand, by means of a conscientious and careful examination of them, whether they are or may be invested with the conditions prescribed by international law.

In virtue of this rule of conduct, inspired by justice and sentiments of the most noble and frank friendliness, the claims of subjects of different nationalities proceeding from events which happened under the different governments that have existed in the Republic during the last years of the war, though not all were recognized by the Government of your excellency, are discussed in this office.

Under the influence of similar sentiments, my Government has pleasure in giving your excellency the assurances that when the time arrives for discussing and resolving any of the claims patronized by your excellency, their merits will be estimated under the light of the principles of international law, and of the justice that rules the moral relations of men and peoples.

The Government, without abdicating, therefore, the statute law and essential prerogatives of the national sovereignty, without establishing odious preferences when exercising the rights belonging to its character, without renouncing the exercise of the authority that the people have conferred on it in accordance with the political charter of 1860, is disposed to recognize in favor of the citizens of the Great Republic the guaranties that our laws and the principles of international law concede to them.

With sentiments of my highest consideration and esteem, and asking that your excellency excuse the involuntary delay of this answer, I subscribe myself your excellency's very obedient servant,

CESÁREO CHACALTANA.

[Inclosure 2 in No. 212.]

Mr. Buck to Mr. Chacaltana.

LEGATION OF THE UNITED STATES,
Lima, February 26, 1887.

SIR: The note of your excellency, dated January 25, replying to my "memorandum" of October 26, 1886, bearing upon certain legislation of the Peruvian Congress claiming to annul all internal acts of the Piérola and Iglesias Governments, was only delivered at this legation on the 18th instant, late in the evening.

Having advised the Peruvian cabinet in the said "memorandum" of the views of the United States Government on the subject, I must consider those views conclusive, and I can not feel at liberty to further discuss the opinions, if they imply contention, with which your excellency has thought proper to respond, unless my Government should hereafter otherwise instruct me.

Indeed, I do not see that there need necessarily follow, from what your excellency has written, a difference of views between our two Governments on pertinent international principles stated in my "memorandum," and I cordially hope there may be none.

It may, however, be proper, without entering upon general discussion, to make the following observations:

My "memorandum" of October 26 last was read to Señor Ribeyro, then minister of foreign affairs, on the day of its date, in my presence, and thereupon he said that the general principles announced were correct, and no one with the least knowledge of international law would deny them.

But as no American interest was yet infringed, he thought it premature that I should pass to him the note. I replied that the act of Congress in verbiage was general and sweeping, and I thought my Government desired that he should be advised of its view of the international principles involved in the abstract. But since he had expressed full agreement with the views I had presented, I did not demand an answer, but would leave the paper as a "memorandum" of what I had said, which I did. He then again expressed agreement with the general principles, but said he would reserve the right to reply if it should seem proper upon more careful consideration, but thanked me for relieving him of the necessity of answering.

I supposed, however, of course if a reply were made, it would not be unreasonably delayed; and as months had passed without dissent from the position taken in the said "memorandum," I naturally concluded the expression of the minister that "the general principles were correct, and no one with the least knowledge of international law would deny them," might be taken as final. I do not adopt the form of the minister's expression as my own, but have quoted it as used, and reported by me to Washington, at the time. Certainly, after so ready an appreciation of my language by the then minister, I could hardly suppose I had left any room for the remark that I had "insinuated" ("lo insinua") aught.

I might add in this connection that nothing in my "memorandum" could, it seems to me, by any fair or legitimate construction, imply or "insinuate" any derogation to the fullest exercise of national independence by Peru, or of her prerogative to recur to any of her past constitutions or laws, or to create others, or set up or pull down within her own borders at will; so far as her acts may not trespass beyond recognized limits upon the rights and duties of equally independent and sovereign powers, to exceed which limits might be an exercise, not of independence, but of internationally dangerous license. And I expressly limited my observations upon the action of the Peruvian Congress to its possible effect through any construction adverse to rights internationally vested in citizens of my own country. I did not assume to discuss any engagements (if there are such) of Messrs. Iglesias or Piérola ("dichos Señores") or either of them, entered into without authorization, or in violation, of then (at the time) existing law.

My Government has assumed no interference in the politics of Peru, and I do not think there can be implied any confusion of partisanship with any deductions logically drawn from the presentation of views made in my said "memorandum." It has only, in common with most Governments maintaining diplomatic and commercial relations with this country, recognized facts as they stood out before the eyes of the world, failure to recognize which might have induced with some show of validity the accusation of partisanship.

On the other hand, if the United States Government has at any time, through approved acts of its representative, manifested in an acceptable way an earnest desire to see bloodshed cease, peace restored, and national harmony prevail under the orderly "reign of law," it has been prompted by a disinterested national friendship, coexistent with the life of this Republic as an independent member of the family of nations; and while every true and elevated aspiration of Peru for constitutional and healthy republican conditions has the cordial sympathy of the Federal Government, yet, except so far as recognition may imply the duty of protection to their own citizens, the United States have assumed no responsibility for the existence of any Government—the present, that established in December, 1885, or any preceding—or any constitution that has been proclaimed in Peru, and so far from such assumption, if it be implied in any quarter, I apprehend my Government would consider such idea of responsibility as derogatory to the status of a nation which it concedes to be sovereignly independent, with all powers which that recognition can justly imply—so sovereign that it is to the nation of Peru it looks as obligee in international relations, irrespective of who may, for the time, in succession wield executive power, or what may be the particular conformation of its political autonomy at any stated period.

Having said thus much merely to correct what seem to me indications in your excellency's note not warranted by anything contained in my "memorandum" of October 26 last, I have only to add, in the nature of a precautionary view, entirely friendly in intent—though it may seem almost monotonous reiteration—if the object of said note, as might possibly be inferred in part, is to assume for the chancery or the tribunals of Peru a right of construing under said legislation of Congress, the acts of certain preceding Governments adversely to the internationally vested rights of United States citizens, acquired in accordance with then existing laws, under any Govern-

ment recognized by the United States on the *ex post facto* pronunciamento by a succeeding Government (however called into existence) of the invalidity of such a preceding recognized Government, I can not admit such assumption, but must reserve in every case the right of my own Government to determine for itself every matter which may devolve responsibility upon it, and claim the exercise of its discretion or protection in behalf of its own citizens.

But I will not anticipate the arising of any trouble out of the action of Congress referred to, especially as I note with satisfaction the statement that your excellency does not apprehend any difficulties relative to this matter in connection with the interests of United States citizens.

I also give due appreciation to the assurances expressed by your excellency of just intentions and willingness to consider all claims presented by my Government on the basis of an enlightened construction of international and moral rights.

I shall forward to Washington a copy of your excellency's note, and with it a copy of this for the appreciation of my Government, by the first mail.

Meanwhile I avail myself, etc.,

CHAS. W. BUCK.

No. 564.

Mr. Buck to Mr. Bayard.

[Extract.]

No. 216.] LEGATION OF THE UNITED STATES,
Lima, March 19, 1887. (Received April 14.)

SIR: I herewith inclose copy of a note received on the 9th instant from the foreign office, with a translation and a copy of my reply.

The purpose of this request from the minister was to obtain information in aid of the tax assessor or collector in carrying into effect a law of contributions passed by the last Congress. Under this (in view of the decentralization law which was finally enacted, placing the obligation on the provinces and departments of their own support and management of their fiscal affairs—see relative to said act my No. 142, of August 20, 1866), among other things, a poll or head tax has been imposed.

I also inclose a copy of the decree of the sub-prefect of Lima, published March 3, and translation. I think a note similar to that I inclose from the foreign office has been sent to all the legations here.

I have, etc.,

CHAS. W. BUCK.

[Inclosure 1 in No. 216.]

Mr. Chacaltana to Mr. Buck.

MINISTRY OF FOREIGN RELATIONS,
Lima, March 9, 1887.

SIR: Complying with a request made to this ministry by the prefect of this department, I take the liberty of asking your excellency to be pleased to forward me one list of the citizens of the nation which your excellency so worthily represents, who are domiciled in this capital, specifying the name, age, profession, street, and number of the house in which each one lives, including in it those from twenty-five to sixty years old, and another list, including in it those from seventeen to twenty-one years old, with the same specifications.

I avail, etc.,

CESÁREO CHACALTANA.

[Inclosure 2 in No. 216.]

Mr. Buck to Mr. Chacaltana.

No. 46.] LEGATION OF THE UNITED STATES,
Lima, March 10, 1887.

SIR: I received last evening your excellency's note of the same date, requesting "one list of citizens of the United States, resident in this capital, specifying the name, age, profession, street, and number of the house inhabited of each, including those from twenty-five to sixty years, and another of those from seventeen to twenty-one years, with the same particulars."

I have to reply, as the United States Government does not require registry of its citizens, this legation is not in possession of the information requested by your excellency.

With assurances that for all purposes contemplated by my commission and instructions as understood by me, I am at your excellency's disposition, I renew, etc.,

CHAS. W. BUCK.

[Inclosure 3 in No. 216.—Translation from "El Comercio" of March 3, 1887.]

Taxes.

With all due formalities, the following decree has been published:

Julio Aguirre, sub-prefect and chief of police of Lima.

Whereas (1) The law of fiscal decentralization and the regulation providing for the assessment and collection of the departmental taxes having been enacted, it is proper to enforce them.

(2) It being ordered in articles 56 and 57 of the same regulation of the 20th December, of the year last passed, it is the duty of the sub-prefect of the province to call all the inhabitants together for the purpose of drawing up the registers, as well as to form the board which is to provide for the same.

I decree:

ARTICLE 1. All inhabitants of the province over 17 and under 60 years are called on to present themselves before the board of registration of their respective districts, with all the data relating to the income from their property, capital, or business, the list of the persons dwelling in their house, close, or shop, within the peremptory term of fifteen days, counted from this date; those violating this provision being subject to the penalties mentioned in the said regulation.

ARTICLE 2. The board of registration, to which the said regulation refers, occupies one of the rooms of the building assigned to the prefecture of the department, and the boards of the other districts the buildings of the respective administrations.

Given at the house of the sub-prefect at Lima on this 3d day of March, 1887.

JULIO AGUIRRE.

JOSÉ ANICETO ROMERO,
Secretary.

No. 565.

Mr. Bayard to Mr. Buck.

No. 129.] DEPARTMENT OF STATE,
Washington, April 19, 1887.

SIR: I reply to your No. 216, of the 19th ultimo, that while Peru may by law or decree require the registry of aliens, it can not require our consuls or other officers to carry out the enactment.

Your reply of March 10 to the minister of foreign relations on the subject was appropriate.

I am, etc.,

T. F. BAYARD.

No. 566.

Mr. Bayard to Mr. Buck.

No. 130.] DEPARTMENT OF STATE,
Washington, April 29, 1887.

SIR: I have received your No. 212, of February 28, containing correspondence in regard to the action of the Peruvian Congress "declaring null all acts of the Piérola and Iglesias Governments."

The views of the Government of the United States having been announced as to the general principles involved in the assumptions of the Peruvian legislation, and exception in principle duly taken thereto, the matter may now rest, unless some specific case should arise affecting American interests and calling for renewed representations.

I am, etc.,

T. F. BAYARD.

PORTUGAL.

No. 567.

Mr. Lewis to Mr. Bayard.

No. 88.] LEGATION OF THE UNITED STATES,
Lisbon, March 29, 1887. (Received April 11.)

SIR: I have the honor to transmit inclosed an official copy and translation thereof of the protocol of a treaty* between Portugal and China. Whilst the former Government has been in possession of Macoa for over three hundred years, there has never been a treaty between the two countries.

I am informed by Mr. Campbell, the agent for the Chinese Government, that the treaty will be ratified in the course of the next three months.

I have, etc., E. P. C. LEWIS.

No. 568.

Mr. Bayard to Mr. Lewis.

No. 52.] DEPARTMENT OF STATE,
Washington, May 13, 1887.

SIR: In my No. 23 of the 16th December, 1885, I called your attention to the case of Mr. C. E. D. Griffith, who had been made to pay a passport tax by the Portuguese consul at Boston before sailing for the Azores, to which you replied in your No. 52 that passports were not exacted from travelers from Europe to the Azores, but only from those from American ports. This manifestly unjust discrimination against this country should be protested against as such with every fresh case which occurs until remedied.

I now send you a somewhat similar case as given in a letter of the 6th instant from Mr. Henry Watson, who incloses a notice furnished to him by the agents of the ship on which he intends to sail for the Azores on the 12th instant, as follows:

Passengers bound for the Azores must provide themselves before sailing with Portuguese passports, which can be obtained of the Portuguese vice-consul, 136 Congress street, Boston.

The fee for these documents is $3.30, which, in addition to the $5 already paid by Mr. Watson for his passport, obtained from this Department, and which was thus rendered superfluous, amounts to a heavy tax on the traveler. This Government has never questioned the propriety of a visa at a moderate charge apposed by a foreign consul to an American passport, and such a practice still prevails in some European countries, but the present case appears to altogether ignore the passports issued by this Government, which are documents generally

*Published page 218, *supra*.

acknowledged and respected by other nations as evidences of nationality in the countries through which the bearers of them travel.

It is understood from your dispatches in the case of Mr. Griffith that the consul at Boston was dismissed, but whether for the act complained of in that instance is not stated. It is possible that in this case Mr. Dabney, the Portuguese vice-consul at Boston, may be exercising powers not given him by his Government, and you are therefore instructed to bring the case to the attention of the Portuguese Government, and ask to be informed whether this practice of his is known and approved of by his Government, and express the confident hope that Portugal will not ignore passports issued by the United States, or knowingly discriminate against American citizens visiting her shores or her colonies.

I am, etc., T. F. BAYARD.

No. 569.

Mr. Bayard to Mr. Lewis.

No. 55.] DEPARTMENT OF STATE,
Washington, May 28, 1887.

SIR: I transmit, with reference to instruction No. 52, of 13th instant, in the matter of Mr. H. Watson's representations regarding unwarranted charges of the Portugese vice-consul at Boston, a copy of a note* from the minister of Portugal at this capital, by which it appears that a Portuguese passport, issued by the consular officer, is needed only when the passenger is unprovided with a United States passport, in a case like that presented.

When he has one, a consular visa, at a cost of about 80 cents, is all that is necessary.

I am. etc., T. F. BAYARD.

No. 570.

Mr. Lewis to Mr. Bayard.

No. 107.] LEGATION OF THE UNITED STATES,
Lisbon, July 9, 1887. (Received July 23, 1887.)

SIR: A project of law of great importance to the foreign commerce of Portugal has been laid before the Côrtes by the minister of finance, proposing the construction on the right bank of the Tagus in the port of Lisbon, or its proximity, of a free port, and of stores, for the landing, bonding, warehousing, handling, and shipping of goods of all kinds not destined for home consumption, to be exempt from all fiscal charges. It is proposed that this port and buildings shall be created at a locality situated between Belem and Cascaes, about 9 miles from Lisbon. At the same time the minister proposes the establishment of similar entrepots in the Azores and at one of the Cape Verdes.

The Government will be authorized to offer to public competition the concession for the execution of the necessary works, which it is stipulated shall be completed within three years after the contract shall have been awarded. The exact nature and extent of the work has not as yet been made known, nor is it the intention of the Government to make them public until the project of law now before the Côrtes shall be

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* Printed page 937, *infra*.

passed. This scheme meets with the almost unanimous condemnation of the commercial community, and has elicited from the Chamber of Commerce of Lisbon the declaration that the creation of the entrepot in the locality indicated by the treasury and under the conditions proposed by the Government, will have "fatal consequences upon the commerce of Lisbon and the interests of the treasury." The opposition thus evinced is, however, not likely to lead to the abandonment of the project by the treasury. It is now under discussion in the Côrtes, and in case of its ultimate creation as a law I will transmit a copy of it to the Department.

I have, etc., E. P. C. LEWIS.

CORRESPONDENCE WITH THE LEGATION OF PORTUGAL AT WASHINGTON.

No. 571.

Mr. Bayard to Viscount das Nogueiras.

DEPARTMENT OF STATE,
Washington, May 11, 1887.

VISCOUNT: I have the honor to inform you that Mr. Henry Watson, an American citizen, who sails to-morrow for the Azores, was informed by the agents of the line he goes by that passengers bound for the Azores must provide themselves, before sailing, with Portuguese passports, which could be obtained of the Portuguese vice-consul, 136 Congress street, Boston. The price of such passports for his party was $3.30.

As this regulation apparently supersedes the passports issued by this Department to Americans going abroad, and practically puts a tax on their departure, I should be glad to know whether this regulation of the shipping agents is in consequence of orders issued by your consuls and authorized by your Government, and also to be exactly informed, if there be no objection, as to the tenor of the instructions issued to your consuls in regard to visas or passports for travelers to Portugal and her colonies.

Accept, etc., T. F. BAYARD.

No. 572.

Viscount das Nogueiras to Mr. Bayard.

[Translation.]

LEGATION OF PORTUGAL,
Washington, May 15, 1887. (Received May 16.)

SIR: I had the honor to receive your note of the 11th instant, in which you inform me that a certain Mr. Henry Watson, an American citizen, has been informed by the agents of the boat which he was to take to go to the Azores that the passengers going to the islands of that archipelago must provide themselves with Portuguese passports, which he, Mr. Watson, could obtain at the vice-consulate in Boston, and that the price of a passport was $3.30.

You also ask me if this notification of the agent is the result of orders emanating from Portuguese consuls and authorized by my Government; and finally, you wish to know, if there be no objection, what instruc-

tions are given to our consuls with regard to visas or passports for travelers to Portugal or her colonies.

By article 76 of the Portuguese consular code the captains of ships are obliged to present at the consulates or vice-consulates at the moment of their departure for Portuguese ports the necessary documents, as also the passports of passengers. If these latter are foreigners their passports must be visaed at the consulates or vice-consulates, but it is not required that all the passports should be made out by the consuls or vice-consuls. The visas for foreign passports amount to about 80 cents.

I think, therefore, that the agent of the boat on which Mr. Watson embarked erroneously interpreted the provisions of the Portuguese consular code.

Be pleased to accept, etc.,

VISCOUNT DAS NOGUEIRAS.

No. 573.

Mr. Bayard to Viscount das Nogueiras.

DEPARTMENT OF STATE,
Washington, May 19, 1887.

VISCOUNT: I have the honor to acknowledge your note of the 15th instant, informing me that passengers to the Azores are expected to have their passports visaed by the Portuguese consular officer before sailing, but that all passports are not necessarily furnished by the consulate, as Mr. Watson was led to suppose by the agent of the ship, he and his friends having already obtained passports from this Department.

You appear to think that the agent must have misunderstood the Portuguese consular code; though, even were this the case, it would seem that the vice-consul should, on Mr. Watson and his friends exhibiting their passports at the consulate, have limited himself to affixing a visa, instead of obliging them to obtain passports of him.

In view of Mr. Watson having been required to procure a Portuguese passport in addition to the one he already had, I have the honor to request you to call the attention of your vice-consul in Boston to the occurrence, as being at variance with article 76 of your consular code, as cited by you, and instruct him, if proper, to set the agents right as to the papers required of passengers, and, if the facts should prove to be as stated by Mr. Watson, to explain why that gentleman and his party should have had to obtain new passports instead of visas only.

Accept, etc.,

T. F. BAYARD.

No. 574.

Viscount das Nogueiras to Mr. Bayard.

[Translation.]

LEGATION OF PORTUGAL,
Washington, May 25, 1887. (Received May 28.)

SIR: In reply to the note you did me the honor to address to me on the 19th instant, in regard to the passport demanded of Mr. Watson by the Portuguese vice-consul at Boston, I hasten to inform you that orders have been given to prevent such mistakes in future.

Pray accept, etc.,

VISCOUNT DAS NOGUEIRAS.

RUSSIA.

No. 575.

Mr. Bayard to Mr. Taft.

No. 13.] DEPARTMENT OF STATE,
Washington, March 25, 1885.

SIR: I inclose a copy of a dispatch from Kanagawa, Japan, and of the papers accompanying the same, relating to the unwarranted seizure of the schooner *Eliza*, the property of a highly respected American citizen doing business at Yokohama, Japan, by the Russian cruiser *Razbornyk*, on the Anadyr River, on the 21st July last, and its subsequent "confiscation" by the captain of the cruiser, without any court of inquiry.

According to the statement of the owner, the vessel was on a trading voyage and catching walrus. No act obnoxious to Russian law seems to have been committed in the premises, neither was any article carried by the vessel which could have warranted the seizure and confiscation referred to.

The papers have been carefully examined by the law officer of the Department, and in pursuance of his advice I have to ask that you will present the claim of Mr. F. C. Spooner, the owner of the *Eliza*, for the favorable consideration of His Majesty's Government.

"The pecuniary loss to me," says Mr. Spooner, in his sworn statement, "of the vessel and cargo would amount to $10,000, and for this sum, together with all other expenses that may appear to have been incurred through this seizure and confiscation I wish to make claim on the Russian Government."

I am, etc., T. F. BAYARD.

[Inclosure 1 in No. 13.]

Mr. Rice to Mr. Davis.

No. 879.] UNITED STATES CONSULATE,
Kanagawa, Japan, February 9, 1885. (Received March 16.)

SIR: Herewith I have the honor to hand you a communication from Mr. Francis C. Spooner, a highly respectable American merchant, for many years resident and doing business at Yokohama, Japan, concerning the seizure by the Russian authorities of the schooner *Eliza*, the property of the said Spooner, on the 26th of July, 1884. I also inclose the depositions of Austin Weston, master, and Albert Wixon, mate, of said vessel, giving the details of the schooner's cruise and her seizure.

From these papers it would appear that the schooner was engaged in no illegal commerce and was violating no law or obligation, and that the said seizure was an act of piracy.

I also inclose certified copies of the bill of sale of said schooner to Mr. Spooner, certificate of American ownership, certificate of change of name from *Kiwa Elizabeth* to *Eliza*, and copy of last clearance of said schooner from this port.

I commend to favorable consideration the claim of the owner for the damages as assessed by him.

I have, etc.,

GEORGE E. RICE,
Vice-Consul-General.

[Inclosure 2 in No. 13.]

Affidavit of F. C. Spooner.

I, F. C. Spooner, owner of the schooner *Eliza*, that left this port on the 21st of March last under protection of the American flag and was seized by the Russian cruiser *Razbornyk* in the Anadyr River, on the 26th day of July last, do hereby protest against this seizure as illegal and unwarranted, and desire a representation through the proper authorities to the Russian Government.

The vessel was simply on a trading voyage, engaged in bartering with the natives and catching walrus, and as such did not come under the notice of the Russian Government, which was directed against the capture of seals on Copper, Robbin, and Behring's Island.

I hand herewith affidavit of the master, Austin Weston, supported by his chief officer.

The vessel's papers were in order, and she had been properly cleared from this port. No salt was on board, and no preparation made for an attempt to take seals.

The vessel has been confiscated by the captain of the *Razbornyk*, and without any court of inquiry, which high-handed act is, I believe to be, against the law of nations.

The pecuniary loss to me of the vessel and cargo would amount to $10,000; and for this sum, together with all other expenses that may appear to have been incurred through this seizure and confiscation, I wish to make claim for on the Russian Government.

[SEAL.] F. C. SPOONER.

Sworn to before me this 20th November, 1884.

GEO. E. RICE,
U. S. Vice-Consul-General, Kanagawa, Japan.

[Inclosure 3 in No. 13.]

Affidavits of Austin Weston and Albert Wixon.

I, Austin Weston, late master of the American schooner *Eliza*, being duly sworn, do hereby affirm:

Sailed from Yokohama March 21, 1884, with a crew of fourteen all told, consisting of myself, two officers, cook, and ten men before the mast, bound on a hunting and trading voyage to Northeastern Siberia.

My cargo consisted of assorted and general goods, such as are requisite in that section to obtain whalebone, ivory, and furs.

My vessel was duly cleared from the Yokohama customs the 21st of March, the day of sailing.

A specified invoice of everything on board was supplied me before leaving. Sailed for Behring's Straits; was in the ice-pack forty-nine days, and reached Cape Chaplin on the 23d of June, where I traded for bone, ivory, furs, and blubber.

Left Chaplin for St. Lawrence Bay and East Cape, where I got a good quantity of bone and furs. Returning through the Straits, I sailed to the westward, stopping at Cape Acheen, and then into the Gulf of Holy Cross, where I remained seventeen days hunting and killing walrus; then to the mouth of the Anadyr River, where I arrived on the 23d July.

Proceeded up the river a few miles to a village; traded here, and continued on. On the 26th, about 2 p. m., was boarded by a boat from the Russian cruiser *Razbornyk*, and ordered to report on board with my log-book and all ship papers.

These consisted of ship's articles, bill of sale, Yokohama clearance, and manifest of cargo and stores.

The latter was found and produced a short time after seizure, although mislaid at the time, and no attempt was made to conceal anything.

The vessel was at once declared to be confiscated, and I, with a portion of the crew, was taken by the *Razbornyk* to Petropaulski and landed.

The remainder of the crew were kept on board the schooner to work her to Vladivostok.

After being twenty-one days at Petropaulski, I was again taken on board the *Razbornyk*, and taken to Vladivostok and again set at liberty.

The schooner arrived off the harbor the same day, and was towed in by the cruiser; was afterwards hauled into dock, and everything taken out of her.

Immediately on arrival at Vladivostok, the five men who had been detained on board the *Eliza* to work the vessel were thrown on the hands of the consul, and their expenses there and passage to Yokohama refused.

I deny the statement in the protocol, that the vessel had neither bill of lading or clearance, for she had both.

There was a good search made for salt, as the most important article to cause confiscation, but there was none on board.

I sailed from Yokohama with positive instructions from my owners not to attempt any capture of seals, and to keep away from the islands frequented by them. Knowing the Russian Government had forbidden any depredations, my trading voyage was similar to what has been going on for years without molestation from the Russian Government, and I plead ignorance that the notice issued and referred to in the protocol was intended to apply to anything except the protection of the seal fisheries, and particularly to the Copper, Robin, and Behring Islands.

AUSTIN WESTON.

Sworn to before me this 20th November, 1884.

[SEAL.]

GEO. E. RICE,
U. S. Vice-Consul-General, Kanagawa, Japan.

Albert Wixon, being sworn, says that the foregoing is a true and correct statement.

[SEAL.]

ALBERT WIXON,
Mate Schooner Eliza.

Sworn to before me this 20th November 1884.

GEO. E. RICE,
U. S. Vice-Consul-General, Kanagawa.

[Inclosure 4 in No. 13.]

Order for sale of schooner Eliza.

YOKOHAMA, *May* 4, 1882.

By order of H. I. Russian Majesty's court at Kanagawa, was sold at public auction on the 2d day of May, 1882, the schooner *Kiwa Elizabeth*, to foreclose a mortgage held by F. C. Spooner on said vessel. The said vessel was sold to said Spooner for the sum of $3,600, the acknowledgment of payment of said sum constituting a bill of sale for the said schooner. N. 86.

[SEAL.]

A. PELIKAN,
H. I. Majesty's Consul.

[Inclosure 5 in No. 13.]

[Certificate to be issued to citizens of the United States being purchasers of American or foreign-built vessels in a foreign port.]

I, Thos. B. Van Buren, consul-general of the United States for the port of Kanagawa, Japan, do hereby certify that the within bill of sale, bearing date the 4th day of May, 1882, of the schooner *Eliza*, formerly called the *Kiwa Elizabeth;* tonnage, 113 tons; length over all, 74 feet; breadth, 20 feet; depth, 8 feet; masts, 2; decks, 1; frame, wood and iron fastened; stem, elliptic; sold and transferred by A. Pelikan, Russian consul, to F. C. Spooner, under foreclosure of mortgage, has been proved satisfactorily to me to have been duly executed by the subscribing party; and I further certify the F. C. Spooner, therein mentioned as purchaser of said vessel, is a citizen of the United States. As witness my hand and the seal of the consulate-general, this 31st day of May, in the year of our Lord 1882.

[SEAL.]

THOS. B. VAN BUREN,
Consul-General.

[Inclosure 6 in No. 13.]

Act of change of name.

To all whom it may concern:

Whereas I, Frank C. Spooner, of Yokohama, in the Empire of Japan, am the sole owner of the schooner called *Kiwa Elizabeth*, of Yokohama aforesaid; and whereas it is my desire and intention to change the name of said schooner; now, therefore, by

these presents be it known that from and after the date hereof said schooner will be known as and called the *Eliza*, of Yokohama.

Witness my hand and seal at Yokohama this thirty-first day of May, in the year one thousand eight hundred and eighty-two.

F. C. SPOONER. [SEAL.]

By his attorney.

CHAS. WIGGINS.

Signed and sealed in the presence of—

GEO. E. RICE,
H. S. VAN BUREN.

UNITED STATES CONSULATE-GENERAL,
Kanagawa, Japan.

On this thirty-first day of May, in the year one thousand eight hundred and eighty-two, personally appeared before me Charles Wiggins, known to me to be the attorney for F. C. Spooner, and who executed the foregoing instrument, and who acknowledged to me that he executed the same for the purposes therein set forth.

Witness my hand and official notarial seal at the place and time last above written.

[SEAL.]

THOS. B. VAN BUREN,
Consul-General.

Recorded in the Record Book H, of the United States consulate-general, at Kanagawa, Japan, this 31st May, 1882, at 11 a. m.

[Inclosure 7 in No. 13.]

Delivery of bill of sale and papers.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
March 21, 1884.

I, the undersigned, deputy consul-general of the United States of America at Kanagawa, Japan, and the dependencies thereof, do hereby certify that A. Weston, master of the schooner called *Eliza*, of Yokohama, having this day exhibited to me the clearance of said schooner from the proper authorities of this port, I have delivered to him, the said master, the bill of sale and papers of the said schooner, duly deposited in this consulate-general on the 6th day of November, 1883.

Given under my hand and the seal of this consulate-general the day and year above written.

[SEAL.]

GEO. E. RICE,
United States Deputy Consul-General.

UNITED STATES CONSULATE-GENERAL,
Kanagawa, Japan.

I, vice-consul-general of the United States at Kanagawa, Japan, do hereby certify that the foregoing bill of sale from H. I. Russian Majesty's consul to F. C. Spooner, certificate by the United States consul-general of American ownership, and certificate of change of name, also certificate of clearance, constituting the papers of the schooner *Eliza*, of Yokohama, are true and correct copies of the originals of same of record in this consulate.

Witness my hand and seal of office this 9th day of February, A. D. 1885.

[SEAL.]

GEO. E. RICE,
Vice-Consul-General.

No. 576.

Mr. Bayard to Mr. Lothrop.

No. 65.]

DEPARTMENT OF STATE,
Washington, December 4, 1886.

SIR: I transmit a copy of a dispatch from the United States consul at Nagasaki, relating indirectly to the seizure and confiscation of the American schooner *Henrietta* by the Russian corvette *Kreysser*,

in Behring Strait, off East Cape, August 29 last, for fishing and trading in Russian waters. You will please apply with due urgency to the Emperor's Government for the facts and an explanation of its claim. Opinion as to the merits of the question is for the time reserved.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 65.]

Mr. Birch to Mr. Porter.

No. 44.] UNITED STATES CONSULATE,
Nagasaki, Japan, October 18, 1886.

SIR: I have the honor to inform you that five destitute seamen, named Charles Blois, Charles Giles, Thomas Greenfell, James Hurley, and Frederick Nelson, came upon this consulate to-day from Vladivostock, having been sent to Nagasaki by the Russian authorities at Vladivostock.

These men were part of the crew of the schooner *Henrietta*, of San Francisco, Benjamin Dexter, master, and James Sennett, owner, which was seized and confiscated by the Russian corvette *Kreysser*, in Behring Strait, off East Cape, August 29, 1886, for fishing and trading in Russian waters.

I learn that the vessel and cargo confiscated amounted in value to about $25,000.

I inclose a copy of the letter sent by the captain of the corvette *Kreysser* to this consulate. I have forwarded the seamen to Yokahama, where they may find employment on board an American vessel or a passage to the United States more likely than at this port.

I have, etc.,

JOHN M. BIRCH.

[Inclosure 2 in No. 65.]

I hereby certify that the undermentioned five men are American citizens, taken from the schooner *Henrietta* confiscated by the Russian corvette *Kreysser*, in the Behring Strait. They are not guilty of any violation of the Russian law, and are therefore sent to the disposition of the American consul at Nagasaki.

CHAS. BLOIS.
CHAS. GILES.
THOS. GREENFELL.
JAS. HURLEY.
FREDERICK NELSON,
Captain of H. I. R. M's Corvette Craysser.

[L. S.] A. OSTOLOPOFF.

VLADIVOSTOCK, *October* 1—13, 1886.

No. 577.

Mr. Lothrop to Mr. Bayard.

No. 92.] LEGATION OF THE UNITED STATES,
St. Petersburg, January 18, 1887. (Received February 10.)

SIR: I wish to lay before you the case of Adolph Lipszyc, who claims to be a naturalized citizen, now imprisoned at Wlocklawek, Russian Poland, charged with having become naturalized in the United States without permission of the Russian Imperial Government, of which he was a native born subject.

It appears that Lipszyc went to America many years ago, where he served as a Union soldier in the war of the rebellion. His father dying

in Poland last February, he came to Russia to claim his share in his father's estate.

On August 10 last he wrote me asking my intervention in that matter. From that letter it was evident that there was a controversy between him and the other claimants. I answered him that I could not interfere, that the estate must be settled under the Russian laws, and advising him to employ some competent lawyer, who would probably enable him to secure his rights.

On November 8 last Lipszyc wrote me that the procurator refused to return him his passport and pension certificate. Anxious to avoid difficulty, I advised him to make again a respectful application for the return of his papers.

On December 15 last, being informed that the papers were still withheld, I applied to the foreign office for an investigation of the matter. Before receiving any reply I learned that Lipszyc had been arrested, and I at once wrote to the foreign office asking an investigation and for information of the cause of arrest.

On the evening of the 13th instant I received a note from the foreign office, saying that Lipszyc was charged with having become naturalized in the United States without leave of the Imperial Russian Government, whose subject he was, this being a crime under article 325 of the Russian penal code.

A copy of said article 325 was sent in my dispatch No. 43 of December 15, 1885.

It will be seen that Lipszyc is not charged with any violation of the Russian laws before leaving the country or since his return. His sole offense is his naturalization in the United States without the consent of Russia, of which he was a subject.

This presents directly the question of the status of a native-born Russian subject who, having been naturalized in the United States, revisits his native country. The laws of the two countries are in direct conflict.

I confess I have not felt quite clear as to my course under your dispatch No. 35 of January 14 last, but, on full reflection, I felt that it was my duty, temperately but firmly, to interpose in Lipszyc's behalf, to assert his privilege and immunity as an American citizen, and to ask that he be liberated.

Accordingly, on the next day, I wrote to the foreign office, calling their attention to the fact that the act of naturalization was done under the laws of the United States and wholly outside the territorial jurisdiction of Russia; that not from any disrespect of any other country, but simply in discharge of its necessary obligations of government, the United States guaranteed to all its citizens, natives and naturalized, equal protection.

At the same time I expressed the great concern and regret with which the United States viewed the arrest and imprisonment of one of its naturalized citizens, under the circumstances of this case; that it tended to excite irritation and to disturb the feelings, hitherto so cordial and satisfactory, between the two countries.

I respectfully, but earnestly, asked that Lipszyc might be set at liberty, his papers restored to him, and he be allowed to depart to the United States. Should this be denied, I respectfully ask your instruction as to any further procedure.

There is one other naturalized American citizen, Abraham Thiessen, a Mennonite, from Nebraska, who is imprisoned at Berdiansk, in southern Russia. On what charge I do not know. I have asked an investi-

gation, and also written to the consul at Odessa for information. Rumor has said that Thiessen was charged with being a nihilist, but I can discover no ground for this, and do not credit it. But, for whatever reason, Thiessen is very rigidly imprisoned.

These are, so far as I know, the only Americans now imprisoned in Russia.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 92.—Article 325, Russian Code of Penal Laws, chapter 7. Unauthorized absence from the country.—Translation.]

Whoever, leaving his country, enters a foreign service without the permission of the Government, or takes the oath of allegiance to a foreign power, for this transgression of the duty of a loyal subject and of his oath is liable to the loss of all social rights and perpetual banishment from the territory of the Empire, or, in case of his unauthorized return to Russia, to deportation to and settlement in Siberia.

No. 578.

Mr. Lothrop to Mr. Bayard.

No. 95.] LEGATION OF THE UNITED STATES,
St. Petersburg, February 17, 1887. (Received March 7.)

SIR: In compliance with the instructions of your dispatch No. 65, of December 4 last, I addressed a note on December 22 to the imperial minister of foreign affairs, asking for the facts and grounds on which the American schooner *Henrietta* was seized and confiscated off East Cape, in Behring Strait, on August 24 last.

On January 21 last I received a reply, a translation of which I inclose herewith, stating that the *Henrietta* was confiscated by the judgment of a commission, sitting on board the imperial corvette *Kreysser* for the offense of illicit trading on the Russian coasts.

On January 28 I had a personal interview with General Vlangally, the assistant minister of foreign affairs, in which I asked him how the commission that sat on board the corvette was constituted. He informed me that it was composed of certain officers of the corvette, acting under the orders of the governor of Eastern Siberia, within whose general jurisdiction such matters were vested.

I also called his attention to the fact that his note to me failed to specify in what the alleged "illicit commerce" consisted, and asked him for further information. He replied that he was not then able to give me the desired information, but said an answer in respect to the seizure and condemnation of the American schooner *Eliza* was in preparation, and would be sent to me in a few days, and he thought that perhaps I might thereby receive the information sought.

On February 11 I received the promised communication respecting the *Eliza*, a copy of which will accompany the dispatch which will immediately follow the present one.

It will be seen that the seizure and condemnation of the schooners rest on the provisions of an administrative order, "*d'une disposition administrative*," prohibiting, after the first of the year 1882. all trading, hunting, and fishing on the Russian Pacific coasts without special license from the governor-general.

It is claimed that very extended publicity of the regulation was given in 1881–'83, through the newspapers of Yokohama, in the Russian consulates of the Pacific, and at the American custom-houses.

Upon the receipt of this last note I at once, for greater certainty, wrote to General Vlangally, asking him for a copy of the trading regulations or order.

I also asked if I was right in my understanding that the commission was composed of the officers of the vessel that made the capture.

The feature that strikes me as very peculiar in these cases is the fact that the captors are also the judges of their own acts. The commission seems to sit at once at the place of capture, and the evidence on which it acts would seem to be that which the captors derive from their own observation and their investigation on the spot.

It is perhaps a fundamental and equitable maxim of jurisprudence that no one can be a judge of his own cause; and it will probably be worthy of consideration how far the decisions of a tribunal so constituted can be considered as valid.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 95.—Translation.]

Mr. Vlangally to Mr. Lothrop.

MINISTRY OF FOREIGN AFFAIRS,
Asiatic Department, No. 79, January 8–20, 1887.

Mr. ENVOY: In consequence of the note addressed by you to me on the 10–20 of December, I hastened to ask information of the maritime province, by telegraph, in regard to the seizure of the *Henrietta*.

I have now the honor to bring to your knowledge that, according to the information communicated to me by General Enghelm, acting governor of said province, the *Henrietta* was in fact seized and confiscated on the 17–29 August, in virtue of a decision of the commission sitting on board of the imperial corvette *Kreysser*, for the offense of illicit trading on our coasts.

Pray accept, etc.,

A. VLANGALLY.

No. 579.

Mr. Lothrop to Mr. Bayard.

No. 96.] LEGATION OF THE UNITED STATES,
St. Petersburg, February 17, 1887. (Received March 7.)

SIR: I have the honor herewith to transmit to you a copy, with translation, of a communication received from the imperial foreign office on February 1 instant, relative to the seizure of the schooner *Eliza*.

The Russian Government claims that she was seized and condemned under the provisions of an order, or regulation, which took effect at the beginning of 1882, and which absolutely prohibited every kind of trading, hunting, and fishing on the Russian Pacific coasts without a special license from the governor-general.

It is not claimed that the *Eliza* was engaged in seal fishing, but that she was found actually engaged in trading with the natives with the contraband articles of arms and strong liquors.

She was condemned by a commission sitting on the imperial corvette *Rasbornyk*, composed of the officers thereof. In this respect the case is precisely like that of the *Henrietta*, mentioned in my last preceding dispatch, No. 95, and of this date.

It will be noticed that Mr. Spooner, the owner of the *Eliza*, in his statement of his claims, declares that the *Eliza* was "on a trading voyage, engaged in bartering with the natives and catching walrus, and as such did not come under the notice of the Russian Government which we directed against the capture of seals on Copper, Robbins, and Behring Island." It will be seen that Mr. Spooner either refers to an order of the Russian Government different from the one mentioned by the imperial foreign office, or he understood the letter in a very different sense. I may add that the Russian code of prize law of 1869, article 21, and now in force, limits the jurisdictional waters of Russia to 3 miles from shore.

As stated in my previous dispatch, I have asked for a copy of the order or regulation under which the *Henrietta* and *Eliza* were seized and condemned.

Very truly, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 96.—Translation.]

Mr. Vlangally to Mr. Lothrop.

MINISTRY OF FOREIGN AFFAIRS,
Asiatic Department No. 233, *January* 19-31, 1887.

Mr. ENVOY: The chief of the general staff of the navy has just transmitted to me the information which I had requested from that department in consequence of the note that you addressed to me bearing date of July 5-17, 1886, in regard to the incident of the seizure of the schooner *Eliza*.

This information is in substance to the effect that the *Eliza* was confiscated, not for the fact of seal hunting, but by virtue of an administrative regulation prohibiting, from the beginning of the year 1882, every kind of commercial act, of hunting and of fishing on our coasts of the Pacific without a special authorization from the governor-general, and carrying with it, against those disregarding it, the penalty of the seizure of the ship as well as of the cargo.

During the years 1881-'83 the widest means of publicity were employed in bringing this regulation to the knowledge of the parties interested. It was published in the journals of Yokohama, posted up in all our consulates of the Pacific, and communicated to the American custom-house establishments.

The complainant can not, therefore, plead ignorance of these prohibitory measures in question.

The crew of the *Eliza* was engaged not only in hunting walrus on our coasts of Kamtchatka, and in commercial transactions with the natives, but traded there with illicit articles, such as arms and strong liquors.

The infringements of the aforesaid regulation are duly established by the *flagrante delicto* and the confession of the captain, Austin Weston, who made no protest against the seizure of the vessel ordered under that head by the commission *ad hoc* on board the imperial corvette *Rasbornyk*. The captain and his second (officer) besides acknowledge the offense charged against them, of hunting and trading, in their depositions annexed to the petition itself of Mr. Spooner, and communicated to the imperial ministry by the legation of the United States under date of April 16-28.

In informing you of the foregoing circumstances, which demonstrate the entire legitimacy of the seizure of the *Eliza*, I have no doubt, Mr. Envoy, that the claim brought by the proprietor of that ship is without foundation, and

I avail myself, etc.,

A. VLANGALLY.

No. 580.

Mr. Bayard to Mr. Lothrop.

No. 70.] DEPARTMENT OF STATE,
Washington, February 18, 1887.

SIR: Your dispatch No. 92, of January 18, 1887, relative to the case of Adolph Lipszyc, has been received. In it you state that "Lipszyc is not charged with any violation of the Russian laws before leaving the country or since his return. His sole offense is his naturalization in the United States without the consent of Russia, of which he was a subject."

By the law of July 27, 1868 (Rev. Stats., sec. 1999), it has been enacted that—

> Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in recognition of this principle, this Government has freely received emigrants from all nations and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United State which denies, restricts, impairs, or questions the right of expatriation is declared inconsistent with the fundamental principles of the Republic.

This right, therefore, it is the duty of the Department and its representatives abroad to maintain without restrictions or qualifications.

At the same time the Department is far from questioning the right of His Imperial Majesty to refuse to permit his subjects to emigrate. This is an incident of territorial sovereignty recognized by the law of nations, but can only be exercised within the territory of Russia. If a Russian subject emigrates and becomes a citizen of the United States his acquisition of this citizenship entitles him to all the privileges which by treaty, or the law of nations, belongs to citizens of the United States when visiting Russia. Doubtless he could, when thus revisiting Russia, be tried, as a general rule, for offenses committed by him before emigration.

But this general rule does not include the offense of expatriation when followed by the acquisition of citizenship in the United States. This position is maintainable under the law of nations, but the case falls within the tenth article of the treaty of 1832, between Russia and the United States, a copy of which is inclosed.

The article distinctly provides that Russian subjects in the United States and American citizens in Russia, without any distinction as to native or naturalized citizens or subjects, may dispose of their property. That a citizen of the United States naturalized in Russia could under the treaty dispose of his property in the United States is beyond question, and the privileges thus conferred are equally given and equivalent, and should be so construed by each of the contracting parties. As citizens of the United States becoming Russian subjects are not to lose their property in the United States, so Russian subjects becoming citizens of the United States are not to lose their property in Russia.

It may be said that this stipulation is qualified by the concluding sentence of the article, providing that it is not to derogate "from the force of the laws already published, or which may hereafter be published, by His Majesty the Emperor of all the Russias to prevent the emigration of his subjects."

It is not necessary to do more than call your attention to the rule that the assertion at the close of a treaty, of a general claim to which a prior grant is an exception, is an affirmation of such a grant. Of this the reassertion of their general claims to sovereignty by the German emperors in their treaties with other sovereigns may be taken as an illustration; and another, to the same effect, may be found in our negotiations with Great Britain, in which she recognized Britons naturalized in the United States to be American citizens, while maintaining the doctrine of perpetual allegiance. But such reservation does not conflict with the prior grant. When the *status* of citizenship is changed, then the right of control ceases.

His Imperial Majesty may "prevent" Russians from coming to the United States, but when they have come, and have acquired American citizenship, they are entitled to the privileges conferred by the article.

If there could be any doubt that this is the true meaning of the article in question it would be removed by the fact that it is adopted from the fourteenth article of the treaty between the United States and Prussia, concluded May 1, 1828.

That treaty was accepted by Mr. Buchanan and Count Nesselrode, the negotiators, as a standard; and the Russian treaty is to be taken with the construction which the Prussian treaty rightfully bears. A copy of this treaty between the United States and Prussia is inclosed herewith.

It was never contended by Prussia, nor subsequently by Germany, that the validity of the naturalization of a Prussian or German in the United States was under this article to be conditioned upon his having emigrated with his sovereign's consent. If such an emigrant left his native land in violation of its laws requiring him to perform military service, this might be the subject of prosecution on his return. But emigration, by itself, when followed by the acquisition of citizenship in the United States, was not to deprive such citizen of the unmolested enjoyment of the rights of American citizenship as given by international law as well as by the treaty in question. The object of the treaty was to secure to that large class of Prussians who had emigrated, and had become citizens of the United States, the right to dispose of their property in their native land, with a mutual and equivalent privilege to emigrants from the United States, who should become Prussian subjects. The question whether the emigration was with the consent of the sovereign was not made, nor could such a condition have been accepted without destroying the newly-acquired rights of citizenship.

The construction always given to the Prussian treaty by both the parties thereto has been that the rights it gives Prussians (or Germans) who become citizens of the United States are not dependent on their emigration being with their sovereign's consent. German sovereigns have not been disposed to look favorably on those of their former subjects who, having emigrated and been naturalized in the United States, revisit their native land to dispose of their property. But numerous as have been such visits, in no single case has there been an attempt to proceed against such visitors for breach of allegiance. Count Nesselrode and Mr. Buchanan must have been well aware of this; and it is impossible for us to do otherwise than hold that when they adopted in 1832 the very words of the treaty of 1828 they adopted them with the construction which they not only naturally bear, but which had been assigned to them in practice both by Germany and the United States.

We must, under the treaty before us, regard Lipszyc's United States citizenship as having been acquired with the assent of Russia; and, therefore, he is entitled under treaty, not merely in this country but in Russia, to the immunities attached to such citizenship. As a citizen of the United States he visits Russia; and although he may be liable, when in Russia, for offenses committed by him before his emigration, and may be expelled from Russia on reasonable grounds, he can not be tried for an emigration which, when followed by naturalization in the United States, Russia herself recognizes as conferring citizenship of the United States with the right of disposition in Russia of property there situated. And when you invite from His Imperial Majesty's Government the withdrawal of penal action based exclusively on that emigration you ask for no act which is at variance with the policy of that Government, but for one that is simply in accordance with its treaty stipulations. The withdrawal of such prosecution would be regarded as a signal proof of the continuance of the friendship which has so long existed between Russia and the United States.

Such a withdrawal is [in] no way inconsistent with the acknowledged right of Russia to prevent emigration; but on the other hand for the the United States to acquiesce in the deprivation of the rights which belong to their naturalized citizens, would be to surrender one of their cherished and fundamental institutions. To such surrender this Department can not assent. And in view of the eminently friendly relations between the two Governments and of the facts that the question is not, under the treaty, one of principle with Russia; and that Lipszyc has been already subjected to a long imprisonment, I am confident His Imperial Majesty's Government will not hesitate to act in accordance with the opinions and wishes of the United States. Releasing Lipszyc from imprisonment in no way derogates from the rights of Russia as reserved in the treaty, and I am sure His Imperial Majesty's Government will be unwilling, by continuing that imprisonment, to press on the United States so unwelcome a question as that of the inviolability of the treaty privileges of her citizens.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 70]

Article X of the treaty of 1832 *with Russia.*

ARTICLE X.

The citizens and subjects of each of the high contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives, being citizens or subjects of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato*, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at will, paying to the profit of the respective Governments such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided, finally, by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of one of the high contracting parties, such real estate would, by the laws of the land, descend on a citzen or subject of the other party, who by reason of alienage may be incapable of holding it, he shall be allowed the time fixed by the laws of the country, and in case the laws of the country

actually in force may not have fixed any such time, he shall then be allowed a reasonable time to sell such real estate and to withdraw and export the proceeds without molestation, and without paying to the profit of the respective Governments any other dues than those to which the inhabitants of the country wherein said real estate is situated, shall be subject to pay in like cases. But this article shall not derogate, in any manner, from the force of the laws already published, or which may hereafter be published by His Majesty the Emperor of all the Russias, to prevent the emigration of his subjects.

[Inclosure 2 in No. 70.]

Article XIV of the treaty of 1826 *with Prussia.*

ARTICLE XIV.

The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise, and their representatives, being citizens or subjects of the other party, shall succeed to their personal goods, whether by testament or *ab intestato*, and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question should arise among several claimants, to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of *detraction*, on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects.

No. 581.

Mr. Lothrop to Mr. Bayard.

No. 98.] LEGATION OF THE UNITED STATES,

St. Petersburg, February 23, 1887. (Received March 14.)

SIR: I had intended to withhold a report of the the case of Abraham Thiessen, mentioned in my dispatch of the 18th ultimo, No. 92, until I had information that Thiessen was actually out of Russia.

But I notice in American papers, received last evening, that there is a report in Nebraska that Thiessen had formerly been sent to Siberia for Nihilism; that he thence escaped to [America?]; that returning to Russia he had been rearrested and executed.

I am glad to say that no part of this is true, except his arrest, and that from this, by earnest efforts, we have procured an order for his release.

It seems that Thiessen, who was a Mennonite living in Southern Russia, was interned in the Government of Kaluga "for raising agrarian questions and exciting the Mennonites to emigration," and from thence he escaped to the United States, where he became naturalized. Last summer he came to St. Petersburg, as he informed me, at the request of his Mennonite brethren, to see if he could not procure the Government to correct some alleged frauds respecting a grant of lands to Mennonites.

Thiessen informed me that he had escaped from custody on leaving Russia, and I at once warned him of his danger, and how difficult it

might be to aid him if he was rearrested. He, however, thought he would run the risk, and actually obtained from the police permission to stay in Russia six months. He also succeeded in bringing his business before some of the Imperial departments. Finally, in November, he concluded to visit Southern Russia, thence intending to return to America. I advised him not to go there, but he felt secure in the recognition he had secured here.

On December 10 I received oral intelligence that he was arrested, and very rigorously imprisoned at Berdiansk. I at once wrote to the foreign office, asking to be informed of the grounds of his arrest, and asked his release as an American citizen. I also pointed out that his visit was not clandestine, that he had been openly engaged in business with high officials here. At the same time I wrote to our consul, Thomas E. Heenan, esq., at Odessa, giving him full information in the case, so far as I knew, and asking him to inquire into it and do anything he could to aid Thiessen, being careful to use all proper discretion. The result was that, on January 17 Mr. Heenan was able to inform me generally that Thiessen was arrested under the law which prohibits a Russian subject, without permission, to leave the Empire and to acquire foreign naturalization; and that he had been handed over to the civil authorities and bail refused.

Mr. Heenan then wrote to the governor of Taurida, within whose jurisdiction Thiessen was confined, claiming that Thiessen's alleged offense had been purged by the general pardon promulgated by the Emperor at his coronation, and insisting on Thiessen's prompt release as an American citizen.

On January 26 the governor notified Mr. Heenan that the imperial minister of the interior had ordered that Thiessen should quit the country, never to return.

It seems that at this time Thiessen had been in hospital, and on the next day Thiessen telegraphed from Nagansk that he was there on his way to Odessa, without money or food. At Mr. Heenan's instance, Thiessen's friends took steps to have his wants supplied. The telegram indicated that he was one of a party of prisoners.

Nothing further was heard by Mr. Heenan until February 15, when he received a letter from the governor, dated February 8, in which he said: "Thiessen sent from Berdiansk on the 13th of January (January 25, n. s.), in accordance with an order received from the minister (of the interior) to the Odessa police master, for expulsion abroad."

From this official statement it appears that Thiessen was sent from Berdiansk, on his way to the frontier for liberation, about four weeks ago. This is the latest information I have on the subject, nor had Mr. Heenan received anything further up to February 15. As Thiessen had been ill, and may have been subject to exposure on his winter journey, I shall not feel quite easy till I hear that he is safely across the frontier.

He was certainly liable to severe punishment, from which he was saved only by our timely intervention in his behalf. The great distances in this enormous Empire and the difficulties of communication present obstacles which can not be well appreciated in the United States.

It is proper that I should make acknowledgments for the great assistance I have received from Mr. Heenan. Not only in this business but in all matters in which I have had occasion to ask his official aid, I have found him most prompt, efficient, and discreet, and it gives me great pleasure to make this known to the Department.

I remain, etc.,

GEORGE V. N. LOTHROP.

No. 582.

Mr. Lothrop to Mr. Bayard.

No. 100.] LEGATION OF THE UNITED STATES,
St. Petersburg, March 7, 1887. (Received March 22.)

SIR: Referring to my recent dispatches Nos. 95 and 96, concerning the seizure and confiscation of the schooners *Eliza* and *Henrietta*, I am now able to report that the minister of foreign affairs, in answer to my inquiries, informs me explicitly that the "illicit commerce" imputed to the *Henrietta* was commerce in violation of the order or "*disposition administrative*" set forth in my aforesaid dispatches.

He further states that the commission that condemned the schooners was, in each case, made up of officers belonging to the capturing vessel.

He has also sent to me a translation into English of said "*disposition administrative*," a copy of which I inclose herewith. It will be noticed that it appears in the form of the notice which was given by the Russian consul at Yokohama, November 15, 1881.

I remain, etc.,

GEORGE V. N. LOTHROP.

[Inclosure in No. 100.]

Notice of order relative to commerce on Russian Pacific Coast.

At the request of the local authorities of Behring and other islands, the undersigned hereby notifies that the Russian Imperial Government publishes, for general knowledge, the following:

I. Without a special permit or license from the governor-general of Eastern Siberia foreign vessels are not allowed to carry on trading, hunting, fishing, etc., on the Russian coast or islands in the Okhotsk and Behring Seas, or on the northeastern coast of Asia, or within their sea-boundary line.

II. For such permits or licenses foreign vessels should apply to Vladivostock exclusively.

III. In the port of Petropavlovsk, though being the only port of entry in Kamschatka, such permits or licenses shall not be issued.

IV. No permits or licenses whatever shall be issued for hunting, fishing, or trading at or on the Commodore and Roblen Islands.

V. Foreign vessels found trading, fishing, hunting, etc., in Russian waters without a license or permit from the governor-general, and also those possessing a license or permit who may infringe the existing by-laws on hunting, shall be confiscated, both vessels and cargoes, for the benefit of the Government. This enactment shall be enforced henceforth commencing with A. D. 1882.

VI. The enforcement of the above will be intrusted to Russian men-of-war, and also to Russian merchant vessels, which, for that purpose, will carry military detachments and be provided with proper instructions.

PELIKAN,
H. I. R. M. Consul.

YOKOHAMA, *November* 15, 1881.

No. 583.

Mr. Lothrop to Mr. Bayard.

[Extract.]

No. 101.] LEGATION OF THE UNITED STATES,
St. Petersburg, March 12, 1887. (Received April 1.)

SIR: A letter received this morning from Mr. Heenan, consul at Odessa, informs me that Abraham Thiessen "is slowly making his way

to Odessa, and is expected there in a few days." The cause of this slow movement is not known.

Very truly, yours,

GEORGE V. N. LOTHROP.

P. S.—MARCH 13. Mr. Heenan telegraphs this morning, "Thiessen sent to Constantinople to-day."

G. V. N. L.

No. 584.

Mr. Bayard to Mr. Lothrop.

No. 74.] DEPARTMENT OF STATE,
Washington, March 16, 1887.

SIR: I have received your No. 96, of the 17th February, relative to the seizure of the American schooner *Eliza* July 21, 1884, which formed the subject of instruction No. 50 of June 28, 1886.

The instruction which I send you to-day relative to the seizure of the *Henrietta* is applicable to this case also.

You are requested to forward a translation of article 21 of the Russian code of prize law of 1869, to which you refer as limiting the jurisdictional waters of Russia to 3 miles from the shore.

I am, etc.,

T. F. BAYARD.

No. 585.

Mr. Bayard to Mr. Lothrop.

No. 75.] DEPARTMENT OF STATE,
Washington, March 16, 1887.

SIR: I have received your No. 95, of the 17th ultimo, in answer to instruction No. 65, concerning the grounds for the seizure and confiscation on the 24th August, 1886, of the American schooner *Henrietta* by the Russian authorities.

If, as I am to conclude from your dispatch, the seizure of the *Henrietta* was made in Russian territorial waters, then the Russian authorities had jurisdiction; and if the condemnation was on proceedings duly instituted and administered before a competent court and on adequate evidence, this Department has no right to complain. But if either of these conditions does not exist, the condemnation can not be internationally sustained. The first of these conditions, viz, that the proceedings should have been duly instituted and administered could not be held to exist if it should appear that the court before whom the proceedings were had was composed of parties interested in the seizure. On general principles of international law, to enforce a condemnation by such a court is a denial and perversion of justice, for which this Government is entitled to claim redress. The same right to redress also would arise if it should appear that while the seizure was within Russian waters the alleged offense was committed exterior thereto, and on the high seas.

You are therefore instructed to inquire, not merely as to the mode in which the condemning court was constituted, but as to the evidence adduced before such court, in which the exact locality of seizure should be included.

I am, etc.,

T. F. BAYARD.

No. 586.

Mr. Lothrop to Mr. Bayard.

No. 103.] LEGATION OF THE UNITED STATES,
St. Petersburg, March 17, 1887. (Received April 4.)

SIR: I have the honor to inclose to you an article published this morning in the Journal de St. Petersburg, giving some account of a proposed modification of the Russian law on the subject of naturalization. I also inclose a translation of said article.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 103.—Proposed modification of the Russian law relative to naturalization. From the Journal de St. Petersburg, March 17, 1887.—Translation.]

The Gazette de St. Petersburg (in the Russian language) publishes the substance of the project drawn up by the minister of justice of a new law relating to Russian citizenship, its acquisition and its loss.

The legislation in force on the naturalization of foreigners dates from February 10, 1864. At its origin it accorded in its general principles with the stipulations contained in the codes of the states of western Europe. The modifications introduced during these last twenty years having destroyed this harmony, it becomes urgent to keep pace in this respect also with the movements of the day. Unfortunately our brother does not enlarge upon the nature of the modifications about to be introduced into the law relating to the naturalization of foreigners.

Concerning the acquisition of citizenship in another state by a Russian subject the Gazette is more explicit, until now, excepting article 325 of the penal code, and article 3 of the regulations on obligatory military service, we have no clearly defined stipulation. The new law will fill this void. It is thought to be no longer possible to have recourse to force to prevent Russian subjects from abandoning their nationality, but only, be it well understood, in cases when the naturalization abroad is real and not fictitious. The important point is to expose subterfuges, by which the duties incumbent upon every citizen are sought to be evaded. As a general rule, the passage of a Russian subject to a foreign nationality will be allowed in every case when this change shall not violate the existing obligations towards Russia.

Former Russian subjects naturalized in foreign countries shall, in case of their return, be considered as foreigners during one year at the maximum. At the expiration of this period they shall be considered as reintegrated *eo ipso* into Russian citizenship. Russian subjects who shall be recalled by the Government and who do not return within the time prescribed, shall be, on their return later, liable to confinement in a fortress for a time varying from four weeks to a year. A severe punishment shall be inflicted also upon Russian subjects who, to escape military service, shall have gone abroad. On their return into the Empire they shall undergo, if the crime has been committed in time of peace, confinement in a house of detention for the period of from six months to a year and a half, while if their departure has taken place in time of war they may be condemned to the loss of civil rights and to exile to the provinces far from European Russia, with confinement in a work-house, conformably to the stipulations of paragraph 1 of article 33 of the penal code.

No. 587.

Mr. Bayard to Mr. Lothrop.

No. 78.] DEPARTMENT OF STATE,
Washington, March 23, 1887.

SIR: I reply to your No. 100, concerning the confiscation of the two schooners, *Eliza* and *Henrietta* (the subject of recent instructions), by the Russian authorities, that the Department will hold the cases under consideration and await further reports.

I am, etc.,

T. F. BAYARD.

No. 588.

Mr. Lothrop to Mr. Bayard.

No. 110.] LEGATION OF THE UNITED STATES,
St. Petersburg, April 2, 1887. (Received April 16.)

SIR: On the 27th of January last, Adolph Lipszyc wrote me that he was "as good as under arrest of 500 rubles bond," which I understood to mean that he was on bail in that sum. He also asked of me permission to come to St. Petersburg, which, I answered him, I had no authority to give.

Since then I have not been able to hear a word from or about him until this morning, though I wrote him on January 31 and on March 17. This morning I have a note from the foreign office saying that Lipszyc's brother had paid 500 rubles on account of bail, and given his personal guaranty for Lipszyc, and that the latter had been set at liberty on January 31 last.

I infer that the charge against Lipszyc is still retained, and that his bail is given to answer to it.

I suppose that Lipszyc has left the country, though I have no information on the point.

As matters now stand I do not see that I am called on to do anything more.

As Thiessen is out of the country and Lipszyc probably so, I am glad to say that no American citizen is under detention here so far as I know.

I am, etc.,

GEO. V. N. LOTHROP.

No. 589.

Mr. Bayard to Mr. Lothrop.

No. 81.] DEPARTMENT OF STATE,
Washington, April 8, 1887.

SIR: I have received your No. 103 touching a proposed modification of the Russian law on the subject of naturalization. A movement in this direction is very gratifying. You will omit no discreet endeavor to encourage the disposition and lead it towards a fuller recognition of the inherent right of expatriation, which is now firmly rooted in international law.

I am, etc.,

T. F. BAYARD.

No. 590.

Mr. Lothrop to Mr. Bayard.

No. 111.] LEGATION OF THE UNITED STATES,
St. Petersburg, April 11, 1887. (Received April 27.)

SIR: In order to obtain an accurate copy of article 21 of the Russian prize law of 1869, and which you desire to be sent to you, as by your dispatch No. 74, I applied to Prof. F. Martens, and I am indebted for the following reply:

The article 21 belongs to the Chapter III of the prize law, the title of which is as follows: "On the places in which the prize law is to be executed."

The text of the article 21 is as follows:

"The right of making prizes is recognized *only* in the open seas. As for the open sea, it consists of waters which are not under the fire of neutral batteries, or 3 sea miles from the neutral shores."

"In order to prevent any misunderstanding of the word *only*, I must say that in the articles 19 and 20 it is said that prizes may also be taken in the territorial waters of the enemy."

From the above it will be seen that I was not literally accurate when I said that article 21 limited the jurisdictional waters of Russia to 3 miles from the shore. I had only a brief note of the tenor of the article before me and was somewhat misled by it.

But the implication seems unequivocal. In defining the open sea and jurisdictional waters of all neutral powers it would seem clear that she intends to recognize a general rule applicable to all nations alike.

I am, etc.,

GEO. V. N. LOTHROP.

No. 591.

Mr. Bayard to Mr. Lothrop.

No. 84.] DEPARTMENT OF STATE,
Washington, April 20, 1887.

SIR: I inclose for your information a copy of an interesting dispatch from our consul at Odessa on the changes in the Russian laws touching expatriation, etc., to which your No. 103 called attention.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 84.]

Mr. Heenan to Mr. Porter.

No. 80.] CONSULATE OF THE UNITED STATES,
Odessa, Russia, March 29, 1887.

SIR: I have the honor to report that in addition to the regulations regarding foreigners, it is intended now by the Russian Government to issue special rules for granting permission to Russians to become subjects or citizens of a foreign power.

Propositions on the subject which are out lay down the general principle that the right of becoming a Russian subject, or of leaving such allegiance, is only personal, so that children who have not reached their full age and have no personal will of their own must remain in the allegiance in which they were born, even when their parents have changed their allegiance.

On the strength of these rules will be laid down for children taken abroad by their parents and who have discontinued to be Russian subjects the following:

No. 1.—No person can receive permission to renounce his allegiance while he is liable to military service, and must first serve his time.

No. 2.—Persons who are not of age, and such males as have only reached the age of fifteen years, if they are under the control of their parents, will be entered in the release documents of their parents, but will continue to be considered Russian subjects until they attain the age of twenty-one years. After reaching that age they can only be permitted to renounce the Russian allegiance subsequent to their carrying out all the rules laid down for that purpose.

No. 3.—Persons who have not attained full age and whose names were entered in the release documents of their parents must serve their time of military service on attaining the age of twenty-one years.

The following additions will be made to the rules of the general military service: Males can only be permitted to renounce Russian allegiance after having served their full time, or on drawing lots which will exempt them from serving in the regular army.

The minister of the interior, however, after consulting with the minister for war, will have the right to address a special request to the committee of ministers to grant permission to persons who have not served their time in the ranks of the army to become foreign subjects. At the same time it is intended to add certain rules to the military service statutes, to the effect that Russian subjects who are liable to military service and have left the country without permission and before serving their time, in the event that they should return to Russia, be it even with a foreign passport which shows that they have become foreign subjects, will at once be compelled to join the regular army on the same conditions as transgressors.

This rule will be in keeping with the corresponding rules in the legislation of those countries where general military service exists.

Persons who were formerly Russian subjects, and who have renounced their allegiance, should they return to Russia even with a foreign passport, will be considered Russian subjects if they remain in the country for more than one year.

By this last paragraph the Russian Government strikes a severe, but at the same time a proper, blow at an abuse which causes annoyance to Russia and other countries.

I have met many naturalized American citizens who were formerly Russian subjects, and it has always been a source of great surprise to me to find how devotedly they cling to Russia, and how great is their love of country; they appreciate very fully the advantages which their American passports give them, but I venture to predict that many of these individuals will renounce their allegiance to the United States rather than be forced to leave Russia.

I am, etc.,

THOS. E. HEENAN.

No. 592.

Mr. Lothrop to Mr. Bayard.

[Extract.]

No. 114.] LEGATION OF THE UNITED STATES,
St. Petersburg, May 10, 1887. (Received May 31.)

SIR: Soon after sending my dispatch, No. 110, of April 2, I had reason to believe that I was mistaken in my conclusion that Adolph Lipszyc would be allowed to leave the country without further prosecution.

I therefore, on April 8, again wrote the foreign office on his behalf.

On April 25 I received a note from M. de Giers in response to my note respecting Lipszyc.

The note had evidently been prepared with much care, and though in terms directed to Lipszyc's case, it really had in view an exposition of the views taken by the Russian Government in reference to the naturalization question at large. It aims to show that the enforcement of their laws against Russian subjects who have been naturalized in the United States ought to be considered as a matter of domestic concern, and no grievance against the United States.

I thought it my duty to make known at once that this view could not be satisfactory to the United States, and accordingly I replied, somewhat at length, in a note to M. de Giers, on the 6th instant.

The matter has thus taken a form which seems to make it proper that I should lay the correspondence before you. I shall therefore inclose herewith:

1. Copy of my note relative to Lipszyc.
2. Copy of M. de Giers's reply to above.
3. Copy of my reply to M. de Giers of May 6, instant.

I do not think the Russian Government has appreciated the strong feeling that exists in the United States in reference to the protection of our naturalized citizens. While avoiding importunity, I have felt it my duty, respectfully, but earnestly, to press our views upon the attention of the Government here. I wish I could say that it has been with any decisive success. But I am informed that never before has the foreign office here given the matter consideration enough to discuss it. This is at least encouraging.

I shall be glad to receive an expression of your views, and such suggestions and directions for the future dealing with the question as you shall think appropriate.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure 1 in No. 114.]

Mr. Lothrop to M. de Giers.

LEGATION OF THE UNITED STATES,
St. Petersburg, March 27–April 8, 1887.

YOUR EXCELLENCY: Upon considering the communication which your excellency did me the honor to send me on March 20–April 1 respecting the case of Adolph Lipszyc, I feel constrained further to address you.

I had earnestly hoped that it would have been thought proper to liberate Lipszyc. You do indeed say that he was set at liberty on December 15 last, but as this was only on bail to appear for trial, it can not be said that he was set free from legal restraint. The charge against him, and to which he is held to appear, is not for any offense committed in Russia, but only for acquiring citizenship in the United States. That he should be prosecuted and held for this is the precise grievance of which the United States complain.

In addition to his detention, his United States passport and his pension certificate were taken from him and are still withheld. It is true you say that they are held as proofs of his guilt, but your excellency will allow me to remind you that they are unquestionably his private property, of which he was in lawful possession, and of which he had made no criminal or wrongful use.

The United States can not recognize the right to deprive him of the possession and use of these papers.

I would respectfully ask your excellency to reconsider this case, in the hope that you may be able to restore to Lipszyc his papers, and also to set him at liberty from the restraint in which he now is held.

I beg to renew, etc.,

GEO. V. N. LOTHROP.

[Inclosure 2 in No. 114.—Translation.]

M. de Giers to Mr. Lothrop.

IMPERIAL MINISTRY OF FOREIGN AFFAIRS,
DEPARTMENT OF HOME RELATIONS,
St. Petersburg, April 11-23, 1887.

Mr. MINISTER: By your note dated March 27–April 8, you informed me that the Government of the United States considered the arrest and trial of Mr. Adolph Lipszyc, prosecuted for having become a naturalized American citizen, as a grievance of which it felt called upon to complain.

You made also the observation that the documents of Lipszyc, having been legally delivered to him and constituting private property, of which he had made no criminal use, the Government of the United States could not admit that he might be deprived of them or hindered from making use of them.

I shall permit myself to remark to you on this subject, Mr. Minister, that the whole question appears to rest on a misunderstanding, which has prevented the acts of the Imperial Government from receiving a correct interpretation on your part.

The relations of the state to the subject or citizen are the exclusive domain of the internal legislation of every country, which alone has the right and the power of loosening or tightening the bonds that serve to hold its subjects or citizens according as it may judge fit or necessary for the public welfare in general.

This right is thus understood and practiced by all governments. Thus it was only in 1868 that the United States proclaimed the freedom of emigration of their citizens; it was in 1870 that England for the first time abandoned the strict observance of the principle, "once a subject, always a subject."

France does not now recognize the right of her citizens to emigrate except under certain conditions, and a Frenchman naturalized in a foreign country can eventually be prosecuted in France, and even condemned to death.

The Imperial Government of Russia does not recognize the right of its citizens to emigrate without special authority. According to the terms of article 325 of the penal code any person who, having gone abroad, takes service there without the authority of Government, or who becomes naturalized, incurs the loss of all his civil rights and perpetual banishment. If he returns to Russia he would be transported to Siberia.

This law is altogether general in its purport and is applicable without discrimination to Russian subjects who may have become naturalized in any country whatsoever. Its application to the case of Lipszyc cannot, therefore, be regarded as a grievance towards the United States.

In regard to Lipszyc's papers, it is necessary to form a just idea of the value they may have in Russia.

That these papers were legally delivered by the American authorities there can be no subject for doubt. The Government of the United States grants naturalization on the request of any person domiciled in the States who fulfills the requirements of the American law on naturalization.

It furnishes him with documents which, setting forth his capacity of citizen of the United States, guaranty to him its advantages. The act of naturalization being according to law the papers have a legal value in America.

On the other hand, a fundamental law of the Empire forbids Russian subjects to change their nationality, and every infraction of this law is punished as a crime.

A person inscribed on the registers of population as a Russian subject, unless especially authorized to emigrate, is and always remains a Russian subject, whether he wishes it or not. He could not hold an authentic foreign passport without violation of the law. His papers, therefore, can have no legal value in Russia; they tend to prove his guilt without changing anything in his position as a Russian subject. While an American law has conferred upon him the rights of American citizenship, a Russian law considers him as having preserved the status of a Russian subject. There is a conflict then between the legislations of the two countries, but in the opinion of the Imperial Government without the possibility resulting therefrom of the least alteration of the good relations of the two Governments.

The situation is altogether the same on both sides. As Russia could not pretend that a law of the Empire should hinder action of the laws in the United States, so the United States can not demand that a Russian law should be amended or abolished in its effects by reason of an American law. When a Russian subject becomes naturalized in America as a citizen, the Government of the United States ignores the Russian law, which forbids him the act, and which always holds him to be a Russian subject. If he returns to Russia he naturally falls back under the penalty of the Russian law, and the Imperial Government could not recognize in him the standing acquired contrary to the dispositions of its own laws.

Nevertheless, on closer examination of the question, it is easy to perceive that the conflict above indicated between the Russian and the American legislations is but apparent, and can cause no real difficulty.

In fact the Government of the United States confers naturalization on a foreign subject without inquiring into the laws of the country to which he belongs; but it only does so at the request of the foreigner.

It is for him to know what he loses on quitting the citizenship of his own country, and to judge if the advantages which he counts on by his change will sufficiently compensate him for his losses. A Russian naturalized in the United States knows, or ought to know, that he can not return to Russia without danger of criminal punishment. If he returns, all the same, it is at his risk and peril.

The complaint of the United States in this case appears all the less founded, as by one of the provisions of the treaty of 1832 the difference between an American citizen, formerly a Russian subject, and every other citizen of the United States has already been clearly established. Article 10 of that treaty, in determining the rights of the respective citizens or subjects in regard to inheritance, stipulates at the same time that "this article shall not derogate in any manner from the force of the laws already published or which may hereafter be published by His Majesty the Emperor of all the Russias to prevent the emigration of his subjects."

In bringing the foregoing to your notice, Mr. Minister, I venture to indulge the hope that you will admit that in the case of Lipszyc the Imperial Government has but conformed to the formal provisions of the laws of the Empire, and has in no manner derogated from the principles of equity and of law which should exist in the amicable relations between Russia and the United States.

Receive, Mr. Minister, etc.,

GIERS.

[Inclosure 3 in No. 114.]

Mr. Lothrop to M. de Giers.

LEGATION OF THE UNITED STATES,
St. Petersburg, April 24–May 6, 1887.

YOUR EXCELLENCY: I duly received your note of April 11–23 in answer to mine of March 27–April 8. I beg to express to your excellency my high appreciation of the considerate attention you have given to the case of Adolph Lipszyc, and for your courteous statement of the views of the Imperial Government relative to his naturalization in the United States.

In submitting to you some further observations which seem to me pertinent, I should say at the outset that, as I understand it, to a certain extent my Government is in cordial agreement with you.

The United States fully assents to the doctrine that to every country belongs the exclusive management of its domestic affairs. No political principle is held more sacred than this in America. It also agrees that all who enter a country become subject to the laws and tribunals of that country for all acts done while remaining there. It also agrees that to every country belongs the exclusive right to prescribe and enforce its relations with its own subjects or citizens. So long as a man remains in the land of his birth he certainly owes it allegiance, and must recognize the obligations and duties imposed by its laws. This allegiance, of course, continues until rightfully transferred to, and accepted by, another government.

Here the divergence obviously begins. The United States insists that it is neither just nor practical, especially under the conditions of modern society, to assume that native allegiance is a perpetual bond which can not be renounced.

The position of the United States is that when a man has actually expatriated himself, and by naturalization has assumed allegiance to an adopted country, his political situation is completely changed. Citizenship is a personal condition and attends an individual wherever he goes. From the nature of the case he can not owe a two-fold allegiance. He can not, at one and the same time, be one thing at Athens and another at Rome, but must bear the same national character everywhere. Naturalization of course implies the renunciation of the former allegiance and the assumption of a new allegiance. This act therefore necessarily affects his relations to two Governments, and what was before limited to questions of purely domestic concern may thus be raised to international importance. It seems to me, with great deference, that it obviously presents something more than the ordinary case of a "conflict of laws," spoken of by your excellency. Such conflicts usually concern only private and individual rights. A conflict between states as to citizenship involves a conflict as to allegiance, which is, of course, of the highest public concern.

In ordinary cases of conflict of laws it is readily recognized that each country, within its own territorial jurisdiction, may administer its own laws without any just ground of offense to any other. But when a conflict as to the right of naturalization arises, the question of private rights is almost necessarily merged in the paramount question of the rights of the State.

It seems to me that it is only by great discretion that conflict on so delicate a subject can fail to endanger harmonious relations. It gives me great pleasure here to say, that the judicious consideration extended by the Imperial Government in cases of this kind has hitherto happily averted unpleasant feelings.

In a previous letter I have pointed out that the views of the United States are not at all of a theoretical or sentimental character. They are of the most practical and vital character, for a very large portion of its best citizens hold their citizenship by naturalization.

It would be quite irrelevant for me to discuss here the origin or extent of the doctrine of indelible allegiance. But it seems proper to notice that your excellency seems to have been led into an error as to the position of the question in the United States. It is true that it was only in 1868 that the natural right of expatriation was declared formally by act of Congress, but this was never intended or understood as the declaration of a new principle. It was only intended as a solemn declaration of a fundamental principle. I can declare, on the highest authority, that no other doctrine has ever been held, from the foundation of the Government, by any of its political departments, and this is a question which pertains especially to the political departments of the Government. It was one of the questions which led to our war of 1812 with Great Britain, and though it remained unsettled at the close of that war, yet it was not thereafter asserted with the former arrogance. So much doubt, indeed, was thrown on the question that, finally, in 1868, it was referred to a commission of England's most eminent jurists and statesmen, who unanimously reported that the doctrine "once a subject always a subject," was "neither reasonable nor convenient," and that it "was at variance with those principles on which the rights and duties of a subject should be deemed to rest." Under this decisive condemnation the doctrine, as your excellency is aware, disappeared from British law.

As to the law of France on this important subject, though aware of some obscurity about it, I have not understood it quite as stated by your excellency. The Code Napoleon expressly declared French citizenship to be lost by foreign naturalization. I am informed that by some subsequent laws, Frenchmen acquiring foreign naturalization without leave were subjected to the penalty of confiscation of property and to deportation from the Kingdom. In 1860, however, in his annual message, President Buchanan was able to declare, on the authority of the French minister of war and the decisions of the French courts, that France recognized the right of expatriation. But in the disturbed period about 1870, it seems that some law or regulation was adopted, that where a person conscripted failed to appear, he might be prosecuted for "insoumission." If it appeared that he had been naturalized abroad for three years or more, he was discharged; if for a less time, he might be imprisoned for a short period. I am not aware that even this modified regulation has been enforced of late years.

I also note your protest that the treaty of 1832 does not recognize the lawfulness of the naturalization of Russian subjects by the United States.

Without further discussing the point at this time, I should state that my Government has supposed it did so recognize such naturalization; and I may add that it seems to me that the emigration clause, at the end of the 10th article, may be given full force without ascribing to it the meaning given in your note. Certainly the United States never for a moment questioned that the right to regulate and control the emigration of its subjects was within the exclusive domain of the Imperial Government. This it regards as an incident of territorial sovereignty to be exercised within territorial limits, but not as following the subject into foreign countries.

I regret that I can not assent to your excellency's position that Lipszyc's naturalization papers, though valid in America, are valueless in Russia. They are valid in America only because they recognize a valid national act, and in the hands of a naturalized citizen they are the peaceful evidence of his citizenship. If the Imperial Government claims that the act of naturalization violates its rights, it might properly demand of the United States that the papers should be revoked and withdrawn. But to seize and confiscate such papers, when no unlawful use has been made of them, seems to be wholly unnecessary and to be an exercise of power of which the United States may justly complain.

In taking leave of the legal aspects of this case, as they present themselves to me on principles alike just and convenient, I beg for a moment to ask whether the following may not justify your indulgent consideration. It is now over twenty-five years since Lipszyc left Russia and he has ever since lived in the United States. Even if he is guilty of an offense in acquiring naturalization may it not now, after this lapse of time, be condoned?

I am also informed that the Emperor on his accession to the throne, or at his coronation, graciously made a grant of amnesty or pardon which would include the offence charged against Lipszyc.

I have never seen a copy of this imperial act, and my information may be incorrect, but I beg respectfully to call attention to it. At the same time permit me to say that I should be greatly obliged if your excellency could furnish me an English or French translation of His Majesty's grant aforesaid.

I beg, etc.,

GEO. V. N. LOTHROP.

No. 593.

Mr. Lothrop to Mr. Bayard.

[Extract.]

No. 118.] LEGATION OF THE UNITED STATES,
St. Petersburg, May 31, 1887. (Received June 20.)

SIR: A few days after the promulgation of the Russian tariff on iron, steel, etc., mentioned in my dispatch No. 115, there was published a new and greatly enhanced tariff on foreign coal and coke. The rates for the Baltic and Gulf of Finland ports are practically prohibitory; at the Black Sea ports they are not so high.

There has just now been published an imperial ukase relative to the equisition and holding of real estate by foreigners in Russia. The kase seems to have been framed and approved March 14–28 last, but or some reason was promulgated only four or five days ago.

I herewith inclose a printed copy (in French) of the ukase, and also a translation thereof.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 118.—Imperial ukase relative to the acquisition and holding of real estate by foreigners.—Translation.]

To the Senate directing:

Since 1864 a whole series of legislative measures have been promulgated tending to consolidate the Russian landed property in the western frontier zone of the Empire, and to assimilate this zone to the other parts of the Empire. We have now seen fit to establish, temporarily and in accordance with the above-mentioned measures, as also in view of their ulterior development, some special regulations relating to the acquisition by foreign subjects of real estate (*biens immeubles*), either in fee or for limited term, in certain provinces of the western zone of Russia.

In virtue of the proceedings and conformably with the conclusions of the committee of the ministers, we have ordered and order as follows:

1. In the ten provinces of the Kingdom of Poland, as in the provinces of Bessarabia, Vilna, Vitchok, Volhynia, Grodno, Kief, Kovno, Courland, Livonia, Minsk, and Podolia, foreign subjects can not henceforth acquire in any way whatever, or on any lawful condition whatever, either general or local, outside of the ports and towns (with the exception of the cases provided for by article 3 of the present ukase) any proprietary right in real estate, or any right of enjoyment therein independent of the general right of property and resulting from special leasing or farming out.

NOTE I.—In the provinces of the Kingdom of Poland it is also forbidden to foreign subjects to administer real estate situated outside of the towns, by means of their holding power of attorney or as stewards (directors).

NOTE II.—The restriction of the right of foreign subjects, established by article 1, relating to the possession and enjoyment of real estate situated out of the ports and towns, does not extend to the hiring of houses, lodgings, and country houses for their temporary use and personal residence.

2. In the localities indicated by article 1 of the present ukase, foreign subjects can secure payment of sums due to them by accepting real estate as pledge, but the guaranties of this kind and in general the recovery of debts by foreigners can not enable them to acquire the property given in security nor put them in enjoyment of it as of actnal ownership. (Judicial code of the Emperor Alexander II, civil procedure, articles 1063, 1064, 1129, 1171, 1173, 1175, and 1209; civil laws of the provinces of the Kingdom of Poland, articles 2071, 2072, and 2085–2091; local laws of the Baltic provinces, civil section, articles 1336, 1412, and 1457.)

3. In regard to the rights of foreign subjects inheriting real estate situated out of the ports and towns, the following restrictions are established for the districts enumerated in article 1:

A. Inheritance in direct line descending and between husband and wife, of property left by a deceased foreign subject is legal if the heir has established his residence in Russia previous to the promulgation of the present ukase.

B. In all other cases of inheritance, either by virtue of established laws or by virtue of testamentary disposition, the foreign subject is held to sell to a Russian subject within the space of three years the property inherited by him.

C. In case of non-execution of paragraph B, the property inherited is taken in trust by administrative measure of the provincial council, and sold at public auction by the respective provincial chamber. The product of this sale, after deducting the expenses of the trust, is handed over to the heir.

4. The restrictive action indicated in the paragraphs B. and C. of the preceding article extends also to cases of acquisition by foreign subjects of property rights in real estate in virtue of acts done prior to the promulgation of the present ukase, if the proprietor has not yet entered upon the actual enjoyment of the property acquired by him.

5. Acts and contracts concluded according to the law established for a specified period, and in virtue of which foreign subjects acquired, in the localities enumerated in article 1, prior to the promulgation of the present ukase, proprietary rights or the enjoyment of real estate out of the ports and towns, can not, this delay having once expired, be either renewed or extended beyond the contracts indicated in the Note II of article 1 and in article 2 of the present ukase.

6. The operation of the preceding articles extends to associations, commercial and industrial companies, and societies (firms) formed by virtue of foreign laws, even when they may have been authorized to transact business within the limits of Russia.

7. Any transaction concluded with the object of infringement or evasion of the present ukase is null and void.

8. If any transaction, such as mentioned in article 7, is discovered either by the general, local, or by the provincial authority, the governor-general or the governor of the province, after having gathered all the necessary information, which the tribunals and all the authorities and functionaries are obliged to furnish him, is to bring suit by the ministry specially charged (the court of judges for the kingdom of Poland, the substitutes of the quaestors for Livonia and Courland), to annul the transaction or act impeached. Suits of this kind are to be tried according to the special rules framed for prosecutions brought by the state administrations.

The senate directing is charged with the execution of these presents.

ALEXANDER.

Given at Gatchina, March 14-26, 1887.
(Messager officiel.)

No. 594.

Mr. Lothrop to Mr. Bayard.

No. 119.] LEGATION OF THE UNITED STATES,
St. Petersburg, June 1, 1887. (Received June 18.)

SIR: I have the honor to inclose to you a cutting from the Journal de St. Petersburg of this morning, with a translation thereof, relative to the proposed law for naturalization.

If it shall become a law in the form proposed, it will not only distinctly recognize the right of expatriation, but remove many of the most serious difficulties we have had in dealing with the question.

I have reason to believe that the views and wishes of the United States, which I have not failed to present on every suitable occasion, have had a material influence with the Imperial Government.

I am, etc.,

GEO. V. N. LOTHROP.

[Inclosure in No. 119.—Translation from the Journal de St. Petersburg of May 20 (June 1), 1887.]

According to the information of the Gazette de Moscow, the council of the Empire will shortly take into consideration the project of a law for the naturalization of foreign subjects and for the right of Russian subjects to obtain naturalization abroad.

The last right would be granted to all Russian subjects free from every obligation towards the country of their origin. Every Russian naturalized abroad could return to Russia for a period not longer than one year. If he remained beyond this term, he would be considered *eo ipso* to have become again a Russian subject.

No. 595.

Mr. Lothrop to Mr. Bayard.

No. 122.] LEGATION OF THE UNITED STATES,
St. Petersburg, June 6, 1887. (Received June 25.)

SIR: Mr. Emil Stucker, who now appears to be residing at Odessa, having been refused a passport by me, desires me to present his appeal to you.

The father of Mr. Stucker was a naturalized American citizen, who, shortly after his naturalization, returned to Europe, and died at Paris in April last. It does not appear that he ever returned to the United States after leaving it, shortly after his naturalization.

Emil Stucker was born in England, May 12, 1863, and after his father was naturalized. He has never been in the United States, and does not express any purpose to go there to reside. He appears to have been for some years engaged in business in Europe. Some years ago, being in Bremen, and called suddenly to go to Russia on urgent business, and finding that he could only obtain an American passport by going to Paris, for which there was not time, he obtained temporarily "British protection," but did not take, and never has taken, any oath of allegiance to Great Britain.

On these facts Mr. Stucker claims to be an American citizen by birth.

Under the rulings of the Department in somewhat similar cases I was of the opinion that he was not an American citizen, and declined to issue to him a passport. At his request I now submit his case for your decision.

I am, etc.,

GEORGE V. N. LOTHROP.

No. 596.

Mr. Bayard to Mr. Lothrop.

[Extract.]

No. 92.] DEPARTMENT OF STATE,
Washington, June 18, 1887.

SIR: I have your dispatch of the 10th ultimo on the case of the arrest of Adolph Lipszyc, a native Russian, holding naturalization papers as an American citizen. I have read with care the notes which you inclose.

This Department, while dissenting, as always heretofore, from the position of the Russian Government on the question of naturalization, is pleased to note the apparent disposition of the Imperial Government now to approach a fuller consideration of the subject.

The rule of unalterable allegiance is not in accord with the growing freedom of social intercourse between nations and commercial exchanges; and every international arrangement that can relieve individuals from a divided allegiance and doubtful domicile is certainly to be encouraged.

I am, etc.,

T. F. BAYARD.

No. 597.

Mr. Lothrop to Mr. Bayard.

No. 126.] LEGATION OF THE UNITED STATES,
St. Petersburg, June 22, 1887. (Received July 9.)

SIR: In answer to my note of April 11 last, asking for information as to the precise places of seizure of the schooners *Eliza* and *Henrietta*, severally, and also for copies of the minutes or records of the courts that condemned the said schooners, including the charges, evidence, and other proceedings, I have now received from the Imperial Government copies of the "protocols" in each of said cases.

It will be seen that the tribunal that confiscated the schooner was made up of the officers of the capturing vessel, and that the evidence on which they claim to have acted was furnished by their own observation, the papers or want of papers of the schooners, and the admissions of their masters.

I inclose the copies furnished to me, with translations of the same.

I am, etc.,

GEORGE V. N. LOTHROP.

[Inclosure 1 in No. 126.—Translation.]

Protocol in the case of the "Henrietta."

We, the undersigned, do certify, that the 17th of August, 1886, in the Behring Sea, latitude 65° 55′ N., and longitude 190° 4′ E., was met a two-masted schooner carrying the American flag.

Upon examination of her, as also her documents, it was found that this schooner belonged to the town of San Francisco, was the property of James Sennett, was called the *Henrietta*, under the command of Benjamin Defter; was going from the region of the Territorial waters to Cape Chaplin, part of the Russian possessions. On the schooner besides the crew were six Chuktchees from Cape Chaplin. According to the journal, and as acknowledged by the commander, it is seen that the schooner *Henrietta* was engaged in trading without license on the Russian coast, viz, in the bay of St. Laurentia, Providence, and at Capes Chaplin and Eastern; besides this, upon examination of the schooner there was found on board about one pood (36 pounds) of gunpowder, two guns, more than two thousand cartridges of different kinds, lead one pood (10 pounds), small shot and percussion caps. The cargo did not correspond with the bill of lading, the journal was not written up properly, and the last days had not been entered at all.

Length of the schooner	feet..	51
Breadth of the schooner	do....	20
Water displacement	tons..	44

The cargo consisted of 4,000 pounds of whalebone, three barrels of walrus tusks, furs, and various small articles; taking into consideration all the foregoing, we have decided to confiscate the schooner to the benefit of the Russian Government, August 17–29, 1886.

Personally signed.
President of the committee, captain of the second rank:

PLAKSIN.

Members of the committee:

Lieutenant POPOFF,
PORUCHICK ZIM,
Under Lieutenant FEDOTOFF,
Lieutenant KOROBSCHIK.

Confirmed:
Commander of the clipper *Cruiser*, captain first rank:

OSTOLOPOFF.

Compared with the original:
Senior flag officer:

Lieutenant RODIONOFF.

Correct.
Secretary-midshipman:

SCHVANK.

[Inclosure 2 in 126.—Translation.]

Protocol in the case of the "Eliza."

Of the confiscation, at the mouth of the river Anadyr, near Cape Observatory, of the American schooner *Eliza*.

The 14-26th June, 1884, at the mouth of the river Anadyr, near Cape Observatory, Lieutenant Parenoff, of the Imperial clipper *Razbornik*, under the command of Lieutenant-Captain Hiltebrandt, inspected the American schooner at anchor, *Eliza*, Captain Austin Weston, upon which was found, in the hold, unlawful merchandise, such as rum, fire-arms, etc. Amongst the ship's papers was not found any bill of lading or port clearance. As seen by the ship's journal and acknowledged by the captain, the above-named schooner carried on trade with strangers in different parts of the Russian northwest coast, without having any license for this from the governor of Eastern Siberia, and besides this trading in prohibited goods; therefore, by order of the Government, published in the English language three years ago, and instructions given, I order:

1. The above-named schooner *Eliza*, with all that belongs to her and her cargo, to be confiscated at once to the benefit of the Russian Imperial Government.
2. The captain and part of the ship's crew of the schooner to be taken on board the clipper as passengers, with their personal effects belonging to them, until the first meeting with a commercial vessel having lawful rights, or until they arrive at one of the ports having postal communication.
3. The confiscated schooner to be sent to Vladivostok for delivery to the port; and,
4. To hand the Captain, Austin Weston, a copy of this protocol in the English language, and to get a receipt from him for the same.

[Signed] Commander of the clipper *Razbornik*.
Lieutenant-Captain HILDEBRANDT.
Lieutenant PARENOFF.

Confirmed:
Revisor YOUNG.

Correct:
Secretary-Midshipman SCHVANK.

No. 598.

Mr. Bayard to Mr. Lothrop.

No. 93.] DEPARTMENT OF STATE,
Washington, June 24, 1887.

SIR: I have received your No. 119 of the 1st instant, in which you send a paragraph and translation from the Journal de St. Petersbourg relative to the proposed new Russian law of naturalization which will permit Russian subjects to obtain naturalization abroad. This is an encouraging sign.

I am, etc.,
T. F. BAYARD.

No. 599.

Mr. Porter to Mr. Lothrop.

No. 94.] DEPARTMENT OF STATE,
Washington June 30, 1887.

SIR: Your No. 122, of the 6th instant, stating that you had declined to issue a passport to Mr. Emil Stucker, has been received, and your course in the matter is approved. The fact that Stucker's father had resided over twenty years abroad after his naturalization, and died there last April without having returned to the United States, and the further

circumstance that the son has always resided and even been in business in Europe, without any apparent intention of ever residing in the United States, are quite sufficient ground for questioning the son's *bona fides* as an American citizen, and for refusing to acknowledge him as such by issuing him a passport, the more especially as he admits having obtained British protection temporarily in Bremen. His reason for doing so, namely, that he had not time to go to Paris for an American passport, is insufficient on the face of it, as a passport can be procured by an American citizen in Bremen from Berlin, without leaving Bremen, on application to our consul there. It would be well in all such cases of refusal to forward a duplicate of the applicant's sworn statement in the prescribed form to the Department.

I am, etc.,

JAS. D. PORTER.

No. 600.

Mr. Lothrop to Mr. Bayard.

No. 145.] LEGATION OF THE UNITED STATES,
St. Petersburg, October 6, 1887. (Received October 24).

SIR: Notwithstanding the very full information which has been furnished you by our consuls touching the production of Russian petroleum and the trade in the same, I have thought that a recent article published in the Journal de St. Petersbourg would be interesting, as presenting the latest Russian view on the subject. It will be seen that the entire expulsion of American petroleum from the European markets is confidently looked for. And whatever superiority in quality may exist in favor of the American product, yet the ease and abundance of the production of the Russian wells and the cheapness at which their product can be placed on the market can not but cause some solicitude respecting the future of a business which has hitherto been so valuable to the producers in the United States. The article and translation is annexed.

I am, etc.,

G. V. N. LOTHROP.

[Inclosure in No. 145.—Translation of an article from the Journal de St. Petersbourg, of September 14–26, 1887.]

The Parole de Kieff (Kiebckoe Clobo) draws attention to the constant progress of the naphtha industry in the Caucasus and Transcaucasus. The importance of this industry is already considerable, and there is every reason to believe that it will end by driving American petroleum from the European markets. A pamphlet of Mr. Charles Marwin has just appeared in London, entitled "The approaching deluge of Russian petroleum." This writing and the report of the consul of the United States at Bakoo furnish our contemporary with the information for the following considerations:

In the district of Bakoo the production of refined petroleum in 1883 was about 60,000,000 gallons (the gallon is equal to nearly a third of a vedro). This proportion, in 1884 had amounted to nearly 100,000,000 gallons, and the year following to nearly 132,000,000. This branch of the industry has more than doubled, therefore, in three years. On the other hand, a notable diminution in the importation of American petroleum has been observed in Europe.

The following table shows the variations of this importation during those three years in the following countries:

	1883.	1884.	1885.
	Gallons.	*Gallons.*	*Gallons.*
Austria-Hungary	15,500,000	6,300,000	2,000,000
Greece	1,300,000	1,100,000	300,000
Turkey in Europe	4,200,000	3,600,000	2,000,000
Turkey in Asia	3,100,000	3,500,000	2,100,000
Gibraltar and Malta	2,700,000	3,300,000	1,000,000

In short, an importation reduced to one-quarter—from 26,800,000 gallons to 6,700,000—and that in three years alone; and let it not be forgotten that the naphtha industry in Russia is developing without check, putting itself in unison with the requirements of our consumers of the West, whilst in America many wells have become exhausted. In Pennsylvania, for instance, in order to obtain naphtha, it is necessary to bore into the earth to the depth of 2,000 feet, whereas at Bakoo the deepest wells are only 700 feet; and besides Bakoo, we have abundant springs of naphtha on the shores of the Black Sea, in the environs of Anapa and Novorossisk; they are to be worked by a French company, disposing, it is said, of a capital of 15,000,000 of rubles.

Let us now see what has been the development of the production of Russian naphtha. In 1872 only 750,000 gallons had been extracted; in 1870 (*sic*), 3,500,000. Until 1873 the production of naphtha formed a state monopoly. The contractor, Mirzoiew, while making an immense fortune, did little towards giving an impulse to this industry. The abolition of the tax changed the stagnation into feverish activity, especially since the arrival at Bakoo of the Nobel Brothers, Finlandish engineers, to-day called the naphtha kings.

The 1st of September, 1877, the tax on naphtha was abolished. The free extraction of this product has given rise to many abuses. Has not one often heard of the discovery of gigantic fountains of naphtha, which, from the lack of resources to dam it and preserve it, was lost in the sand or in the Caspian Sea. On the other hand, the natural naphtha of Bakoo gives only 30 per cent. of petroleum, 70 per cent. of the natural matter having to be employed in the manufacture of paraffine, of aniline colors and of different kinds of oils. Well, scarcely any profit is derived from it. Only the refuse, the *mazout*, as it is called locally, is used as a combustible of an inferior quality.

Here are some more figures, which characterize the extent of our riches in mineral oils. The firm of Nobel Brothers own 32 wells, which work permanently, and furnish from 150 to 500,000 hectoliters daily. It owns also the best organized and largest petroleum refinery in Russia, 13 maritime constructions specially arranged for the transport of petroleum, as also a great number of cistern-wagons to be met with on all our railways. There are in all at Bakoo, 200 workshops for the production of refined petroleum. The daily production is 1,200,000 gallons.

Of all the quantity produced, 35,000,000 gallons were exported abroad. The ways of exportation were by Batoum on the Black Sea, Riga, Libau, and Wierzbolowo, for Germany; Warsaw, Radzivilow, and Volotchisk, for Austria-Hungary.

One can judge of the development of which the exportation of our petroleum is susceptible by the following facts, related by Mr. Marwin: Three years ago a well discovered at Bakoo was much talked of, from which 3,400 tons of naphtha daily spurted up a quantity larger than the whole of the production of the 25,000 wells of North America. At first these rumors were received with much want of confidence, but it was found that really the spring was still more abundant than had been said. In fact, in 1886 the said well produced daily up to 11,000 tons of naphtha, by which the production of one locality was larger than that of the whole world—America, Galicia, Roumania, etc. On October 6, 1886, the manufacturer Tagniew had discovered a spring which threw up to a height of 224 feet, hurling stones and sand 3 versts around, even reaching the town of Bakoo. Thirty thousand pounds of naphtha were emitted from it every hour, to the point where it became necessary to put out all the fires of the factories of the "black city" in order to prevent terrible conflagrations.

In the presence of this richness of the wells, and their relative proximity to the markets of Europe and of Asia, one can understand that Mr. Marwin speaks of the "deluge" with which Russian petroleum threatens Europe, definitively ruining the naphtha trade of North America, which henceforth will only have to supply the local demand.

The consul of the United States at Bakoo sees things differently. He recognizes the loss to America of the markets of Austria, of Southern Europe, of a part of Germany, even of Asia, but he hopes to keep those of France, England, and of the other part of Germany.

CORRESPONDENCE WITH THE LEGATION OF RUSSIA AT WASHINGTON.

No. 601.

Baron Rosen to Mr. Bayard.

IMPERIAL RUSSIAN LEGATION,
Washington, June 19, 1887. (Received June 20.)

SIR: I am instructed to inform you that the Imperial Government desires to propose to the governments who have expressed their intention to take part in the labors of the Fourth International Prison Congress in St. Petersburg to formulate, before the first day of September, 1887, the questions which they would like to submit for discussion at the congress, and also to communicate the names of the scientists who would be willing to assume the task of reporting on any of the questions proposed for discussion in the official programme of the congress drafted at the conference of Berne.

Accept, etc.,

ROSEN.

No. 602.

Mr. Bayard to Baron Rosen.

DEPARTMENT OF STATE,
Washington, June 27, 1887.

BARON: I have the honor to acknowledge the receipt of your note of the 19th instant, communicating the proposition of the Imperial Government to the governments who have expressed their intention to participate in the Fourth International Prison Congress, which meets at St. Petersburg in 1890, to formulate, before September 1, 1887, the questions which they would like to submit for discussion at the congress, also "to communicate the names of the scientists who would be willing to assume the task of reporting on any of the questions proposed for discussion in the official programme of the congress adopted at the conference at Berne."

I inclose in reply a copy * of the message of the President, which announced to Congress the invitation to the United States to participate in the congress of 1890, and have the honor to say that a draught of a joint resolution appropriate for carrying out the suggestions of the President's message was transmitted to the Committee on Foreign Relations February 3, 1887.

Congress, however, seems not yet to have taken the necessary action to enable this Government to definitively respond to the propositions of your note.

Accept, etc.,

T. F. BAYARD.

* See For. Rels., 1886.

No. 603.

Mr. Bayard to Baron Rosen.

DEPARTMENT OF STATE,
Washington, October 4, 1887.

The Secretary of State presents his compliments to the chargé d'affaires *ad interim* of Russia, and has the honor to request him to cause the inclosed documents to be authenticated under the seal of the Russian legation and then returned to the Department of State.

No. 604.

Baron Rosen to Mr. Bayard.

IMPERIAL RUSSIAN LEGATION,
Washington, September 23–October 5, 1887.
(Received October 5.)

The chargé d'affaires of Russia presents his compliments to the Secretary of State, and has the honor to say, in reply to his communication of the 4th of October, that the documents forwarded for authentication relating to property in Russian Poland, and issuing from persons who appear to be Hebrews, could only be legalized by this legation if accompanied by passports for foreign travel or other documentary evidence showing that the said persons had left Russia with the permission of the Imperial Government, as all legations and consulates are under instructions not to authenticate any documents whatsoever relating to the transfer of property in Russian Poland issuing from Hebrews who have left Russia without permission. In the absence of the evidence above referred to the chargé d'affaires of Russia regrets not to be able to comply with the request of the Secretary of State in regard to the authentication of the said documents, which are returned herewith.

SIAM.

No. 605.

Mr. Child to Mr. Bayard.

No. 25.] LEGATION OF THE UNITED STATES,
Bangkok, Siam, May 10, 1887. (Received June 25.)

SIR: I have the honor to inform you that I have received a dispatch from His Royal Highness Prince Devawongse, minister for foreign affairs, inclosing a law agreed to by a committee of representatives of the treaty powers appointed for the purpose of regulating the importation and sale of spirituous liquors in Siam, a copy of which, together with a copy of the law,* is herewith transmitted. At present but little American liquor is sent to Siam, hence the duty will not materially effect our trade at present, but there is a demand springing up for the better class of whiskies and California wines that may result eventually in a large trade. In consultation with members of the consular body here, I find that it was agreed on their part that the new law should be put in force. Such being the case, I hope that you may grant the request of Prince Devawongse, that the law may become operative upon the 1st of September next, as suggested.

I have, etc.,

JACOB T. CHILD.

[Inclosure in No. 25.—Translation.]

Prince Devawongse to Mr. Child.

FOREIGN OFFICE,
Bangkok, April 30, 1887.

Mr. MINISTER: I have the honor to forward you herewith a printed copy of the new law (of 1249), for the regulation of the trade in spirituous liquors in Siam.

It will doubtless be in your recollection that in the month of January, 1885, a committee was appointed by the representatives of the treaty powers, to confer with the officials appointed by His Majesty's Government respecting a draught of this law, which had been forwarded to them from this office in that same month.

That committee after conferring with the Siamese officials, made certain suggestions for the alteration of the draught law, which in other respects they were good enough to approve. All the suggestions made by the committee have been adopted, and the alterations proposed by them have been embodied in the law, of which a translation is now sent. His Majesty's Government is happy to have been able in this instance to defer to the wishes of the treaty powers.

I trust that the law, as now amended and settled, will be acceptable to you as well as the representatives of the other powers interested, and that your Government will deign to agree upon an early date of enforcing the spirit convention of the 14th May, 1884.

I have therefore the honor to propose that such date shall not be later than the 1st of September, 1887.

With the assurance of my high consideration, etc.,

DEVAWONGSE VAROPRAKAR.

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* Not published.

No. 606.

Mr. Bayard to Mr. Child.

No. 18.] DEPARTMENT OF STATE,
Washington, July 1, 1887.

SIR: I have received your No. 25 of May 10, 1887, transmitting to the Department a copy of a new law, agreed to by the committee of representatives of the treaty powers in Siam, for the regulation of the importation and sale of spirituous liquors in that country. You therein inclose a copy of a note from the Siamese foreign office of April 30 last, expressing the hope that the law will be acceptable to the United States, and recommend that the assent of this Department be given to its going into operation on the 1st of September next, the time suggested in the note of Prince Devawongse for that purpose.

It is regretted that there is an ambiguity not noticed in your dispatch, in section 4 of the law, which, if correctly interpreted by the Department, would preclude its assenting to the law, on the ground that it violates the provisions of the treaty concluded between the United States and Siam, on the 14th of May, 1884, for the regulation of the liquor traffic in the latter country.

Article I of this treaty provides that "beer and wines may be imported and sold by citizens of the United States on payment of the same duty as that levied by the Siamese excise laws upon similar articles manufactured in Siam, but the duty on imported beer and wines shall in no case exceed 10 per cent. ad valorem."

Article V of the treaty contains the following stipulation:

> Citizens of the United States shall at all times enjoy the same rights and privileges in regard to the importation and sale of spirits, beer, wines, and spirituous liquors in Siam as the subjects of the most favored nation; and spirits, beer, wines, and spirituous liquors coming from the United States shall enjoy the same privileges in all respects as similar articles coming from any other country the most favored in this respect.

These two articles place a precise limit to the duty which may be imposed by the Government in Siam upon beer and wines imported and sold by the citizens of the United States and guarantied most favored nation treatment, both for citizens of the United States in respect to the importation and sale of spirits, beer, and wines, and for spirits, beer, wines, and spirituous liquors coming from the United States.

Section 4 of the law reads as follows:

> No spirituous liquors, excepting wine and beer actually made in Europe, shall be consumed, sold, or exposed for sale, in any city, town, or place in the Kingdom of Siam, unless there shall have been previously paid in respect of them either the import duty or the excise duty chargeable as hereinafter specified. Such duties shall be chargeable at the rate and on the scale following, that is to say: Eight ticals and twenty-four atts for every te of twenty tanans of one hundred cubic nins containing under 50 per cent. of absolute alcohol by volume (equal to $1.20 for every gallon, 26½ cents per liter), and proportional sums in every case for higher quantities and different alcoholic strength. No beers or wines of any kind shall be consumed, sold, or exposed for sale in any city, town, or place in the Kingdom of Siam, unless there shall have been previously paid in respect of them either an import duty of 5 per cent. on the value thereof, or an excise duty to the same amount, according to the detailed scale hereto annexed in schedule 17.

As the Department reads this section it contains a palpable discrimination against beer and wines manufactured in the United States. Instead of being subjected to the ad valorem duty of 5 per cent. they would be assessed at the rate of duty charged on other spirituous liquors,

while wines and beers made in Europe would pay only the ad valorem duty above specified. Such a discrimination this Government could not assent to, especially in view of the explicit and unmistakable provisions of the treaty of 1884 forbidding any discrimination on this subject.

You will therefore bring the objectionable features of section 4 of the law to the attention of the Siamese minister of foreign affairs, and say that while this Government recognizes the propriety and necessity of proper regulation by the Government of Siam of the importation and sale of spirituous liquors in that Kingdom, the Government of the United States can not recognize the enforcement of provisions of law which conflict with the conventional obligations of the Government of His Majesty to that of the United States. Beyond this point this Department is not disposed to make any objections to a law intended to preserve the good order of the community, and which has the approval of the representatives of the treaty powers.

I am, etc.,

T. F. BAYARD.

No. 607.

Mr. Child to Mr. Bayard.

No. 40.] LEGATION OF THE UNITED STATES,
Bangkok, August 31, 1887. (Received October 22.)

SIR: It gives me pleasure to inclose a copy of translation of a letter from his excellency Phya Bhaskarawongse, acting minister for foreign affairs, in reply to a dispatch sent by me with extracts from your instruction No. 18, diplomatic series, under date July 1, 1887, in regard to the Siamese Government having left the United States out of the new law that is shortly to go into operation relating to the importation and sale of liquors, and in which he assures me that the proper correction has been made.

I have, etc.,

JACOB T. CHILD.

[Inclosure in No. 40.—Translation.]

Phya Bhaskarawongse to Mr. Child.

FOREIGN OFFICE,
Bangkok, August 29, 1887.

Mr. MINISTER: I have the honor to acknowledge receipt of your letter of the 16th instant, inclosing a dispatch from the honorable T. F. Bayard, and I beg leave to inform you that, in deference to the wishes of the United States Government, His Majesty's Government have determined to alter clause 4 of the new law relating to spirituous liquors by inserting therein after the word "Europe," which occurs in the second line thereof, the words "or in the United States of America." I trust that the new law as thus altered in the particular direction which you notice in your letter will satisfy the wishes of the United States Government, and I take this opportunity of thanking you for the courteous and friendly tone in which you have brought this matter under my notice, and of renewing to you the expression of the high consideration with which I have, etc.

PHYA BHASKARAWONGSE.

SPAIN.

No. 608.

Mr. Bayard to Mr. Curry.

No. 141.] DEPARTMENT OF STATE,
Washington, November 23, 1886.

SIR: I transmit, with a reference to previous instructions concerning the vexatious impediments which the Cuban passport system opposes to beneficial and enlarged intercourse between our respective ports, a copy of a dispatch from the consul-general at Havana.

It is to be noted that with one exception the instances cited by Mr. Williams relate to the issue of Spanish passports to persons quitting the island. Our correspondence heretofore has had reference to the demand for United States passports for all persons going from our shores to Cuba.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 141.]

Mr. Williams to Mr. Porter.

No. 512.] UNITED STATES CONSULATE-GENERAL,
Havana, November 9, 1886. (Received November 16.)

SIR: I beg most respectfully to call the attention of the Department to the several within inclosures, all going to show the inconveniences to which American citizens, as well as American shipping and discharged American sailors, are subjected in this city by the operations of the passport system enforced by the island government.

Inclosure No. 1 is the English translation of a letter that I addressed on the 29th ultimo to the civil governor of the province, presenting the case of two American citizens, Mr. Antony P. Hamilton and Mr. Christopher Ahrens, who arrived here from New York the day previous in the American steamer *Niagara* on their way to Vera Cruz. On these Americans going to buy their tickets for the continuation of their voyage to Vera Cruz, as passengers in the Spanish steamer *Reina Mercedes*, they were refused passage by the agent until they could present passports from the civil authorities of the city, notwithstanding same authorities had allowed them to enter the city without passports. In this dilemma these citizens called at this office for assistance. This I rendered by officially explaining the case, and asking for the issuance of passports in my note addressed to the civil governor, as above cited.

After considerable delay and inconvenience to these two Americans, and upon the payment of $4 gold each, passports were issued allowing them to continue their voyage to Mexico.

Inclosure No. 2 is copy of a certificate under form 24 of the Department of State, dated the 30th ultimo, and given under my signature and the seal of this office, to Mr. Frank Stevens, the master of the American steamer *Manhattan*, for six seamen discharged at Matanzas by Consul Pierce, from the American bark *Deda E. Clark* of Harpswell, Me., and sent to me to be forwarded home to some port in the United States. Although the *Manhattan* is an American ship, and the seamen are also Americans, and this consulate-general likewise, yet the consignees objected to taking the

men without a passport from the civil governor, upon the ground that the master would thereby transgress the local law, and, in consequence, expose the ship to a fine, besides to a good deal of trouble. In order not to inconvenience the master or bring trouble upon the ship, I complied with the request of the consignees, and asked for and obtained the visa of the civil governor, though I do not believe that outside of the islands of Cuba and Porto Rico a passport is required for the shipping home of discharged seamen of any nation.

Inclosure No. 3 is copy of an introductory card from Mr. Guillermo Zaldo, of Messrs. Hidalgo & Co., agents here of the Alexandre and Ward lines of American steamers, in favor of Mr. Henry Draper, the writer of the letter copied under inclosure 4.

As Mr. Draper represents, he left New York in the steamship *City of Alexandria* for Mexico, in company with two American ladies; but owing to the very rough passage from New York, the ladies became sick, and left the ship in this port and went to a hotel to recover, resolving to desist from the continuance of the voyage, and to go back home on the return trip of the same steamer from Vera Cruz. But upon Mr. Draper calling at the office of the agents to arrange for their passage to New York, he was told that it could not be given him unless he presented a passport for himself and the ladies. At this juncture he came to the consulate, and, after handing me his letter explaining the facts of his case, I addressed a communication to the civil governor of the province, asking to be informed, officially, if passports were necessary in this instance. A copy of this communication is contained in inclosure No. 5. No answer has yet been returned to me from the civil governor, but a passport was issued gratis for this party, the only expense incurred being a stamp of 5 cents, collected under the new stamp act.

Inclosure No. 6 is copy of a letter from Mr. P. M. Moffer, another American citizen who, having come here to do some work for an oil refinery of this city, was refused passage to return to New York. This office had likewise to interpose in his behalf. A passport was then issued to him on the payment of a stamp of five cents.

Inclosure No. 7 is a letter from Messrs. Lawton Brothers, a highly respectable American firm of this city, and agents of the "Morgan" and "Plant" lines of steamers, plying, respectively, between New Orleans, Tampa, Key West, and this port; and Tampa, via Key West; also with this port. In this letter Messrs. Lawton Brothers report that the consul of Spain in Key West has informed Purser Giroux, of the steamer *Hutchinson*, that he will refuse clearance for Havana to any steamer whose passengers do not all possess passports visaed by a Spanish consul.

Inclosure No. 8 is copy of a letter received from Sister M. Francis Mitchell, addressed to this office from the Convent of the Good Shepherd on the 7th instant, informing me that the civil governor had refused to issue a passport *gratis* to return to New Orleans in favor of a poor American girl who had been given refuge at that convent. Under date of the 8th instant I wrote to the civil governor, presenting this case to his attention and consideration, and presume my request will have been granted.

The above few sample cases will give the Department an idea of the many vexations experienced by American visitors, as well as of the extra labor thrown on this office by the passport system ruling in this island. Our citizens on going abroad are not subjected to this sort of inconvenience by the Governments of the continental or other insular neighbors of the United States. Rather to the contrary, facilities are given for the attraction, instead of the presentation of obstacles for the repulsion of American visitors.

In submitting these facts to your consideration, it is in the hope that if a total suppression of passports between the United States and Cuba can not be obtained, at least some mitigation of the present annoyances may be reached by the Department either through its relation with the minister of Spain at Washington or through our minister at Madrid.

I am, etc.,

RAMON O. WILLIAMS.

[Inclosure 1 to inclosure in No. 141.]

Mr. Williams to the civil governor of Cuba.

UNITED STATES CONSULATE-GENERAL,
Havana, October 29, 1886.

EXCELLENCY: I have the honor to inform your excellency that by the steamer *Niagara*, which arrived from New York on the 28th instant, Messrs. Anthony P. Hamilton and Christopher Ahrens, citizens of the United States, came passengers en route to Mexico.

But upon endeavoring to take passage at this port in the Spanish steamer *Reina Mercedes*, which leaves for Vera Cruz on the 31st instant, the consignees of said steamer exacted passports of them from the civil government.

I have, therefore, respectfully to request that you will be pleased to issue passports to these gentlemen in order to avoid the interruption of their voyage.

I am, etc.,

RAMON O. WILLIAMS.
Consul-General.

[Inclosure 2 to inclosure in No. 141.]

Mr. Williams to the civil governor of Cuba.

UNITED STATES CONSULATE-GENERAL,
Havana, October 30, 1886.

EXCELLENCY: I have respectfully to ask your excellency to be pleased to visa the accompanying certificate of passage to New York, per steamship *Manhattan*, for the following seamen: James Mumford, A. Soderholm, Joseph Davis, Hans Norman, and Frank Linguist, in order that no obstacle be placed to the departure of said seamen.

These seamen were discharged according to law from the American bark *Deda E. Clark*, at Matanzas, and sent to this consulate-general by the United States consul at said port with the object of sending them to the United States.

I remain, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Form No. 24.—Certificate given to masters of American vessels when required to take to the United States destitute American seamen.]

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Havana, October 30, 1886.

I, the undersigned, consul-general of the United States of America for Havana, Cuba, and the dependencies thereof, do hereby certify that I have sent to New York by the American vessel *Manhattan*, of New York, 1,154 tons burden, whereof Frank Stevens is master, the following-named destitute American seamen:

Names of seamen.	Name of vessel on which they last served.	Port belonging to.	Remarks.
Henry Childs	*Deda E. Clark*	Harpswell	Discharged at Matanzas and sent to Havana by United States Consul Pierce.
James Mumford	do	do	
A. Soderholm	do	do	
Joseph Davis	do	do	
Hans Norman	do	do	
Frank Linguist	do	do	

And have agreed with the said master that on presentation of this certificate at the Treasury Department, bearing an indorsement of the collector of customs of the port of New York aforesaid that the seamen herein mentioned have arrived in said vessel within his district, he shall and will be entitled to receive the sum of $60 for their passage, being the sum of $10 for each seaman.

Given under my hand and seal of office this 30th day of October, 1886.

[SEAL.] RAMON O. WILLIAMS,
U. S. Consul-General.

No. 894.

Visto en este Gobierno Civil. Bueno para los Estados Unidos.
Habana, 30 de *Octubre*, 1885.

P. O.:
[Seal of the civil government.]

JOSÉ DE ALONZO.

[Inclosure 3 to inclosure in No. 141.—Card of introduction received October 30, 1886.]

MY DEAR MR. WILLIAMS: The bearer, Mr. Henry Draper, who came highly recommended to me, is here without a passport. Can you arrange anything to get him off without extra expense?

Yours, truly,

GMO. ZALDO.

[Inclosure 4 to inclosure in No. 141.]

Mr. Draper to Mr. Williams.

HAVANA, *October* 30, 1886.

MY DEAR SIR: I would like to call your attention to a matter which has occurred to me during my visit to Havana.

I left New York on October 14, 1886, in the steamer *City of Alexandria*, meaning to take the round trip to City of Mexico and return, two ladies and myself making the party. The trip from New York to Havana being so very bad, the ladies were made very ill. We therefore concluded to remain in Havana and wait the steamer and return home (New York).

I now find I can not leave the city of Havana without considerable trouble, and perhaps at an expense.

This I consider anything but just or right, as the ladies who are with me, and myself, are all American citizens. I can not but feel that on application to our representative we should be able to pass without any delay upon our being identified as the persons we represent ourselves to be. All of which I submit to your notice, and remain,

Yours, most respectfully,

HENRY DRAPER,
New York City, U. S. A.

[Inclosure 5 to inclosure in No. 141.]

Mr. Williams to the civil governor of Cuba.

UNITED STATES CONSULATE-GENERAL,
Havana, November 2, 1886.

EXCELLENCY: I have the honor to inform your excellency that the American citizen Mr. Henry Draper, accompanied by the American ladies Mrs. E. T. Duncan and Mrs. E. F. Bartlett, embarked in New York on the 14th of last month, in the steamer *City of Alexandria*, en route to Vera Cruz; but, owing to a rough and tempestuous passage, the ladies were taken sick, and upon arrival at this port have desisted from continuing on to Mexico, and landed here, with the intention of recuperating their health, and awaiting the return of the same steamer to take passage by it to the United States. But, as they did not take out passports in the United States, not needing them to go to Mexico, in consequence they now find themselves here without that document, and for the want of which, Mr. Draper informs me, the consignees of said steamer refuse to admit them on board.

Therefore, and in view of the circumstances narrated, I beg your excellency to inform me, officially, if it is necessary for these persons to take out passports issued by the civil government in order to return to the United States.

I have, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 6 to inclosure in No. 141.]

Mr. Moffer to Mr. Williams.

HAVANA, *November* 3, 1886.

SIR: I have visited this city to do some work at the oil refinery without a passport, and find that it is required before I can procure a ticket to return to New York.

I arrived here on the steamer *Niagara* on the 28th ultimo, and wish to return by the same steamer on the 4th instant.

Please inform me what I shall do to procure the necessary passport.

Yours, truly,

P. M. MOFFER.

[Inclosure 7 to inclosure in No. 141.]

Lawton Brothers to Mr. Williams.

HAVANA, CUBA, *November* 5, 1886.

SIR: The circular of the gobierno civil of this province, dated at Havana July 29, 1886, and published in the Boletin Oficial of August 3, 1886, declares, in accord with the gobireno-general, that the authorities here shall cease to exact from foreigners

landing here passports, or visa of Spanish consuls on passports, this being in harmony with the "law of foreigners" of 1870, but that such foreigners must present passports or documents proving their identity upon leaving the island.

The Spanish consul at Key West writes us under date of October 26, 1886, that on August 12, 1886, the governor-general cabled to the Spanish consul-general in New York: "Report that passports abolished is incorrect; 'law of foreigners' continues in force, by which presentation of this document is required," this being in reply to an inquiry on this subject.

In consequence of this, the Spanish consul at Key West, who has to clear all the steamers of the Plant Steamship Line from Tampa via Key West, and of the Morgan Steamship Line from New Orleans via Tampa and Key West, considers that no change has been made in the working of the laws of this island regarding foreigners arriving without passports, and has intimated to Purser Giroux, of the steamship *Hutchinson*, that he will refuse clearance for Havana to any steamer whose passengers do not all possess passports, duly visaed by Spanish consul.

We beg, therefore, that you will ask either the governor-general or the State Department of the United States, through the minister from Spain, to communicate to the Spanish consul at Key West the necessary instructions, that he may place no obstacle to the proper clearance of any American vessels clearing for Havana, amongst whose passengers there may be foreigners not possessing passports.

Yours, truly,

LAWTON BROTHERS,
Agents for Plant Steamship Line and for Morgan Steamship Line.

[Inclosure 8 to inclosure in No. 141.]

Sister Francis Mitchell to Mr. Williams.

CONVENT OF THE GOOD SHEPHERD,
Havana, November 7, 1886.

DEAR SIR: I hasten to give you Miss Buttenath's and my best thanks for your kindness in procuring her passage free.

At the same time I would inform you that at the Gobierno Civil they refused to put her name on the sister's passport (although the same was done last year for another girl). Would you have the kindness to give her one?

Most respectfully, etc.,

Sister M. FRANCIS MITCHELL.

[Inclosure 9 to inclosure in No. 141.]

Mr. Williams to civil governor of Cuba.

UNITED STATES CONSULATE-GENERAL,
Havana, November 8, 1886.

EXCELLENCY: I beg that your excellency will be pleased to order that a passport be issued, *gratis*, for the United States, in favor of Miss Susanna Buttenath, a native of the United States, single, and twenty-four years of age.

This young lady arrived here from the United States the 8th of February ultimo, and after being here some time took refuge at the Convent of the Good Shepherd. At her request, and as an act of charity, this consulate-general has obtained for her a passage *gratis* to return to the United States.

I have, etc.,

RAMON O. WILLIAMS,
Consul-General.

No. 609.

Mr. Curry to Mr. Bayard.

No. 152.] LEGATION OF THE UNITED STATES,
Madrid, November 23, 1886. (Received December 7.)

SIR: I have the honor to inclose a copy and a translation of a royal decree of November 12, 1886, relating to marriage, which has been issued to the provinces of Cuba and Porto Rico. The law of civil mar-

riage of June 18, 1870, established for the peninsula during the regency of Marshal Serrano, declared the civil marriage to be the only legal and binding ceremony.

On the restoration of the Bourbon dynasty, however, and at the beginning of the reign of Alfonso XII, a royal decree of February 9, 1875, a copy of which was sent to the Department in Mr. Cushing's No. 285, endowed the ecclesiastical marriage with its former validity by giving it the benefit of all the laws that had existed in regard to it previous to the introduction of the above-mentioned law of 1870. The latter, however, was, by article 6 of this decree, left applicable to those persons who chose to avail themselves of the civil form only.

The decree of 1875, therefore, while it reaffirmed the validity of the ecclesiastical did not in any way impair the binding force of the civil marriage. In Spain both forms are legal, and the object of the annexed royal decree is to place the provinces upon the same footing as the peninsula, or, in other words, to give to the civil marriage in the Antilles the validity heretofore exclusively possessed by the church ceremony.

I have, etc.,

J. L. M. CURRY.

[Inclosure in No. 152.—Translation.]

Ministry of ultramar.—Decree relative to marriage in Cuba and Porto Rico.

PREAMBLE.

MADAM: The law of civil marriage of June 18, 1870, and the royal decree of February 9, 1875, which modified it, had for their object the development of the precept of the constitution of the state in what concerns this substantial point of liberty of conscience.

None of these regulations were applied to the islands of Cuba and Porto Rico, perhaps for the reason that the fundamental law was not expressly in force there; but from the moment that by the royal decree of April 7, 1881, and of January 8, 1884, respectively, the constitution of the Spanish Monarchy and the law of civil registration were explicitly ordered to be promulgated in those provinces, the aforesaid application was the logical and inflexible consequence, as a development of article 11 of the constitution, in order that no Spaniard or foreigner residing in the Antilles, whatever the religion he professes, may be deprived of the right of contracting marriage and rearing a family under the protection of the law.

Individual complaints, deliberations of authorities, and public and solemn appeals in Parliament have proven this necessity, to which the Government of your Majesty is, therefore, obliged to attend in order to avoid the social and legal conflicts which immediately and still more in the future will surely result from such an exception, entirely indefensible because it involves a flagrant contradiction to admit the inhabitants of the aforesaid islands to the same rights as those of the peninsula and at the same time to deprive them of the legal means for their exercise. This contradiction can and ought to be perfectly avoided by doing nothing more than applying in the Antilles the legislation existing on the subject in the peninsula, that is to say, the law of civil marriage, with the modifications afterwards introduced by the royal decree of February 9, 1875, by using in effect the authority granted to your Majesty's Government by article 89 of the constitution of the Monarchy. In this way the just aspirations of public opinion will be satisfied without contending against any of those ideas or feelings which, from every point of view, merit consideration and respect, and without prejudices to applying at the proper time the reforms for the improvement of the legislation in regard to marriage which the Government has under consideration and thinks of presenting to the Cortes.

On the other hand, madam, it is no new thing to adopt for the provinces of ultramar regulations in the sense of the present, as is proven by the royal instruction order of December 16, 1792, by which a form of civil marriage, with its corresponding register, was established for marriages contracted in the Territory of Louisiana and Florida, at that time Spanish possessions, by persons professing Protestantism, and for mixed marriages of Protestants and Catholics, because the glorious predecessors

of your Majesty, with a lofty appreciation of the duties of Government, have always desired and attempted to heed true social necessities in all the length and breadth of the nation. In view of the reasons above given, the undersigned minister, in accord with the council of ministers, has the honor to submit to the approbation of your Majesty the annexed project of decree.

Madam, at your Majesty's royal feet.

VICTOR BALAGUER.

MADRID, *November* 12, 1886.

ROYAL DECREE.

Having taken into consideration the reasons given by the minister of ultramar, in accord with the council of ministers, and using the authority granted to my Government by article 89 of the constitution of the monarchy, in the name of my august son, King Alfonso XIII, and as Queen Regent of the Kingdom, I decree as follows:

ARTICLE 1. The provisional law of civil marriage of June 18, 1870, as well as the royal decree modifying it of February 9, 1875, is hereby extended to the islands of Cuba and Porto Rico.

ARTICLE 2. The minister of ultramar will issue the regulations necessary for the accomplishment of this decree, of which he shall give an account to the Cortes.

Given in the palace the 12th of November, 1886.

MARIA CRISTINA.

The minister of ultramar.

VICTOR BALAGUER.

No. 610.

Mr. Bayard to Mr. Curry.

[Extract.]

No. 143.] DEPARTMENT OF STATE,
Washington, December 2, 1886.

SIR: I have not heretofore specially replied to your dispatches* Nos. 140 and 145, of the respective dates of October 27 and November 3, 1886.

They present the closing phases of the negotiations for equal treatment of the American and Spanish flags in the carrying trade of the Spanish Antilles, which terminated with the signature of the existing *modus vivendi* on the 27th of October last.

It is a cause of satisfaction that the disputed and admittedly defective agreement of January 2, February 13, 1884, has at last been replaced by an arrangement which, although temporary, is couched in such clear and positive terms as to admit of no doubt as to its purport so long as it shall continue.

It was natural and proper that you should seek to defend your Government against unjust imputation because of its action in terminating, as the statute required, the imperfect and unreciprocal state of things found to exist under the old arrangement. Your note of October 29 to Señor Moret is approved as abundantly correcting the erroneous impression which seemed to have sprung up in his mind that the Government of the United States had acted with unusual or even unbecoming haste. The patience with which this Government had for nearly two years continued to present the simple question of fact, and endeavored to impress upon the Spanish Government that the continuance of the suspension proclaimed by President Arthur in February, 1884, was wholly dependent upon the ascertained and complete reciprocal treatment of our flag by Spain in the Antillean ports on terms of equality with the royal flag, is a complete answer to the suggestion of

*Published pp. 824 and 827, For. Rels., 1886.

undue haste. Nor should Señor Moret overlook the marked alacrity with which this Government responded to the overtures which it had so long and urgently invited from Spain, and the promptness with which the new arrangement was entered into by us in order to obviate the anticipated injurious effects of a continued lack of absolute reciprocity

I am, etc.,

T. F. BAYARD.

No. 611.

Mr. Curry to Mr. Bayard.

No. 157.] LEGATION OF THE UNITED STATES,
Madrid, December 15, 1886. (Received December 28.)

SIR: On receiving your telegram of the 10th instant, stating that the Spanish minister at Washington had declared that the agreement of October was to terminate on January 1, and referring to instructions to me of December 2, which have not yet been received, I have the honor to report that I immediately addressed a note to the minister of state, inquiring as to the intention of his Government in regard to the termination of the agreement, and on the 13th instant I received a reply informing me that his note of the 14th of November, as well as that of the Spanish minister, was for the purpose of expressing clearly the intention of the Spanish Government to consider the agreement as provisional and transitory, but it was the desire of Her Majesty's Government to extend the agreement until March 31, 1887, with the possibility of further prolongation. I at once informed you of this fact, and on last night received a telegram authorizing me to assent to the extension proposed, which I have this morning done.

I have, etc.,

J. L. M. CURRY.

No. 612.

Mr. Bayard to Mr. Curry.

No. 157.] DEPARTMENT OF STATE,
Washington, January 10, 1887.

SIR: I inclose for your information a copy of a dispatch from the United States consulate-general in Cuba, reporting on tonnage dues paid by Spanish vessels there.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 157.]

Mr. Springer to Mr. Porter.

No. 537.] UNITED STATES CONSULATE-GENERAL,
Havana, December 16, 1886. (Received December 21.)

SIR: In obedience to instruction of the Department, No. 235, of 3d instant, I have now the honor to inclose copy of a communication from the *administrador central* of customs, to the effect that Appendix No. 16 to the customs tariff in force

contains the rate of tonnage dues paid by Spanish vessels in the ports of Cuba, and all the regulations regarding steam-ships making regular trips and mail steamers. I accompany translations of several of the same, omitting reference to any other than Spanish vessels.

I am, etc.,

JOSEPH A. SPRINGER.

[Inclosure 1 to inclosure in No. 157.—Translation.]

Mr. Valdes to Mr. Springer.

CENTRAL ADMINISTRATION OF CUSTOMS OF THE ISLAND OF CUBA.

SIR: In reply to your attentive official communication of this date regarding the present payment of tonnage dues by Spanish vessels, I have the honor to inform you that in Appendix 16 of the customs tariff now ruling, a copy of which was sent to your consulate, will be found the tariff now ruling, together with all the regulations regarding steam-ships making regular trips and mail steamers.

God guard you many years.

Habana, 15 December, 1886.

JOAQUIN B. VALDES.

[Inclosure 2 to inclosure in No. 157.—Appendix No. 16 to the customs tariff of Cuba.]

A.—*Navigation and port dues.*

First. * * * A Spanish vessel arriving and clearing with cargo will pay for each ton of admeasurement according to register, $1.35.

Second. * * * A Spanish vessel arriving with cargo and leaving in ballast will pay $1.30.

Third. * * * A Spanish vessel arriving in ballast and leaving with cargo, $1.

Fourth. * * * Spanish vessels arriving with coal in quantity equal to or exceeding their registered tonnage, if they bring other goods, nothing.

A Spanish vessel importing coal as the only cargo, but in quantity less than their registered tonnage, will pay for each ton occupied by coal nothing, and for every ton not so occupied 62 cents.

Spanish vessels importing coal in less quantity than their regular tonnage, and besides bringing other goods in whatever quantity, will pay for every ton occupied by coal 73 cents, and for every other ton $1.35.

Fifth. * * * A Spanish vessel arriving in ballast and leaving with a full cargo of molasses will pay 37 cents.

Sixth. * * * A Spanish vessel arriving in ballast and leaving with products of the country will pay, per ton, $1, and for every ton empty, 5 cents.

Seventh. * * * A spanish vessel arriving and leaving in ballast, per ton, 5 cents.

Eighth. * * * A Spanish vessel putting in for orders or in distress, per ton, 5 cents.

Ninth. Steam-ships which make periodical trips to Cuban ports, whatever may be the flag or from any port, will be exempt from payment of all dues, provided they do not import or export more than 6 tons of cargo, and will be cleared with preference to others when carrying the mails.

Tenth. A Spanish steam-ship, under the foregoing circumstances, importing or exporting more than 6 tons will pay, per ton, 62½ cents.

Eleventh. Spanish mail steam-ships will pay according to the special contracts they may have with the Government.

Twelfth. Whenever the steam-ships that may arrive are not comprised in the ninth, tenth, and eleventh cases they will pay according to their flag and port whence from, deducting from total tonnage those occupied by machinery and bunkers.

Madrid, March 12, 1867.

Approved by H. M.

CASTRO.

B.—*Reciprocity with foreign nations for the payment of tonnage and port dues.*

1. Royal decree of June 4, 1868, establishing reciprocity of dues for the payment of tonnage or navigation and port dues in the islands of Cuba, Porto Rico, and the Philippines, with respect to the vessels of all nations which in their respective terri-

tories or colonial possessions grant the same benefit to vessels of the Spanish merchant service. * * *

ARTICLE. 1. The vessels of all nations which grant a similar benefit within their respective territories and colonial possessions to Spanish merchant vessels proceeding from the ports of Spain and adjacent islands shall be equalized in the islands of Cuba, Porto Rico, and the Philippines with Spanish vessels in regard to the exaction of tonnage and port dues.

* * * * * * *

MADRID, *June* 4, 1868.

d. Nations, the vessels of which have been successively equalized with Spanish vessels for the payment of navigation and port duties: France, Germany, Great Britain and all her colonies, Sweden and Norway, Holland and her colonies, Denmark, United States of America, Belgium, Austria, Hungary, Italy, Greece, Russia and Finland, and Mexico.

d. Regulations of August 28, 1882, modified on 10th May, 1883, in accordance with royal order of January 4, 1883, and finally amended by the intendancy general of finance, on October 16, 1883, in obedience to royal order of August 26 of that year.

* * * * * * *

ARTICLE 1. All Spanish vessels from Spain and her colonial possessions will pay, upon arriving in this island, 37½ cents for each ton of 1,000 kilograms of cargo discharged, and 25 cents for each passenger landed, whatever may be the port for which the vessel afterwards clears.

* * * * * * *

ART. 5. All steam-ships registered in Spain and engaged in periodical trips between the ports of this island and those of Spain and Porto Rico, with the exception of those lines which have a direct subvention, are exempt from the payment of this discharge tax (inward tonnage dues). To enjoy that benefit the duration of the regular trips shall not exceed twenty days from Havana to Spain, and *vice versa*, and four days from Porto Rico, respectively; a regular trip being understood to be at least one a month, deducting on each trip the days employed in touching at other ports.

* * * * * * *

ART. 9. For the payment of outward tonnage dues and passenger fees, due observance will be had of the foregoing articles. Spanish vessels arriving from Spain and her colonial possessions will pay 25 cents for each ton of 1,000 kilograms of cargo, and the same amount for each passenger shipped, whatever may be the port to which the vessel is bound, as stated in article 1, being exempt from payment of dues on cargo when it leaves in ballast, but not from the passenger fees.

* * * * * * *

Havana, October 16, 1883.

CASTRO.

No. 613.

Mr. Curry to Mr. Bayard.

[Telegram.]

MADRID, *March* 10, 1887.

Mr. Curry informs the Department that the Government of Spain is willing to extend the duration of the agreement of October 27, until the 30th of June next.

No. 614.

Mr. Bayard to Mr. Curry.

[Telegram.]

WASHINGTON, *March* 11, 1887.

Mr. Bayard informs Mr. Curry that the Government of the United States accepts the extension proposed by the Government of Spain of the duration of the agreement of October 27 until June 30.

No. 615.

Mr. Bayard to Mr. Curry.

No. 180.] DEPARTMENT OF STATE,
Washington, March 18, 1887.

SIR: I transmit a copy of a further dispatch from our consul-general at Havana, giving various instances of the annoyance caused our citizens visiting Cuba by the passport regulations there.

The apparent need of some amelioration of this vexatious system is abundantly presented in previous instructions, to which your attention is called in this connection.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 180.]

Mr. Williams to Mr. Porter.

No. 583.] UNITED STATES CONSULATE-GENERAL,
Havana, March 5, 1887. (Received March 10.)

SIR: With reference to my previous correspondence upon the subject of the annoyances and vexations suffered by American travelers and tourists in Cuba from the exactions of the passport system still practiced here, and particularly to my dispatch, No. 249, of August 12, 1885, I now beg most respectfully to ask the attention of the Department to the accompanying correspondence, which has been evoked by the constant complaints and solicitations presented to this office by Americans who have been permitted freely to enter the island without opposition from the police authorities, but who are prevented afterwards from returning home, or to continue their voyage to other parts, without first taking out passports from the office of the civil governor of the province of Havana.

Inclosure No. 1 is copy of my letter addressed, under date of the 16th instant, to his excellency the governor-general of the island, asking him to be pleased to order me to be informed by the corresponding bureau as to the requirements of the passport system now ruling here.

Inclosures Nos. 2 and 3 are copies of my letters dated the 18th instant, addressed, respectively, to Messrs. Lawton Brothers and Messrs. Hidalgo & Co., the former firm being the agents of the "Morgan" and "Plant" lines of American steamers, plying between the ports of New Orleans, Tampa, Key West, and Havana, and the latter firm the agents of the "Alexandre" and "Ward" lines of American steamers, plying, the one between New York and Vera Cruz, via Havana, and the other directly between New York and Havana. In these letters I have asked the agents of the said four lines of American steamers running to this port to favor me with a copy of the instructions under which they are acting, and by which they are supposed to be justified in their refusal to issue tickets to American citizens that have been allowed to land here without passports unless they present these documents.

Inclosures 4 and 5, dated both the 18th instant, are the replies of said agents, Messrs. Lawton Brothers, and Messrs. Hidalgo & Co., to inclosures Nos. 2 and 3.

Inclosure No. 6 is the answer from his excellency the governor-general of the island, transmitted through the honorable political secretary, under date of the 17th instant, received on the 19th, in answer to my communication of the 16th, accompanied herewith as inclosure No. 1.

You will please notice that the political secretary informs me that the old passport system has suffered no alteration in regard to persons who leave the island, because of the "law relative to foreigners residing in the Spanish colonies" being still in force, article 4 of which, he adds, requires all foreigners who come to Cuba without passports or other documents identifying their persons, to present satisfactory proof, attested by witness, of their identity, which proceeding must be effected either before a local authority or before the consul of their nation, particularly if they should attempt to leave the island; because, without the presentation of this proof, passports can not be granted allowing them to go away.

Upon a close inspection of article 4, and, in fact, of the whole law cited by the political secretary, it will hardly seem that the interpretation given to it by the civil governor of the province, in his accompanying circular of July 29, 1886, is warranted by the text itself.

Indeed, the law here cited, which was passed by the Spanish Cortes and approved at San Ildefonso the 4th of July, 1870, would appear to be exclusively declaratory of the status of foreigners under the constitution of Spain and of the conditions to which they must submit in order to become, upon their own petition, residents of a Spanish colony, but can hardly be construed so as to apply to those who do not wish to take up a residence, and who really remain here from only one to several days, as the perusal of the accompanying letters will show.

The published English translation of the article referred to reads as follows: "Article 4. Foreigners arriving in Spanish ultramarine territory who may desire to be inscribed in the register as domiciled or transient foreigners, must present to the civil authority of the town a passport or a corresponding document to identify their persons. In the event of their not having such a document, testimony as to the identity of the petitioner will be taken before the said authority. This procedure may be taken instead before the proper consul, who in such case will forward a complete and authenticated report to the civil authorities."

The spirit and intention of article 4 can, I think, be better apprehended by reference to the preceding article 3 of the same law, which reads as follows: "Foreigners may freely enter, reside, and settle in the Spanish ultra-provinces."

Now, this article evidently applies to foreigners who enter the Spanish dominions for the purpose of commerce, the attention to which compels them to take up there a residence of shorter or longer duration. This is provided for by the granting to them of the right of residence upon their inscription in a register kept by the civil authority under the three denominations of domiciled, transient, and emigrant foreigners.

It will be observed that domiciled foreigners are those who have their own house, or who have resided three years in the province, or who are inscribed in the register as domiciled, and that transient foreigners are such as have no house of their own, or who have not resided three years in the province. Yet it is under the interpretation of the second division of this paragraph that American travelers and tourists, who, in many cases, have been here, not only less than three years, but indeed even less than three days, are subjected to all the inconveniences of a passport system. The question as to the length of time a foreigner has the right to remain here under this law without being compelled to subject himself to the process of identification, or to solicit inscription in the register of foreigners, either as a domiciled or transient foreigner, also receives light from article 5 of the same law. This article, in its English official translation, reads as follows: "Any foreigner not identifying his person in one of the ways aforesaid will be considered as an emigrant after the expiration of three months from the date of his arrival."

Now, the several articles quoted of the law controlling foreigners residing in the Spanish colonies seem to be in opposition to the resolution taken by the civil governor in his circular, already cited, of July 29, 1886. Its very title is explanatory of its intention. This title only mentions and refers to foreigners residing in the Spanish colonies, and alludes in no manner to persons whose residence is in other countries, the United States, for instance, as occurs in the present case.

Again, this law particularly designates as the object of its action those foreigners mentioned in article 4 *who may desire to be inscribed in the register as domiciled or transient foreigners.* But none of the foreigners, subject of this correspondence, have ever expressed any desire whatever to be inscribed in the register kept by the civil authority of this place for the enrollment of foreigners, nor asked the privilege to reside or settle, as expressed by article 3.

An instructive example as to the status of these tourists and travelers, as compared with resident foreigners who keep house, or transient foreigners, such as do not keep house nor have been here three years, may be found, it seems to me, in that given by the customs authorities of Cuba to pleasure yachts in comparison with merchant vessels that enter the ports of the island:

"Yachts are exempt from all customs and port charges and formalities, and pay nothing but pilotage."

The tourists or passengers arriving in them are allowed to come and go on shore just as they please, and again leave port whenever they like, without at all having to obtain or present a passport to anybody.

But, if a yacht were to be converted into a merchant vessel, and come here on a trading instead of a pleasure trip, the case would be different. She would then come under the laws governing the commerce of the island, and in consequence would have to pay tonnage dues as well as custom-house charges. In a similar manner, if these yachtsmen were to remain here to do business, they would have to petition the Government, with exhibits of proof of their personal and national identity, asking to be granted inscription in the register of foreigners, before the right would be conceded to them, under the laws pursuant to the constitution of Spain, for the definition of their status. Now, the object of these tourists is the same as that of yachts-

men, pleasure and recreation and not commerce, and, judging from the analogy between the one case and the other, they should both be treated alike.

At this point I beg to call the attention of the Department to the accompanying thirty-eight original letters* of complaint.

Letter No. 1 is from D. J. Crowley, who came to Havana from New York without a passport, merely for the benefit of the sea trip, but was compelled to take out one here before he could leave Havana for home.

Letter No. 2 is from Asa B. Tripp, who ordered his passport before leaving New York, but not having received it in time, and though allowed to land without it, was refused a return ticket for return passage till he presented one to the consignee.

Letter No. 3 is from Luke Langly, the import of which is similar to that of the preceding letters.

Letter No. 4 is from W. B. Roberts, who with his wife came here from Florida for the purpose of taking passage for Progreso, in Yucatan, but was not allowed to go on board the outgoing steamer till he had taken out his passport here.

Letter No. 5 is from Frank G. Ward, who came here with his wife and sister from New York for three days, but all of whom were unable to return home by way of Florida till they had obtained passports.

Letter No. 6, is from Rean Campbell, who, in a similar predicament to the others, had to get a passport before being able to leave the island.

Letter No 7 is from John Good, asking, for the same reason, the assistance of this office.

Letters Nos. 8 to 28 all present complaints of similar import to the preceding.

Letter No. 29 is from Dr. Charles L. Dyer, who was sent here for a few days for the good of his health, by his principal, Dr. Bayard, of New York; yet Dr. Dyer could not leave here without first obtaining a passport.

Letters Nos. 30 to 33 are of similar complaint to Nos. 8 to 28.

Letter No. 34 is from four Catholic clergymen, all of whom came here from New York on a vacation trip, but they could not get away without a passport.

Letter No. 35 is from J. D. Riadan, who arrived here in a Spanish steamer from Puerto Cabello, Venezuela, to take the American steam-ship for New York. He was here only eight hours, but could not get away without first taking out a passport at the office of the civil governor.

Letter 36 relates to Hugh L. Cole, of New York, who was only here six hours, having come by sea from New York to go over to Florida, but had to get a passport before he was allowed to continue on his trip.

Letter No. 37 is from W. F. Stark, who came here with his wife from New York, with the intention of continuing to Mexico, but they could not leave without a passport.

Letter No. 38 is from Brackly Shaw, who came from New Orleans on a short trip to Havana; but who, also, had to take out a passport from the office of the civil governor before being able to leave.

In submitting this exposition to the Department, I beg to express the hope that it may initiate diplomatic efforts through our minister at Madrid toward the suppression of the passport system between the United States and Cuba, or that it may be pleased to instruct me if I shall continue further action here.

I am, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 1 to inclosure in No. 180.]

Mr. Williams to the Governor-General.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Havana, February 16, 1887.

EXCELLENCY: With the object of informing my Government, I beg you to have the goodness to order that I be advised, through the corresponding bureau, as to the present system of passports; for I observe that although the consuls of Spain in the United States no longer oppose any obstacle to impede American tourists and travelers from leaving there freely for the Island of Cuba, nevertheless the same American tourists and travelers on returning to the United States encounter the difficulty, offered by the local police, of being obliged to take out passports here before they are permitted to leave the island, to which end the intervention of this consulate is also exacted.

I have, etc.

RAMON O. WILLIAMS,
Consul-General.

*Not published.

[Inclosure 2 to inclosure in No. 180.]

Mr. Williams to Messrs. Lawton Brothers..

UNITED STATES CONSULATE-GENERAL,
Havana, February 18, 1887.

GENTLEMEN: As this office is now called upon several times a day by American citizens for its official aid to obtain passports for them to leave the island, after having been admitted here without that document, and who allege that you refuse to issue them tickets to return to the United States by the American steamers to your consignment only upon the previous delivery to you of a passport issued by the civil government, and as I have to report and explain the matter to my Government, I will esteem it a particular favor if you will have the goodness to furnish me a copy of the instructions you may have received from the authorities upon the subject, whether written or verbal.

I remain, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 3 to inclosure in No. 180.]

Mr. Williams to Messrs. Hildalgo & Co.

UNITED STATES CONSULATE-GENERAL,
Havana, February 18, 1887.

GENTLEMEN: As this office is now called upon several times a day by American citizens for its official aid to obtain passports for them to leave the island, after having been admitted here without that document, and who allege that you refuse to issue them tickets to return to the United States by the American steamers to your consignment only upon the previous delivery to you of a passport issued by the civil government, and, as I have to report and explain the matter to my Government, I will esteem it a particular favor if you will have the goodness to furnish me a copy of the instructions you may have received from the authorities upon this subject, whether written or verbal.

I remain, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 4 to inclosure in No. 180.]

Lawton Brothers to Mr. Williams.

TAMPA AND HAVANA STEAM-SHIP LINE,
Havana, Cuba, February 18, 1887.

DEAR SIR: We beg to own receipt of your favor of this date, and to accompany this with a copy of the "Boletin Oficial," dated 3d of August, 1886, which we think contains the information you desire, requesting that you will kindly return the same to us, as it is the only copy that we have.

Yours, etc.,

LAWTON BROS.

[Inclosure 5 to inclosure in No. 180.]

Hidalgo & Co. to Mr. Williams.

HAVANA, *February* 18, 1887.

SIR: Your official letter of to-day's date is to hand in regard to inconvenience offered to American citizens in need of passports.

As we are obliged to submit to the "Inspector de bahia y reconocimiento de buques" (inspector of vessels) and captain of the port a list of each of the passengers who propose to embark, and as the vessels are visited immediately prior to sailing by the first-named officer, who takes off any one who desires to leave the island who does not carry a passport, we are obliged to require that every person we issue a ticket to is possessed of a passport, to avoid detention and annoyance, both to ourselves, the

steamer, and the parties detained. We have never had any official communication, either verbally or in writing, from the authorities of the place, but we recollect some time ago having read in the "Diario de la Marina" a copy of laws regarding the incoming and residence, both of foreigners and Spaniards. We have mislaid it, for which we are sorry. We have not on archive any written instructions as to the papers we need to clear steamers, but can inclose blank forms which are exacted from us for your guidance, and remain, etc.,

HIDALGO & CO.

[Inclosure 6 to inclosure in No. 180.—Translation.—General Government of the Island of Cuba, secretary's office, b ureau of public order and police.]

To the Consul-General of the United States:

SIR: In consequence of your communication of the 16th instant, in which your consulate desires to be informed about the present system of passports, his excellency the governor-general has been pleased to order that you be informed, as I now have the honor to do, that in respect to persons who leave the island the old system has suffered no alteration, as your consulate knows; also, that the "law relative to foreigners residing in the Spanish colonies" of the 16th of August, 1870, article 4, does not exact passports from foreigners on landing in Spanish ultramarine territory, but in the case of foreigners who come without passports or other documents identifying their persons, they must present satisfactory proof, attested by witnesses, of their identity, which must be done either before the local authorities or before the consul of their nation, particularly if they should attempt to leave the country because without the presentation of the proof required for their personal identification passports can not be issued for them to depart from the island.

God grant you many years.

Havana, February 17, 1887.

EL. MARQUE DE MENDEZ NUÑEZ.

[Inclosure 7 to inclosure in No. 180.—Translation.—Civil government of the province of Havana, section of public order.]

Circular respecting foreigners.

In virtue of a consultation held by order of the Government with regard to the practice to be observed here with foreigners arriving in the island without passports, or who, though bringing them, may have omitted to have them legalized by the Spanish consul at their ports of departure; and in view of the difference of meaning observable between the instruction of the 1st of April, 1849, and the law of the 4th of July, 1870. His excellency the governor-general, under date of the 20th instant, has been pleased to declare that as the law relative to foreigners residing in the colonies of Spain is still in force it is in order to adhere to its provisions in this matter.

In consequence I have decided that the deputies and agents of my authority shall no longer exact, as heretofore obligatory, legalized passports from foreigners who arrive in this province under the conditions expressed; but who, though relieved of that formality on entering the island, are not exempted from proving their personality within the term fixed by the law, it being besides obligatory upon them, as it is with the rest of citizens when they intend to leave the country, since by the tenor of what is established by the third paragraph of the said law, the fact of remaining or of domiciliating themselves in these provinces subjects them to compliance with all the laws and regulations ruling in the same, among which are to be found the instruction of 1849, above mentioned, which, in consequence of not having been repealed in the part referring to this subject, must continue to be observed as long as not otherwise ordered by the superior authority. All of which I have ordered to be published by the insertion herewith of the articles of the law of the 4th of July, 1870, relative to the subject, for the information of the public, and particularly for those persons whom it may concern.

Havana, July 29, 1886.

LUIS ALONSO MARTIN.

ARTICLE III.

Foreigners may freely enter, reside, and settle in the territory of the Spanish ultramarine provinces. They will be divided into domiciled, transient, and emigrant; they will have the rights and be subject to the duties which this law establishes, and will be, besides, subject to all the laws and regulations in force in those provinces.

Domiciled foreigners will be those who have their own house, or who have resided three years in the province, or who are inscribed in the register as domiciled.

Transient foreigners will be those who possess none of the foregoing requisites.

Emigrant foreigners will be those who, lacking the same requisites, are not inscribed in the register as transient, and have been more than three months in the province.

ARTICLE IV.

Foreigners arriving in Spanish ultramarine territory, who may desire to be inscribed in the register as domiciled or transient must present to the civil authority of the town a passport or corresponding document to identify their persons.

In the event of not having such document, testimony as to the petitioner will be taken before the said authority.

Either mode of procedure may take place before the proper consul, who in such case will forward to the civil authority complete and attested evidence.

ARTICLE V.

Any foreigner not identifying his person in one of the ways aforesaid will be considered as an emigrant after the expiration of three months from the date of his arrival.

ARTICLE VI.

The provisions of Article IV having been complied with, the foreigner will be provided with a certificate to accredit the identity of his person in any point of the territory to which he may desire to go while he is inscribed in the register of foreigners, and provided with the proper permit.

ARTICLE VII.

Every foreigner residing in the ultramarine provinces in order to be considered as such according to this law, must be inscribed in the register of foreigners, which will be kept for this purpose by the superior civil governments, and also in that of the consulate of his nation.

When there is more than one consulate of the same nation in the territory, the register shall be kept by that one established in the capital, and if there be none in the capital, by that one which the Superior Government may designate.

ARTICLE XI.

The inscription being made, the petitioner will be provided with a cedula, in which will be stated his name, age, nativity, condition, and profession, his character, whether domiciled, transient, or emigrant, and if the former, the place of his domicile.

This cedula will serve the petitioner to accredit the identity of his person, and will enable him to reside in and journey freely through Spanish territory.

ARTICLE XXI.

Emigrants will reside, while they hold such character, in the place where the superior civil governors, and afterward, the Spanish Government may designate. Meanwhile they will be under the vigilance of the political authority of the town where they may first present themselves, which will name the place of their residence, giving immediate notice thereof to the superior civil governor.

ARTICLE XXVI.

Every emigrant will pass to the character of transient or domiciled at the expiration of six months from his arrival in Spanish territory, or sooner if he desire it, and his person be identified.

ARTICLE XXVII.

Emigrants who, at the expiration of six months from the date of their arrival in Spanish territory, shall not have identified their persons, or of whom nothing certain shall be known, although information may have been asked as prescribed in Article XXV, will be enrolled according to the statement which they may have given.

ARTICLE XXVIII.

Any emigrant who not being able to identify his person may make false statements as to his name and circumstances, may be expelled from Spanish territory by the Government or by the superior civil governor of the province.

Any one may likewise be expelled who, to identify his person, shall present false documents or other false testimony. In this case criminal proceedings will be instituted against any Spaniards who may in any way have taken part in the fraud.

No. 616.

Mr. Bayard to Mr. Curry.

No. 181.] DEPARTMENT OF STATE,
Washington, March 21, 1887.

SIR: I inclose for your information a copy of a further dispatch from Cuba, showing the public dissatisfaction there with the exactions of the passport system.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 181.]

Mr. Williams to Mr. Porter.

No. 584.] UNITED STATES CONSULATE-GENERAL,
Havana, March 10, 1887. (Received March 16.)

SIR: I beg to inclose the translation of an article that appeared in the Pais of this city on the 7th instant, in censure of the passport system in this island, and which has been called out by a complaint lately published against it by the leading hotel-keepers of this city. I beg to commend it to the attention of the Department in connection with my dispatch No. 583, of the 5th instant.

I am, sir, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure to inclosure in No. 181.—Translation from El Pais, of Havana, dated March 7, 1887.]

An administrative trap.

There has appeared in our columns a communication addressed to us by several of the hotel-keepers of this city censuring, with reason, a measure adopted by the civil government of this province, which, while it justifies those foreigners who visit the island in saying they have been deceived by our Government, inflicts a heavy damage upon the hotel business.

Complying with the call made by the hotel-keepers upon the press, we have at once to take sides with them in asking for the complete cessation of the anomaly that has given cause for their complaint, as much because of its justice as the pain it gives us to see the authorities employ certain means which, apart from the injury they do, lower them in public estimation.

The complaint can not be more justified, and it is sufficient only to take into account the fact upon which it is founded to so acknowledge it. The civil government of the province announced that transient foreigners would not need passports to visit this island, and confiding in this many have come here during the present winter without providing themselves with that useless document; but upon their returning home it is exacted from them as an indispensable requisite before they can take passage. These foreigners, as is natural, protest against this deception, alleging that, in consequence of the necessity of the passport to leave the island, they find themselves caught in a rat-trap, and of course vent themselves in comments against our system

of government, of which the least that can be said is the want of sincerity; and they swear they will not be fooled again by returning to a country where so much mystification is practiced.

We are well aware there is no other malice in this than the desire to collect a tax. But does not the Government perceive that it is a delusion to abolish passports on entering the island and to exact them upon going out? It has not taken into account the damage caused to business in driving away so many foreign tourists from our shores, who spend their money here in the winter season.

No. 617.

Mr. Bayard to Mr. Curry.

No. 182.] DEPARTMENT OF STATE,
Washington, March 29, 1887.

SIR: I inclose for your information a copy of a dispatch from our consul-general at Havana, concerning an exaction of differential duties in January last, at Havana, on the cargo of the American bark *Sarah A. Staples.*

I am, etc., T. F. BAYARD.

[Inclosure in No. 182.]

Mr. Williams to Mr. Porter.

No. 591.] UNITED STATES CONSULATE-GENERAL,
Havana, March 16, 1887. (Received March 22.)

SIR: I beg to inclose the copy of a letter dated the 3d instant, received at this consulate from Mr. H. N. Gay, master of the American bark *Sarah A. Staples,* which vessel arrived at this port on the 29th of January last with a full cargo of coals from the port of Cardiff, Great Britain.

This is the same American vessel to which I referred in my dispatch No. 589 of yesterday, as having had a question with the collector of customs about import duties.

On signing his charter-party for the voyage, as I am informed, the master agreed to pay out of his freight money any excess of import duties that might be charged by the Havana customs authorities on his cargo of coals over what should or might be collected upon the same cargo were it brought here by a British vessel. And an excess of $65.80 having been collected, as stated by the master, over not only what would have been charged by a British but also by a Spanish vessel, he had to pay it, of course, by the terms of his charter-party.

But the collection of this differential duty being clearly in opposition to the memorandum of agreement between the United States and Spain, signed at Washington, October 27, 1886, I decided to bring the matter before the governor-general of the island. I did this by presenting him, in person, a remonstrance dated the 8th instant, copy and translation of which are herewith accompanied.

Meantime, awaiting the instructions of the Department,

I remain, etc.,

RAMON O. WILLIAMS.

[Inclosure 1 to inclosure in No. 182.]

Mr. Gay to Mr. Williams.

HAVANA, *March* 5, 1887.

SIR: I arrived in this port on the 29th day of January last with the American bark *Sarah A. Staples,* of Philadelphia, under my command, from the port of Cardiff, Wales, with a full cargo of coal, and consigned to Messrs. Barrios & Co. of this city.

On entering my vessel at the custom-house my consignees were informed that I should be obliged to pay a duty on my cargo of coal of 9¾ cents per ton, for the reason that my vessel was an American vessel proceeding from a British port.

Upon making known this fact to you, you informed me that the said discriminating duty on American vessels had been removed, and I should not have to pay anything; but my consignees insisted that although a Spanish vessel would not have to pay such discriminating duty, still the custom-house authorities had notified them that they had no knowledge of any such change in the regulations, and they should exact the said payment.

Upon clearing my vessel this day at the consignees I learn that they have paid for me into the custom-house the sum of $65.80 in Spanish gold, as appears in the disbursement's account of my vessel, as discriminating duty on the coal, 710,500 kilos, at 9¾ cents, minus 5 per cent., and that they paid this amount under protest.

I am assured by my consignees that the money will eventually be paid back to me, but no time is stated.

I respectfully beg to lay these facts before you and request that you will please aid me to recover from the customs authorities the sum so unlawfully exacted of my ship.

H. N. GAY,
Master.

[Inclosure 2 to inclosure in No. 182.—Translation.]

Mr. Williams to the governor-general.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Havana, March 8, 1887.

EXCELLENCY: In accordance with the instructions received from my Government I have to notify your excellency that Capt. H. N. Gay informs me, in a letter dated the 5th instant, addressed to this consulate-general, that the collector of customs of this port has ordered to be collected a differential import duty of 9¾ cents, less 5 per cent. per kilogram, amounting to $65.80 Spanish gold, upon the complete cargo of 710,500 kilograms of coal brought to this port on January 29 last in the American bark *Sarah A. Staples* under his command, from Cardiff, England.

I must also particularly inform your excellency that when the collector of customs was reminded by the consignee and captain that the collection ordered to be made constituted, in fact, an open infraction of the agreement of the 27th of October, 1886, between the United States and Spain, that high functionary replied that he had no knowledge of the said agreement, for there was no information in his office in regard to it.

In view of this strange declaration on the part of the collector, I beg to transcribe, in full, the preamble and article first of the memorandum of agreement between the Government of the United States of America and the Government of Spain for the reciprocal and complete suspension of all discriminating duties of tonnage or imposts in the United States and in the islands of Cuba and Porto Rico upon vessels of the respective countries and their cargoes, viz:

"First. It is positively understood that from this date an absolute equalization of tonnage and impost duties will at once be applied to the products of and articles proceeding from the United States or from any foreign country in vessels owned by citizens of the United States to the islands of Cuba and Porto Rico, and that no higher or other impost or tonnage duties will be levied upon such vessels and the merchandise carried in them as aforesaid than are imposed upon Spanish vessels and their cargoes under the same circumstances."

Therefore, excellency, the collector of the custom-house of Havana is unauthorized to levy either upon the tonnage or cargo of this vessel other than the same, but no higher, duties than under the same circumstances would be levied upon the cargo and tonnage of a Spanish vessel, because of the coming of both from a foreign country, as is expressly stipulated by the agreement. This is exactly what my Government practices on its part under the second division of the said article, which says: "Under the above conditions the President of the United States will at once issue his proclamation declaring that the foreign discriminating duties of tonnage and imposts within the United States are suspended and discontinued so far as respects Spanish vessels and the produce, manufactures, or merchandise imported in them into the United States from Spain or her possessions aforesaid, or from any foreign country." And in the third division the same article adds: "This memorandum of agreement is offered by the Government of Spain and accepted by the Government of the United States as a full and satisfactory notification of the facts above recited."

In consequence, excellency, the Spanish steamers that run between New York and Vera Cruz, via Havana, pay to the Treasury of the United States the same but no higher duties of tonnage and impost upon the cargo they bring from Mexico than the American steamers; because the circumstances are the same. Indeed, within the purview of this agreement, Mexico is just as much of a foreign country as England. The

same treatment is given in the United States to all Spanish vessels and their cargoes when proceeding from any foreign countries. And this is the rule to be applied in the present case.

In view of the reasons above stated I have to ask your excellency, in the name of my Government, to be pleased to order the rectification of the account of duties upon the cargo of coals brought from England in the American bark *Sarah A. Staples*, with instructions that it be done in the same terms in which it would have been made if the vessel had been Spanish; and further, that due return be made of the said differential amount of $65.80, because so exacted by the faithful fulfillment of the aforesaid agreement between the United States and Spain, made the 27th October, 1886.

I have, etc.,

RAMON O. WILLIAMS.

No. 618.

Mr. Adee to Mr. Curry.

No. 185.] DEPARTMENT OF STATE,
Washington, April 16, 1887.

SIR: I inclose for your information a copy of a dispatch from our consul-general at Havana in further relation to extreme annoyances of the passport arrangements in Cuba.

I am, etc.,

ALVEY A. ADEE,
Acting Secretary.

[Inclosure in No. 185.]

Mr. Williams to Mr. Porter.

No. 599.] UNITED STATES CONSULATE-GENERAL,
Havana, March 19, 1887. (Received March 24,)

SIR: In reply to the Department's instruction No. 257, of the 2d instant, inclosing the copy of a letter from Messrs. James E. Ward & Co., of New York, dated the 23d ultimo, and requesting me to report whether a shipping and landing fee upon passengers is charged in Cuba by the insular officers, I beg most respectfully to refer to my dispatch No. 583, of the 5th instant, wherein the subject is extensively treated, and which crossed on the way with the said instruction.

I may add, however, as complementary of my said dispatch, that no fee is charged by the insular officers on passengers when landing, but when leaving the island, then a passport, which involves the payment of a fee, is exacted of them. This was facetiously called a few days ago by one of the Havana newspapers, "Un derecho de exportacion sobre los Americanos" (an export duty upon Americans).

All Americans who enter the island and return, taking passage at this port, are required by the authorities to take from this office an official request for the visa of their passports, when they have them. For the information of the Department, I inclose blank form, marked No. 1, of these printed requests.

There have been days during the winter just past when as many as fifty to sixty of these requests have been issued from this office. When Americans come here without passports issued by the Department, I then send another form of request to the authorities, one of which is also inclosed and numbered 2.

The fee charged by the insular officers for visaing a passport of the Department, whose holder has not been here over a month, is 30 cents. Generally holders prefer to pay the clerk of the hotel at which they stop a fee of $1, in addition to the 30 cents, to attend to the work of visaing, rather than lose time in waiting attendance upon the insular officers or running around in the sun to attend to the work themselves. If the holder of a passport, however, remains here over a month, then he must pay, instead of 30 cents, $4.05, besides the fee of the hotel clerk.

Blank number 2 is used when the holder has come here without a passport. In this case the charge of the officers is $4.05.

As pertaining to and as illustrative of the subject, I beg to accompany the inclosed letters,* numbered 1 to 12, from Americans who, in the absence of passports from the Department, have lately called for assistance upon this office.

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* Not published.

As relevant also to this subject, I may mention that the hotel-keepers of this city have lately published a communication in the newspapers, complaining against the passport system as an obstruction to their business, and as therefore tending to diminish the resources by which they are enabled to pay their heavy taxes.

In no case where services are rendered by this consulate in the matter of passports is any charge whatever made.

I have the honor to be, sir, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 1 to inclosure in No. 185.]

No. ——.

Visto en este consulado general, solicita Don —— —— refrendar —— —— su pasaporte parapasar á los Estados Unidos, —— ——.

Habana, —— ——, 188—.

—— ——,
Consul-General.

[Inclosure 2 to inclosure in No. 185.]

CONSULADO GENERAL DE LOS ESTADOS UNIDOS,
Habana, —— ——, 188—.

Excmo. Sr. Gobernador Civil de la Provincia:

EXCMO. SEÑOR: Ruego á V. E. se sirva mandar expedir pase para volver á los Estados Unidos, á favor de —— —— quien llegó á esta sobre el dia —— —— sin pasaporte.

Dios guarde á V. E. muchos años.

—— ——,
Consul-General.

No. 619.

Mr. Bayard to Mr. Curry.

No. 187.] DEPARTMENT OF STATE,
Washington, April 25, 1887.

SIR: I transmit, with reference to former correspondence on the annoyances of the passport arrangements in Cuba, a copy of a note* from the minister of Spain at this capital, anticipating that his Government will remedy the evil.

I am, etc.,

T. F. BAYARD.

No. 620.

Mr. Bayard to Mr. Curry.

No. 198.] DEPARTMENT OF STATE,
Washington, May 31, 1887.

SIR: I transmit a copy of a dispatch from our consul-general at Havana, reporting that whenever any discharged or destitute American sailors are sent home to the United States in American vessels by that consulate-general (in accordance with art. 16, par. 271, Consular Regulations), he is compelled by the local police to obtain, first, the visa of the

* Published page 1030, *infra.*

civil governor of the province to his consular certificate before the consignees of said American vessels will issue passage tickets to his office for the American seamen concerned, and furnishing a statement of such consignees, by which it appears that they act in obedience to Cuban authorities.

This report illustrates the exceptional and vexatious character of the Cuban passport regulations. By general maritime law, and particularly by the statutes of the United States, the discharge of seamen is under the direct control of the Government of the country under whose flag they ship, and its certificate, duly issued, is the highest evidence of their status as American seamen. To claim that, in addition to such certificate, the seamen must also present a national passport, is an anomalous attempt to assimilate his condition to that of a voluntary traveler. Moreover, in the case of a seaman not a citizen of the United States, but discharged from an American vessel, this rule would seem to require that he should be furnished not only with the lawful certificate of discharge as an American seaman, but also with a passport issued by the authority of the nation of which he is a subject.

The point to be emphasized is that a discharged American seamen in a foreign port is under the direct charge of the Government of the United States, which assumes the duty of sending him home to the United States. This duty is performed wholly independently of the citizenship of the seaman.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 198.]

Mr. Williams to Mr. Porter.

No. 640.] UNITED STATES CONSULATE-GENERAL,
Havana, May 21, 1887. (Received May 27.)

SIR: I beg to ask the special attention of the Department to the fact that whenever any discharged or destitute American sailors are sent home to the United States in American vessels by this consulate-general in accordance with article 16, paragraph 271, of the "Consular Regulations," I am compelled by the local police to obtain first the visa of the civil governor of the province to my consular certificate before the consignees of said American vessel will issue passage tickets to this office for said American seamen.

In further explanation and confirmation of this complaint, I accompany herewith the copy of a letter addressed by me on the 21st of March last to Messrs. Hidalgo & Co., agents in this city of the "Alexandre" and "Ward" lines of American steamers plying between New York and Havana, together with copy of their answer, dated the 22d of the same month, giving the reasons for their refusal to issue passage tickets to this office for American seamen on board American vessels bound to the United States without the previous presentation of a passport or a consular certificate visaed by the civil government.

In soliciting the honorable Secretary of State to be pleased to draw the attention of the Spanish minister at Washington to the subject, with the view of seeking from the Madrid Government the abolition of this requirement of the local police, I beg to remark that as far as my knowledge goes this is the only port in the world where such an exaction is made of a foreign consul, his certificate of the discharge or of the relief of a sailor being everywhere, with the exception of Havana, sufficient to insure the admission of such seamen on board the vessels in which the consul may have secured passage for them. Certainly the authorities of New York and New Orleans, Key West and Savannah, the ports of the United States most frequented by Spanish vessels, never interpose obstacles for the departure of Spanish seamen returned to Spanish ports by the respective Spanish consular officers, and a reciprocal treatment requires that the Havana civil government should extend an equal privilege to American seamen.

I am, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 1 to inclosure in No. 198.]

Mr. Williams to Messrs. Hidalgo & Co.

CONSULATE-GENERAL OF THE UNITED STATES,
Havana, March 21, 1887.

GENTLEMEN: I have noticed that in every instance that this consulate-general has had the occasion to afford transportation to the United States, by one of the American steam-ships that come to your consignment, to a seaman discharged from an American vessel, or to a seaman who may come upon the consulate for relief, which transportation is given to them in accordance with the laws of the United States making it the duty of the consul to send such seamen home, as well as of American vessels to take them, that you have refused to allow the seamen to take passage upon the steamer until he is provided with a passport issued by the civil government, or has the passage certificate issued by the consulate visaed at the office of the civil governor to serve as a passport.

Regarding this refusal on your part to allow the consul-general to perform a duty imposed upon him by the law of the United States, applying to the cases of discharged and destitute seamen, as well as to the obligation of American vessels to receive them for transportation, I would respectfully ask you to be pleased to inform me upon what grounds you base your action in the premises.

I am, etc.,

RAMON O. WILLIAMS,
Consul-General.

[Inclosure 2 to inclosure in No. 198.]

Messrs. Hidalgo & Co. to Mr. Williams.

HAVANA, *March* 22, 1887.

SIR: In answer to your valued communication of the 21st instant, we beg to say that we have often been warned by the inspector of police for the bay not to issue any tickets of passage without a passport or a consular certificate duly visaed by the civil government, unless we were willing by so doing to expose the parties holding such tickets to be withdrawn from on board the ship and ourselves to be fined.

This is what we have to state in reference to the object of your inquiry, and beg to subscribe ourselves, sir, very respectfully, etc.,

HIDALGO & CO.

No. 621.

Mr. Curry to Mr. Bayard.

No. 222.] LEGATION OF THE UNITED STATES,
Madrid, June 22, 1887. (Received July 5.)

SIR: On the 15th instant, on receiving your telegram, I immediately saw Señor Moret and called his attention to the necessity of his giving me an early official notification of his intention to extend the *modus vivendi* of which he had already verbally assured me. He replied that immediately after the meeting of the next council of ministers he would send me an official communication in reference to it. This I received on the 20th instant, and at once telegraphed to you the proposal therein contained to prolong the *modus vivendi* to December 31 of the present year.

This morning I had the honor to receive your reply, and have addressed a note to Señor Moret, expressing the concurrence of the Government of the United States in the extension proposed.

I have, etc.,

J. L. M. CURRY.

No. 622.

Mr. Bayard to Mr. Curry.

No. 210.] DEPARTMENT OF STATE,
Washington, July 6, 1887.

SIR: I have received your No. 222, of the 22d ultimo, reporting correspondence touching the extension of the commercial arrangement of October 27, 1886, between the United States and Spain, to December 31, 1887. Your course in the matter is approved.

I am, etc.,

T. F. BAYARD.

No. 623.

Mr. Strobel to Mr. Bayard.

No. 241.] LEGATION OF THE UNITED STATES,
Madrid, August 19, 1887. (Received September 5.)

SIR: In accordance with instructions, an official statement has been requested of the minister of foreign affairs of the laws of Spain now in force "affecting the status or liabilities of former subjects, once owing military service, who have been naturalized in foreign countries, should such persons visit their native country."

It may not be improper in the meantime to give what my own examination shows the law on the subject to be.

Article I of the constitution of 1876, now in force, says: "The quality of Spaniard is lost by naturalization in a foreign country. * * *"

Article 14 of the conscription law of July 11, 1885, also in force, makes the following provision: "Only Spaniards shall be admitted to service in the army in any position whatever."

It seems, therefore, that a Spaniard naturalized in a foreign country is not only exempt, under any circumstances, from military service in Spain, but is actually prohibited therefrom.

I have assumed that the words, "once owing military service" in the instructions referred to, mean simply "liability" and not "actually drafted."

In the latter case, the question of desertion or criminality under martial law might arise.

I have, etc.,

EDWARD H. STROBEL.

No. 624.

Mr. Bayard to Mr. Strobel.

[Telegram.]

DEPARTMENT OF STATE,
Washington, September 20, 1887.

Promptly inform British legation, for communication to Madrid Government, that certified New York manifest steamer *Utopia*, British, cleared August 20, shows only 1,500 bales cotton for Malaga; remainder

of cargo is destined and cleared for Gibraltar and Italian ports, including 738 hogsheads tobacco for Genoa and Naples. Steamer now detained at Malaga. Serious loss.

BAYARD.

No. 625.

Mr. Strobel to Mr. Bayard.

No. 248.] LEGATION OF THE UNITED STATES,
Madrid, September 21, 1887. (Received October 4.)

SIR: I had the honor to receive last night your telegram in reference to the British steamship *Utopia*, and I communicated its contents a once to Sir Clare Ford, the British minister at this court, who stated that he was exceedingly obliged for the information. He had been notified that of the 738 hogsheads of tobacco, 696 were for Italian ports and 42 for a Swiss manufactory. Some doubt, however, existed as to the 42 hogsheads. He knew nothing of any consignment to Gibraltar.

The facts of the case, which were explained to me by the British minister, show that the detention of the vessel in Malaga is due to the law in force here, that a vessel entering a Spanish port with tobacco, in transit for a foreign port, is compelled to give a bond amounting to 20 pesetas for every kilogram of tobacco carried, the bond to be canceled on satisfactory proof of the delivery of the tobacco to the alleged consignees.

The object of the law is to prevent any attempt to smuggle the tobacco into Spain.

The 738 hogsheads of the *Utopia* contain 450,000 kilograms of tobacco, which, at 20 pesetas the kilogram, fix the amount of the bond at 9,000,000 pesetas or about $1,800,000. A surety for this impressive amount can not be found; the Spanish Government has so far refused to allow the vessel to proceed, and the facts, in the words of Sir Clare Ford, make "an exceedingly troublesome case."

I have, etc.,

EDWARD H. STROBEL.

No. 626.

Mr. Bayard to Mr. Strobel.

No. 228.] DEPARTMENT OF STATE,
Washington, October 20, 1887.

SIR: I transmit for your information a copy of a dispatch from Havana, on the subject of new passport regulations for Americans, as contained in the royal order of July 30 last.

The Department suspends any expression of opinion on the new rules until their practical working shall be better known.

I am, etc.,

T. F. BAYARD.

[Inclosure in No. 228.]

Mr. Springer to Mr. Porter.

No. 705.] UNITED STATES CONSULATE-GENERAL,
Havana, September 13, 1887. (Received September 21.)

SIR: Referring to previous dispatches from this office, regarding the passport system of this island, and the regulations to be observed by foreigners, especially Americans, upon arrival and departure therefrom, I have now the honor to transmit herewith copy and translation of a communication from the general government, inclosing copies of the Official Gazette containing the royal order of July 30 last.

By virtue of this royal order American citizens can now come into this island, provided with any kind of an official document, sufficient to prove their identity, without the former requirement of the visa thereto of the Spanish consul.

Those arriving without any document whatever must make a sworn statement to their identity, supported by witnesses, before the civil authority, or before their consul, who will furnish a duly attested complete copy thereof to the civil authority.

By this order the fee of a passport visa for Americans leaving Cuba has been reduced to 25 cents.

I am, sir,

JOSEPH A. SPRINGER,
Vice-Consul-General.

[Inclosure 1 to inclosure in No. 228.—Translation.]

Mr. Pujals to Mr. Williams.

GENERAL GOVERNMENT OF THE ISLAND OF CUBA,
SECRETARY'S OFFICE.

Board of Police and Public Works.

By order of his excelleney the governor-general, I have the honor to transmit to you herewith two copies of the Official Gazette of Havana, of to-day's date, on the second page of which have been published a royal order dated 30th July last, and the corresponding instructions of this government upon the requirements to be observed by Americans in order to come and remain in this island, or to leave the same, begging that you will please endeavor, in so far as you may be able, to have this change reach the knowledge of whoever may be concerned in the subject.

As an explanation of the fact of fixing, in the royal order and in rule 3 of the instructions, upon three months only after arrival as the maximum of the time within which the said Americans can leave the country, by presenting to the superior civil authority at the point of departure, some one of the documents referred to in rules 1 and 2 of the said instructions, his excellency has been pleased to order to make known to you that, according to articles 5 and 6 of the law relating to foreigners, of July 4, 1870, foreigners are obliged within three months after their arrival in Cuba either to be considered as emigrants for not having identified themselves, or if they have already fulfilled this requirement, are bound to inscribe themselves in the register of foreigners, and therefore to obtain a police pass (*cédula*) gratis, which document will serve them upon their departure, in accordance with the said royal order and rule 4 of the instructions.

God guard you many years.

Havana, September 10, 1887.

JOSÉ PUJALS.

[Inclosure 2 to inclosure in No. 228.]

Royal order concerning passports in Cuba.

[Translation.—Official Gazette, Havana, September 10, 1887.]

Board of police and public order.

The colonial ministry communicates the following royal order to this Government.

COLONIAL MINISTRY, No. 857.

EXCELLENCY: In conformity with the opinion of the colonial department of the council of state, His Majesty the King, and in his name the Queen Regent of the Kingdom, has been pleased to decree:

(1) American citizens may come to the island of Cuba without passports, but identifying their persons by the documents referred to in article 4 of the law of July 4, 1870.

(2) Those who are not registered as transient, and shall have resided in the island less than three months, may leave the same upon presenting the documents by which their entrance was authorized to the superior civil authority of the place of departure, in order that after being noted in a special register, the said document may be visaed.

(3) American citizens who may have obtained domicile or transient passes (*cédulas*) shall produce them to the authority for the same purpose mentioned in the foregoing article; and

(4) The register and visa of the documents to which the foregoing articles refer shall be effected, prompted in ordinary cases to avoid delay and annoyance, and a moderate fee shall be charged, to be paid in stamped paper or stamp to be duly canceled.

Which, by royal order, and inclosing copy of the opinion of the said colonial department, I communicate to your excellency for your information and compliance therewith.

God guard you many years.

Madrid, July 3, 1887.

BALAGUER.

In virtue whereof his excellency the governor-general has been pleased to dictate the following rules:

(1) In accordance with the prescriptions of article 4 of the law relating to foreigners of July 4, 1870, citizens of the United States may come to the island of Cuba provided either with passports, notarial certificate, or any other official document which shall identify their person without the necessity of the consul's visa thereto.

Those who may arrive without any document whatever shall make, before the civil authority of the place where they intend to reside, or before their consuls, a sworn statement, supported by witnesses, for the same purpose of identification; and in the latter case the consul shall furnish the said authority with a copy of the statement, complete and duly attested. All these services shall be performed officially and without charge.

(2) The civil authority before whom the said statement is made, or who shall receive the copy of that made before the consul, will furnish the applicant with a certificate, issued officially and free of charge, as prescribed in article 14 of said law.

(3) Citizens of the United States who are not registered as transient, and may desire to leave the island before the three months after their arrival, will present to the superior civil authority of the place of departure the document with which they may be provided, where, after being noted in a special register, it will be visaed, after the payment of 25 cents in stamps, to be affixed to the document and canceled in due form, which operation will be performed in all ordinary cases with promptness, not to cause annoyance and delay to travelers.

(4) Citizens of the United States who, in accordance with the said law relating to foreigners, are provided with passes (*cédulas*) as domiciled or transient residents, will present them when they intend leaving the island to the proper authority at the point of departure for the purpose of visa, upon the payment of 25 cents in stamps, to be affixed to the pass and canceled, as before stated.

(5) The chief of the harbor police, encharged with the inspection of vessels, when citizens of the United States arrive provided with any of the documents mentioned in the first paragraph of rule 1, will take note of the party concerned and of the office where the document was issued, which, after being stamped with the seal of his office, will be immediately returned to the owner.

Those who arrive without any document may land freely upon the condition of making afterwards the statement mentioned in the second paragraph of the same rule.

(6) If, by any unforeseen event, note should not have been taken of the traveler's document by the inspector of the harbor police, this circumstance will not be considered a reason for refusing the visa of departure, unless a special cause should exist to render the contrary advisable.

Neither will the fact that note has been taken of the document at a different port from that in which the party interested intends leaving the island be considered a reason for refusing the said requirement of visa.

(7) The chief of the harbor police will transmit daily to the superior civil authority of the place to which the post belongs a comprehensive statement of the notes he has taken in compliance with rule 5.

(8) Should it happen that at any point of departure the civil governor or municipal mayor should not have their residence there, the officer of police or other civil functionary of higher grade will, after noting the document in a special register, visa the same, unless that formality should have previously been complied with by another superior authority of the district to which the place belongs.

By order of H. E. the foregoing is published in the Official Gazette for general information and exact compliance therewith.

Havana, 9th September, 1887.

JOSÉ PUJALS.

No. 627.

Mr. Strobel to Mr. Bayard.

No. 271.] LEGATION OF THE UNITED STATES,
Madrid, November 2, 1887. (Received November 14.)

SIR: I have the honor to inclose a copy and translation of a note received from the ministry of state, reporting a modification of the Cuban passport system, which, as I learn from the Department 228 of October 20, 1887, just received, has already been communicated by the consulate-general at Havana. Identification is still necessary, and, as the order applies to American citizens, a man must of course prove himself a citizen in order to be relieved of the necessity of showing a passport. This looks very much like working in a circle.

In view of the persistence with which the legation verbally and in writing has pressed this question upon the attention of the Spanish Government the result is not entirely what was hoped for.

I have, etc.,

EDWARD H. STROBEL.

[Inclosure in No. 271.]

Mr. Moret to Mr. Strobel.

[Translation.]

MINISTRY OF STATE,
Palace, October 28, 1887.

MY DEAR SIR: I have the honor to inform you that the minister of the colonies, in accordance with the report of the corresponding department of the council of state, has issued the following regulations on the subject of passports in Cuba relative to citizens of the United States:

(1) That American citizens can enter the island of Cuba without passport, but identifying themselves with the documents referred to in article 4 of the law of July 4, 1870.

(2) That those who are not inscribed in the register of transients, and have resided in the island less than three months, can leave it by presenting the documents by virtue of which their entrance was authorized to the superior civil authority of the point of departure in order that he place his visa, after entering them in a special register.

(3) That American citizens who have provided themselves with a certificate of being domiciled or transient may show this to the authorities for the purposes stated in the former article.

(4). That the entering and visa of the documents to which the preceding articles refer shall be made with celerity in ordinary cases to avoid trouble, and in return for a moderate fee collected in stamped paper, or a corresponding stamp canceled in due form.

The preceding regulations adopted for the benefit of American citizens, and proving the interest with which Her Majesty's Government tries, as far as possible, to meet the wishes of the Washington cabinet, have been already transmitted to the governor-general of Cuba for their exact performance, and while giving you the above information, in reply to the different notes which the legation has been good enough to address me on the subject, I reiterate assurances of my highest consideration.

S. MORET.

CORRESPONDENCE WITH THE LEGATION OF SPAIN AT WASHINGTON.

No. 628.

Mr. Valera to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
February 19, 1886. (Received February 20.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, begs the honorable Secretary of State to permit him to call his attention to the claim of Messrs. Larrache & Co., successors to the Spanish firm of Maza & Larrache, which has for some time been pending before his Department.

By the notes from this legation of the 2d and 10th of December, 1884, it will be seen that the undersigned, in pursuance of special instruction from his Government, presented the claim in question to the Department of State in the name and in behalf of the Government of Spain, and requested that due reparation should be made for the injuries and losses occasioned to the said Spanish firm by the authorities and agents of the United States Government, who, in obedience to the express orders of their Government, had seized and appropriated to its use and benefit some 1,369 bales of cotton belonging to the aforesaid firm.

This legation's notes of December 29, 1884, February 7 and March 10, 1885, were accompanied by testimony showing that the said cotton was the legitimate property of the aforesaid firm; that it was seized by the authorities and agents of the United States Government; that it was sold and appropriated to the use and benefit of the said Government, and that the aforesaid Spanish firm had never been indemnified for that seizure, appropriation, and sale.

The undersigned, in obedience to the instructions of his Government, again called the attention of the honorable Secretary of State to this claim on the 15th of November last, setting forth its strict justice and also the equitable manner in which the Government of Spain had recently responded to the demands made by that of the United States in behalf of one of its citizens whose property had been seized by the Spanish authorities, and asked that this claim of the firm of Larrache & Co. might be taken into consideration, and that speedy measures might be adopted looking to the granting of an indemnity which was justly due and which had been long deferred.

The undersigned has not yet received a reply to his last note. He is aware that there are many urgent demands upon the time of the honorable Secretary of State, and that they doubtless compel him to delay his reply, but, in view of the insistence of his Government and of his own desire that this matter may be speedily and satisfactorily settled, he begs the honorable Secretary to pardon him for again calling his attention to the just claim of Larrache & Co.

In so doing he avails himself of this occasion to transmit to the Hon. Thomas F. Bayard the affidavits of Messrs. L. M. de Avendano and C. Maduell, members of the old and well-known firm of Avendano Brothers, of New Orleans, Spanish subjects, whose disinterestedness and good faith can not be questioned. In these affidavits these gentlemen con-

firm, from their personal knowledge of the matter, the statements heretofore made by this legation to the Department of State relative to the possession of the cotton by the firm of Maza & Larrache, to the seizure and appropriation of the same by the agents of the United States Government, and to the fact that the aforesaid firm has vainly endeavored to recover the cotton or its value.

The affidavits in question show, moreover, in detail, what earnest efforts were made by the representatives and agents of the firm, immediately after the seizure of the cotton and for many years subsequently, to recover the proceeds of the sale thereof, with interest, from the United States Government.

In connection with the forgegoing facts the undersigned deems it his duty to invite the attention of the honorable Secretary of State to a few brief considerations which give to this case a character of exceptional justice.

The seized cotton was the property of Spanish subjects, who had purchased it while carrying on the usual and legitimate operations of their commercial establishment. It was confiscated by agents of the United States Government, in obedience to orders issued by the Treasury Department of said Government. Those agents took this course in pursuance of a general policy, and by no means on account of charges of disloyalty against the members of the firm of Maza & Larrache, or of illegal acts committed by them.

It was not confiscated owing to a military necessity, nor was that measure required by the usual operations of war, because the seizure took place after hostilities had ceased and the supremacy of the Federal Government had been re-established.

It is, moreover, a well-known fact that the cotton was sold by the agents of the aforesaid Department, and that the proceeds of the sale were deposited in the vaults of the Treasury. The United States Congress, recognizing the justice of the claims of its own citizens for similar property seized in this manner, enacted certain provisions to the end that claimants might recover the value of their property, and a large number of them have been indemnified for their respective losses. Besides, it is known that the proceeds of the sale of the seized cotton are now deposited in the Treasury of the United States, so that it may be truthfully asserted that the value of the bales taken from the Spanish firm of Maza & Larrache, in 1865, is still in the United States Treasury, notwithstanding the constant efforts of the said firm to recover it.

In view, therefore, of these facts, of the earnest wish of the Spanish Government to secure indemnity for its subjects, and of the evidences of a desire to do justice with which that Government has recently responded to the demands of that of the United States, the undersigned reiterates to the honorable Secretary of State his request that the claim of Messrs. Larrache & Co. may be taken into special consideration, and that suitable measures may be adopted for making speedy and just reparation.

The undersigned gladly avails himself, etc.,

JUAN VALERA.

[Inclosure 1.]

Deposition of Luis Maria de Avendano.

Personally appeared before me, James Fahey, a notary public in and for the parish of Orleans, city of New Orleans, State of Louisiana, Luis Maria de Avendano, who being by me duly sworn, deposes and says:

I was born in Liendo, Kingdom of Spain, on the 14th day of the month of February, 1840; am a subject of Spain, and have resided in the city of New Orleans, State of Louisi-

ana, since the year 1860, engaged in commercial pursuits as a member of the firm of Avendano Brothers. The house or commercial firm of Avendano Brothers has had business relations with the Spanish house of Maza, first at Catorce, in the State of San Luis Potosi, Republic of Mexico, and after it was united with that of Larrache in the city of San Luis Potosi, and with the branch of Maza & Larrache at Matamoras, Mexico, since the year 1860. From that date to the present Avendano Brothers have been the correspondents and in commercial relations with said house and that of Larrache & Co., who are the successors and legal representatives of Maza & Larrache. Don Gregorio de la Maza, now resident in and a subject of Spain, is a member of said firm of Larrache & Co. and the chief silent partner. On account of the intimate relations which Avendano Brothers maintained with said firm of Maza & Larrache, I know that during the years from 1862 to 1865 said latter firm made large purchases of cotton in the States of Texas and Louisiana through their representative and agent, Don Ezequiel Bustamante, now also a resident in Spain, and with whom I was personally well acquainted. I also know that at the close of the war of the rebellion, in 1865, some 1,369 bales of cotton, the property of said Maza & Larrache, were seized and taken at Shreveport, La., from the possession of the said Bustamante by the authorities of the Federal Government of the United States. I further know that on account of said seizure the said Bustamante came to New Orleans in 1865 and solicited the assistance and good offices of Avendano Brothers, as the correspondents of Maza & Larrache, for the purpose of securing the return of said cotton or its value or proceeds. In compliance with this request, Avendano Brothers aided the said Bustamante to the extent of their ability, and in the course of their investigation they ascertained that the Federal authorities had seized at Shreveport, La., and brought to New Orleans 1,369 bales of cotton which was the property of Maza & Larrache, and that said cotton so seized was of the value of $700,000. But notwithstanding the said Avendano Brothers and Bustamante made repeated demands upon said authorities to surrender and return to the said Bustamante the said cotton, the said authorities failed and refused to release the same or to account and pay for its value; and I understood at the time and do believe that said cotton was sold for the account and benefit of the Government of the United States.

The said Bustamante having been entirely unsuccessful in the object of his visit to New Orleans, returned to San Luis Potosi, leaving the business in the hands of Avendano Brothers, with instructions to them to continue the prosecution of the claim against the Government of the United States for said cotton. Some time after the departure of Señor Bustamante, having received new and repeated instructions from Maza & Larrache to renew their efforts to obtain the return of the proceeds of said cotton from the United States Treasury Department, Avendano Brothers, in order to execute their instructions, employed Messrs. Sanford & Merry, of New Orleans, to prosecute said claim, and the said gentlemen made efforts at New Orleans to obtain a settlement of the claim, and also made a visit to Washington for that purpose, but they also were entirely unsuccessful in their efforts. From time to time after that date Maza & Larrache recalled the claim to the attention of Avendano Brothers, but the latter firm were convinced, after the unsuccessful efforts made in 1865, that no settlement could be obtained until the Spanish Government should take the claim under its special and active protection, and that even then it might be greatly delayed, as the United States had for many years refused to settle other meritorious claims, such as those of east Florida, and hence Avendano Brothers did not think it prudent to create new expenses uselessly, to the injury of their correspondents.

But in the month of May or June, 1878, Don Santos Ollo, an industrial member of said late firm of Maza & Larrache, came to New Orleans from Mexico, and upon presenting the letter of Larrache & Co. and their general power of attorney, conferring full authority on him to renew the prosecution of the claim for said cotton, Avendano Brothers delivered to the said Ollo all the documents which remained in their possession relative to the claim; and from that time they consequently ceased to give any further attention to the subject. And I declare that I have no interest whatever in said claim.

L. M. DE AVENDANO.

Sworn to and subscribed before me this 13th day of February, 1886.

[SEAL.]

JAS. FAHEY,
Notary Public.

[Inclosure 2.]

Deposition of Carlos Maduell.

Personally appeared before me, James Fahey, a notary public in and for the parish of Orleans, City of New Orleans, State of Louisiana, Carlos Maduell, who, being by me duly sworn, deposes and says:

I was born in Tortosa, Spain, on the 11th day of March, 1836; am a subject of Spain;

have resided in the city of New Orleans, State of Louisiana, since the year 1853, and am a member of the firm of Avendano Brothers. I have read the foregoing affidavit of Luis Maria de Avendano, my business partner, which, from my personal knowledge of the business of said firm, I know to be a true statement of facts, and I hereby ratify and confirm the same.

C. MADUELL.

Sworn and subscribed to before me this 13th day of February, 1886.
[SEAL.]
JAS. FAHEY,
Notary Public.

Personally appeared before me, James Fahey, a notary public in and for the parish of Orleans, State of Louisiana, Messieurs Aristide Delvaille and Edward Villeré, residing in this city of New Orleans, both of whom are personally known to me, who, being duly sworn, declare that they are well acquainted with Luis Maria de Avendano and Carlos Maduell, of the firm of Avendano Brothers; that the said firm has been established in the city of New Orleans for many years, and has always maintained a high commercial reputation; that they know the said Luis M. de Avendano and Maduell to be truthful and worthy of belief, and that full credit to their foregoing sworn statements should be given.

A. DELVAILLE.
ED. VILLERÉ.

Sworn to and subscribed before me this 13th day of February, 1886.
[SEAL.]
JAS. FAHEY,
Notary Public.

No. 629.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, June 28, 1886.

SIR: I have the honor to acknowledge your predecessor's esteemed note of February 19 last, calling my attention to the claim of Messrs. Larrache & Co. against the United States Government for the seizure and sale in May, 1865, of some cotton belonging to them, the details of which had already been laid before this Department in notes from your legation of the 2d, 10th, and 29th of December, 1884, and of February 7, March 10, and November 15, 1885.

I beg you to believe that the delay in replying to these communications is solely due to the great importance of the questions involved, which are now for the first time brought diplomatically before this Department.

The claimants state that during the year 1864 the agent of the commercial firm of Maza & Larrache purchased about 3,000 bales of cotton from the Confederate States Government in Louisiana and Texas, of which 1,369 bales, valued at $700,000, and stored at Shreveport, La., were seized by agents of the United States Government, shipped to New Orleans, there sold by Federal officials, and the proceeds turned into the National Treasury. For this seizure the claimants now demand indemnity from the United States Government.

The case, as thus presented, appears to be a simple one of a private contract for commercial profit and mutual advantage between the claimants and the Southern Confederacy, which, at the time the bargain was made, was a recognized belligerent, and was considered by the claimants a responsible contracting party. It was also at that time perfectly well known to the claimants that the Confederate Government, with which they made this voluntary contract, was then in a state of open rebellion and war against the Government of the United States. The claimants also knew that the commodity contracted for was at that time being made

use of by the Confederacy in carrying out the war, both by accumulating it in large quantities for sale, when it could be passed through the lines, and by destroying it when in danger of being seized by the United States troops; in this way aiding a cotton famine in foreign countries, so as to stimulate and secure recognition of the Confederacy as a separate member of the family of nations.

Cotton was useful as collateral security for loans negotiated abroad by the Confederate States Government, or, as in the present case, was sold by it for cash to meet current expenses, or to purchase arms and munitions of war. Its use for such purposes was publicly proclaimed by the Confederacy, and its sale interdicted except under regulations established by, or contract with, the Confederate Government. Cotton was thus officially classed among war supplies, and, as such, was liable to be destroyed when found by the Federal troops or turned to any use which the exigencies of war might dictate.

The military importance of cotton to the Confederacy is shown by the fact that as early as February, 1861, an act passed by the provisional government of the Confederate States "to raise money for the support of the government and to provide for the defense of the Confederate States of America" levied a duty on all cotton in the raw state exported from the Confederate States; and in May of the same year an act was passed prohibiting the export of cotton from the Confederate States, except through the ports of said States.

In the same year (1864) in which the claimants made their contract the Confederate war department officially recognized cotton as being one of the chief munitions of war by advising that large amounts of Confederate bonds should be issued for the separate use of that department in purchasing cotton and steamers with which to obtain military supplies from abroad.

Cotton, in fact, was to the Confederacy as much munitions of war as powder and ball, for it furnished the chief means of obtaining those indispensables of warfare. In international law there could be no question as to the right of the Federal commanders to seize it as contraband of war, whether they found it on rebel territory or intercepted it on the way to the parties who were to furnish in return material aid in the form of the sinews of war—arms or general supplies.

The facts that the claimants were aliens, living in another country, and acting only through agents in the Confederate States, does not alter the case or entitle them to damages for seizures by the United States. This argument in analogous cases has been frequently used by Spain towards American claimants, alien ownership not being in the Spanish dominions, or in any other part of the civilized world, a ground on which confiscation of contraband of war could be avoided.

The argument of the claimants that hostilities had ceased when the seizure took place is not valid, as the war between the Confederacy and the United States was flagrant at the time the contract was made by the claimants with the Confederate States. The war, under the decisions of the Supreme Court of the United States, did not terminate until the 20th of August, 1866.

This Department, in its instructions to our ministers at those courts which recognized the Southern insurgents as belligerents, has maintained that those nations, after such recognition, must be content to have their subjects who were domiciled as merchants in belligerent territory considered as belligerents, and the same argument would embrace all aliens residing in the enemy's country for business purposes, or represented by agents there. It has likewise been held by the Su-

preme Court of the United States in one case, where the property of a non-combatant was destroyed, that property left by its owner in the country of a belligerent is subject to the chances of war and to confiscation by the other belligerent.

A similar rule was enforced in the case of the losses of British subjects through the Dutch bombardment of Antwerp in 1830, and was assented to by Great Britain and all the other powers whose citizens suffered loss. The same was the case with the property of American citizens in Naples in 1807, and likewise in the case of losses incurred by foreigners by our bombardment of Greytown in 1853, France and Great Britain acquiescing.

If claims for losses of goods belonging to neutral owners which happen to be at the time of hostilities in the enemy's territory can not be entertained, how much less valid are they when goods were the subject of a voluntary contract entered into by the owners with the leaders of a revolt, the two contracting parties taking the chances of loss through the failure of the Confederacy, or of the profits to result from its success, which, doubtless, would in the present case have been enormous. The contracting parties were partners in a speculation in contraband of war, which was subject to the vicissitudes of war and which failed, and the resulting loss can become no basis for a claim which, if admitted, might embarrass Spain, among other nations, as furnishing a precedent in possible future cases where the integrity of her colonial possessions should be at stake.

Trusting that, on due consideration of the views I have adduced, you will acquiesce in the validity of the objections of this Government to entertain the claim of Messrs. Larrache & Co. so courteously and ably presented by your predecessor, I avail, etc.

T. F. BAYARD.

No. 630.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
Washington, August 13, 1886. (Received August 18.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, had the honor, on the 1st ultimo, to acknowledge the receipt of the note of the honorable Secretary of State of the 28th of June previous, in relation to the claim of the Spanish firm of Maza & Larrache.

It is now his duty, in obedience to the instructions of Her Majesty's Government, again to invite the attention of the honorable Secretary of State to this claim, asking that it may be re-examined in view of the facts and reasons which the undersigned will state in this note, feeling confident that the honorable Mr. Bayard, acting in accordance with the dictates of his well-known spirit of sincerity and friendship for the Government and people of Spain, will not hesitate to reconsider the case.

The undersigned is compelled to think that the honorable Secretary of State's note of June 28 was written without a full understanding of the facts on which the claim is based. The note of this legation of the 19th of February last fully and correctly establishes the validity of the claim, which is based upon sworn statements and documents that have been laid before the Department of State, and it is clearly shown,

in the aforesaid note, that the seized cotton "was the property of Spanish subjects, who had purchased it in the course of the usual and legitimate operations of their commercial establishment." It is true that, when the claim was first presented, it was stated that Messrs. Maza & Larrache had purchased the cotton by a contract with the Confederate Government. Subsequently, however, the affidavit of Mr. Ezequiel Bustamante, the agent who bought the cotton, was secured and sent to the Department of State as an inclosure to the note of this legation of March 10, 1885. The said agent thereby declares that he purchased the cotton in question from loyal citizens of the United States (that is to say, non-combatants) in the States of Texas and Louisiana. This apparent contradiction is easily reconciled and explained by the fact that the Confederate Government exercised strict surveillance over the transportation of all the cotton within its territory, and that no purchase could be made except through its officers or with their approval. It is, therefore, confidently to be hoped that, in view of these facts, the statement made in the note of the 19th of February last will be considered as being strictly correct, and the cotton in question as having been purchased in the way of a legitimate commercial transaction, just as this has been repeatedly recognized by the United States Government, in consequence of which the owners are entitled to indemnity from the National Treasury.

The undersigned has not forgotten the fact that the place where the cotton was purchased was within the jurisdiction of a power (or of its authorities) that was at war with, or in rebellion against, the United States Government, and that the latter had forbidden all commercial transactions with that territory. He begs leave to remark, however, that, according to the principles and practice of international law, such a prohibition could not be maintained against other nations otherwise than by the establishment of an effective blockade of the coast and by something equivalent thereto on the land frontier.

It is a well known fact that the claimants and their predecessors were for many years engaged in commercial operations in those states of Mexico which border upon the territory of the United States, and that they had correspondents and maintained commercial relations in the States of Texas and Louisiana long before the outbreak of the war. It is believed to be a matter of history that the United States Government, during the entire period of the war for secession, never seriously attempted to maintain, either by means of military stations or patrols, its prohibition of trade with the Confederacy along the frontier line extending from Brownsville, near the Gulf of Mexico, to the northwestern limit of the State of Texas. Throughout this long extent, comprising hundreds of leagues, not a sign of any military or other force was established by the United States for the *de facto* prevention of trade between the Confederacy and the neighboring territory of Mexico. Such was the condition of things in the region in which the claimants effected their commercial transactions. Since no measures were taken to prevent other merchants from carrying on commercial business it does not seem reasonable to assert that the Spanish house of Maza & Larrache was engaged in illicit trade. Under these circumstances, even if the said firm had traded with the Confederate authorities, it will be shown in the present note that such trade did not deprive it of the right to indemnity for its property that was seized and appropriated by the United States Government.

Before entering upon an examination of the principles of international law which were stated in the note of the honorable Secretary of State,

it is proper for me to explain another fact which is intimately connected with the claim now under consideration.

The cotton for which indemnity is asked was not captured while being carried across the Confederate lines during the war, nor was it seized during the period of active military operations. It is a historical fact that after May 13, 1865, no resistance was offered to the Federal authorities anywhere in the territory of the Union. The capitulation of the Confederate army of the trans-Mississippi department was signed at New Orleans on the 26th of the aforesaid month, and General Grant's proclamation to the Union Army, announcing the termination of the war, was published on the 2d of June following. Subsequently to May 26 northern Louisiana, where the cotton of the claimants was stored, was peacefully occupied by the United States authorities, and the cotton in question, which was stored at Shreveport, was seized by the agents of the Treasury Department and taken to New Orleans during the months of June, July, August, and November, 1865.

The undersigned thinks that, in view of the circumstances of this case, he is not called upon to refute the assertion of the honorable Secretary of State that cotton, during the war for secession, was an article contraband of war. The acceptance of this assertion would, however, imply an extension of the list of articles contraband of war agreed upon by the treaty of Paris. It will be sufficient to remark that, whatever may have been the principles professed on the subject by the United States Government, it will hereafter be shown that that Government has been very far from uniformly maintaining its theory in actual practice.

The note of the honorable Secretary of State enunciates correctly, it is believed, the principle of international law, that foreigners or their agents, who are domiciled in an enemy's country for mercantile purposes, are to be considered as belligerents, and that property abandoned by its owner in belligerent territory is subject to the chances of war and to confiscation, and that the principle has been recognized among civilized nations that governments are not obliged to indemnify the owners of property destroyed in active warlike operations, such as bombardments, battles, and marches.

While this doctrine, however, is recognized as a general principle, it is, nevertheless, liable to numerous exceptions, among which the undersigned will cite the following:

Governments frequently extend to the subjects of friendly nations the same usage that they accord to their own citizens. They likewise accord, and this is very common, the same principles of compensation that are claimed by other governments; and when property captured during the operations of war is not destroyed, but is used in order to provision the army, or when its value is deposited in the national treasury, then governments often indemnify the owners of the property captured or seized.

In order that this note may not be rendered unreasonably long by a statement of the practice of nations, made with the view of demonstrating the truth of the foregoing exceptions, the undersigned thinks that it will be amply sufficient for the purpose of the present claim if he confines himself to a statement of the course pursued by the United States Government both during and since the war for secession.

The Congress of the United States has in a large number of cases granted payment to its own citizens for property situated within the Confederate lines which had been destroyed by the Union Army or taken for its use, or the proceeds of which had been deposited in the

vaults of the national Treasury. Among such measures may be mentioned the act of March 12, 1863, known as "The captured and abandoned property act," and that of March 3, 1871, creating the Southern Claims Commission.

Since the close of the war the United States Government has concluded conventions with Mexico, England, and France for the settlement of claims of their respective citizens and subjects.

The commissioners appointed in pursuance of those conventions have examined and decided favorably a great many claims growing out of the operations of the war. A cursory examination of these claims will clearly show the attitude assumed by the United States in behalf of their own citizens and the concessions made by them in favor of the subjects of other nations.

The Government of the Union presented a large number of claims against that of Mexico in behalf of its citizens, asking for indemnity on account of destruction of, or injury to, their property, caused by the military operations of the Mexican troops, on account of provisions taken for the use of said troops and of property seized and appropriated by the Mexican Government in time of war in that country. Among other cases the following may be cited:

The case of Mr. Anderson, No. 333; this was a claim of American residents based upon the injuries done to their plantation and crops in the State of Sinaloa, Mexico, by the encampment on said property of the Mexican troops under General Corona, and for provisions taken for the use of the aforesaid troops during the war occasioned by the establishment of an empire in that country. This claim was energetically advocated by the agent of the United States, and the American commissioner held that, although a Government in time of war had a legal right to take possession of any property belonging to the inhabitants of the country, it was bound to pay for the same, and in accordance therewith indemnity was awarded to the claimants, just as it was to various others who had brought similar claims.

That of Mr. Gárate, No. 699, for damage done to the claimant's house while occupied by troops during the bombardment and seige of Matamoras in 1861, and also for wearing-apparel and other articles taken by General Cortina for the use of his troops in 1865, during the war with the French. In this case judgment was rendered against Mexico, and Mr. Gárate was indemnified, as were various other parties whose claims were similar to his.

That of Mr. Newton, No. 154; in this the United States asked for and secured an award against Mexico for a quantity of cotton rags taken from the claimant's factory to be used in dressing the wounds of the soldiers that had been wounded during the siege of Guadalajara.

That of Mr. Benjamin Weil, No. 447, in which the United States Government asked for and secured an award against Mexico for the sum of $487,000 on account of the seizure of a train loaded with cotton, which the claimant had purchased within the Confederate lines in Texas and had taken across the frontier into Mexico, where it was captured by the Mexican authorities in 1864 while the war for secession was raging with unabated fury. A considerable portion of the amount of this claim was paid over to the claimants by the worthy predecessor of the honorable Secretary of State.

The Anglo-American Commission, which was organized in pursuance of the treaty of Washington, concluded in 1871, made a considerable number of awards in favor of British subjects, many of whom had resided or been engaged in business within the Confederate lines, on ac-

count of property captured by the Union forces within the enemy's lines and subsequently confiscated or appropriated to the use of the United States Government. That Government maintained the principle that persons domiciled within the enemy's territory were to be considered as enemies. This principle was, it seems, accepted as part of the law of nations, but in view of the fact that the United States had granted compensation to their own citizens in similar cases, it was decided that neutral foreigners were entitled to the same kind of indemnity. (See documents relating to the treaty of Washington, vol. 6, pages 41–45.)

Many claims were laid before the commission on account of cotton seized by the United States Government. This Government objected thereto, on the ground that cotton was the product on which the enemy mainly depended for the purchase of provisions, and that it properly constituted an article contraband of war; that the abandoned and captured property act of March 12, 1863, was an act of grace and that no use could be made of it except on the terms therein specified, and that, consequently, compensation for seized cotton could not be obtained through the commission. This argument, however, was disregarded, and all the claims laid before the commission, that had not previously been taken before the Court of Claims, were examined and decided *favorably* on their own merits. (See vol. 6, pages 46–49.)

The same course was adopted by the French and American Commission appointed in pursuance of the treaty for the settlement of claims, which was concluded in 1880, both in respect to cotton and to property in general. (See Boutwell's report.)

In order that the honorable Secretary of State may be able properly to appreciate the merits of the claim of the firm of Maza & Larrache, the undersigned will cite a few similar cases which were favorably decided by the aforesaid commissions.

Among those of English claimants he will cite the following:

That of Henderson, No. 41; in this case the cotton was seized by General Banks within the enemy's lines, in the course of active military operations in 1863, and was appropriated to the use of the United States. The agent of the United States Government maintained that the seizure was justified by the laws of war for strictly military purposes, inasmuch as the cotton was the enemy's property, captured within the enemy's territory, in which the claimant was domiciled.

That of Thompson, No. 237; the cotton was captured in 1863, within the Confederate lines; it was used in the construction of fortifications, and afterwards burned to prevent it from falling into the hands of the enemy.

That of O'Bryan, No. 298; the claimant was a resident of Charleston, S. C., and the cotton was seized during the occupation of that city by the United States troops in 1865, delivered to agents of the Treasury Department, taken to New Orleans, and sold there.

Among French claims he will cite the following:

That of Dupré, No. 67; the cotton was seized in Louisiana, in May, 1863, by a military expedition, and taken to New Orleans.

That of Brochard, No. 110; the cotton was captured within the enemy's lines by gun-boats belonging to the United States Navy, during the Red River expedition, in 1864.

That of Prévöt, No. 172; the cotton was seized in May, 1863, by United States troops, according to the captured property act, and taken to New Orleans.

That of Jeannaud, No. 206; the cotton was burned by United States troops during General Banks's Red River expedition, in 1864.

The commission unanimously expressed its opinion as follows:

This was an act of unnecessary destruction committed by the soldiers in a moment of excitement on returning to their camp after gaining a victory over the Confederates.

That of Sardos, No. 157; the cotton was burned by United States troops during General Banks's Red River expedition, in 1864, while the enemy was retreating. The owner was accused of having dealt with the enemy, and of having lent him assistance; his defense was that, being domiciled in the territory, he had a right to sell provisions to the Confederate army. The commission unanimously decided in the claimant's favor.

That of Steyrie, No. 655; Mr. Steyrie resided in France during the war; the cotton was captured by a United States gun-boat at one of the sea islands, in South Carolina, while on board of a lighter, and about to be exported. A plantation belonging to the claimant was also occupied by a party of freedmen.

In all these cases the commission decided in favor of the claimants.

It thus appears that the United States Government has claimed and obtained from Mexico, in behalf of American citizens, indemnities for property destroyed during the active operations of war, and for provisions captured and appropriated to the use of the Mexican Army. The United States Government has gone still farther, since it has required payment from the Mexican Government of an indemnity to an American citizen who was domiciled in the territory of the Confederate States, and was engaged in business within the enemy's lines, on account of cotton which the aforesaid American citizen had removed from the Confederate territory with the intention of shipping it to Europe, while the war of the rebellion was at its height.

Certainly if the Government of Mexico, under such circumstances, was obliged by international law to indemnify the claimant, the United States Goverment, which supported and enforced this claim, will not refuse to pay the claim of the Spanish firm of Maza & Larrache, which has been presented by the Spanish Government, for the cotton which, while quietly stored in Confederate territory awaiting the end of the conflict, was seized after the war was over and sold by the United States, the proceeds thereof being deposited in the National Treasury, where they still remain.

The undersigned appeals to the uprightness of the honorable Secretary of State, and feels confident that he will extend to the Government of Spain the same principle of compensation that the United States claimed and obtained from the Government of Mexico.

It has been abundantly shown that the United States Government has modified the recognized doctrine of international law stated by the honorable Secretary of State in his note of the 28th of June last, in that it has granted indemnities to its own citizens domiciled or owning property in the territory of the Confederate States on account of losses of or injuries to the same when the said Government took possession thereof for its own use and benefit.

It has also been shown that the article cotton has been included among those kinds of property for which the United States Government allowed the said indemnities; that foreigners who were domiciled or engaged in business or who owned property within belligerent territory have been indemnified in pursuance of decisions of United States courts, and that in those cases in which French or English claimants presented their claims diplomatically through their respective Govern-

ments they were likewise indemnified for the losses which they had suffered.

After the explanation, furnished at the beginning of this note, concerning the character of the trade in which the claimants were engaged within the Confederate lines, and after the citations of awards for cotton captured and confiscated when the war was at its height, it is not to be presumed that the honorable Secretary of State will insist upon considering that trade as illicit so far as to refuse indemnity, which, under similar circumstances, has been conceded by the United States Government to subjects of other friendly nations. The undersigned can not admit that the firm of Maza & Larrache was engaged in a kind of trade that rendered its acts disloyal, by furnishing direct aid and military strength to the enemy. Even admitting, however, that the firm should be shown, by a new investigation, to have been guilty—even more guilty than was asserted in the note of June 28—yet even in this latter case it can not be deprived of the right to indemnity for its cotton. The undersigned knows that the Supreme Court of the United States, in the case of a claim preferred by a British subject (Carlisle, 16 Wall, 147), who was proved to have been engaged in furnishing saltpeter to the Confederate military authorities for the manufacture of gunpowder, decided that the assistance rendered by the claimant to the rebellion did not justify a denial of his right to receive the proceeds of his property from the United States Treasury, in view of the proclamation of amnesty issued by the President on the 25th day of December, 1868. By that act of amnesty or pardon all offenses and acts of disloyalty were condoned, and those who had committed them were authorized to recover the proceeds of their cotton, provided that they furnished proof of ownership and of its capture.

The undersigned is perfectly well acquainted with the sentiments of impartiality and uprightness of the honorable Thomas F. Bayard, and he thinks that it would not be very respectful on his part to enter into further arguments to show that the respected Spanish firm of Maza & Larrache is entitled to receive from the United States the same measure of indemnity that has been granted to the subjects of other nations.

The honorable Mr. Bayard has been able to form a correct idea of the spirit of equity which has ever influenced the action of Spain in the case of American claimants, and of which it has just given unmistakable evidence in a recent and notable instance. The undersigned therefore feels convinced that, after a second and more careful examination of the matter which forms the subject of this note, and after considering the facts therein stated, the honorable Secretary of State will be able to point out some means whereby an opportunity may be afforded to Messrs. Maza & Larrache, Spanish subjects, to determine the extent and amount of their losses, and to receive due compensation therefor. When it is remembered that a very large fund is now in the vaults of the United States Treasury which consists of the proceeds of the sale of cotton, and which consists, in part, of the proceeds of the sale of that which was taken from the firm of Maza & Larrache; when it is remembered that that firm has for many years been endeavoring to obtain compensation for its heavy losses, the undersigned can not do otherwise than feel confident that the honorable Secretary of State will make use of reciprocity towards the Government of Spain by complying with its just desires in the present case, in which it is deeply interested.

The undersigned avails himself, etc.,

E. DE MURUAGA.

No. 631.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, December 3, 1886.

SIR: I have the honor to acknowledge the receipt of your communication of August 13 last, a reply to which has unavoidably been delayed, and to which I have given the careful consideration it deserves. In view of the importance of the questions involved, and of the great respect felt for yourself and the Government you so worthily represent, especial effort has been made to meet your views, and I now proceed to consider the arguments advanced in your communication.

In my note to you of June 28, 1886, the following positions are taken, which I now restate, because I fear I have not been so fortunate as to have my meaning understood.

During the year 1864 the agents of Maza & Larrache purchased about 3,000 bales of cotton from the Confederate States Government, of which 1,369 bales, valued at $700,000 and stored at Shreveport, in Louisiana, were seized by the United States Government, shipped to New Orleans, there sold, and the proceeds turned into the National Treasury. For this seizure the claimants now demand indemnity from the United States Government.

This was a contract between the claimants and the Confederate States Government, a recognized belligerent, engaged in open rebellion and public war against the United States.

The commodity contracted for was, as the claimants well knew, especially used by the Confederate Government for warlike purposes, and that government designed, by assuming absolute control of the entire cotton product, to exchange it for military stores, and by restricting its supply to foreign consumers to coerce thereby recognition as an independent nationality.

The cotton within the Confederate States was publicly recited in their obligations and bonds as a security for their payment; its exportation and sale controlled and regulated by statute, and it thus became officially and publicly classified among the war assets and supplies of that government, and its destruction was authorized, wherever found, whenever military exigencies rendered it advisable to avoid capture by United States forces.

Being thus a munition of war, as much as arms or powder, there could be no question of the right, under international law and usage, of the United States authorities to seize it as contraband whenever found within the theater of war.

Alien ownership of such property so found and seized does not exempt it from liability for confiscation, as has been decided by Spain in analogous cases.

War was flagrant at the time and in the place where the contract with the Confederate States Government was made by the claimant, and this status did not terminate until August 20, 1866, as has been judicially established.

This Department has held all merchants domiciled in belligerent territory to be belligerents, and the same rule will apply to aliens resident in the enemy's country represented by agents there, and I have already referred you to many decisions as authority for the subjection of the property of such aliens to the chances of war, and to confiscation by a successful belligerent when found in the enemy's country.

In your note now before me you contest the fact that the cotton in question was purchased under "a contract with the Confederate Government," admitting, however, that the statement that it was so purchased was made in the "claim as first presented." You now call attention to an affidavit filed in the case to the effect that the cotton in question was purchased "from loyal citizens of the United States, that is to say, non-combatants," and you proceed to maintain that "this apparent contradiction is easily reconciled and explained by the fact that the Confederate Government exercised strict surveillance over the transportation of all cotton within its territory, and that no purchase could be made except through its officers or with their approval."

With great desire to recommend the claim here presented, if I can rightfully do so, I can not hold, even were I to consider the affidavit referred to as a competent denial of the claimants' own sworn statements on file, that it presents a state of facts materially different from that on which I partly based my former conclusion. I do not regard "loyal citizens of the United States" and "non-combatants" as equivalent or convertible terms, nor, even if they were, do I conceive the statement that the cotton was purchased from "loyal citizens of the United States" in any way affects the pending issue. If, as it is conceded, the purchase was made when war was flagrant, with the co-operative approval of the Confederate States officials; and if the cotton was held under the shelter, and with the sanction of that Government, this must have been because the investment promised to be beneficial to the Confederacy and therefore necessarily prejudicial to the United States.

As the claimants well knew, cotton was the basis of value on which the belligerent power of the Confederacy chiefly rested, and purchased, as in the present case, with the agency and approval of the officials of that government, remained when within its military lines under its control.

The claimants knew this when making the purchase, and thus voluntarily aided in supplying an additional element of Confederate strength, and they thereby gave such aid and comfort to the Confederacy as bars them from maintaining their present claim.

The Federal Government had the right, by the law of nations, to seize the cotton in question in the summer of 1865. In support of this position I respectfully call your attention to the following language of Chief-Justice Waite in delivering judgment in the case of Young *vs.* United States, 97 U. S., 58, decided in 1877:

> Beyond all doubt the late rebellion against the Government of the United States was a sectional civil war, and all persons interested in or affected by its operations are entitled to have their rights determined by the laws applicable to such a condition of affairs. It is equally beyond doubt that, during the war cotton found within the Confederate territory, though the private property of non-combatants, was a legitimate subject of capture by the national forces. We have many times so decided, and always without dissent. (Mrs. Alexander's cotton, 2 Wall, 404; United States *vs.* Padelford, 9 *id.*, 531; Spratt *vs.* United States, 20 *id.*, 459; Haycraft *vs.* United States, 22 *id.*, 81; Lamar *vs.* Browne, 92 U. S., 187.)
>
> The authority for the capture was not derived from any particular act of Congress, but from the character of the property, it being potentially an auxiliary of the enemy, and constituting a means by which they hoped and expected to perpetuate their power. As was well said by the late Chief-Justice in Mrs. Alexander's case (*supra*), when this question first arose:
>
> "Being enemy's property, the cotton was liable to capture and confiscation by the adverse party. It is true that this rule as to property on land has received very important qualifications from usage, from reasonings of enlightened publicists, and from judicial decisions. It may now be regarded as substantially restricted 'to special cases dictated by the necessary operations of the war', and as excluding in general 'the seizure of the private property of pacific persons for the sake of gain.'

"The commanding general may determine in what special cases its more stringent application is required by military emergencies; while considerations of public policy and positive provisions of law, and the general spirit of legislation, must indicate the cases in which its application may be properly denied to the property of non-combatant enemies. In the case before us the capture seems to have been justified by the peculiar character of the property, and by legislation. It is well known that cotton has constituted the chief reliance of the rebels for means to purchase the munitions of war in Europe. It is a matter of history that, rather than permit it to come into the possession of the national troops, the rebel government has everywhere devoted it, however owned, to destruction. The value of that destroyed at New Orleans just before its capture has been estimated at $80,000,000. * * * The rebels regard it as one of their main sinews of war; and no principle of equity or just policy required, when the national occupation was itself precarious, that it should be spared from capture, and allowed to remain, in case of the withdrawal of the Union troops, an element of strength to the rebellion."

No better evidence can be found of the value of cotton as an element of strength to the insurgents than is contained in this record. It there appears that the chief requirement of the Confederate Government from abroad was warlike supplies, and that an outward cargo of cotton of one-fourth the carrying capacity of a vessel would pay for a full inward cargo of munitions of war, and leave a very large surplus to the credit of that government.

As war is necessarily a trial of strength between the belligerents, the ultimate object of each in every movement must be to lessen the strength of his adversary or add to his own. As a rule, whatever is necessary to accomplish this end is lawful; and, as between the belligerents, each determines for himself what is necessary. If in so doing he offends against the accepted laws of nations, he must answer in his political capacity to other nations for the wrong he does. If he oversteps the bounds which limit the power of belligerents in legitimate warfare, as understood by civilized nations, other nations may join his enemy and enter the conflict against him. If in the course of his operations he improperly interferes with the person or property of a non-combatant subject of a neutral power, that power may redress the wrongs of its subject. But an aggrieved enemy must look alone for his indemnity to the terms upon which he agrees to close the conflict.

All property within enemy territory is in law enemy property, just as all persons in the same territory are enemies. A neutral owning property within the enemy's lines holds it as enemy property subject to the laws of war, and if it is hostile property, subject to capture.

It has never been doubted that arms and munitions of war, however owned, may be seized by the conquering belligerent upon conquered territory. The reason is that if left they may, upon a reverse of the fortunes of war, help to strengthen the adversary. To cripple him, therefore, they may be captured, if necessary, and whether necessary or not must be determined by the commanding general, unless restrained by the orders of his Government, which alone is his superior. The same rule applies to all hostile property.

The rightful capture of movable property on land transfers the title to the Government of the captor as soon as the capture is complete, and it is complete when reduced to "firm possession." There is no necessity for judicial condemnation. In this respect captures on land differ from those at sea.

The statement is made by you, and considered by me with the gravity it calls for, that the assertion that cotton is contraband of war would "imply an extension of the list of articles contraband of war agreed upon by the treaty of Paris."

If by the treaty of Paris is meant the treaty of amity and commerce of 1778, between the United States and France, I have to say that this treaty was annulled by the act of Congress of July 7, 1798; was treated subsequently by the French Government as having ceased to be in force, and at the utmost was simply a bilateral arrangement between France and the United States, which excluded by its specifications the assumption that it laid down a general rule, its object being to give special advantages to France. But if, on the other hand, by "the treaty of Paris" is meant the declaration of Paris of 1856, it is unnecessary to remind you that to this declaration neither Spain nor the United States was a party. (See Hall's International Law, section 180.)

But even supposing that this declaration gave an authoritative enumeration of contraband articles, which it does not, such specification

could in no sense be regarded otherwise than as illustrative of the rule that a belligerent is authorized to regard as contraband whatever is materially conducive to his adversary's strength. I apprehend it to be the settled rule of international law that the question of contraband is to be determined by the special circumstances of each case. Horses, for example, would not ordinarily be spoken of as contraband, yet all authorities agree that they may be so regarded when their supply is so essential to a belligerent that he can not carry on operations successfully without them. *A fortiori* is this the case with cotton and the late Confederacy. You mistake the position of the United States, you will permit me respectfully to say, when you suppose that it is proposed by us formally to insert cotton on the list of articles contraband of war. We do not so propose. All we say is that when cotton is the prime military engine or muniment of one belligerent then it may be seized and treated by the other belligerent as contraband of war.

I have not been unwilling to consider the case in its relations to contraband because, even on that ground, viewing the cotton under investigation as a publicly recognized element in the military strength of of the Confederacy, I do not see that the claimants have any right to redress. But the seizure by the Government of the United States in 1865 is not to be narrowed to a question of contraband. The distinctions as to contraband have grown up from seizures from neutral vessels at sea, when the presumption arising from the ordinary inviolability of a neutral vessel has to be overcome before the seizure can be sustained. Here the seizure was not on board a neutral vessel, or on neutral territory invaded on ground of necessity, but on soil over which the United States had rights of sovereignty, not merely by constitutional title, but by the law of nations and by the law of war. Aside, however, from such municipal sovereignty, a belligerent, equally by the law of nations and the law of war, can seize and confiscate whatever he finds on his enemy's territory conducing to the strength of such enemy. It is not needful, nor do I, therefore, say whether cotton purchased in the Confederacy during the war would be liable to seizure as contraband if found on a neutral ship.

I propose to strictly construe belligerent rights on the high seas; but the cotton, which is the subject of the present claim, placed as it was by its owners, the present claimants, under what you properly state to be the "strict surveillance" of the Confederate authorities, was, to the eye of the United States Government when it sought to reclaim the region where such cotton was stored, as much the proper subject of belligerent seizure as would have been a park of artillery. The very fact you have stated, that the land blockade on the boundary between the United States and Mexico was, from the nature of things, more easily eluded than a maritime blockade, serves to impress this cotton still more strongly with a belligerent stamp; and though I am unable to accept your statement of the looseness of the land blockade to the extent to which you carry it, yet that this condition of things was supposed to exist at the time the cotton was purchased explains the reason for its purchase, and why it was stored so near the border. Just in proportion to the difficulty of absolutely sealing the vast southwestern frontier of the United States rose, to the eager vision of speculators, the probability that the cotton there stored could be readily sent across the frontier and its product returned in the shape of munitions of war. I desire to make no definition, either expanded or contracted, of contraband, but only to make and enforce the proposition that a belligerent has, in time of war, a right to seize munitions of war or military engines

in his enemy's territory, or material stored for the purpose of conversion into such military engines. And such, unquestionably, was the case with the cotton in question during its storage under the Confederate States control.

You maintain, however, that when this seizure took place the war was over. Undoubtedly the Confederate army of the Transmississippi Department had surrendered; but I have yet to learn that a war in which the belligerents, as was the case with the late civil war, are persistent and determined, can be said to have closed until peace is conclusively established, either by treaty, when the war is foreign, or, when civil, by proclamation of the termination of hostilities on one side and the acceptance of such proclamation on the other. The surrender of the main armies of one of the belligerents does not of itself work such termination; nor does such surrender, under the law of nations, of itself end the conqueror's right to seize and sequestrate whatever property he may find which his antagonist could use for a renewal of hostilities. The seizure of such property, and eminently so when, as in the present case, it is notoriously part of the war capital of the defeated government, is an act not merely of policy and right, but of mercy, in proportion to the extent to which the party overthrown is composed of high-spirited men, who are ready to submit only when their military resources are wholly exhausted, and not until then. This, in the summer of 1865, was the condition of things in the Southern and Southwestern States of this nation. The period was one in which the maintenance of military rule, and the taking into the possession of the United States of all the property capable of use as military resources of those States, was essential to the permanent restoration of order, peace, and a common municipal law. This was so from the nature of things, and such was the course of public action. It is in accordance with this principle that the Supreme Court of the United States has formally decided that the late civil war terminated in the particular sections of the United States at the periods designated in the proclamations of the President of the United States. (Brown *vs.* Hiatts, 15 Wall., 177; Adger *vs.* Alston, *ibid.*, 555; Batesville Institute *vs.* Kauffman, 18 Wall., 151.) And by the President's proclamation of April 2, 1866, "the insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida is at an end, and is henceforth to be so regarded." Up to and before that date the insurrection in those States was held to exist. After that date it was held to be at an end.

It may be said, however, that while the seizure of this cotton may have been justifiable, the claimants should be paid for its value. A party whose goods are confiscated as tainted with insurgency can not claim compensation if he was himself implicated in such insurgency. Nowhere has this rule been more inflexibly applied than by the Spanish Government in the various insurrections in Cuba in which citizens of the United States have been charged with complicity. The United States Government has always accepted the position that, if its citizens ventured their property in support of such an insurrection, they must submit to the consequences. This position was maintained by Mr. Webster in 1851, when, as Secretary of State, he was called upon by a resolution of the House of Representatives to report upon certain wrongs claimed to have been inflicted by Spanish authorities in Cuba on John S. Thrasher, a citizen of the United States.

"If in that [a foreign] country," said Mr. Webster, "he [a citizen of the United States] engages in trade or business, he is considered

by the law of nations as a merchant of that county;" and in this and other cases ruled in this Department on this principle it was held that citizens of the United States who engaged in insurrectionary movements in Cuba thereby exposed their property to seizure by Cuban authorities, and had no claim on this Government to secure indemnity for them from Spain.

This large purchase certainly was not made for legitimate business purposes in the Confederate States. The only value cotton had there was for blockade running, and there was little or no manufacture. It was at so high a price as to be almost unpurchasable for mill purposes, and the demand there for such purposes was comparatively trivial. The reason for its high price was the existence of a cotton famine abroad, created by the blockade of Southern ports and the watch kept on the boundary separating Texas from Mexico. Cotton, then, was bought and stored for the purpose of blockade running; and on this sole ground was justly subject to confiscation.

But there is another and still stronger ground for confiscation, which makes it immaterial whether the cotton was bought from the Confederate States Government or not, although the claimants, having sworn positively to the fact, should be precluded from setting up now an affidavit of a witness in denial. The claimants well knew, when they purchased the cotton, that it was controlled by the Confederate States laws, and subject to be used by that Government in such way as best to promote its military ends. The Confederate Government, long before the seizure in question, "by public notice," to quote the language used by Justice Field in Radich *vs.* Hutchins, 95 U. S., 212, "had prohibited the exportation of cotton from the State of Texas to Mexico, except upon condition that the exporter should sell to them an equal amount for the benefit of the Confederate Government." "At this time also," he proceeds to say, "it was the declared policy of the United States to prevent all intercourse between the insurgent States and loyal States, and also between them and foreign countries, and thus to cut off from the insurgents the means of prolonging the existing war. In pursuance of this policy, the ports and coasts of those States were blockaded, commerce with their inhabitants was prohibited except as specially authorized under regulations of the Treasury Department, and property which eluded the blockade was subject to seizure and condemnation. The attention of the authorities was specially directed to prevent the exportation of cotton, upon which the insurgents chiefly relied to obtain the means for the continuance of their struggle."

For an alien or his agents, so it was held, to contribute towards investing in cotton subject to the control of the confederacy, was, under these circumstances, giving "aid and comfort to the enemy of the United States," and therefore no suit could be maintained on such a cause of action.

It is no answer, therefore, even supposing such a case to have been made out, that the claimants were non-resident aliens, who were not personally present, engaged in furthering the Confederate cause.

A non-resident alien [so says Chief-Justice Waite in Young *vs.* United States, 97 U. S., 63] need not expose himself or his property to the dangers of a foreign war. He may trade with both belligerents, or with either. By so doing he commits no crime. His acts are lawful in the sense that they are not prohibited. So long as he confines his trade to property not hostile or contraband, and violates no blockade, he is secure both in his person and his property. If he is neutral in fact as well as in name, he runs no risk. But so soon as he steps outside of actual neutrality, and adds materially to the warlike strength of one belligerent, he makes himself correspondingly the enemy of the other. To the extent of his acts of hostility and their legitimate consequences he submits himself to the risk of the war into whose presence he

voluntarily comes. If he breaks a blockade or engages in contraband trade, he subjects himself to the chances of the capture and confiscation of his offending property. If he thrusts himself inside the enemy's lines, and for the sake of gain acquires title to hostile property, he must take care that it is not lost to him by the fortune of war. While he may not have committed a crime for which he can be personally punished, his offending property may be treated by the adverse belligerent as enemy property. He has the legal right to carry, to sell, and to buy; but the conquering belligerent has a corresponding right to capture and condemn. He enters into a race of diligence with his adversary, and takes the chances of success. The rights of the two are in law equal. The one may hold if he can, and the other seize. Collie, having been a non-resident or alien, was not a traitor; but in his foreign home he seems to have done as much as any one private person could do to aid and assist the insurgents in their struggle for supremacy.

I have read with interest the citations furnished by you from proceedings on alien claims before certain international commissions, and have caused careful search to be made in the records of these commissions; and though, in the multitude of cases adjudicated by them, there are many rulings which are obscure, and some open to serious objection on ground of injustice, and as being in conflict with international law, yet the general purport of the cases cited by you is understood by me to be merely that a sovereign is liable to make compensation for property seized by his forces for their consumption; not, therefore, covering the cases of a seizure which is a legitimate means of disabling the enemy.

But, aside from this criticism, I must be allowed to remind you that decisions of international commissions are not to be regarded as establishing principles of international law. Such decisions are molded by the nature and terms of the treaty of arbitration, which often assumes certain rules, in themselves deviations from international law, for the government of the commission. Even when there are no such limitations, decisions of commissions have not heretofore been regarded as authoritative, except in the particular case decided. I am compelled, therefore, to exclude from consideration the rulings to which you refer, not merely because they do not sustain the position for which they are cited, but because, even if they could be construed as having that effect, they do not in any way bind the Government of the United States, except in those cases in which they were rendered. In no case cited by you was it held that an alien, implicated in an insurrection, could recover from the Government at which the insurrection was aimed the value of goods which that Government seized in the territory which was the theater of war as part of the military stength of that insurrection. And that the present claimants were so implicated is conclusively established by the circumstances to which I have called your attention.

The claimants, it should be remembered, had an ample and early opportunity given them to recover the proceeds of their captured cotton could they have cleared themselves from implication in the insurrection, as above stated.

By an act of Congress approved March 12, 1863 (12 Stats., 820, incorporated in Revised Statutes, section 1059), it was provided to adopt the summary of Chief Justice Waite in Young *vs.* United States (97 U. S., 61) that property seized by United States authority in the Confederate States "when captured should be sold, and the proceeds paid into the Treasury of the United States. That being done, any person claiming to have been the owner, might, at any time within two years after the close of the rebellion, bring suit in the Court of Claims for the proceeds; and, on proof of his ownership of said property, of his right to the proceeds thereof, and that he has [had] never given aid or comfort to the present rebellion, receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together

with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof. (12 Stats., 820.) As to all persons within the privileges of the act the proceeds were held in trust, but, as to all others, the title of the United States as captor was absolute. Whoever could bring himself within the terms of the trust might sue the United States and recover, but no one else."

As under the principle of United States *vs.* O'Keefe, 11 Wall., 178, the claimants had access to the Court of Claims within the limit specified to purge themselves at a time when the evidence bearing on the question was fresh from the charge of aiding and comforting the Confederacy, it is impossible not to view their failure to avail themselves of that opportunity and their holding back their claim for twenty years as greatly strengthening that charge. I do not desire to insist, as I well might under the circumstances, that the claimants' are barred by the limitations of the statute. Municipal limitations undoubtedly do not, as a general rule, bar an international claim. It may, however, be rightfully maintained, as has frequently been done by both this Government and that of Great Britain, that when a sovereign rests his administration, so far as concerns claims against himself, primarily on his judiciary, and when such tribunals are open to aliens for redress, to them aliens claiming to be aggrieved should at first resort. I do not desire, however, to confine myself to this position, but to maintain that when claimants on whom ostensibly rests the charge of aiding an insurrection against the United States decline to press their claim before a tribunal before which, when the evidence was on all sides attainable, the charge could have been judicially disposed of, and then wait twenty years before bringing the claim before this Department, which, by reason of its organization, has no means of taking testimony as to disputed facts, and which, even if it could, would at this late date find these facts obscured by the lapse of time, then such claimants can not, under that common system of ethical jurisprudence which is acknowledged by Spain, as well as by ourselves, be admitted to a hearing unless they produce a strong array of testimony to disprove their culpability, but also give satisfactory explanation for their delay in presenting their case. The same presumption may be almost as strongly drawn from the delay in making application to this Department for redress.

Time [said a great modern jurist, following herein a still greater ancient moralist], while he carries in one hand a scythe by which he mows down vouchers, by which unjust claims can be disproved, carries in the other hand an hour-glass, which determines the period after which, for the sake of peace and in conformity with sound political philosophy, no claims whatever are permitted to be pressed.

The rule is sound in morals as well as in law, and applies with peculiar force to claims infected with taints which the claimants refuse to submit to judicial examination when the facts are attainable. I may be unwilling to set up against any foreign claim a municipal statute of limitations, even where such a statute is sustainable in international law.

But this claim was based upon transactions within the theater of an extensive armed insurrection against the United States, and necessarily connected with the insurrectionary government; and the first opportunity of a hearing should have been taken, either in this Department or in the Court of Claims, which was open to the claimants, to have shown they were not chargeable with complicity.

They never approached the Court of Claims at all, nor this Department until twenty years had elapsed.

In view, therefore, of all the circumstances of this case, and in deference to the acknowledged rules of jurisprudence of civilized nations,

I am constrained to deny the liability of the Government of the United States to render the compensation asked for by you in behalf of Messrs. Larrache & Co., the claimants.

Accept, etc., T. F. BAYARD.

No. 632.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN AT WASHINGTON,
December 14, 1886. (Received December 17.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to inform the Hon. Thomas F. Bayard, Secretary of State, that in pursuance of negotiations conducted during the past few months by the cabinet of Madrid, the Government of Germany, desiring to furnish evidence of its friendship for Her Majesty the Queen Regent and the Spanish Government, has renounced the right to establish a naval station for the Imperial German navy on one of the Caroline or Pelew Islands, which was conceded to it by article 5 of the protocol signed at Rome, December 17, 1885.

The renunciation has been embodied in a declaration which was exchanged on the 20th of August last, by Count Benomar, envoy extraordinary and minister plenipotentiary of Her Majesty at Berlin, and Count von Berchem, assistant secretary of state for foreign affairs, in charge of the ministry, and ratified by a special note addressed on the 28th of the same month (August) to the minister of state of Spain by Baron von Gutschmidt, chargé d'affaires of Germany at Madrid.

In consequence thereof, article 5 of the protocol signed at Rome, December 27, 1885, is annulled, and the sovereignty of Spain over the entire territory of the Caroline or Pelew Islands remain unimpaired.

The undersigned, in obedience to instructions of his Government, hastens to inform the honorable Secretary of State of this fact, in order that he may be pleased to bring it to the knowledge of the Federal Government, and he gladly avails himself, etc.

E. DE MURUAGA.

No. 633.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN,
Washington, January 4, 1887. (Received January 7.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to make known to the Hon. Thomas F. Bayard, Secretary of State, that the Spanish steamer *Hernan Cortes*, cleared at Barcelona for New Orleans by way of Cuba and other places in the Antilles, was obliged on her arrival from Cienfuegos to pay 6 cents per ton, instead of 3 cents, which were paid by her on her previous voyages.

The case of the *Hernan Cortes* is identical with those of the steamers *San Francisco*, *Buena Ventura*, and *Alicia*, of which the honorable Secretary of State was informed through the note of this legation dated 2d December last, and the reason of the collector at New Orleans for

imposing on said steamer the tax of 6 cents per ton rests upon the same erroneous interpretation that was the basis for exacting similar taxes from the other said steamers.

As the honorable Secretary of State will see by the annexed document, the collector at New Orleans makes no mention of the conditions (*clausulas*) of the *modus vivendi* now in force, and abides solely by article 265 of the Custom-House Regulations of 1884, and by the text of the proclamation of the honorable President, that official insisting that Spanish vessels can only enjoy the privilege of assimilation to the American flag when they come direct from the ports of the islands of Cuba or Porto Rico, and not at all when they come from other Spanish or foreign ports, an interpretation which is wholly contrary to the definitive agreement of the said *modus vivendi*, by which vessels owned by Americans, carrying the American flag, although sailing from foreign ports, enjoy in Spanish ports equal exemption from tonnage dues.

The undersigned calls the especial attention of the Hon. Thomas F. Bayard to this matter and begs him to be pleased to urgently promote the necessary orders to the end that the collector at New Orleans shall strictly abide by the spirit and letter of the convention of the 27th of October last, and refund the excess of taxes exacted by him from the *Hernan Cortes* and from the other Spanish vessels mentioned in the note of this legation of the 2d of December last.

The undersigned minister avails himself, etc.

E. DE MURUAGA.

[Inclosure.]

Mr. Crawford to Mr. Jonas.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
New Orleans, December 27, 1886.

SIR: In compliance with your request asking for report on the collection of tonnage tax at the rate of 6 cents per ton on the Spanish steam-ship *Hernan Cortes*, I have the honor to state that the tax was levied under section 11 of the act of June 19, 1886, the master on entry having declared—

That the said steam-ship belonged to the E. Pi. Co. Line, plying between Spain and the United States via Cuban and other ports. That he cleared from Barcelona on the 7th of November, 1886, via other Spanish ports, with cargo for Cuban ports and Porto Rico, and after discharging same proceeded to this port in ballast.

Her case is precisely similar to that of the steamer *Alicia*, in which, upon appeal to the Treasury Department, it was decided that the tax of 6 cents applied. I inclose a copy of Department letter, dated November 11, 1886.

Relative to the "reciprocity treaty," spoken of by the Spanish consul, I respectfully call your attention to article 265, Customs Regulations, 1884, and inclosed copies of the President's proclamation concerning same. They treat simply upon reviving and suspension of "discriminating duties" of tonnage and impost on vessels of Spain coming from the islands of Cuba and Porto Rico.

Very respectfully,

J. D. CRAWFORD,
Deputy Collector.

No. 634.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, February 5, 1887.

SIR: Referring to your esteemed note of the 4th ultimo, relative to the collection of tonnage dues at the rate of 6 cents per ton from the master of the Spanish steamer *Hernan Cortes* at the port of New Orleans,

La., December 22, 1886, I have now the honor to communicate to you the substance of the opinion of the honorable the Secretary of the Treasury, to whom the question was referred by me on the 12th ultimo, and who has obtained a full report of the facts in the case from the collector of customs at New Orleans.

It appears therefrom that the *Hernan Cortes* belonged to the E. Pi. Co. Line, plying between Spain and the United States via West Indian ports; that on the voyage in question she was cleared from Barcelona November 7, last, proceeded to the United States via ports in Spain, Cuba, and Porto Rico, and that the cargo was all discharged at West Indian ports, from which she came in ballast to New Orleans. The collector states that there was no doubt from the declaration of the master that the voyage of the vessel was actually between Spain and the United States, and that the case was similar to those of the Spanish steam-ships *Buena Ventura* and *Alicia*, referred to in your note.

Section 14 of the act of June 26, 1884, as amended by section 11 of the act of June 19, 1886, imposes a duty of 6 cents per ton at each entry upon all vessels which shall be entered in the United States from any foreign port, except any foreign port or place in North America, Central America, the West Indian Islands, etc., from which ports the rates on vessels are less than 6 cents per ton. The question is, whether the vessel entered within the meaning of the statute from a foreign port other than one of the excepted ports, as mentioned above.

It has been hitherto held by the commissioner of navigation, whose decision in such cases is final, under the statute applicable, that when the voyage to the United States actually commenced at a European port, and one of the excepted ports is visited by the vessel, such visit constitutes merely an incident in the voyage from Europe, and that entry must be made as from a European port. Such decision was rendered on the case of the British steamship *Cella*, from Shields, England, via Halifax, which was charged with tonnage dues at the rate of 6 cents per ton.

Other similar decisions have been and are believed to be in accordance with the statute, and that any other course would afford opportunities for evasion of the law. The ruling is applicable not only to Spanish vessels, but to British and all other foreign vessels, and also to vessels from the United States. If the vessel, instead of being one of a line plying between Spain and the United States via certain foreign ports, had traded directly between a West Indian port and the United States the lower rate of tax only would have been levied.

There appears to be a misunderstanding on your part in regard to the grounds for the action taken in the case of the *Hernan Cortes* when you state that the reason of the collector at New Orleans for imposing on said steamer the tax of 6 cents per ton, rests upon the same erroneous interpretation that was the basis for exacting a similar tax from the steamships *San Francisco*, *Buenaventura*, and *Alicia*, and that the collector disregarded the conditions of the *modus vivendi* as agreed to between the United States and Spain, when insisting that Spanish vessels can enjoy the privilege of assimilation to the American flag only when they come direct from ports of the islands of Cuba and Porto Rico, and not at all when they come from other Spanish or foreign ports.

The stipulation upon the subject by the United States was simply that the foreign discriminating dues of tonnage and imports within the United States should be suspended and discontinued so far as respects Spanish vessels or produce, manufactures, on merchandise imported in

them into the United States from Spain or her possessions, or from any foreign country. A proclamation was issued in accordance with this, and since the date thereof no discrimination has been made in contravention of such agreement. Should such discrimination be made at any time, immediate measures will be taken by the Treasury Department, on information from you, to remedy the irregularity.

The conditions of the *modus vivendi* have, however, no bearing upon the present question, the action taken not depending in any respect upon the nationality of the vessel, but entirely upon the character of the voyage and of the entry of the vessel.

I avail, etc.,

T. F. BAYARD.

No. 635.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, March 3, 1887.

SIR: I have the honor to beg of your accustomed courtesy enlightenment touching a certain item found in the Spanish tariff of consular fees, which went into operation on the 1st of August, 1886.

Among the fees for visa of manifests, bills of lading, bills of health, and other consular acts pertaining to commerce and navigation, is the following:

ART. 26. Por el embarque ó desembarque de cada pasagero [en America], 2 pesetas.

I should esteem it a favor if you would kindly inform me what consular act or service is performed with regard to each passenger shipped or landed in the United States, whether it consists of the registry or certification of each individual passenger coming within its purview, and whether it applies only to passengers coming from or bound for a Spanish port, or to any and all passengers, whatever their destination, carried by a vessel whose papers require the visa of the Spanish consul.

Reserving further and fuller communication on the subject until the operation of the tax is clearly understood, I may, however, express my hope that it will not be found to be such a tax upon the shipment and landing of passengers in the United States as it properly pertains to the laws of the United States to regulate.

Accept, etc.,

T. F. BAYARD.

No. 636.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN IN WASHINGTON,
Washington, March 8, 1887. (Received March 10.)

The undersigned, envoy extraordinary and minister plenipotentiary of Her Majesty, has the honor to address the honorable Thomas F. Bayard, Secretary of State, in order to call his attention to the following facts.

According to trustworthy information furnished to him by the consul of Spain at Key West, the filibuster leaders Brigadier Ruiz, R. Ramirez, J. Garcia, Perico Torres, and others, are at the present time in the towns of Key West and Tampa (Fla.), publicly recruiting men to be embarked at Punta Gorda and destined for Cuba, there to again disturb the peace and tranquillity of the island.

The undersigned, in compliance with the instructions of his Government, brings these facts to the knowledge of the honorable Secretary of State, and begs him to be pleased to cause, within the limits of his proper action, the necessary orders to be given to the end that the federal authorities of the above-mentioned localities shall prevent the unlawful purposes of the persons mentioned.

The Government of Her Majesty the Queen Regent trust that the Government of the United States will hasten, as on other occasions it has hastened, under identical circumstances, to cause the provisions of the law to be observed by all those adventurers who have no other means of existence than gambling and the irregular contributions which they collect by means of fallacious promises from certain deceived laboring classes, and who take a delight in disturbing the pacific and progressive course of the amicable relations which sincerely exist between the two Governments.

The undersigned, etc.,

E. DE MURUAGA.

No. 637.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, March 10, 1887.

SIR: I had the honor to receive this morning the note which you were pleased to address to me under date of the 8th instant, urgently inviting attention to the reports which have reached you from the consul of Spain at Key West, that certain named Spanish malcontents are openly recruiting men at Tampa and Key West, for the purpose of a filibustering expedition against the island of Cuba.

As on previous occasions when similar statements have been made to this Department by the diplomatic representative of Spain, copy of your note has been promptly transmitted to the Secretary of the Treasury and the Attorney-General, with the request that the agents of those respective Departments in the localities named by you shall, in concert as far as may be practicable, take all proper precautions to frustrate any open violation of law, such as you seem to apprehend.

I have the honor, at the same time, to renew to you the suggestion heretofore made on like occasions, that the Spanish officials on the spot be instructed to make, or cause to be made, before the proper judicial authority, formal declaration of any facts of their knowledge which may inculpate the authors of such violations of law, and so set in motion the machinery necessary to the administration of justice.

Accept, etc.,

T. F. BAYARD.

No. 638.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, March 15, 1887.

SIR: I have the honor to say that I have received letters from the Department of Justice and the Treasury assuring me that their respective agents have been instructed to act in concert to prevent any violation of the neutrality laws, by alleged forces gathering at Key West and Tampa, hostile to the peace of Cuba.

Accept, etc.,

T. F. BAYARD.

No. 639.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

SPANISH LEGATION,
Washington, March 18, 1887. (Received March 19.)

The undersigned, envoy extraordinary and minister plenipotentiary of Spain, has the honor to inform Hon. Thomas F. Bayard, in reply to his note dated 3d instant, respecting the application of article 26 of the Spanish consular tariff, that the payment of the imposts referred to in the said article is exacted of the vessels for the passengers transported in them in the following cases:

For embarkation.

(1) On every Spanish vessel, whatever be her point of destination.
(2) On every foreign vessel destined for different ports, for the passengers carried in her to a Spanish port, excluding those carried to foreign ports.
(3) On every foreign vessel destined for a Spanish port.

For landing.

On every Spanish vessel *only* for the passengers carried on board.

By the enumeration of these cases the honorable the Secretary of State will see that the impost in question does not infringe upon the laws of the United States, and that the right of the American Government to regulate for itself the subject of the embarkation and the landing of passengers in the ports of the Union does not exclude the right of Her Majesty's Government to regulate it also, in the cases above mentioned, in regard to the foreign vessels, and among them the American, which are obliged to present in the Spanish consular offices not only the manifest for the proper visa of the cargo and the bill of health, but also the list of passengers carried in them for Spanish ports.

The undersigned, etc.

E. DE MURUAGA.

No. 640.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, March 28, 1887.

SIR: I have the honor to say that the Acting Secretary of the Treasury has sent to me a copy of a communication from the United States deputy collector at Tampa, Fla., expressing his opinion that any projected expedition from that quarter, to disturb the peace of Cuba, has failed, and assuring the Department that all available means will be taken to prevent such an expedition in the future.

Accept, etc.,

T. F. BAYARD.

No. 641.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, April 11, 1887.

SIR: I have the honor to invite your attention to a matter of detail in connection with the subject of the inconveniences of the existing passport regulations in the island of Cuba, which have heretofore been the occasion of correspondence between us.

A recent dispatch from the United States consul-general at Havana communicates to me a number of letters addressed to him by American citizens who, having entered the island without the production of a passport being required as a condition of landing, have suffered considerable delay and some expense through the exaction of a passport as a condition of being permitted to quit the island. This rule appears to be enforced even when the passenger is merely in transit and transferred from one vessel to another for the purpose of making the continuous voyage between ports of the United States and Mexico. In nearly every instance the writers state that they had made inquiry at the United States port of sailing, and had been there informed that no passport was needed by them upon landing in Cuba, and that a permit to depart could be obtained through the consul of the United States, at a trifling cost, said in several of the letters to be 30 cents. The consul-general, however, reports the charge to be 30 cents for visa of a passport, and $4.05 for the issuance of a permit of departure when the party is unprovided with a passport.

Mr. John S. Palmer, of Cleveland, Ohio, states that he was told by the Spanish consular agent at Tampa, Fla., that no passport "was required to visit Havana," and that he "would be subjected to no extra expense on that account at Havana for permit to return to the United States" beyond a fee of 30 cents. Mr. Palmer states that this information was corroborated by the Spanish consular agent at Key West, to whom he also applied.

Mr. Z. T. Mills, of Key West, writes that he was informed by the Spanish consul at Key West that he "would not want a passport to visit Havana," as it would only involve extra expense, and that all that was necessary was to call upon the United States consular representative there.

The consul-general illustrates the very general complaint on the part of the numerous travelers who are thus subjected to delay and expense by quoting comments, to the effect that the rule imposes "an export tax on Americans," and that it is a "mouse-trap" regulation, whereby they can get in, but not out again.

I may be permitted to observe that I fail to see the justice of imposing restrictions and burdens upon the departure of American citizens from the island which are not imposed upon their landing, and I should be glad to hear that a more uniform and conspicuously rational rule has been adopted. May I trust that, in the interest of the large and mutually beneficial intercourse between the United States and the Antilles, you will use your good endeavors toward a change in this regard?

At any rate, as it would seem that serious inconvenience has been occasioned by erroneous information, alleged to have been given by the consular agent of Spain at Tampa and Key West, and perhaps at other ports, I beg to suggest that those officers be instructed to give precise and adequate information to intending travelers and notification to the agents of the passenger lines of steamers of the rules governing the landing and departure of American citizens visiting the island of Cuba.

Accept, etc.,

T. F. BAYARD.

No. 642.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN,
Washington, April 15, 1887. (Received April 19.)

The undersigned has the honor to acknowledge the receipt of the honorable Secretary of State's note of the 11th instant, relative to passports in the island of Cuba, and hastens to inform him that he has communicated it to his Government, requesting, as already before receiving your note he had examined the matter, that with the urgency that the case required it should issue the necessary orders to avoid any molestation or inconvenience which could prejudice the frequent passage of travelers between the United States and the Antilles.

The undersigned can therefore anticipate that Her Majesty's Government, always desirous of removing the obstacles which tend to embarrass the relations existing between the citizens of the two countries, will adopt without delay measures conducing to this object, of which timely information shall be communicated to the honorable Secretary of State.

The undersigned, etc.

E. DE MURUAGA.

No. 643.

Mr. de Muruaga to Mr. Bayard.

LEGATION OF SPAIN,
Washington, June 10, 1887. (Received June 11.)

SIR: It appears from explanations forwarded to me by the captain-general of Cuba in reference to passports, that these are not required from foreigners during a month's travel. Beyond this time, according

to the alien law, they must provide themselves with a passport. This is more or less a measure of internal policy. In the first case they are considered under the law as transients, in the second as residents.

Against this I have already remonstrated in Madrid, but to avoid in the meantime all source of trouble, I deem it necessary to instruct all our consuls in the United States to furnish a visa to American citizens going to Cuba at a cost of $1.

Believe me, etc.,

E. DE MURUAGA.

No. 644.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN,
Washington, July 12, 1887. (Received July 12.)

The undersigned, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen Regent of Spain, has the honor to inform the honorable T. F. Bayard, Secretary of State of the United States, that the *modus vivendi* of October 27, 1886, having been extended until the 31st of December next, the undersigned, in obedience to the instructions of his Government, considers that the time has arrived for formalizing that agreement by rectifying it with the additions contained in his note of the 1st of February last past, and agreed to by the honorable Secretary of State in his reply of the 7th of that month.

The undersigned therefore proposes, if the Department of State has no objections, that Article I be worded as follows:

1. It is positively agreed that from this date an absolute equalization of tonnage dues and imposts shall at once be applied to the productions of or articles proceeding from the United States or any other foreign country when carried in vessels belonging to citizens of the United States, and under the American flag, to the islands of Cuba, Porto Rico, and the Philippines, and that no higher or other tonnage dues or imposts shall be levied upon said vessels and the goods carried in them, as aforesaid, than are paid by Spanish vessels and their cargoes under similar circumstances.

2. On the above conditions the President of the United States shall at once issue a proclamation declaring that discriminating tonnage dues and imposts in the United States are suspended and discontinued as regards Spanish vessels and produce, manufactures, or merchandise imported therein into the United States proceeding from Spain, from the aforesaid possessions, and from the Philippine Islands, and also from all other countries belonging to the Crown of Spain, or from any foreign country.

This protocol of an agreement is offered by the Government of Spain and accepted by that of the United States as a full and satisfactory notification of the facts above recited.

It would be well, in the opinion of the undersigned, for the agreement thus supplemented to be signed and sealed, in order that it may possess the necessary validity, and for its contents to be transmitted to the Treasury Department for the information of collectors of customs in the United States.

The undersigned, etc.,

E. DE MURUAGA.

No. 645.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, August 16, 1887.

SIR: I have had the honor to receive your note of the 12th ultimo, proposing that the *modus vivendi* of October 27 last, which has been extended until the 31st of December next, should be formally renewed, with the extension, however, of its provisions in terms to the Philippines and all other colonies of Spain, which I expressed the willingness of this Government to do in my note to you of the 7th of February last.

In examining the draught of a new agreement, submitted in your note of the 12th ultimo, I find that it will be necessary, in order to make all parts of it conform, to insert, after the word "Philippines," in the first paragraph, the phrase, "and also to all other countries belonging to the Crown of Spain." The first paragraph, which provides for the equal treatment of American vessels and their cargoes going *to* the ports of Spain, would then correspond with the provisions of the second paragraph, which relates to Spanish vessels coming to the United States "from Spain, from the aforesaid possessions (Cuba and Porto Rico) and from the Philippine Islands, and also from all other countries belonging to the Crown of Spain, or from any foreign country."

In respect to your suggestion that "in order that it may possess the necessary validity," the agreement thus enlarged should be signed and sealed, I have the honor to say, that while I am not aware of any objection to the sealing of the agreement, I am not informed that such a process would give to it any additional efficacy, at least so far as its effect under the laws of this Government is concerned.

The agreement being signed, it furnishes the "satisfactory evidence" in virtue of which the President's proclamation is issued, under and in pursuance of the laws of the United States, and by the terms of those laws is to remain in force so long as the condition of facts stated in the agreement and recited in the proclamation continues to exist.

Accept, etc.,

T. F. BAYARD.

No. 646.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

LEGATION OF SPAIN,
Washington, August 23, 1887. (Received August 29.)

The undersigned, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen Regent of Spain, has the honor to acknowledge the receipt of the note of the honorable Thomas F. Bayard, Secretary of State, bearing date of the 16th instant, and to inform him that he readily agrees to the addition of the words "and also in all other countries belonging to the Crown of Spain," which the Department of State proposes as an amplification of Article I of the *modus vivendi*.

With regard to the affixing of seals to the new instrument which is to be signed, the undersigned, without claiming that that formality invests it with any additional authority in the States of the Union, never-

theless thinks that, as this practice is universal in the foreign offices of Europe, and as its apparent object is to confirm the authenticity of the signatures of plenipotentiaries, its application in the present case can give rise to no objection on the part of either of the contracting parties.

The undersigned, etc.,

E. DE MURUAGA.

No. 647.

Mr. Bayard to Mr. de Muruaga.

DEPARTMENT OF STATE,
Washington, August 31, 1887.

SIR: I have the honor to acknowledge the receipt of your note of the 23d instant, accepting the slight modification proposed in my note of the 16th instant, of the draught of a renewed agreement contained in your note of the 12th July, establishing a *modus vivendi* for the commerce of the two countries; and I transmit a copy of your draught thus amended, in both languages, which, if it seems to be correct, you will no doubt kindly return at your convenience, suggesting some time when it will prove agreeable to sign the memorandum.

There seems to be no objection to the instrument being sealed in accordance with your wishes.

Accept, etc.,

T. F. BAYARD.

No. 648.

Mr. de Muruaga to Mr. Bayard.

[Translation.]

SPANISH LEGATION IN WASHINGTON,
September 1, 1887. (Received September 2.)

The undersigned, envoy extraordinary and minister plenipotentiary of Her Majesty the Queen Regent of Spain, has the honor to return to the Hon. T. F. Bayard, Secretary of State, as requested in his note of yesterday, the annexed memorandum* regulating the commercial relations between Spain and the United States.

The undersigned finds the text of the said document perfectly correct, and in harmony with the declarations made in the late notes exchanged for that purpose between Her Majesty's legation and the Department of State, and he leaves to the honorable Mr. Bayard's decision the naming the day and hour agreeable to him for proceeding to the signing and sealing of the same.

The undersigned, etc.,

E. DE MURUAGA.

Published, p. 1034, *infra*.

No. 649.

Memorandum of agreement between the United States of America and Spain for the reciprocal and complete suspension of all discriminating duties of tonnage or imposts in their respective ports. Done at Washington September 21, 1887.

Memorandum of agreement between the Government of the United States of America and the Government of Spain for the reciprocal and complete suspension of all discriminating duties of tonnage or imposts in the United States and in the islands of Cuba and Porto Rico and all other countries belonging to the Crown of Spain, upon vessels of the respective countries and their cargoes.

1. It is positively agreed that from this date an absolute equalization of tonnage dues and imposts shall at once be applied to the productions of or articles proceeding from the United States, or any other foreign country, when carried in vessels belonging to citizens of the United States, and under the American flag, to the islands of Cuba, Porto Rico, and the Philippines, and also to all other countries belonging to the Crown of Spain, and that no higher or other tonnage dues or imposts shall be levied upon said vessels and the goods carried in them, as aforesaid, than are paid by Spanish vessels and their cargoes under similar circumstances.

2. On the above conditions, the President of the United States shall at once issue a proclamation declaring that discriminating tonnage dues and imposts in the United States are suspended and discontinued as regards Spanish vessels and produce, manufactures, or merchadise imported into the United States, proceeding from Spain, from the aforesaid possessions, and from the Philippine Islands; and also from all other countries belonging to the Crown of Spain or from any foreign country.

This protocol of an agreement is offered by the Government of Spain and accepted by that of the United States as a full and satisfactory notification of the facts above recited.

3. The United States minister at Madrid will be authorized to negotiate with the minister for foreign affairs either by an agreement or treaty, so as to place the commercial relations between the United States and Spain on a permanent footing advantageous to both countries.

In witness whereof the undersigned, in behalf of the Governments of the United States and of Spain, respectively, have hereunto set their hands and seals.

Done at Washington this 21st day of September, in the year of our Lord 1887.

T. F. BAYARD. [SEAL.]
E. DE MURUAGA. [SEAL.]

No. 650.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas satisfactory proof has been given to me by the Government of Spain that no discriminating duties of tonnage or imposts are imposed or levied in the islands of Cuba, Porto Rico, and the Philippines,

and all other countries belonging to the Crown of Spain, upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country;

And whereas notification of such abolition of discriminating duties of tonnage and imposts as aforesaid has been given to me by a memorandum of agreement signed this day at the city of Washington between the Secretary of State of the United States and the envoy extraordinary and minister plenipotentiary of Her Majesty the Queen Regent of Spain accredited to the Government of the the United States of America;

Now, therefore, I, Grover Cleveland, President of the United States of America, by virtue of the authority vested in me by section 4228 of the Revised Statutes of the United States, do hereby declare and proclaim, that from and after the date of this, my proclamation, being also the date of the notification received as aforesaid, the foreign discriminating duties of tonnage and imposts within the United States are suspended and discontinued, so far as respects the vessels of Spain and the produce, manufactures, or merchandise imported in said vessels into the United States from the islands of Cuba and Porto Rico, the Philippines, and all other countries belonging to the Crown of Spain, or from any other foreign country; such suspension to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes shall be continued in the said islands of Cuba and Porto Rico, and the Philippines, and all other Spanish possessions, and no longer.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twenty-first day of September, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] GROVER CLEVELAND.

By the President:
T. F. BAYARD,
Secretary of State.

SWEDEN AND NORWAY.

No. 651.

Mr. Magee to Mr. Bayard.

No. 81.] LEGATION OF THE UNITED STATES,
Stockholm, January 20, 1887. (Received February 10.)

SIR: On yesterday at noon His Majesty, attended by members of the royal family, his personal suite, the ministers of state, and all the high functionaries of the Kingdom, in presence of the diplomatic corps and the members of the two chambers, opened the annual session of the Riksdagen.

The address delivered from the Throne was brief, its delivery not consuming more time than fifteen minutes.

The subjects touched upon are of a purely domestic nature, there being no foreign question that in any way menaces or disturbs the peace and integrity of the United Kingdoms.

The paramount question, into the discussion of which there has been interjected a good deal of bitterness, is the tariff question. While His Majesty refrained from alluding to the subject, he, as well as his ministry, are free traders, and any change in the present system would lead to the resignation of the ministry, and commit Sweden to the protective theory.

The duty proposed will especially affect breadstuffs and meats.

The country at present is suffering from a very great depression in all its commercial and manufacturing interests without much outlook for improvement.

The protectionists insist that this condition of things is the result of the present custom laws, and the arguments have made some headway the past year.

It is not improbable, therefore, that during the present session of the Riksdag, Sweden will make a radical change in her present tariff regulations.

I have, etc.. RUFUS MAGEE.

No. 652.

Mr. Magee to Mr. Bayard.

[Extract.]

No. 85.] LEGATION OF THE UNITED STATES,
Stockholm, May 24, 1887. (Received June 13.)

SIR: Since my return to this mission I have endeavored to ascertain such facts relative to the political condition as will acquaint you with the present status thereof.

This country is usually free from political agitation, the current of public affairs running smoothly, and the people contented with their political condition.

The past year, however, has been one of agitation, controversy, and excitement. The two distinctive questions discussed, and which have divided and excited public thought, are free trade or protection, and separation from Norway. The former of these is the paramount the latter the incident of the discussion.

Sweden for many years has been practically a free-trade country, but for the past four or five years there has been an extreme depression in all branches of mechanical industries, as well as of the agricultural interests. This condition has greatly tended to promote the theory of protection, and during the past two years a great many persons have joined the ranks of the protection party. Notably has this been the case among the landed proprietors, who usually have seats in one of the chambers of the Riksdag (parliament).

Upon the assembling of that body in January last, it was discovered that the protectionists had a majority in the lower chamber of 10, while the upper chamber had a majority of only 2 who favored the continuance of the long-adhered-to policy of the Kingdom in reference to trade with other nations.

Under the constitution of the kingdom all money bills, revenue laws, must be passed upon in joint convention of the two chambers and it was, therefore, clear that the protectionists were to be successful.

This success meant an impost duty upon all meats, breadstuffs, and other articles of necessity.

It also meant the turning out of the present Government and the formation of a new one in sympathy with the changed condition of things.

The Government, as well as His Majesty, are free-traders, and have strenuously opposed the innovation of the protectionists upon the ancient custom and laws of the kingdom.

In this emergency the King had resort to the unusual and extraordinary privilege of declaring the lower chamber adjourned, a privilege never before exercised by the present dynasty.

Writs for a new election were issued fixing the voting times during the two first weeks of the present month, whereupon the Government appealed to the country.

The result has been to return to the lower chamber a majority in favor of the Government of 46

The election being a special one the term of the members-elect is only until September of this year, when a new election will take place for the term of three years, commencing in January, 1888.

The discussion is, however, continued with great bitterness, and the battle is not yet to the Government beyond the possibility of defeat.

There is some evidence that the long-continued depression in trade is about to be released, and that better industrial prospects are in the future. Notably is this so in the iron industry and shipping interests, the two principal ones of Sweden. The agricultural outlook is not very promising.

I have, etc.,

RUFUS MAGEE.

No. 653.

Mr. Magee to Mr. Bayard.

No. 90.] LEGATION OF THE UNITED STATES,
Stockholm, July 14, 1887. (Received August 1.)

The special session of the Swedish Diet adjourned *sine die* on Saturday last, after a session lasting two months.

The only action taken that in any way affects American imports was the passage of a law imposing duties upon corn and cheese.

The latter article is not imported in any great quantity from America, and the duty, therefore, will not appreciably affect the trade.

It will be otherwise, however, with corn (or maize, as it is designated in the law). The duty fixed upon this article is 2 kroner per each 100 kilograms, or about 53 cents for every 220 pounds avoirdupois weight.

The importation of American corn formerly was quite large, it being used principally in the manufacture of brandvine, the national Swedish spirits, and almost universally drunk as a beverage by the people. For some time past attempts have been made in the Diet to tax corn, and otherwise restrict the manufacture of spirits, for the purpose of lessening the effect of the intemperate use thereof. Heretofore brandvine has been comparatively inexpensive, thus placing it within the reach of all classes, and one purpose of adding to the cost of manufacture was to secure a restrictive purchase of it by the poorer class of people. Whether this mode of enforcing temperance will be successful, time will determine.

The majority of the working classes in this country are not in condition to support any additional cost of living, and neither is it very probable that they will give up the consumption of their favorite drink because of its increased cost.

The action of the Riksdag was not an indication that any very marked change is to take place in the policy of impost laws of the Kingdom, but simply was the result of a temperance sentiment on the part of a few members, to the views of which the majority yielded.

The election of new members to the Riksdagen takes place in September. For the present, however, political matters are very quiet. The trade condition has not improved.

I have, etc.,

RUFUS MAGEE.

CORRESPONDENCE WITH THE LEGATION OF SWEDEN AND NORWAY AT WASHINGTON.

No. 654.

[Translation.]

Mr. de Reuterskiöld to Mr. Bayard.

LEGATION OF SWEDEN AND NORWAY,
Washington, March 8, 1886. (Received March 9.)

Mr. SECRETARY OF STATE: I have the honor again to ask your excellency's kind attention to the note*, preceded by a memorandum dated June 17, 1885, which, by order of my Government, I addressed to you on the 4th of October last, asking (on the basis of Article VIII of the treaty between the United Kingdoms of Sweden and Norway and the United States of America, concluded July 4, 1827) for a reduction of tonnage dues, according to section 14 of the shipping act approved June 26, 1884.

The Government of the King, which I informed, without delay, of the transmission of the memorandum of June 17, 1885, entertained the hope that this matter would be easily and speedily settled in a manner con-

*Printed For. Rels., 1885, pp. 789, 790.

sonant with both the spirit and with the clear and distinct wording of Article VIII of the existing treaty.

I should be grateful to your Excellency if you would have the kindness to communicate to me, with as little delay as possible, the reply of the United States Government to the application of my Government, and I avail myself, etc.

REUTERSKIÖLD.

No. 655.

Mr. Bayard to Mr. de Reuterskiöld.

DEPARTMENT OF STATE,
Washington, March 29, 1886.

SIR: Referring to your notes of the 17th June, 4th October, and 11th November last, as also to that of the 8th instant, I have the honor to inform you that the whole question of the claims of Sweden and Norway against the terms of the shipping act of the 26th June, 1884, by virtue of her special treaty provisions, has again received the careful attention which its importance merits.

The claim appears to be that by the eighth article of the treaty of 1827 the shipping of Sweden and Norway is entitled to the benefits of the above-mentioned act in common with other nations, but without submission to its geographical conditions and limitations as exacted from them.

It is not found that this claim of Sweden and Norway can be assented to by this Government any more under the fourth article of the treaty of 1827 than under the "most favored nation clause" of that treaty, simply on account of the phrase "every other navigation" in that article, or that it would be consistent to admit Sweden and Norway under that treaty to the benefits of the reduced tonage duty of the act of 26th June, 1884, without likewise exacting its qualifications and conditions.

The object of the treaty was doubtless to secure the shipping of each of the contracting parties from discriminations imposed by the other and not practiced against other powers. The act of 1884 admits all nations to its benefits, but these can only be enjoyed upon the terms on which they are offered, and it is expected that Sweden and Norway will accede to those terms in common with other nations. It is not found that the act of 1884 is in any way in conflict with the treaty of 1827, or that there is any occasion, even if there were the means, for not carrying out its terms as the deliberate expression of the law-making power of the United States.

Accept, etc., T. F. BAYARD.

No. 656.

Mr. de Reuterskiöld to Mr. Bayard.

[Translation.]

LEGATION OF SWEDEN AND NORWAY,
Washington, March 31, 1886. (Received April 1.)

Mr. SECRETARY OF STATE: I have this day had the honor to receive your excellency's note of the 29th instant, whereby you inform me that the United States Government declines to entertain the claim of the

King's Government, which was presented in my note of October 4, 1885, in behalf of the vessels of our countries, which, in the opinion of my Government, were, according to Article VIII of the treaty concluded July 4, 1827, beyond a doubt entitled to the enjoyment of the advantages granted to the vessels of other countries by section 14 of the shipping act approved June 26, 1884.

While reserving the transmission to your Excellency of such further communications as his Excellency, the minister of foreign affairs, may instruct me to address to you on this subject, I must protest, without further delay, in the name of the Royal Government, against the refusal of the United States Government to entertain the claim which the Royal Government thought it had a right to present, on the ground of an article of a treaty now in force, which, in the opinion of my Government, is in no way ambiguous, either in letter or spirit.

Be pleased to accept, etc.,

REUTERSKIÖLD.

No. 657.

Mr. de Reuterskiöld to Mr. Bayard.

[Translation.]

LEGATION OF SWEDEN AND NORWAY,
Washington, D. C., June 30, 1886. (Received July 1.)

Mr. SECRETARY OF STATE: Referring to my note of the 31st of March last, I have the honor to address to your Excellency a fresh communication upon the same subject, that is to say, touching the tonnage dues which at the present time weigh upon navigation between the United Kingdoms of Sweden and Norway and the United States.

His excellency the minister of foreign affairs at Stockholm has recently sent me instructions on the subject by a dispatch dated the 12th of this month, directing me at the same time to deliver a copy thereof to your excellency. I have, consequently, the honor to annex hereto a copy of that dispatch.

Your excellency will see by the line of argument developed in that document, and by the tenor of my instructions, that the Royal Government firmly maintains its position in demanding, in favor of the navigation between Sweden and Norway and the United States, the same advantages as are conceded by the Shipping Act of June 26, 1884, to that between the United States and other territories.

In conformity with the orders given to me, I now renew the demand upon the Government of the United States already set forth in my notes of the 4th October and 11th November of last year—that, in virtue of article 8 of the treaty of 1827, the navigation between the United Kingdoms of Sweden and Norway and the United States (whether by Swedish and Norwegian vessels or American vessels) be admitted to enjoy the benefits of the reduction which fixes the tonnage dues at 3 to 15 cents.

Convinced that the well-grounded demand of the Royal Government can be no longer gainsaid, and that it will please your excellency to set me in the way of informing my Government of the reply it confidently awaits, I hasten to embrace this opportunity to renew, etc.,

REUTERSKIÖLD.

[Inclosure.—Translation.]

Copy of note addressed by his excellency the minister of foreign affairs at Stockholm to the minister of Sweden and Norway in Washington, under date of June 12, 1886.

I have had the honor to receive, with your dispatch of March 31 last, a copy of the note which Mr. Bayard addressed to you under date of the 29th of the same month touching our claim to obtain for the navigation between the United Kingdoms and the United States the same advantages as those which have been granted by the shipping act of June 26, 1884, to the navigation between the United States and certain areas of territory. You have, at the same time, sent me a copy of the correspondence on the subject which was printed for the use of Congress.

The answer of Mr. Bayard is negative, but the terms in which it is couched lead me to believe that, notwithstanding the clearness with which you, in the notes you addressed to him under date of October 4 and November 11, 1885, set forth the views and the demands of the King's Government, our position has not been well comprehended.

In those notes you asked that the reduction of tonnage dues accorded by the act of June 26, 1884, to the vessels of any nation arriving in the United States from certain geographical points, shall be also granted to vessels arriving from Sweden and Norway. You did not speak of the nationality of such vessels, but only of their point of departure, your object being thereby to make it evident that it was not for the merchant-shipping of Sweden and Norway, as such, that we claimed the privilege in question, but for the vessels arriving in the United States from our ports, without distinction of nationality.

Nevertheless, Mr. Bayard, in the note above referred to, thus defined our claim:

"The claim appears to be that, by the eighth article of the treaty of 1827, the shipping of Sweden and Norway is entitled to the benefit of the above-mentioned act, in common with other nations, but without submission to its geographical conditions and limitations as exacted from them."

It is therefore evident that the scope of our claim has not been well understood, for if, instead of the words "the shipping of Sweden and Norway," there had been employed the words "the shipping arriving from Sweden and Norway"—which would have indicated the precise point in question—all the latter part of the paragraph which I have just cited would become absolutely incomprehensible.

Mr. Bayard's note can not, therefore, be considered as a reply to our demand, and it becomes necessary to invite anew the attention of the Government of the United States to the rights which accrue to us under the express stipulations of our treaties, and the more so as Mr. Bayard appears to assert, at the end of his note, the opinion that there is no conflict between the act of 1884 and our treaty of 1827. As this is precisely the point in dispute, I deem it useful to sum up our arguments afresh.

By the treaties of 1783 (article 2) and 1827 (article 17) the treatment of the most favored nation is reciprocally established between the United Kingdoms and the United States. It is stipulated in addition by the eighth article of the treaty of 1827, as follows:

"The two high contracting parties engage not to impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties, of any kind or denomination, which shall be higher or other than those which shall be imposed on every other navigation except that which they have reserved to themselves, respectively, by the sixth article of the present treaty."

I must here point out the importance of the words "the navigation between their respective territories." It is in no wise a question of the privileges of the mercantile marine of Sweden and Norway or the United States as such, but it concerns in the clearest possible manner the navigation from the ports of one of the parties to those of the other, which is expressly benefited on an equality with every other navigation. The significance of this stipulation is rendered still more clear by the fact that it was deemed necessary to declare, by a separate article, that article 8 should not be applicable to the navigation between the United Kingdoms and Finland, which is bound to the United Kingdoms by considerations of proximity and ancient relationship, and therefore enjoys an exceptional position. But no equivalent reservation was deemed necessary on the part of the United States, and it remains, consequently, established by the article in question, that vessels, whether Swedish or Norwegian, or American, arriving from our ports in those of the United States, have a right to the benefits of any reduction of tonnage or other dues which may be granted to vessels coming from any geographical point whatever.

I have begun by setting forth this argument, since it appears to me to define the question in a manner so clear and decisive that it seems to me that after having taken it into consideration the solid foundation of our claim can no longer be the occasion of a doubt. I could, therefore, content myself with the support given to us by the stipulations of article 8, but in order to better elucidate everything connected with this

matter, I deem it due to assert that the "most favored nation" clause seems to the Government of the King equally to justify a demand to participate in the reduction of the tonnage dues to 3 to 15 cents. It is true that this reduction applies to all vessels, without distinction or nationality, arriving from certain ports, but, since the Government of the United States maintains that no favor is accorded to the navigation of the countries where such ports are situated since other vessels than those of the country itself share therein, it does not take into account that this advantage constitutes for the commerce of the ports in question—and consequently for the nations to which they belong, a veritable favor, since the traders there residing have obtained the privilege of employing for their intercourse of importation or exportation with the United States vessels which, on arriving in the American ports, are better treated and have lesser charges to pay than the vessels made use of by their competitors in other countries. It seems to me difficult not to admit that this is a favor, and in so far as it has been granted gratuitously to any party in interest, our right to participate therein clearly flows from article 2 of the treaty of 1783. In placing ourselves upon this point of view, it is unnecessary to discuss whether the privilege created by the shipping act of 1884 in favor of certain ports is to be called national or geographical as Mr. Bayard maintains in his note of November 7, 1885, for even if it be agreed to style the advantage created for the navigation of these ports a geographical privilege, it remains certain that the advantage granted to their commerce is a national favor.

I do not find that the considerations I have herein set forth have been sufficiently discussed in the correspondence which you have sent me, and I invite you in consequence to renew the demand heretofore made upon the Government of the United States that, in virtue of the eighth article of the treaty of 1827, the vessels, whether Swedish or Norwegian or American, arriving in the United States from Sweden or Norway, be admitted to share in the reduction of tonnage dues to 3 to 15 cents.

I seems to me that a refusal can not rest on any other assumption than that the act of 1884 has made the stipulations of the treaty of 1827 without effect. There is no necessity for my insisting on the fact that such an assumption would be contrary to the principles of international law recognized by civilized nations, and I have too much confidence in the good faith of the Government of the United States to suppose that it proposes to maintain that the obligations of a contract as solemn as our treaty can be modified or annulled at will by one of the contracting parties alone.

Accept, sir, etc.,

ALB. EHRENSVÄRD.

No. 658.

Mr. de Reuterskiöld to Mr. Bayard.

[Translation.]

LEGATION OF SWEDEN AND NORWAY,
Washington, November 15, 1886. (Received November 16.)

Mr. SECRETARY OF STATE: I had the honor to transmit to your excellency, as an inclosure to my note of the 30th of June last, a copy of a dispatch from his excellency the minister of foreign affairs at Stockholm, bearing date of the 12th of that month, and stating the reasons which cause the Royal Government to maintain the position which it took in claiming a reduction of the tonnage duty to from 3 to 15 cents per ton on vessels belonging to the United Kingdoms of Sweden and Norway and entering the ports of the United States.

In the mean time a bill (Public, No. 85) entitled, "An act to abolish certain fees for official services to American vessels and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes;" has been passed by Congress, and the President of the United States, by approving the said bill, has made it a law.

The provisions of this new law have been brought by me to the knowledge of my Government.

The Royal Government, having examined the provisions of this law, has found that it is in several respects manifestly at variance with the

treaty now in force which was concluded between the United Kingdoms of Sweden and Norway and the United States July 4, 1827, inasmuch as, in certain cases, it favors American vessels above those of the United Kingdoms, this being in contravention of that clause of the above-mentioned treaty which places our vessels on "the same footing as national vessels."

I have consequently been instructed to protest, in the name of the King's Government, against these legal provisions, which are in violation of an existing treaty, and also to declare that the Royal Government can not regard the act of June 19, 1886, as modifying in the slightest degree the situation of the United Kingdoms in respect to the United States, as that situation is established by the force of a treaty.

The Royal Government has likewise found, by examining this new law, that the United States Government maintains its position on the tonnage question, against which position we also protest.

In the new law the United States Government goes still farther than it does in the shipping act of June 26th, 1884, the scope of that act having been enlarged and the question of the diminution or entire abolition of tonnage dues having assumed another character, viz, that of reciprocity. In this connection I am instructed to state that, as reciprocity did not form the basis of the facilities granted to certain countries and their vessels, my Government maintains its views with regard to the duties which should undoubtedly, in its opinion, be imposed upon navigation between Sweden and Norway and the United States.

I think it proper for me to add that the Royal Government confidently expects a speedy and full settlement of the questions stated in the present note and in those which I have had the honor to address to you on the same subject.

Be pleased, etc.,

REUTERSKIÖLD.

No. 659.

Mr. Bayard to Mr. de Reuterskiöld.

DEPARTMENT OF STATE,
Washington, December 20, 1886.

SIR: I had the honor, on the 3d of July last, to receive your note, dated the 30th of June preceding, in continuation of the previous correspondence touching the operation of section 14 of the shipping act of June 26, 1884, and the claim of Sweden and Norway thereunder.

The paper you were then pleased to inclose to me is a copy of an instruction addressed to you by the minister for foreign affairs of the United Kingdoms, under date of June 14, 1886, whereby you are invited "to renew the demand heretofore made upon the Government of the United States that, in virtue of the eighth article of the treaty of 1827, the vessels, whether Swedish or Norwegian, or American, arriving in the United States from Sweden or Norway, be admitted to share in the reduction of tonnage dues to 3 to 15 [cents?]."

Certain manifest contradictions involved in Mr. Ehrensvärd's presentation of this demand, and an apparent confusion which is consequently interwoven with his argument, made an examination thereof somewhat

difficult and embarrassing, especially in view of his intimation that, in the consideration I have heretofore bestowed upon the question at issue, the position of the King's Government, and its views and demands, have not been fully understood by me.

In the first place, Mr. Ehrensvärd's paper of June 14, 1886, confirms the impression created in my mind by the preceding correspondence, that he confounds "navigation" with "commerce," using the two words as full equivalents of each other, and seeks to attach to a treaty provision which deals solely with "navigation" the more comprehensive idea of an equality of national commerce.

It need hardly be argued that the terms "commerce" and "navigation" are not synonyms, nor are they employed indifferently. Commerce concerns all the transactions of property exchanged. Navigation relates solely to the means of carriage, without regard to the origin or ownership or regulations imposed upon the things carried. "Navigation" is commonly synonymous with "shipping" or "carrying flag."

While other articles of the treaty of 1827 relate to rights of commerce and navigation, severally or together, the eighth article relates solely to navigation—that is, to the marine flag. Its object is clear, that no carrying flag of any other nation shall have a favor granted to it which may not be equally claimed on the same terms for Sweden and Norway.

The fourteenth section of the shipping act of 1884 favors the flag of Sweden and Norway, within the defined geographical limits, equally with that of the United States or of any other nation. It creates an absolute and universal status of navigation, without any national discrimination whatever. Had it been framed to meet the special obligation created by article 8 of the treaty of 1827 it could not have more completely fulfilled its object. Mr. Ehrensvärd's dispatch admits that the treatment of the fourteenth section of the shipping act "applies to all vessels, without distinction of nationality, arriving from certain points;" but, doubtless perceiving that this admission of actual equality of navigation is fatal to the claim of Sweden and Norway for a more extended territorial treatment unless qualified, he proceeds to argue that the supposed discrimination is in reality commercial, and that it falls under the general favored-nation stipulation of the treaty of 1783, because it is commercial. If this expansion of the text be justifiable, article 8 of the treaty of 1827 has no application to the case now in view.

In the second place, I must confess my inability to reconcile the postulate assumed by Mr. Ehrensvärd in his dispatch with the conclusions he deduces therefrom in formulating the demand of Sweden and Norway.

In my note to you of 29th March last I said, speaking of this demand:

"The claim appears to be that, by the eighth article of the treaty of 1827, the shipping of Sweden and Norway is entitled to the benefit of the above-mentioned act, in common with other nations, but without submission to its geographical conditions and limitations as exacted from them."

To this statement Mr. Ehrensvärd appeals as showing that the scope of the Swedish and Norwegian claim "has not been well understood" by me; that the claim is not limited to "the shipping of Sweden and Norway," but includes, to use his own words, "the shipping" [under whatever flag] "arriving from Sweden and Norway." A few citations from Mr. Ehrensvärd's dispatch may be pardoned, even at the risk of prolixity. He says:

> It was not for the merchant shipping of Sweden and Norway, as such, that we claimed the privilege in question, but for the vessels arriving in the United States from our ports, without distinction of nationality.

Again, he points out the importance of the words "the navigation between their respective territories," found in article 8 of the treaty of 1827, and adds:

> It is in no wise a question of the privileges of the mercantile marine of Sweden and Norway or the United States, as such, but it concerns in the clearest possible manner the navigation from the ports of one of the parties to those of the other.

His excellency will kindly permit me to point out, in response, the importance of the words of article 8 immediately following those cited by him, *i. e.*, "in the vessels of either"—which he has apparently failed to consider and certainly has omitted to quote. The article, in its entirety can certainly afford the Swedish and Norwegian Government no ground having the slightest plausibility to claim the privilege of such extended "navigation" for any other national flag than their own. This conclusion would seem to have forced itself on his excellency's mind, for he closes his instruction by claiming the treatment of the shipping act only for the "vessels, whether Swedish or Norwegian or American, arriving in the United States from Sweden and Norway." And this is the formulation and distinct limitation of the demand presented by you in your note of 30th June, 1886, to which I have the honor to reply.

My response might here reasonably close with the foregoing statement of the demand of the Government of Sweden and Norway and my reply thereto founded upon the provisions of the treaty which were supposed to sustain it, for assuredly it is not my province or duty to pursue the construction of formulations as an answer to premises so palpably in conflict with themselves, and which, if attempted, would fail to be satisfactory.

But, having no desire to prolong discussion uselessly, I may be permitted to observe that only one of two forms of demand appears to be logically open to consideration.

(1) That the United States shall, without stipulated consideration or equivalent, exact, in their ports, from vessels of Sweden or Norway, coming from any ports of Sweden or Norway, no higher tonnage duties than the 3 to 15 cent rate established by the shipping act; and

(2) That the geographical zone defined by the shipping act shall be constructively enlarged so as to include all the ports of Sweden and Norway, so that the ships of any nation may engage in the "navigation" between those ports and the ports of the United States on the terms applied and confined to a particular commercial region by the shipping act.

It is clear that the first of these propositions (which, setting aside the argument employed by Mr. Ehrensvärd and its resultant confusion, would seem to be embraced in the demand formulated in your note of June 30, 1886) would not claim an expansion of the status described and sought to be created by the shipping act. It would, on the contrary, seek to establish a flag discrimination, and to inhibit all other flags from participation in a lucrative carrying trade—and this in one direction only, for there is not in the past or present propositions of the Swedish and Norwegian Government the slightest suggestion of reciprocity in such a differential arrangement. It would, moreover, establish such discrimination in favor of Swedish and Norwegian vessels only whilst denying it to vessels of the United States, for it is not competent to the United States and to Sweden and Norway to create by international arrangement a status for United States vessels in the ports of the United States different from that fixed by the municipal law of the United States.

This is the construction which is wholly at variance with the force and meaning of our treaties with Sweden and Norway. No construction that gives Swedish and Norwegian vessels a preference over our own is rational or admissible, or deducible from the terms of the treaties.

The second proposition is not before me, nor is it inferable from the past or present formulation of the Swedish and Norwegian demand.

I am constrained, with all courtesy, not to admit Mr. Ehrensvärd's suggestion that a refusal on the part of the United States to accede to the Swedish and Norwegian demand "can not rest on any other assumption than that the act of 1884 has made the stipulations of the treaty of 1827 without effect." The treaty stipulations of the United States are sacredly respected and fully executed. If it is desired to annul them in any case it will preferably be done by resort to denunciation rather than by statutory abrogation, although the latter method is recognized by the highest authorities as municipally competent and valid.

In conclusion, I must courteously but positively repeat the assurances heretofore given that the provisions of the shipping act of 1884, which extend to the navigation of all nations certain generous and equal privileges, do not, in the judgment of the Government of the United States, conflict with the eighth article of the treaty of 1827 with Sweden and Norway, and express my inability to assent to a demand which, if acquiesced in, would create, under cover of a supposed treaty engagement, a new system of discriminations of commerce, as well as of navigation, not authorized by the statute on which the claim professes to rest, and which would, moreover, give to that statute a construction and meaning devoid of reciprocity and contrary to the letter and equally to the spirit and intent of the treaties which have been cited and are now existing between Sweden and Norway and the United States, and wholly at variance with the policy of this and other nations of the present day.

Accept, etc.,

T. F. BAYARD.

No. 660.

Mr. Bayard to Mr. de Reuterskiöld.

DEPARTMENT OF STATE,
Washington, December 20, 1886.

SIR: I have had the honor to receive and consider the note you were pleased to address to me under date of 15th November ultimo, wherein, by direction of your Government, you make general protest against the provisions of the shipping act of June 26, 1884, and the later amendatory act of June 19, 1886, as being "manifestly at variance with the treaty now in force which was concluded between the United Kingdoms of Sweden and Norway and the United States July 4, 1827, inasmuch as in certain cases it favors American vessels above those of the United Kingdoms, this being in contravention of that clause of the above-mentioned treaty which places our vessels on the same footing as national vessels."

You do not, however, state the particulars wherein consists the alleged treatment of Swedish and Norwegian vessels on a different footing from those of the United States.

Having the most jealous regard for the stipulations of its treaties, the Government of the United States is no less concerned than the United Kingdoms can possibly be in seeing that no discriminating treatment of the respective merchant flags is permitted. I shall be glad, therefore, if, by pointing out the provisions in question, you will afford me an opportunity of making the necessary investigation and of applying the needful correction.

An examination of the statutes in question suggests to me that your Government may take exception to the provisions of section 12 of the act of June 26, 1884, which establishes an exemption from the payment of consular fees for official services rendered to vessels of the United States and to American seamen.

These consular services are of two classes: first, those dependent upon the nationality of the vessel, and which can only be performed by the consul of the vessel's country; and, secondly, those dependent upon the destination of the vessel, whatever be the flag under which she sails, and which are performed by the consul of the country to whose ports the vessel is bound.

In the present case, as the services of the first class can not be performed by the consuls of the United States for the vessels or seamen of Sweden and Norway, no differential treatment is possible, and the Government of the United Kingdoms can no more question the right of the United States so to tax its own vessels or relieve them from taxation at will than the Government of the United States could question the right of Sweden and Norway to treat Swedish and Norwegian vessels as they please with respect to such services performed by Swedish and Norwegian consuls.

But as to services of the second class performed by consuls of the United States for vessels of whatever flag which may be bound for ports in the United States, I am prepared to admit that any tax collected by a consul of the United States from a vessel of Sweden and Norway which is not collectable under the same circumstances from a vessel of the United States is in conflict with the letter and spirit of the Articles II and VIII of the treaty of 1827, because imposing a burden upon the navigation of one country from which the navigation of the other is *cæteris paribus*, exempt; of this class is the consular fee for the certification of a bill of health, and, possibly, other services.

I shall, therefore, await your articulated statement of the discriminations of this class, of which your Government complains.

Your note of November 15th further states that "the Royal Government has likewise found, by examining this new law, that the United States Government maintains its position on the tonnage question, against which position we also protest."

The Government of the United Kingdoms is quite correct in its inference that the Government of the United States maintains its position on the tonnage question. In a note addressed to you under even date with this, and in answer to your note of 30th June, 1886, I have considered the demand which your Government has deemed itself in a position to make for an equality of treatment of navigation. Your present note sets up no specific demand in this regard, but takes the form of a general, and consequently indefinite, protest. To this I reply, that the provisions of the United States shipping acts in respect of tonnage dues have the express sanction of the existing treaty stipulations between the two countries, and are in exact conformity with their engagements. I invite your attention to the provisions of Article II of

the treaty of 1827, which article your Government has apparently not deemed it necessary to invoke hitherto, in the course of the discussion. The first clause of that article, which defines the treatment of Swedish and Norwegian vessels in the ports of the United States, stipulates that such vessels, "from whatever place they may come, shall be treated on their entrance, during their stay, and at their departure upon the same footing as national vessels coming from the same place with respect to the duties of tonnage, light-house, pilotage, and port charges, as well as to the perquisites of public officers, and all other duties or charges of whatever kind or denomination, levied in the name or to the profit of the Government, the local authorities, or of any private establishment whatsoever." You will not fail to note that the equality of treatment herein prescribed is expressly conditioned on the respective vessels "coming from the same place;" and it is precisely this equality which is secured by the acts in question, for a Swedish or Norwegian vessel coming from any point in the defined area of geographical neighborhood to a point in the United States pays the same reduced charges as a vessel of the United States making the like voyage.

I am unable, therefore, to admit your protest in this regard as well founded.

Your note of November 15 further declares as follows:

> In the new law the United States Government goes still further than it does in the shipping act of June 26, 1884, the scope of that act having been enlarged and the question of the diminution or entire abolition of tonnage dues having assumed another character, viz, that of reciprocity. In this connection I am instructed to state that as reciprocity did not form the basis of the facilities granted to certain countries and their vessels, my Government maintains its views with regard to the duties which should undoubtedly, in its opinion, be imposed upon navigation between Sweden and Norway and the United States.

I have shown in previous correspondence that no facilities have been granted by the acts in question to "certain countries," and much less to the vessels thereof. A universal privilege of navigation has been created within a geographically-defined zone, proximate to our own territory, in which the merchant marine of Sweden and Norway equally shares without any equivalent from the Royal Government. A further privilege is granted conditional upon the reciprocal treatment of American vessels within that zone, amounting in the given case to the entire abolition of tonnage dues; but if that additional privilege be established the navigation of Sweden and Norway, coming from the same place, fully and freely shares it.

Section 12 of the shipping act, as amended June 19, 1884, directs the opening of negotiations with foreign countries generally, with a view to the mutual abolition of "all light-house dues, tonnage taxes or other equivalent tax or taxes on, and also all other fees for official services to the vessels of the respective nations employed in the trade between the ports of such foreign country and the ports of the United States.

Circumstances have delayed the initiation of the general negotiation thus authorized. I should be reluctant to construe the declaration of your present note as an announcement, in advance of the contemplated friendly proposal of the United States, that the Government of the United Kingdoms rejects any overtures founded on mutuality of treatment, and will demand every such equality while refusing equivalence. It is to be expected that other Governments will graciously accede to the proposed negotiation, and in that event the duty of the Government of Sweden and Norway and the United States is clearly defined by the

second article of the treaty of 1783 (which is expressly revived and confirmed by the seventeenth article of the treaty of 1827) as follows:

The King and the United States engage mutually not to grant hereafter any particular favor to other nations in respect to commerce and navigation which shall not immediately become common to the other party, who shall enjoy the same favor freely, if the concession was freely made, or on allowing the same compensation if the concession was conditional.

Accept, etc.

T. F. BAYARD.

No. 661.

Mr. de Reuterskiöld to Mr. Bayard.

[Translation.]

LEGATION OF SWEDEN AND NORWAY,
Washington, March 9, 1887. (Received March 10.)

Mr. SECRETARY OF STATE: Referring to my previous notes on the tonnage question, I have the honor to address a few further considerations on this subject to your excellency.

With a view to ascertaining (by documents forming part of the correspondence exchanged at the time of the conclusion of the treaty of July 4, 1827, between the United Kingdoms of Sweden and Norway and the United States) the spirit in which that treaty should be interpreted as regards the question now before us, his excellency Count Ehrensvärd ordered a search to be made among the archives of the royal ministry of foreign affairs at Stockholm. That search brought to light three documents, which I have been instructed to transmit to your excellency.

Immediately after the conclusion of the treaty in question a difference of opinion arose with regard to Article VIII. This led to an exchange of notes between Baron Stackelberg, chargé d'affaires of Sweden and Norway at Washington, and Mr. Clay, Secretary of State of the United States, and to another exchange of notes between Count de Wetterstedt, minister of foreign affairs at Stockholm, and Mr. Appleton, chargé d'affaires of the United States at that capital, the two latter gentlemen having been the signers of the treaty.

Your excellency will find herewith a copy of—

(1) A note addressed by Baron Stackelberg to Mr. Clay under date of April 3, 1828.

(2) A note from Mr. Clay to Baron Stackelberg, dated April 28, 1828.

(3) A note addressed by Count de Wetterstedt to Mr. Appleton under date September 10, 1828.

I think it unnecessary for me here to recapitulate the question which gave rise to the difference of opinion relative to the enforcement of Article VIII, and to a reclamation on the part of the United States Government.

That reclamation had reference to Norway alone. Tonnage duties in Sweden were uniform for all arrivals and for all distances, while in Norway there existed a classification with three schedules, differing according to the port of departure. A distinction was made between vessels which had sailed—

(1) From any place outside of Europe except the Mediterranean.

(2) From the Mediterranean; and

(3) From any European port. The tonnage duties levied upon vessels arriving from ports outside of Europe, or from those in the Mediterranean, were higher than those levied upon vessels arriving from European ports.

Against this state of things, which was unfavorable to American vessels coming from the United States, the Federal Government remonstrated, asking the privilege of the lowest duty for its vessels.

The Secretary of State replied, by his note of April 28, 1828, to the argument presented by the chargé d'affaires of Sweden and Norway at Washington in his note of April 3, 1828, which argument was similar in many respects to the interpretation now given by the United States Government to Article VIII.

The force and justice of Mr. Clay's argument seemed to the Government of the King to be of such a nature as to exclude any possibility of a rejoinder, and I can do no better now than to make use of Mr. Clay's own words in support of the present claim of my Government.

(Here follows a lengthy extract from Mr. Clay's note, beginning with the paragraph "The eighth article" and continuing to the end.)

The Government of the King did not even attempt, as I have already had the honor to remark, to refute these arguments of Mr. Clay, but yielded entirely to the opinion of the United States Government, and granted all that the latter asked for, as is shown by the note of September 10, 1828, which was addressed by Count de Wetterstedt to Mr. Appleton.

The Government of the King has thought that the sense of Article VIII can not be better elucidated than by original letters from the very persons who took part in the conclusion of the treaty to which that article belongs.

In concluding this note, I can find no form better adapted to our present solicitation than the one used by Mr. Clay at the close of his note of April 28, 1828, and I shall confine myself to saying that the Government of my august sovereign "hopes to obtain the concurrence of Mr. Bayard and the United States Government in the construction of the treaty which is now submitted."

Be pleased to accept, etc.,

REUTERSKIÖLD.

[Inclosure 1.]

Copy of a communication addressed by Baron Stackelberg, chargé d'affaires of the King, to Mr. Clay, Secretary of State of the United States, dated Washington, April 3, 1828.

The undersigned, chargé d'affaires of His Majesty the King of Sweden and Norway, having had the honor verbally to communicate with his excellency Mr. Clay, Secretary of State of the United States, in relation to the difference of opinion which has arisen concerning the proper application of the text of Article VIII of the treaty of commerce recently concluded between His Majesty the King of Sweden and Norway and the United States of America, has the honor, by order of his Government, to address the present note to his excellency the Secretary of State.

Article VIII of the treaty reads as follows:

"The two high contracting parties engage not to impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties, of any kind or denomination, which shall be higher or other than those which shall be imposed on every other navigation except that which they have reserved to themselves, respectively, by the sixth article of the present treaty."

Basing his action on this article, Mr. Appleton, chargé d'affaires of the United States of America near His Majesty the King, claims for American commerce between

the United States and Sweden and Norway the privilege of the lowest rate of tonnage duties, in case the latter are not uniform for all navigations, but are regulated according to localities and the length of the voyages; he excepts only trade* between Sweden and Norway.

Tonnage duties are uniform in Sweden for all arrivals of vessels, and for all distances; this is not, however, the case in Norway. The list of that country contains the following classification: (1) Vessels coming from all places outside of Europe, excepting the Mediterranean, pay per ton (commerce-læst) if they are laden, 1 specie 11 skillings, and if they are in ballast or are laden below one-fourth of their capacity, 66 skillings. (2) Vessels from the Mediterranean, in which category are comprised all ports that the vessel can not reach, and from which it can not come otherwise than by passing through the Strait of Gibraltar, pay, if they are laden, 105 skillings per ton, and if in ballast or laden below one-fourth of their capacity, 53 skillings. (3) Vessels coming from all European ports, not including those of No. 2, and excepting the ports of Sweden, when Swedish or Norwegian vessels go thither or return therefrom, pay, per ton, if laden, 53 skillings, and if in ballast or laden below one-fourth of their capacity, 26 skillings species. It thus appears that, if this privilege were to be allowed, American vessels would pay less than those of Norway, which certainly can not have been the intention of the negotiators when the article in question was inserted in the treaty, since the system of equality with the natives forms the general basis of the treaty, and is, at the same time, derived from the immutable rules of justice. It also seems that the sense and purpose of Article VIII of the treaty is to furnish a guaranty against any increase of tonnage duties to the detriment of the commerce concerned. The words on every other navigation have reference solely to another foreign navigation, and consequently the article in question made provision for the two following cases only: First, that a Swedish or Norwegian vessel going to America or returning therefrom should be subjected to the same tonnage duties as an American vessel going to Sweden or Norway and returning to the United States, and second, that no other foreign vessel, engaged in the same trade and sailing by the same route (exerçant la même navigation), should obtain more favorable tonnage duties either in Sweden and Norway or in the United States. The undersigned believes that every necessary guaranty is shown by the foregoing statement to exist, in point of fact, for American commerce, without the necessity of claiming any exclusive advantage on the ground of Article VIII, even at the expense of Norwegian citizens, under a forced interpretation of the sense of that article; he therefore trusts that his excellency the Secretary of State will think proper to consider Article VIII of the treaty in the sense in which the undersigned has had the honor to present it.

The undersigned has the honor, etc.

STACKELBERG.

[Inclosure 2.]

Mr. Clay to Baron Stackelberg, April 28, 1828.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of the Baron de Stackelberg, under date of the 3d instant, in relation to the construction of the eighth article of the treaty of commerce lately concluded between His Majesty the King of Sweden and Norway and the United States, respecting which a difference of opinion appears to have arisen at Stockholm between the Swedish Government and Mr. Appleton, chargé d'affaires of the United States. The President has given attentive consideration, the result of which the undersigned is now charged to communicate to Baron Stackelberg.

It seems that a different principle regulates the tonnage duty imposed in the ports of Norway from that which prevails in those of Sweden. According to that of the former it is not an uniform rate, applicable to the navigation of all countries, but is graduated by the distances of commercial States from Norway, those paying most which are most remote. This is a peculiar mode of levying the duty, to which the practice of no other country is known to conform. It is worthy of consideration, whether, if any difference at all ought to be made in the rate of duty, a rule directly the reverse of that of Norway would not be more expedient and equitable. States situated remotely from each other labor under a great disadvantage in their commercial intercourse, from the space which separates them. It increases the charges on the objects of their commercial exchanges, and consequently lessens the mutual consumption of their respective commodities. Ought this disadvantage to be augmented

* The original has "le commerce interlope;" this term is properly used of illicit trade, which sense does not seem admissible here.

by an increase of tonnage or any other duty? Long voyages are favorable to the acquisition of skill in mariners, an important object with maritime powers. By taxing higher either the vessel or the cargo employed in those voyages they are discouraged. But these considerations belong exclusively to the wisdom of Norway; the United States are only concerned in the just interpretation and fair execution of the existing treaty.

The eighth article stipulated that the two high contracting parties shall not impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties of any kind or denomination which shall be higher or other than those which shall be imposed on every other navigation, except that which they have reserved to themselves, respectively, by the sixth article of the treaty. The reservation in that article is of the coastwise navigation, and that between the ports of Sweden and Norway, and, consequently, does not affect the question under consideration.

It is difficult to conceive any language more explicit than that which is employed in the eighth article. It expressly forbids either party from imposing on the vessels of the other any tonnage or other duties of any kind or denomination higher or other than those which shall be imposed on every other navigation, with the exception which has been stated. This language excludes altogether the office of interpretation, which can not make the stipulation clearer than the words plainly import. It leaves the parties but one inquiry to make, which is into the state of their respective laws imposing tonnage or other duties. According to the laws of the United States, of which the treaty now forms one, a Swedish or Norwegian vessel, whether coming from the Mediterranean, from the ports of any parts of Europe, or from those of any other portion of the globe, with the exception contained in the sixth article is liable to pay no tonnage or other duties, higher or other than those which an American vessel, or any foreign vessel, coming from the same places is chargeable with. But according to the laws of Norway, as stated by Baron Stackelberg, American vessels clearing from the United States for the ports of Norway are liable on entry to pay, if loaded, one species eleven schellings per ton, whilst vessels entering the ports of Norway from all parts of Europe except the Mediterranean are charged only with fifty-three schellings per ton if loaded. In other words, American vessels are bound to pay in the ports of Norway both other and higher duties than the vessels entering the same ports from all parts of Europe. This condition of the laws of Sweden would seem to require that they should be altered so as to place the navigation of the United States on the footing which the treaty contemplated.

Baron Stackelberg argues that the object of the treaty was merely to place the vessels of the United States and those of Sweden and Norway, reciprocally, in their respective ports, on the same equal footing in regard to duties, and that this object is accomplished by the graduated tariff of Norway, since no higher or other duties are exacted from an American vessel than from a Norwegian vessel, when both vessels enter from the same place. That is the object of the second article of the treaty, and Baron Stackelberg would be right if there were no other articles in it. But the eighth article of the treaty was inserted for another and distinct purpose, which is to restrain either party from demanding higher or other tonnage duties from the vessels of the other than those which should be imposed on every other navigation.

It is said that the view now presented of the eighth article would have the effect of compelling a Norwegian vessel to pay a higher duty than an American vessel. This effect would not result from the treaty, but from the law of Norway; and the obvious remedy is a modification of the law so as to adapt it to the provisions of the treaty. The laws of the United States, if they were to remain unaltered, would, also, create a different rule for the vessels of Norway from that which is applicable to the vessels of the United States. But the United States, always faithful to their national engagements, never fail to accommodate their legislation to the obligations which those engagements import. The Government of the United States does not desire that American vessels should pay, in the ports of Norway, less tonnage duties than Norwegian vessels, but it does expect, and thinks that it has a right to insist, that the vessels of the United States shall not pay, in those ports, higher or other duties than the vessels of Norway or any other navigation, with the exception contained in the sixth article.

If it were necessary, the view now taken of the eighth article of the treaty might be forfeited by considerations drawn from other parts of the same instrument. It is stipulated, for example, in the ninth article, that no duties of any kind or denomination shall be levied upon the products of the soil or the industry of the respective countries than such as are levied upon similar products of any other country. The object of this stipulation was to secure in the consumption of the respective countries an equality in the competition. But if a vessel laden with the products of the United States is burdened on her entry into the ports of Norway with higher duties than a vessel laden with similar products and entering the same ports from any part of Europe, that equality is as much disturbed in effect as if the unequal imposition were directly upon the cargo instead of the vehicle which transports it.

The undersigned hopes to obtain the concurrence of Baron Stackelberg and his Government in the construction of the treaty which is now submitted, and, in the mean time, requests him to accept assurances of the high consideration which the undersigned entertains for him.

H. CLAY.

DEPARTMENT OF STATE,
Washington, 28th April, 1828.

[Inclosure 3.]

Copy of a communication addressed by the minister of foreign affairs to Mr. Appleton under date of Stockholm, September 10, 1828.

I communicated, without delay, to the competent Norwegian authorities, the communication addressed by you to me, sir, under date of the 7th of July last, and I now hasten to inform you that, in obedience to the King's command, the custom-houses in Norway have been instructed, by a circular dated August 9, to refund to United States vessels, when they come directly from said States, or sail thither directly from Norway, the difference between the amount of tonnage duties computed according to schedule L^{a}. A. of the law of August 7, 1827, and that established by schedule L^{a}. C.

In accordance with this principle, the custom-house at Bergen has been instructed to refund to the firm of Herman D. Janson & Son, of that city, the agents of the American vessel *Magoon*, the amount of tonnage duties paid in April last, for the said vessel, in excess of what is required by the aforementioned schedule L^{a}. C.

CT. DE WETTERSTEDT.

SWITZERLAND.

No. 662.

Mr. Winchester to Mr. Bayard.

No. 89.] LEGATION OF THE UNITED STATES,
Berne, November 30, 1886. (Received December 13.)

SIR: The police authority of many cantons, notably that of Basle, require that citizens of the United States, residing or established there, should renew their passports every two years. The consuls to whom the applications are made for renewals have not felt authorized to demur or advise the applicant to decline complying with the police order, doubting the propriety or even the right to do either, under their instructions relating to passports, when read in the light of the provisions of the treaty between Switzerland and the United States, covering the rights and obligations of the citizens of the one country domiciled in the other. Therefore the applications for renewals of passports at the expiration of two years, in every instance probably induced by police notice that it was necessary, have been forwarded to the legation, without any protest from the consul or the applicant, and under these circumstances the legation could do nothing but issue a new passport, whenever the party was found to be entitled to one. But at a recent social gathering in my house of our consuls in Switzerland the question was discussed. Much diversity of opinion existed, and a unanimous desire expressed that some uniform and established understanding should be reached. To this end I desire to submit the matter to the Department of State. It is true the question was referred to the Department in 1878, but the instruction then given was not sufficiently definite to justify my then predecessor to advise the consuls as to any specific course to pursue or in any respect modify or better the situation.

It is well to understand that all foreigners who desire to remain in one locality in Switzerland any length of time must produce and deposit with the police of the place of residence some properly authenticated evidence of citizenship. This is exacted of Swiss citizens going from one canton or commune to another, and it is a local registration which is closely watched and rigidly enforced.

The treaty of 1850, Article IV, provides:

> In order to establish their character as citizens of the United States of America * * * persons shall be bearers of passports, or of other papers in due form, certifying their nationality, as well as that of their family, furnished or authenticated by a diplomatic or consular agent.

The practice, as the archives show, has been and continues to be, to resort exclusively to the one evidence of citizenship specifically named, to wit, a passport, and no attempt appears to have been made to utilize the right guaranteed under the alternative of "or of other papers, etc.," embracing, it is presumed, certificates of naturalization, which certainly "certify nationality" in as solemn and authoritative a manner as a passport, neither being conclusive, but merely *prima facie* evidence. Pass-

ports being by precedent the acknowledged evidence of citizenship received by the police authority of Switzerland from citizens of the United States established here, and as before stated the obligation of satisfactorily proving citizenship being imposed impartially upon all foreigners, even including their own people, it remains to inquire whether the police authority can place any restriction on the period for which the passport shall be available for the purpose indicated, or should they be required to recognize its validity for that purpose for an indefinite period. The contention of the police authority has not been without support from United States agents in Switzerland, and in all probability found its origin in some official utterance from that quarter. In 1876, the United States consul at Basle announced that the law required the passports of all United States citizens residing there to be renewed every two years, and requested the police to see that it was done. The legation held the action of the consul to be unsustained by the law, and subsequently, in 1878, referred the matter to the Department of State, and by dispatch No. 70, December 1878, was instructed that by articles 1 and 5 of the treaty of 1850, citizens of the United States had the right to "sojourn temporarily, domiciliate or establish themselves in the cantons of the Swiss Confederation," and that the only condition attached to the reciprocal privileges named in the two said articles is that they shall obey the laws, regulations, and usages of the country in which they are thus residing, and that the object of the stipulations is to secure for United States citizens similar privileges as are accorded to Swiss citizens in the United States. The dispatch then closes with the declaration that the regulation that a visa will not be attached to any passport after two years from its date concerns only the United States Government for its own convenience, and is a subject in regard to which the authorities of Switzerland have nothing to say. Under this instruction the legation held that it was neither proper for the legation nor any consular officer to decide, in advance of action on the part of the Swiss authorities, what consideration should be shown by the latter to a passport over two years old, except in reply to its genuineness. With all respect to the Department, I beg to submit that its instruction did not reach the gravamen of the question—the duty of a diplomatic or consular agent, when a United States citizen appears before him, coerced by a notice from the police, with a passport that is over two years old, and desires to know if he can compel the police to accept it as proper evidence of his citizenship.

It leaves the question, as it were, in a "pocket." The issue can not well be made with the Swiss authority, for between him stands the agent of the United States, embarrassed, if not precluded, by the fact that, if he advises the issue to be made, he practically advises the holder of the passport that it is still in full force and effect, and disregards his instruction that it "is good for two years from its date and no longer." If he conceives it to be his duty to advise the person that his passport, in contemplation of law, no longer has any existence, and must be renewed, then the police authority considers itself sustained. It is from this dilemma the consular officer desires to be relieved. Whenever a United States citizen residing here, summoned by a policeman, appears at the consulate or legation to make inquiry if his passport, which has long since passed the two years' limit, retains its vitality for evidencing nationality and citizenship required for purposes of residence here, and, it may be, complains that to be subjected to a biennial tax of $5 is a hardship, and one not imposed on citizens of other countries, the United States diplomatic or consular agent on the one hand finds an official

statement from the Department that the question of the limit placed on a passport is a matter that merely exists and applies as between the holder of the passport and the Government that issued it, and of which no other person can rightfully take notice, and, on the other hand, as the agent of the Government that issued the passport and his sworn duty to see that its laws and regulations, so far as entrusted to him, are in good faith complied with, he is confronted with the emphatic instruction that "a passport is good for two years from its date, and no longer," and then, as to indicate the duty of the agent, it is said "a new passport may, however, be issued in its place by the proper authority, as hereinbefore provided, if desired by the holder." The diplomatic or consular agent, reading this, very naturally feels estopped from giving an official sanction to the claim that it still survives for the paramount purpose of attesting the citizenship of the holder, if he does not feel constrained to go further and inform his fellow-citizen that his passport is no longer available for any purpose, and he should apply for a new one. In fact, does not the diplomatic and consular instructions by implication, if not *totidem verbis*, not only prohibit a visa being attached to a passport after two years from its issue, but also carry with it the correlative duty to warn the holder that it has expired by virtue of law, and should be renewed? If this be true, how is it possible to insist that it can, under any conditions, subserve the very highest function with which it is clothed? The opinion of the Department contained in the dispatch alluded to of December, 1878, asserting that perfect reciprocal privileges were sought to be established by the treaty, must be taken in connection with the clause in Article I, which limits the reciprocity to a point where it "shall not conflict with the constitutional or legal provisions, as well Federal as State and cantonal, of the contracting parties." The United States and the several States recognize every Sweitzer who goes there, so long as he remains, as practically a citizen. He goes in and out everywhere unchallenged. But under the cantonal and communal laws of Switzerland it is different. Every foreigner, even to enjoy a *permis de séjour*, must deposit properly authenticated evidence of his citizenship, or he is invited to proceed on his way. Article IV contemplates this contingency, and prescribes in what form this evidence shall be furnished. If it rested here there would be no difficulty, but a regulation as binding on the agent as the treaty provision follows, and forbids him to give official indorsement to a passport after two years. The order is positive and makes no exception, but declares substantially that after two years it is no longer *in esse*. It has lost its character and value as a passport; it has run the period of existence accorded to it, and is as valueless and lifeless as any other document given for a specific period when that period has passed. The Government has chosen a certain form for attesting the nationality of its citizen which on its face declares him to be a citizen and invokes in his behalf all lawful aid and protection. It then instructs its agents that its sign manual, as it were, is good for only two years. Can its agent claim that it is good beyond that period for any purpose? And under Article IV of the treaty, is it not the right of the Swiss police authority to demand that a United States citizen residing here shall produce and deposit such evidence of his citizenship as will command the recognition of the Government that issued it, and not one which is denounced by that Government as lapsed and no longer good? This position would not only possess the virtue of consistency, but it would afford an opportunity of a biennial inspection of passports, and discovering those fraudulently obtained or improperly held. The large

majority of passports held by United States citizens established abroad are nearer a score than two years old, declaring the citizenship and asking the protection of persons who have forfeited all right to enjoy this high privilege.

The two years' limitation must have had some substantial purpose in view. It must mean a renewal every two years or its absolute extinguishment.

I am, etc.,

BOYD WINCHESTER.

No. 663.

Mr. Winchester to Mr. Bayard.

No. 97.] LEGATION OF THE UNITED STATES,
Berne, February 4, 1887. (Received February 18.)

SIR: In my dispatch No. 62, 8th of June, 1886, the Department was advised that the officers of the *état civil* in Switzerland declined to accept the circular prepared and issued by this legation, by and with the advice and consent of the Department, concerning marriages of citizens of the United States in Switzerland as satisfactorily meeting the requirements of the Swiss law of December, 1874, concerning the social state, in that it fails to declare the publication of the bans, as required under the Swiss law, is not demanded by the laws of the country of origin (citizenship) of the parties. The object of the circular was to explain the impossibility of there being a literal compliance with that provision of the law concerning the publication of the bans, owing to the status of the question of marriage in the United States, and to persuade the officers of the *état civil* that such literal and technical compliance as to American citizens was not necessary to insure the substantial intent and purpose of the law, the unquestioned recognition and validity of the solemnization, if otherwise according to the law of the country. The whole difficulty resulted from the confusion of conflicting circulars upon the question issued by this legation. Mr. Fish cited section 4082, Revised Statutes of the United States, as determining the conditions of marriage of all citizens of the United States in foreign countries, and gave the law of the District of Columbia fixing matrimonial capacity. Mr. Cramer confined his circular to the simple statement "that a previous publication in the United States or any State or Territory thereof of a proposed marriage is not required by the laws thereof," and "that a marriage performed in accordance with the Swiss federal law of 1874, *if performed in the presence of a consular officer of the United States*, will be valid to all intent," etc. Having serious doubt as to the correctness of the view taken of the question by Mr. Fish or Mr. Cramer in their respective circulars, even before the receipt of instructions from the Department, I had made material modification of the statements I found to be in use by the legation, and referred the matter to the better judgment of the Department, and a form of circular was agreed upon which, it was thought, would subserve every purpose. It failed to do so, as stated in my dispatch of June, 1886. Not feeling justified to make any additional statement, the consuls were instructed that in every case where the *état civil* exacted the declaration that the publication of the bans was not necessary under the law of the place of citizenship, this statement should be made only after communicating with the proper

officer of the state whereof the parties claimed citizenship; and being thus officially advised of the law, I was not entirely satisfied on the point of a consular officer certifying to the law of a given state, even under the conditions above named, and this doubt was largely due to general views of the main question contained in previous dispatches from the Department. Therefore my dispatch of June, 1886, desired the decision of the Department as to the right or the propriety of a consul giving the certificate indicated. To this no answer has been received, and the consuls continue to pursue the course named. Thinking that an appeal to the high federal council might secure a solution of the trouble, on the 18th of June, 1886, a note was addressed to that body, setting forth fully the case and respectfully urging such modification of the law as might be found practicable. To this note an answer has been received of date February 1, 1887. A copy of the circular issued by the legation and heretofore approved by the Department is inclosed.

The federal council indicates a willingness to instruct the cantonal officers to grant the exemptions desired from the provision as to publication of bans, when assured by the Department of State as to the exact scope and extent of section 4082, Revised Statutes, and that the publication of the bans is not required except in a few States, and that the failure to publish the bans by citizens of said States, married outside of said States or in foreign countries, would not invalidate the solemnization when complying with the law of the place of celebration. It is earnestly hoped the Department may see its way to satisfy the request of the federal council and put at rest this vexed question. In dispatch No. 23, November 14, 1885, the Department indicated Pennsylvania and Connecticut as requiring previous publication of bans. The secretary of the former State has advised this legation that it is not necessary.

I am, etc.,

BOYD WINCHESTER.

[Inclosure in No. 97.]

Circular from the legation of the United States of America at Berne concerning marriages of citizens of the United States in Switzerland.

LEGATION OF THE UNITED STATES OF AMERICA,
Berne, Switzerland, ——— ——, 188–.

To ——— ———:

Applications are frequently made to this legation by the cantonal or communal authorities, as well as by private individuals, for certificates as to the validity of marriages of citizens of the United States in Switzerland, and these applications are generally coupled with a request that the legation should certify that the marriage is valid according to the laws of the United States, and that it will be recognized as valid by the laws of the State or Territory from which such citizen comes.

It is not within the province of this legation either to certify officially as to the laws of the different jurisdictions in the United States, or to decide judicially whether any particular marriage is valid or not. The duty of this legation is confined to giving advice.

It is enacted by a statute of the United States that "marriages in presence of any consular officer of the United States, in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States," as, under the Constitution of the United States, the States have exclusive power of determining the conditions of marriage and divorce as to persons domiciled within their borders. This statute only covers marriages by persons domiciled in the District of Columbia or in the Territories. The general rule of law in the United States, as well as in European countries, is that a marriage solemnized in a foreign country according to the law of that country is valid. This is the rule as

to the ceremony. Matrimonial capacity is generally determined by the law of the place of domicile of the party in question. From what has been said it appears that a marriage solemnized under and in accordance with the Swiss federal law, *concernant l'état-civil, la tenue des registres qui s'y rapportent et le mariage*, of December 24, 1874, would generally be valid to all intents and purposes in the United States. By way, however, of precaution, it would be well to have a consular officer of the United States present at the ceremony.

This legation can not undertake to procure certificates as to the laws of the different States and Territories. Persons desiring such certificates should apply to the proper officials of such States or Territories, either directly, or, in the case of Swiss citizens, through the officials of their own country.

BOYD WINCHESTER,
Minister Resident and Consul-General of the United States of America near the Swiss Confederation.

No. 664.

Mr. Bayard to Mr. Winchester.

No. 78.] DEPARTMENT OF STATE,
Washington, March 1, 1887.

SIR: Your dispatch No. 97, of the 4th ultimo, in regard to the marriage of American citizens in Switzerland, has been received.

The questions you ask are answered by the Department circular of the 8th ultimo, as to marriage certificates by consuls. The obstacles which the rules of the Department may put in the way of marriages by American citizens in Switzerland may be regretted; but immeasurably more disastrous would it be to countenance the issuing of certificates which might lead to the solemnization of marriages by Swiss officials which might afterwards be declared invalid by the court having jurisdiction.

I am, etc.,

T. F. BAYARD.

No. 665.

Mr. Winchester to Mr. Bayard.

No. 105.] LEGATION OF THE UNITED STATES,
Berne, March 11, 1887. (Received March 22.)

SIR: The majority of applications to this legation for passports, especially during this period of the year, are made by parties holding passports that have been issued more than two years, and they are given to understand by the local authorities where they reside in Switzerland that they must obtain a renewal of their passports, which simply means a new passport, involving an outlay of 25 francs to the Government and the consular charge for making out the application, in order to continue in the enjoyment of their *permis de séjour*. This question was submitted fully to the Department in my No. 89, of November 30, 1886, how the practice originated, and the whole bearing of the matter as at present enforced. There has been a unanimous and urgent expression on the part of all our consular officers in Switzerland to have an expression from the Department for their guidance in such cases, and I feel constrained to repeat the request, which will be found distinctly and circumstantially submitted in my No. 89, November 30, 1886.

I am, etc.,

BOYD WINCHESTER.

No. 666.

Mr. Bayard to Mr. Winchester.

No. 80.] DEPARTMENT OF STATE,
Washington, March 28, 1887.

SIR: I have received your No. 89, of the 30th of November last, and your No. 105, of the 11th instant, both requesting instructions on the question whether citizens of the United States residing in Switzerland may rightfully be required by the local authorities to renew their passports two years after the date of issue as a condition of the continuance of their *permis de séjour*, such passports being, under the regulations of this Government, invalid after that period. Every foreigner, as you state, in order to enjoy the privilege of sojourn for a specified period in Switzerland must, according to Swiss law, deposit with the cantonal authorities authenticated evidence of his citizenship in the form of a passport visaed by a diplomatic or consular officer of his Government. The validity of this regulation is unquestionable. Every state has, under international law, the right to require of persons entering or residing in its territory some evidence of their personal identity and nationality, and the usual evidence of such nationality is a passport.

There is nothing in the conventional engagements between the United States and Switzerland that is inconsistent with the right of the Swiss Government to require citizens of the United States entering or intending to reside in Switzerland to deposit with the local authorities a duly authenticated passport. In Article I of the treaty concluded November 25, 1850, it is provided that—

> The citizens of the United States of America and the citizens of Switzerland shall be admitted and treated upon a footing of reciprocal equality in the two countries where such admission and treatment shall not conflict with the constitutional provisions, as well federal as state and cantonal, of the contracting parties. The citizens of the United States and the citizens of Switzerland, as well as the members of their families, subject to the constitutional and legal provisions aforesaid, and yielding obedience to the laws, regulations, and usages of the country wherein they reside, shall be at liberty to come, go, sojourn temporarily, domiciliate or establish themselves permanently, the former in the cantons of the Swiss Confederation, the Swiss in the States of the American Union, to acquire, possess, and alienate therein property * * * to manage their affairs, etc.

Article IV of the same treaty provided as follows:

> In order to establish their character as citizens of the United States of America, or as citizens of Switzerland, persons belonging to the two contracting countries shall be bearers of passports, or of other papers in due form, certifying their nationality, as well as that of the members of their family, furnished or authenticated by a diplomatic or consular agent of their nation, residing in the one of the two countries which they wish to inhabit.

By the first of these articles the right of residence and property is recognized and confirmed, and by the second the proper evidence of claim to such rights is indicated and agreed upon.

It hardly seems necessary to say that the provision in Article I of the treaty, that "the citizens of the United States and the citizens of Switzerland shall be admitted and treated upon a footing of reciprocal equality in the two countries," is not to be construed so as to prevent either the United States or Switzerland from adopting such reasonable police regulations as circumstances may require, even if there were no express declaration in the article that such reciprocal equality of treatment "shall not conflict with the constitutional or legal provisions, as well federal as state and cantonal, of the contracting parties."

The requirement of a passport is merely a police regulation for establishing the nationality and identity of foreigners coming into the

country, and it is a matter to be decided by each state according to its political and social conditions. In Switzerland, as you say, not only are passports required of foreigners residing there beyond a certain period, but Swiss citizens going from one canton or commune to another are strictly required to deposit with the local authorities properly authenticated evidence of citizenship.

In this manner there is established a system of registration of all persons, both citizens and foreigners, and to this no reasonable objection can be made. It is true that in some cases, as in that of the bureau of nationality in Mexico, where it was formerly sought to make the failure of a foreigner so to register the ground of a denial of his right to call upon his Government for protection, which amounted to imposing a forfeiture of nationality as a penalty for failure to register, this Department has been constrained to protest, and has taken the ground that a state can not by its municipal laws take away the rights to which a foreigner is by international law entitled, among which rights is that of the protection of his Government. But it has never been maintained that a municipal law, merely requiring registration as a condition of residence, is internationally invalid.

There still remains for consideration the question whether the Swiss authorities may require citizens of the United States to renew their passports two years after issue, in view of the regulations of this Department.

In its regulations made pursuant to law, and in its special instructions to our ministers, this Department has for many years acted upon the rule that passports are not good for more than two years from the date of issue. Formerly, the period of vitality was only one year, and on May 9, 1870, Mr. Secretary Fish, in a circular note to foreign ministers, made complaint that many of the consuls of foreign governments residing in the United States were in the habit of visaing passports of citizens of the United States which had been issued for more than a year. In that note Mr. Fish said that as the regulations of the Department, made pursuant to law, required "that every passport to be valid must be renewed * * * at the expiration of one year from its date, and that a revenue tax of $5 shall be paid on each passport at the time at which it shall be issued or renewed, it is essential to the protection of the revenue from this source that foreign consuls should abstain from attaching their visa to passports * * * which are a year or more old, when presented for visa."

This note, it is to be observed, requests that the officers of foreign governments shall not recognize as valid American passports beyond a certain age.

On the 5th of February, 1878, Mr. Secretary Evarts, in an instruction to Mr. Everett, chargé d'affaires at Berlin, said:

> Upon that subject I have to inform you that applicants at the Department are uniformly advised that a passport is good for two years from its date and no longer; and that persons applying to an American representative abroad will be required to furnish satisfactory evidence that they are still entitled to protection of the United States. It is considered that indefinite residence abroad might be quite as much encouraged by the possession of a passport good for an indefinite period as by the operation of the rule which forces the party to submit his case anew to the careful scrutiny of the legation as often as once in two years, with suitable evidence bearing upon his claim to continued protection.

In the printed personal instructions to the diplomatic agents of the United States there is the following direction:

> No visa will be attached to a passport after two years from its date. A new passport may, however, be issued in its place by the proper authority, as hereinbefore provided, if desired by a holder who has not forfeited citizenship.

These provisions are repeated in an existing circular of this Department, containing general instructions in regard to passports.

In section 174 of the Consular Regulations of the United States, issued in 1881 and unrevoked, there are the following provisions:

A passport is good for two years from its date and no longer. No visa will be attached to a passport after two years from its date.

It is thus indubitable that under the regulations and practice of this Department passports are not regarded by the Department as valid after two years from the date of their issue. The reasons for this rule have already been disclosed. In the first place, there is the matter of revenue. In many cases the fee for the renewal of passports is the only contribution made by citizens of the United States residing abroad to the support of this Government, whose protection they claim and enjoy, together with the privileges, immunities, and exemptions incident to their American citizenship. In the second place, this Government, while granting passports, is entitled to place them under such restrictions as to time as would in part preclude them from being made under changed circumstances the instrument of imposition either upon itself or upon foreign governments.

Now, as this Government has announced and acts upon the rule that its passports are not valid after two years from the date of issue, this Department is unable to perceive upon what ground it could ask foreign governments to recognize those passports as valid after that period, provided there has been opportunity to obtain new ones. A passport is evidence of citizenship, and as such is entitled to recognition as long as it remains in force; but if this Government decides that its passports are not valid for more than two years, it must be held to mean that they are not to be internationally used as evidence of citizenship after that time; and this being so, the Department is unable to see how it could ask the authorities of foreign countries, in which alone passports are required or intended to be used, to recognize them as valid evidence after they have ceased to be so by our own express regulations.

The refusal of a foreign government, under these circumstances, to recognize an extinct passport is not a denial of American citizenship or of any of its incidental rights, but merely a requirement of proper evidence of such citizenship.

In the case of Switzerland this requirement is strengthened by Article IV of the treaty of 1850, in which it is provided that passports or other evidences of nationality of citizens of the two countries shall be "furnished or authenticated by a diplomatic or consular agent of their nation residing in the one of the two countries which they wish to inhabit."

It has been seen that an American passport more than two years old can not be authenticated either by a diplomatic or a consular agent of the United States; consequently, if this Department should contend that the Swiss authorities ought to recognize American passports more than two years old, it might be placed in the position of asking those authorities to recognize as valid passports neither furnished nor authenticated by the diplomatic agent or by any consular officer of the United States in Switzerland.

You will therefore inform citizens of the United States seeking instruction on the subject that, under the regulations of the Department of State, made pursuant to law, passports are good for two years from their date, and no longer, and that this Government can not ask foreign governments to recognize American passports more than two years old.

I am, etc.,

T. F. BAYARD.

No. 667.

Mr. Winchester to Mr. Bayard.

No. 116.] LEGATION OF THE UNITED STATES,
Berne, April 21, 1887. (Received May 3.)

SIR: Consul Staub, of St. Galle, has submitted to this legation the application of Moritz Philipp Emden for a passport. The application is made by means of the blank form recently furnished by the Department of State under circular letter of February 23 ultimo. That part of the application relating to the intention of the party to return to the United States is answered by Mr. Emden in these words, "Whenever business requires my presence." In view of the instruction given in your circular letter of February 23 ultimo, that "too much care can not be exercised in granting passports, especially to persons representing themselves as naturalized citizens," and also believing that the inability of Mr. Emden to answer the question indicated fairly and squarely will apply to a large number of naturalized citizens of the United States residing and established in business in Switzerland, it was considered best to refer the matter to the superior judgment of the Department to determine at once if such ambiguous, if not evasive, answers as that given by Mr. Emden is to be accepted as a proper compliance with the requirements of the application. Consul Staub has been instructed to inform Mr. Emden that the legation declines to issue the passport, and he must await the judgment of the Department. In some measure the question submitted must be considered in the light of the circumstances under which the application is made, and the history of the applicant, to do full and exact justice. The case of Moritz Philipp Emden is not a stranger at the Department. It dates back to March 10, 1881, when Mr. Nicholas Fish, in his dispatch No. 364 of that date, giving a detailed account of its history, advised the Department of his refusal to grant Mr. Emden a passport. The main facts were that Mr. Emden was born at Frakfort-on-Main July, 1826; emigrated to the United States March, 1849; naturalized, June, 1854; October, 1854, obtained a passport from the Department of State, and in November same year sailed for Europe. Returned to United States in 1856, and resided there to January, 1859, when he again left for Europe, and with the exception of a few short visits, all prior to 1863, he has since resided and continues to reside abroad. He is at present, and for many years has been, established in business in St. Galle, residing there with his family. The Department sustained the action of Mr. Fish. Mr. Emden was not satisfied, and it appears employed an attorney to plead his case before the Department. It continued from March 10, 1881, to January 3, 1883, the subject of frequent correspondence between the Department and Mr. Fish, then Mr. Cramer, who succeeded him, until, through his attorney, an instruction was finally secured from the Secretary of State by dispatch No. 19, January, 1883, to Mr. Cramer that the conclusion had been reached, "on the showing now made by him and in his behalf, that Mr. Emden is entitled to a passport;" consequently he renewed his passport. It was renewed for him by Mr. Cramer in February, 1885. In this renewal Mr. Cramer refused to include two sons of Mr. Emden, who, in the mean while, had obtained their majority. Soon after my assumption of this post, the application of Mr. Robert Emden, the son of Moritz Philipp Emden, was made for a passport, which was refused, as set forth fully in my dispatch No. 8, August 26, 1885, and approved by the Department. This is referred to for the purpose of showing the persistent

efforts of this family to claim the protection of a government which they in no way have served in the past nor will probably ever serve in the future.

I am, etc.,

BOYD WINCHESTER.

No. 668.

Mr. Winchester to Mr. Bayard.

No. 118.] LEGATION OF THE UNITED STATES,
Berne, April 23, 1887. (Received May 7.)

SIR: It is reported by the foreign and domestic papers that the Swiss federal council has decided to take stringent measures against the German socialists in Switzerland whose plottings and violent agitations are calculated to compromise its security.

The federal constitution authorizes the expulsion of foreigners who may compromise the internal or external safety of Switzerland.

Socialism has never been able to secure any foothold or command any strong adherents in Switzerland among the native population, for the difference in language in the various parts of the country, the small concentration of industry, and the well-developed national feeling of distrust of everything foreign, much impede all propaganda of this kind. Still, socialism distinctly shows its international character here, and for many years Switzerland has been a place of meeting for all the elements of discontent throughout Europe, its central position in the heart of Europe, on the border between the Germanic and Latin nations, making it very eligible for that purpose. The great trials of socialists which took place just previous to 1880 in the chief cities of Europe, in which it was made to appear that Switzerland was the center of international revolutionary agitation, the sympathetic attitude of a large number of the press, especially at Geneva, the official circular of the 7th December, 1878, which the Government deemed necessary in order to check the waves of this movement at that time running so high, and the expulsions then made of Germans, French, Italians, Spaniards, Russians, and Poles are sufficient to justify the statement. Even during the past winter the Russian printing office in Geneva has been twice forcibly entered and examined in search of "Nihilists" plotting against the Czar's Government. But the "refugees" there claim, and it is believed justly so, that they are not "revolutionists," but simply seeking repose after lives of exile, imprisonment, or hard labor in this most peaceable and hospitable country. In 1878 it was understood that a remonstrance on the part of several European powers was made against the abuse of the right of asylum tolerated in Switzerland, resulting in the action of the Swiss Government as heretofore indicated. However, the socialists and anarchists have had to deal with elements in Switzerland that so far have prevented the attainment of any efficient organization. All efforts to secure the control of the "general trades unions" and "workingmen's societies" have failed, the Swiss members soon discovering on the part of their would-be allies a want of interest in and comprehension of their national political objects, and the thinly-concealed purpose to use the organization for their special propaganda.

In 1883, at a conference held at Basle, it was resolved that an attempt should be made at a general organization with the various Swiss societies, but on a purely federalistic basis, looking to united action on all questions of common interest, especially with regard to international

legislation for the welfare of workers, and in a socialistic direction, the independence of the societies being guarantied. These views were accepted at a "general conference of Swiss workers" held in September of the same year at Zurich, and the execution of the plan intrusted to an "executive committee." For some time enrollment was quite rapid, but soon the old differences broke out again, and the organization has been practically paralyzed by internal dissensions. The right of asylum in Switzerland has been encompassed with serious and complicated difficulties, but this brave little country has never failed to vindicate its proper exercise in a firm, prudent, and courageous attitude in the most critical periods of her existence. During the excitement of 1878 the Bund, which is regarded as a semi-official organ, doubtless expressed the views of the Government on this question in these words:

> Switzerland will maintain the right of asylum, but will know how to take care that the same shall not be abused; whoever is guilty of an abuse forfeits, so far as he is concerned, the protection of the asylum. So long as Switzerland holds strictly in theory and practice to this notion of her duties and her rights, she may put aside the exaggerated suggestions of diplomacy, with the declaration that she has the will and the power to obtain and preserve order in her own house without foreign meddling.

I am, etc.,

BOYD WINCHESTER.

No. 669.

Mr. Bayard to Mr. Winchester.

No. 86.] DEPARTMENT OF STATE,
Washington, May 7, 1887.

SIR: Your dispatch No. 116, of the 21st ultimo, reporting your course in refusing to grant a passport to Mr. Moritz Philipp Emden, who was naturalized in this country in 1854, has resided abroad for many years, and who now gives an indefinite and ambiguous answer to the question as to his intention to resume his residence in this country, has been received.

Your course in regard to this case is approved. The Department expects that its agents abroad, to whose discretion the issuance of passports is confided, will exact unequivocal declaration of a positive intent to return to the United States, there to continue the domicile contemplated by the statute and regulations. Business visits to the United States are not evidence of domiciliary intent any more than business trips of American citizens to foreign countries evince an intent to reside there.

I am, etc.,

T. F. BAYARD.

No. 670.

Mr. Winchester to Mr. Bayard.

No. 123.] LEGATION OF THE UNITED STATES,
Berne, May 11, 1887. (Received May 24.)

SIR: The Swiss Federal Assembly has closed a called session of three weeks' duration. The chief object of the special session was to secure the enactment of the federal bankrupt law, which had passed

the national council, but failed to reach the state council in time for action at the session in December last. This law has been a matter of long and careful consideration, its preparation being first committed to a special commission composed of prominent lawyers and business men, and then revised by the federal council before its submission to the Federal Assembly, and it was thought that it would be accepted without much discussion or any material amendments by that body. Contrary to this expectation, it has provoked considerable opposition, resulting in many amendments very largely changing the character of the law as presented. This came from the fact that Switzerland has never had a national bankrupt law, but each canton has its own separate insolvent laws, and the effort was naturally made by the representatives of the cantons to adjust the details of the proposed national law to the peculiar provisions of their respective cantonal laws. The practice of referring differences between the two houses of the Assembly to a conference committee, as with the Congress of the United States, never having been adopted, or any other expedient to facilitate the solution of this difficulty, such differences are bandied between the two houses until a compromise is reached, sometimes running through several years and numerous sessions. Whilst the state council during the session just adjourned did not fail to act upon this bankrupt law, it refused to concur in amendments made by the national council, and substituted others of its own. The passage of the law, therefore, failed, but its friends are confident of its final success either at the June or December session.

Other important matters received attention, among which may be mentioned the extension of the factory law. A most excellent factory law was enacted by the Government in 1877, fixing the daily working hours, minimum age of children to be employed, inspection of buildings and machinery, and liability of employés in case of injuries and death. This law is now made to embrace various industries not heretofore included, such as construction of telephones, telegraphs, railways, transportation by water or vehicle, mining, and tunnels. Its provisions relating to the proper guarding and secure fencing of machinery have been increased. Nothing can be more important. Workers among machinery should not be left to depend for their safety on their own care and watchfulness. Every man has unguarded moments. No workman can do his best when he has continually to think of something else than his work; and it is as much to the advantage of the employer as of the employed that the law should enforce by heavy penalties the provision of every known means of making work in the factory safe for the workers.

There was also an important step taken towards the enactment of a patent law. Switzerland, although very active in the furtherance of protection to literary property, has never extended either by national or cantonal legislation any protection to individual property. To do this requires a constitutional provision, not being included in the enumeration of powers to be exercised by the Federal Assembly. The federal council having recommended the adoption of an amendment to the constitution expressly conferring this power, the Federal Assembly passed a resolution for its submission to the people and cantonal governments, it being necessary for its validity to be ratified by a majority of the popular vote and a majority of the cantonal governments. The popular *referendum* will take place in July; the action of the cantonal governments must await the meeting of their respective assemblies. A similar law was submitted in 1882 and defeated by the pop-

ular *referendum*. It is claimed, however, that there was no serious objection on the part of the people to a patent law, but its defeat resulted entirely from being submitted simultaneously with a law for obligatory vaccination, which was strongly opposed. Standing alone on its own merits, its favorable reception is not doubted. Then there are weighty public considerations operating in its behalf that did not heretofore exist. Switzerland is rapidly becoming the seat of various international bureaus, the organization of which is showing a vigorous and wide-spread tendency. The convention for establishing an international bureau for the protection of industrial property, held in Rome, April, 1886, located the temporary bureau at Berne, requiring notice of the accession of additional states to the union to be announced to the Swiss federal council, and it is considered an assured fact that Berne will become the seat of the permanent bureau of the industrial union, as it is now of the copyright union, the consolidation of the two under one director being already predicted in the interest of economy, and as cognate matters that could be advantageously placed under one management. It is this that renders it almost absolutely certain for the proposed patent law to be accepted by the people and the cantonal assemblies.

The Federal Assembly also approved an international regulation for the navigation of the lake of Geneva. Hitherto the steamers on that lake, which, during the summer season, carry an immense number of travelers, have been exempt from any kind of surveillance. Commissioners appointed by the French and Swiss Governments have agreed upon a code of regulations to the end of protecting passengers and the proper inspection of the steamers.

I am, etc.,

BOYD WINCHESTER.

No. 671.

Mr. Winchester to Mr. Bayard.

No. 137.] LEGATION OF THE UNITED STATES,
Berne, June 4, 1887. (Received June 20.)

SIR: Your No. 87, of May 11 ultimo, was received May 23. Therein you instructed this legation to transmit the ratification copy (said to be sent under separate cover) to the Swiss Government, with a note declaring that the United States accede to the union for the protection of industrial property, and that the date of said note of notification was to be regarded as the date of this accession. The ratification copy of the convention and final protocol of 1883, above referred to, did not reach this legation until the 30th of May. On that day it was transmitted to the Swiss Government, with accompanying note, pursuant to instructions.

Your No. 87 further requested that "after the acceptance of the same by the federal council you will please telegraph me the date of your note." Accordingly an answer from the Swiss Government has been awaited. It was received this morning and at once the following telegram was sent to you: "Thirtieth May accepted date accession industrial union."

Inclosed please find a copy of the note from the Swiss Government.

I am, etc.,

BOYD WINCHESTER.

[Inclosure in No. 137.—Translation.]

BERNE, *June* 2, 1887.

SIR: We have the honor to acknowledge the receipt of your note of the 30th of May ultimo, in which you notify us of the accession of the United States to the union for the protection of industrial property, fixing the date of accession for the 30th of May ultimo. At the same time you submit to us a copy of the international convention of the 20th of March, 1883, for the protection of industrial property and its annexes, with a declaration of its ratification, signed by the President and countersigned by the Secretary of State of the United States. We beg to inform you that we consider the notification as fully satisfying the conditions of article 16 of said convention for the accession of new states to the industrial property union. Will you please convey to your Government our high gratification to see so large an industrial country as the United States join the union and thereby giving it an additional importance.

The note addressed to us does not indicate the class to which the Government of the United States wishes to be assigned as to the contribution to the expenses of the international bureau. Considering the importance of the country we do not hesitate to place them in the first class.

We beg, Mr. Minister, to call the attention of your Government to the fact that the additional articles to the convention of the 20th March, 1883, and the regulations for the carrying out of said convention, which were made at Rome in May, 1886, by the delegates of the union, should be signed by the diplomatic representative of the contracting states near the Italian Government, and that the exchange of these ratifications should also take place at Rome. It would be convenient, therefore, that the representative of the United States in that city shall receive the necessary instructions and powers to that effect. We would beg your Government to communicate to us the address of the special service of industrial property, and central depot, provided for in article 12 of the convention, and with which the international bureau could enter into direct correspondence.

Will you please accept, etc., in the name of the Swiss Federal Council,

The President of the Confederation:

DROZ.

Chancellor of the Confederation:

RINGIER.

No. 672.

Mr. Winchester to Mr. Bayard.

No. 147.] LEGATION OF THE UNITED STATES,
Berne, August 31, 1887. (Received September 13.)

SIR: Upon a referendum there was a popular vote of 200,000 to 60,000 in favor of an amendment, or rather a supplemental clause, to an existing article of the Swiss constitution, authorizing the Federal Assembly to enact a law for the protection of industrial property.

The Assembly at its December session will doubtless pass some law to that end, but the opposition in all probability will be strong enough to demand a referendum of any action that may be taken. The friends, however, of the measure are confident of its ultimate success, and that within the next twelve months Switzerland will have a broad and liberal general patent law.

I am, etc.,

BOYD WINCHESTER.

No. 673.

Mr. Winchester to Mr. Bayard.

No. 153.] LEGATION OF THE UNITED STATES,
Berne, September 23, 1887. (Received October 4.)

SIR: Mr. Henry Edward Kern, through the United States consul at St. Galle, has applied to this legation for a passport. The application as filed by him shows that he arrived in New York May 21, 1873, and

received his certificate of naturalization in Philadelphia October 23, 1877, having resided in the United States only four years and five months preceding his admission, instead of five years, as required by section 2170, Revised Statutes.

It is true that a certificate of naturalization is a judicial act, and, as stated by the President in his message, there is no statutory provision by which even a fraudulent decree of naturalization can be canceled; but it certainly rests in the discretion of the Government to extend its protection to persons who have improperly obtained certificates of naturalization. Under existing laws, if the formalities attending the acquisition of citizenship be evaded or disregarded, the Government is left no remedy but to decline attesting the nationality of such persons in the form of passports. I am free to say, from the high testimonial of character presented by Mr. Kern, that, in my opinion, there was no fraud on his part in obtaining the certificate of naturalization; that at the time of applying for the same he was urged to do so by the officials of the Fairmount Park, Philadelphia, where he was employed, being informed that two years having expired since his declaration of intention to become a citizen, he was entitled to take out his second or final papers of citizenship, and no inquiry was made or statement required by the court from him as to a five-years' residence in the United States. The following year Mr. Kern was sent abroad by the commissioners of the park, to establish connections with horticultural and botanical gardens, and is now engaged in the nursery business in Switzerland, but declares his intention to return to the United States so soon as he can dispose of his property. The United States consul at St. Galle speaks in the highest terms of Mr. Kern, of his entire confidence in Mr. Kern's loyalty to the duties and responsibilities of his American citizenship, and the good faith of his intention to return and assume these duties. However, under the circumstances of Mr. Kern's insufficient residence in the United States to have entitled him to acquire citizenship in 1877, I have preferred to submit the question to the better judgment of the Department. Mr. Kern holds a certificate of naturalization, in due form and properly authenticated, from the court of quarter sessions, Philadelphia, dated October 23, 1877.

I am, etc.,

BOYD WINCHESTER.

No. 674.

Mr. Winchester to Mr. Bayard.

No. 154.] LEGATION OF THE UNITED STATES,
Berne, September 26, 1887. (Received October 8.)

SIR: The two preceding dispatches from this legation submitted cases involving the right of naturalized citizens to passports, and I am again placed under the necessity of seeking the advice of the Department touching a question covering a large number of cases in Switzerland, and presented in a recent application for a passport. A few days since Mr. Nathan Seligman applied through the consul at St Galle for a passport. The following facts appear in his sworn statement: He was born in Bavaria, October 30, 1844; emigrated to the United States in 1865, arriving at New York 2d of July, 1865; was naturalized January 24, 1880; resided in Switzerland since February, 1880.

Two things in this record are noticeable. First, Mr. Seligman did not become naturalized until he had been in the United States nearly fifteen years, three times the period required by the statute; and, secondly, that he must have taken the first steamer leaving port after he obtained his citizenship, for his certificate bears date January 24, 1880, and he states that he has resided in Switzerland since February, 1880. Mr. Seligman's purpose in coming abroad was to take charge of and manage a large embroidery house at St. Galle as a branch of a house in New York city. The embroidery exportation from Switzerland to the United States is very large, St. Galle having the most extensive and celebrated manufactory of that class in Europe. It is well known that a majority of the houses engaged in that business at St. Galle are the property of naturalized American citizens, and are either branches with head establishments in the United States or *vice versa*. This is not confined to the embroidery business and to St. Galle, but may be found at other places in Switzerland and in other enterprises. The resident partners here acquire such property holdings as may be necessary to their interest, and in some instances these are very considerable; remove their families from the United States, purchase homes here, rear and educate their children here, and to all intents and purposes are permanently domiciled here. So far they have been accorded all the privileges and immunities that attach to the possession of a passport attesting their American citizenship. They are as a rule very reputable men, both personally and in business, beyond any impeachment. Some of these houses have existed for many years, and have built up a very large and profitable business. From time to time, some at long intervals, others at shorter, the managers of the houses here visit the American head house, or branch, as it may be, for business ends or mere pleasure, but it is in every sense a visit of short duration, and always made with *animus revertendi*. Another feature common in these cases is the one indicated in Mr. Seligman's—the failure to invest themselves with American citizenship until their interests demand a return to Europe, and then, and not until then, are they brought to a realization of the benefits and blessings of this high privilege. Mr. Seligman's passport was issued to him, and it may look, in referring the matter now, as a case of "locking the stable after the horse is gone," but there are many other horses left in the stable, and it is for their benefit the legation desires to be instructed.

The inability of the Department to act hypothetically or to lay down any general rule which could with safety or justice be applied to a class of cases without consideration of the special facts in each, is well recognized, and with no such view is this dispatch written. The sole object is to have the opinion of the Department as to the correctness of the legation in granting Mr. Seligman a passport, that it may serve in a measure to guide and assist in the consideration of similar cases that will arise in the near future. In the application of Mr. Seligman it was stated, in pursuance of the blank forms furnished by the Department, that he "last left the United States" in 1886, but this in effect was destroyed by the further statement that followed, in conformity with the blank form, that he "had resided in Switzerland since 1880," and the letter of the consul at St. Galle, transmitting the application, said that Mr. Seligman, with his family, had visited the United States for a few months in 1886. Mr. Seligman also declared in his application that he "was temporarily, residing at St. Galle, and that he intends to return to the United States in two years with a purpose of residing and performing the duties of citizenship there." When a man of good character and fully entitled

to credence makes such a statement under oath, what discretion itself the legation? When the two years expire, he finds that some unforeseen and unavoidable contingencies prevent him carrying out the "intent" to return, in good faith entertained and declared two years previously, and he is again ready to renew the "intent" and the passport at the same time, and the same process will be repeated *ad infinitum*. When the "intent" not to return is not shown by a residence abroad for a period fixed by treaty, it is very difficult to determine.

In a previous dispatch allusion is made to the entire absence of any serious consideration being given to the sworn statements in a passport application that characterize many persons who stand before the world and their fellow-citizens as clear-conscienced as a saint, and it is this strange condition which surrounds the question and its treatment with so much difficulty. It is impossible for the legation to act intelligently or correctly in a simple view of the sworn declarations made by an applicant for a passport, if he fails to consider circumstances within his knowledge that impair if not contradict the affiant's statements. A passport not being an abstract or absolute right of the citizen, but a privilege determined by circumstances that are infinite, variable, and transient, it imposes a very ungracious obligation on the Government agent abroad to see that it is not made through him an instrument of imposition either upon his own Government or upon the Government where the party is domiciled. Feeling that the instructions of the Department, saying, "too much care can not be exercised in granting passports, especially to persons representing themselves as naturalized citizens," and "the Department expects its agents abroad, to whose discretion the issuance of passports is confided, will exact unequivocal declarations of a positive intent to return to the United States, there to continue the domicile contemplated by the statutes, and that business visits to the United States are not evidence of such domiciliary intent," were eminently proper and requisite for the checking of a most shameful and growing abuse, I have striven to execute them in letter and spirit. Many applications for passports have been refused to parties who regarded they had established a prescriptive right to them, and doubtless complaint of their unexpected hardships may reach the Department. In many cases the blank forms used by them contained all the *pro forma* declarations, but I was constrained to think, from other facts disclosed or made known to me, that the affiant himself could not believe his own declarations, and that he merely expected to have others believe them. Vigilance has been exercised to guard against such impositions, and firmness in resisting such solicitations. American citizenship should not be trifled with in this manner; it should not be invaded by fraud or false representations, for it carries with its possession all the privileges and protection a great Government can give to its citizens.

Respect for a passport is indispensable for the safety of our citizens traveling abroad, and nothing can so fatally impair that respect as the experience and observation of foreign governments that it is abusively obtained or lightly given to all who ask. The boon of citizenship is the most precious which our country can confer on the stranger from a foreign land. But it loses its honorable significance when improperly acquired, or perverted to wrong purposes. The only efficient and wholesome check on the abuses to which our naturalization laws are being constantly subjected is a steady and unflinching scrutiny of all the applications for passports by naturalized citizens as to the length of their absence from the United States, and other circum-

stances going to prove an *animus manendi*. This may partially succeed in suppressing the flagrant and scandalous abuse in common practice, and without such severity of treatment it will continue to increase. The many active and unscrupulous men who have illustrated how easily it can be done is a constant encouragement for others to follow their example. The Department, in its instructions bearing on this question, has gone only so far as to exact from the applicant for a passport, when a naturalized citizen, "an unequivocal declaration of a positive intent to return to the United States," without indicating within what period this intent should be consummated. A mere declaration of "intent to return" might be said to come under the class of obligations denounced by the law for uncertainty, and it operates rather adversely to the end sought to be accomplished, in accepting a declaration that few hesitate to make, on the theory that its fulfillment is left entirely at their pleasure. The consuls in Switzerland have all with one accord, without any instructions from the legation, in all passport applications from naturalized citizens, placed the intent to return at two years. They have done so, it is supposed, from the fact of two years being the period of a passport's legal existence, whilst it has not been the purpose of the legation to refuse a renewal of passport in cases where this intent is not carried out at the expiration of the two years, it has been deemed best to permit the practice to continue and leave it to the applicant to show, when applying for a renewal of passport, why he has not returned and for what reason his stay abroad is prolonged. Is it not possible to fix some period within which such parties shall return, unless the failure to do so can be satisfactorily explained? Is the abandonment of citizenship to be established by nothing less than an open act of renunciation? Is it not practicable, even under our imperfect legislation, to hold a residence abroad in the country of one's nativity or contiguous country being the same in principle under such circumstances that a purpose of change of allegiance can be fairly assumed, works practical expatriation? It is high time that our legislatures were doing something to rescue our naturalization laws from the disgraceful perversion to which they are subjected, and to cause those who seek the high privileges they confer to realize that imperative duties are likewise assumed, and that they shall in practice, as well as in theory, take upon themselves the full responsibilities of their new and exalted citizenship.

I am, etc.,

BOYD WINCHESTER.

No. 675.

Mr. Bayard to Mr. Winchester.

No. 101.] DEPARTMENT OF STATE,
Washington, October 7, 1887.

SIR: Your dispatch No. 153, of the 23d ultimo, relative to the application of Mr. Henry Edward Kern to your legation, through our consul at St. Galle, has been received.

You state that Mr. Kern's application for a passport shows that he arrived in New York on the 21st of May, 1873; that he received his certificate of naturalization on the 23d of October, 1877, when he had only resided in the United States four years and five months preceding his admission, instead of five years as required by section 2170 of the Revised Statutes; that he admits that the facts are as stated, but claims

that he was misinformed as to the law, and that the court which admitted him to citizenship did not ask him any questions.

As the fact of insufficient residence in the United States, and consequent violation of the requirements of the naturalization statutes, appears in Mr. Kern's statement, and is further admitted by him on his attention being drawn to the fact, it is your duty to decline to grant him the passport sought.

Mr. Kern's explanation, while appearing to relieve him personally from imputation of fraud, is instructive as showing the defects of existing legislation in regard to such a case, and shows the necessity for the closest scrutiny of all applications for passports.

I am, etc.,

T. F. BAYARD.

No. 676.

Mr. Bayard to Mr. Winchester.

No. 102.] DEPARTMENT OF STATE,
Washington, October 12, 1887.

SIR: I have to acknowledge your No. 154 of September 26, 1887, and I do so with particular satisfaction, in view of the fullness and thoughtfulness of the exposition you give of the position of citizens of the United States, who, after taking up an apparently permanent residence in Europe, apply, while continuing such residence, to our diplomatic agents for passports or other official assistance. And I can understand how, in view of the various phases which such cases assume, you should desire specific instructions as to particular cases coming before you.

These instructions I now proceed to give.

You rightly apprehend the position of the Department towards citizens of the United States who take up what is apparently a permanent abode in a foreign country, spending in that country their income, merging themselves in its society, assimilating themselves to its usages, at the same time refusing to contribute to what was their home Government, under whose protection in most cases their fortunes were built up, sometimes the aid that payment of taxes gives and always the aid derived from the spending of their income within its borders, and the support which it is entitled to obtain from their presence as law-abiding citizens. The policy of our system forbids the granting of diplomatic protection, except in extreme cases, to absentees of this class. They withdraw from the country of their allegiance strength to which that country is entitled. And as the first of my predecessors, Mr. Jefferson, stated as a reason for discountenancing this species of expatriation, a continuous voluntary residence of a citizen of the United States abroad, except for business purposes, is apt, even in case of his final return, to make him unfit, through the enervating and exotic influence it exerts, for usefulness in our own Republic.

But there are distinctions of great importance which must be kept in mind in considering and enunciating this rule. To these I more readily direct your attention as they touch cases frequently arising in the courts in which the domicil of Americans living abroad, and in some instances in Switzerland, is the subject of adjudication.

I have to say, in the first place, that the rule above given does not apply to cases of citizens of the United States who go abroad for reasons of health, and remain abroad many years hoping to come back, yet prevented from doing so by continuing illness. In one recent case in New York it was held that a lady whose residence in the south of France had for these reasons continued for over twenty years had not lost her New York domicil, and that her personal property was to be distributed according to the law of that domicil. In the rightfulness of this and kindred rulings I entirely concur, and I hold that as American domicil is in such cases retained so is American nationality, entitling such parties to the protection due to citizens of the United States.

The rule, in the second place, does not apply to citizens of the United States going and remaining abroad as agents of American business houses. It is as to these that one of your inquiries is put, and I have to call attention, in reply, to the wide difference between such parties as these and absentees whose continued residence abroad can be explained only on the ground of their desire to get rid of the obligation imposed on all good citizens of contributing by their services whatever is in their power to their country's prosperity. The agent abroad of an American house is open to no such charge. The continued presence of such agents at their scene of duty is essential to the maintenance of some of our great industries, and these agents, in living and working abroad in this way, are as much entitled to the protection of the Department, no matter how long they remain away, as if they were on a mere transient visit of inquiry. And, as I have previously had occasion to observe, this protection is applicable as well to naturalized citizens returning to their country of origin as to native citizens of the United States, since it is in many cases peculiarly for the interests of business houses to employ in a foreign land agents familiar with the language and traditions of such land, and since, when such agency is avowed, there is as little ground for an inference of abandonment of American citizenship in one case as in the other.

The rule, once more, does not apply to American communities settled as such in Oriental lands and recognized in their distinctively national character by the system of government prevailing in such lands. This distinction does not, however, arise in any cases that can come before you, and I notice it here simply because I am unwilling to state the general rule without all the qualifications to which it is subject.

I am, etc.,

T. F. BAYARD.

CORRESPONDENCE WITH THE LEGATION OF SWITZERLAND AT WASHINGTON.

No. 677.

Mr. Frey to Mr. Bayard.

[Translation.]

LEGATION OF SWITZERLAND,
Washington, April 15, 1887. (Received April 16.)

Mr. SECRETARY OF STATE: The undersigned, minister of the Swiss Confederation, has repeatedly had the honor to have verbal conferences with you relative to the question of the protection of Swiss citizens by

the representatives of the United States in those countries in which the Confederation has no diplomatic or consular representative, and the undersigned has not failed to inform his Government, on each of these occasions, of the kindness with which you have expressed yourself.

The President of the Confederation has instructed the undersigned to convey to you his warmest thanks for the readiness with which you have been pleased to comply with our wishes in this matter, and to avail himself, at the same time, of this occasion to express to you the thanks of the federal council for the valuable services which have been rendered since 1871 by your representatives to Swiss citizens. The undersigned assures you that the federal council fully appreciates the good will and the friendly sentiments which have been manifested by the United States Government in this matter.

With regard to the scope of the protection hereafter to be extended to our citizens by your representatives, I have, however, the honor, in obedience to the instructions of the President of the Confederation, to remark that the views expressed by you on this subject do not appear to accord in all respects with those of the federal council, nor, as we think, with the position taken in relation to this matter by the United States Government in the year 1871.

In the opinion of the President of the Confederation, protégés should be treated in all respects as if they were citizens of the protecting country. A Swiss, by placing himself under the protection of the United States, becomes assimilated, in the opinion of the President of the Confederation, while he is under that protection, to a citizen of the United States; his character as a Swiss is for the time being not to be considered, and, so far as the foreign state is concerned, he is covered by the United States flag. Diplomatic protection, if it is to have any real meaning, must not be conditional or limited; it must be more than an unofficial mediation in behalf of such claims for indemnity as may arise; otherwise it would be of no avail when most needed—that is to say, at the time when the violated rights of the protégé are to be asserted.

This view of the scope of the protection to be afforded by no means involves any direct intercourse of the federal council with the diplomatic or consular officers of the protecting state, and there consequently seems to be no ground for the assumption that those officers by protecting Swiss citizens assume the rôle of officers of the Swiss Confederation. It might rather be assumed that a contrary state of things took place, since a Swiss, who places himself under foreign protection, loses, to a certain extent, the outward characteristics of his nationality.

The President of the Confederation does not, of course, absolutely decline to accept the view that we can not, by any means, claim the protection of our citizens by the representatives of the United States as a right. He must, however, regard it as his duty to inform himself concerning the nature and scope of the protection of Swiss citizens which has been guarantied to us.

The undersigned entertains the pleasing hope that, duly appreciating the situation, you will have the kindness to give him the further information which is desired, and, while he has the honor to reiterate the expression of his gratitude for the valuable services hitherto rendered by your Government in behalf of Swiss citizens, he avails himself, etc.

E. FREY.

No. 678.

Mr. Bayard to Mr. Kloss.

DEPARTMENT OF STATE,
Washington, July 1, 1887.

SIR: I have the honor to acknowledge the receipt of Colonel Frey's note of April 15, last, on the question of the protection of Swiss citizens by the representatives of the United States in those countries where the Confederation has no diplomatic or consular representative, and conveying the thanks and appreciation of the President of the Confederation and of the federal council for the services which have been rendered in this way by our representatives since 1871. I need not say that any services of this nature which have been heretofore or may in future be rendered by our diplomatic and consular agents are matters of pleasure as well as duty on their part, and that the good will and friendly sentiments you express on behalf of your Government are cordially reciprocated by my own.

As regards the scope of such past or future protection, a study of the instructions issued to our foreign representatives does not suggest any difference in the assistance rendered to the Swiss nation over and above any other which might stand in need of similar services, nor does it appear that such services or protection went beyond the authority given to the minister in his discretion to use his good offices for Swiss citizens when in trouble. I do not find myself in a position to altogether accept the view, if I correctly understand it, of your President that "protégés should in all respect be treated as if they were citizens of the protecting country; that a Swiss under such circumstances becomes assimilated to a citizen of the United States; that his character as a Swiss is for the time not to be considered; that diplomatic protection must not be conditioned or limited, and must be something more than an unofficial mediation on behalf of such claims for indemnity as may arise." All this is to be accomplished, you also suggest, without any direct correspondence between our representatives and the Swiss federal council, the more especially as those of your citizens who are thus protected are supposed by your Government to a certain extent to "lose the outward characteristics of their nationality."

The practice as regards this question in the past appears to be based on a circular addressed to our foreign representative by this Department on the 15th of December, 1871, explanatory of one of June, 1871, as follows:

> You are informed that you are not expected to become a diplomatic or consular officer of the Swiss Republic, which is prohibited by the Constitution to officers of the United States who are citizens.
>
> The intention is that you should merely use your good offices in behalf of any Swiss in your vicinity who might request them in the absence of a diplomatic or consular representative of Switzerland, and with the consent of the authorities where you reside.

This was repeated in a circular issued by Mr. Secretary Evarts, dated the 28th June, 1877, during the hostilities between Russia and Turkey, as follows:

> You are consequently authorized to continue the exercise of your good offices in behalf of Swiss citizens under the limitations prescribed by my predecessor of June 16 and December 15, 1871.

Another circular, dated March 17, 1882, authorized our diplomatic and consular agents to draw on this Department for any expenses incurred in protecting Swiss citizens.

Instructions to our minister in China, dated July 25, 1872, stated:

The protection referred to must necessarily be confined to the personal and unofficial good offices of such functionaries; although when exercised to this extent merely, this can properly be done only with the consent of the Chinese Government. * * * Protection of Swiss citizens in China, such as was contemplated by the circular adverted to, by no means necessarily implies official interposition in their behalf. They may have efficient protection by personal application in their favor to Chinese or other authorities in that country.

I find that on August 26, 1885, our consul-general at Panama was instructed to use the same good offices for the protection of Chinese subjects on the isthmus as were covered by the conditions and rules for the use of good offices by our agents in behalf of Swiss citizens in the above-named circular, it being distinctly understood that the United States consular officer should not thereby become a consular officer of the Chinese Government, and that the consent of the Colombian Government should first be obtained.

On November 9, 1885, in the case of a claim of a Turkish citizen against the Government of Colombia, this Department instructed our consul-general at Panama:

It must be distinctly understood that your friendly negotiation is only an act of courtesy and an exercise of good offices, which may or may not meet with a satisfactory response on the part of the Colombian Government. The failure of any response or action on the part of that Government could not be regarded by you as a ground of offense, or be followed by more rigorous measures. Your services in the case should be limited to the simple transmission of the claim or request for information, without any examination or discussion of its justness or presentation of reasons why it should be paid.

A case more directly in point is the note to your own legation of October 8, last, in which I had the honor to inform you that our minister at Bogota would be instructed to present the claim of J. Bauer, a Swiss citizen residing at Colon, to the Colombian Government, with the understanding that in so doing the minister is to act as the agent to hand over the papers, and not as the representative of Switzerland. Essentially the same instructions were given on the same subject to the same minister on October 19, 1886.

It is evident that anything further than this, on behalf of other nations might involve this Government in great complications with the government to which the protecting minister or consul was accredited, and on which, as regarded our own affairs, we had no disputed claims, and might eventually be of as little benefit to the Swiss nation as to the United States.

I trust that your Government will see the matter in this light, and will continue to be satisfied with allowing our representatives, whenever it is in their power, to use their good offices for your citizens, as being all that the Constitution of the United States permits this Department to authorize.

Accept, etc., T. F. BAYARD.

No. 679.

Mr. Frey to Mr. Bayard.

[Translation.]

LEGATION OF SWITZERLAND,
Washington, October 24, 1887. (Received October 26.)

Mr. SECRETARY OF STATE: Referring to the note which the Swiss chargé d'affaires *ad interim* at this capital had the honor to address to you on the 4th of July last, and by which he acknowledged the re-

ceipt of your note of July 1 in relation to the protection of Swiss citizens by United States consuls in foreign countries, I have the honor to inform you that I have received instructions from my Government to convey to you its warmest thanks for your aforesaid note of July 1 and for the friendly sentiments therein expressed. Although the federal council is unable fully to share the view stated in your note with regard to the nature and scope of the relation between the protecting state and persons commended to its protection, it has nevertheless been glad to be informed, in a definite manner, by your note what your interpretation of the relation in question is.

While the federal council now considers this matter as settled, it desires to return its thanks for your kindness in expressing your willingness to authorize the consular representatives of the United States to use their good offices in future in behalf of Swiss citizens, of which kindness the federal council proposes to avail itself, if there shall be any necessity therefor.

I gladly avail, etc.,

E. FREY.

TURKEY.

No. 680.

Mr. King to Mr. Bayard.

[Extract.]

No. 257.] LEGATION OF THE UNITED STATES,
Constantinople, October 19, 1886. (Received Nov. 8.)

SIR: I have the honor to inclose the correspondence in reference to the case of Rev. Dr. Herrick:

(1) A copy of a letter from Rev. Mr. Dwight; (2) a copy of my letter to Mr. Dwight; (3) a copy of Mr. Dwight's reply; (4) a copy of my dispatch to the Sublime Porte on the subject.

Finding from Mr. Dwight's second letter that Rev. Mr. Filian is a Turkish subject, and moreover being informed that he himself has come to Constantinople to attend to his own case with the Turkish Government, I have limited my dispatch to the Sublime Porte to the interference with Rev. Dr. Herrick.

In Rev. Mr. Dwight's first letter he bases his complaint on the 82d article of the "Capitulations ou traités anciens et nouveaux entre la Cour de France et la Porte Ottomane renouvellés et augmentés à Constantinople le 28 mai 1740."

The following is the extract of the Capitulations to which he refers, the original text of which I inclose:

The bishops and religious persons under the jurisdiction of the Emperor of France who are in my Empire will be protected as long as they keep within the limits of their profession, and no one can prevent them from the exercise of their religious rites according to their usage in the churches which are within their possession, as well as in the other places where they dwell; and when our tributary subjects and French subjects go and come to one another for sale and purchase or other business they shall not be molested, against the sacred laws on account of such intercourse.

I have, etc.,

PENDLETON KING.

[Inclosure 1 in No. 257.]

Rev. Mr. Dwight to Mr. King.

BIBLE HOUSE,
Constantinople, October 9, 1886.

DEAR SIR: On the 7th of August of the present year the Rev. Dr. Herrick, an American missionary residing at Marsovan, went to Kastamouni to administer the sacraments to Protestants residing at that place. On his arrival at Kastamouni he found that the preacher at whose house he was to stay had been ordered by the local governor to desist from holding divine service in his house. Dr. Herrick then sent his passport and other papers to the local authorities, pointing out that he was an American missionary, for twenty-eight years resident in the Turkish Empire, and during all that time in the habit of performing such services as the one now proposed, and explaining that he had come to Kastamouni in order to administer the sacrament of the

Lord's Supper to Protestants in that place, and that therefore he begged the authorities to permit the holding of the service in a quiet way in the house rented by the American mission, and occupied for more than a year by the Protestant preacher, Mr. Filian. He added that of course there would be no objection to the presence of a functionary charged with seeing that at the service nothing was done contrary to good order, but that the prohibition of the service without reason did not accord with the laws of the Empire in reference to the freedom of worship.

Upon the receipt of Dr. Herrick's request the local authorities sent police to the house, with orders to prevent any person from outside the house from access to it either during the service or after it was over.

The police formed a cordon about the house, and thus held it in a state of blockade during the whole time that Dr. Herrick remained within it, that is to say, until the afternoon of the 9th of August, when Dr. Herrick left the city. Even one of our booksellers, who chanced to be in the city over the Sabbath, and who needed to see Dr. Herrick on matters connected with his business, was prevented by the police from having access to the house.

I pass over the insult offered to an American citizen whose papers are in regular order, in blockading his house and thus advertising to the people of the city that the governor chooses to regard him as a dangerous character. The serious part of the incident is the violation of the privileges enjoyed by American missionaries under the capitulations and under the usages of sixty years, of holding religious service in their own houses, and in having free access to native houses, and freedom to receive the calls of native visitors. This privilege has never once been called in question until this occasion since American missionaries came to this country in 1829.

The ground of the enjoyment of this privilege by American missionaries is the French capitulations of 1740, in their stipulations as to the rights and privileges of the members of religious bodies. The status under the treaties of American missionaries has always been regarded as the same as that of the French missionaries and "religieux."

Even in the matter of receiving goods free of duty through the custom-house the American missionaries, as invested with the same religious and benevolent character, have been recognized as having the rights conferred on the French "religieux" by the capitulations.

In regard to the particular case in hand, the treaty provides for the emergency, permitting foreign ecclesiastics to exercise the rites of religious worship in the places which they inhabit, and to receive native visitors without hinderance.

The eighty-second clause of the French capitulations of 1740 contains the following stipulations on this point:

"The bishops and "religieux" dependent on the Emperor of France, who are in my Empire, will be protected while they keep within the limits of their condition, and no one can prevent them from exercising their rites of worship according to their customs, in the churches which are in their hands, as well as in the other places which they inhabit. And where our tributary (non-Muslim) subjects and the French go and come, the one to the abode of the other, for purchases, sales, and other affairs, no one can molest them in contravention of the sacred laws on account of this frequentation." Furthermore, there is no law of the Empire which authorizes the interference of the authorities to prevent the holding of religious worship; on the contrary the laws and the treaties alike declare the exercise of religious worship to be the privilege of all.

It is not necessary to urge the calling to account of the governor of Kastamouni because of his wanton outrage upon a precious right in this case. He may have been ignorant of the gravity of his offense. But I would respectfully beg that you would kindly request the Sublime Porte to take such measures as it may seem necessary for the instruction of the governor of Kastamouni, so that Dr. Herrick or others of our number on going to the city again may not be subjected to restrictions and indignities such as are put upon foreign missionaries in no other part of the Empire.

Very respectfully, etc.,

HENRY O. DWIGHT.

[Inclosure 2 in No. 257.]

Mr. King to Mr. Dwight.

LEGATION OF THE UNITED STATES,
Constantinople, October 13, 1886.

DEAR SIR: Your communication of 9th instant has been received, and in connection with it I should like some additional information, in order that I may examine the ground for action as definitely as may be. * * *

(1) Is Rev. Mr. Filian an American citizen?

(2) Has he in the past held *public* worship in Kastamouni? If so in what *place, i. e.*, in a church or in a private house?

(3) Have the Protestants in Kastamouni a church?

(4) If not, have they asked permission to build one? When was such permission asked (if asked)? On what grounds refused (if refused)?

(5) Have your ministers been (as a rule) hitherto allowed to hold *public* worship in *private* houses of *natives, i. e.*, Turkish subjects, and in *private* houses of American citizens resident in Turkey?

In addition to your written reply I shall be glad to talk the matter over with you, referring to the law bearing on the case, provided you should be in Pera soon.

Yours, etc.,

PENDLETON KING.

[Inclosure 3 in No. 257.]

Mr. Dwight to Mr. King.

CONSTANTINOPLE, *October* 13, 1886.

DEAR SIR: Your favor of this day's date is received, and I answer the questions in reference to the Kastamouni case as below:

(1) Is Rev. Mr. Filian an American citizen?

He is an Ottoman subject.

(2) Has he in the past held public worship in Kastamouni, and if so, in what place?

He has held worship in a dwelling-house rented by the American mission, and to this worship any who have wished to come have been admitted.

(3) Have the Protestants in Kastamouni a church?

(4) If not, have they asked permission to build one?

The Protestants in Kastamouni are few in number, and are mostly, if not all, temporary residents in the place, since the city is a central location, where business men are frequently led from other places in the line of their trade.

A number of sojourners, wishing to have religious privileges, ask for a preacher, and Mr. Filian was sent there by the American mission, the Protestants who attend his service paying half of his salary; the state of the case being this: The Protestants of Kastamouni have never asked for permission to build a church, and have none. In fact there could hardly be under the circumstances any other arrangement than the one in existence there. Those who wish to attend service on the Sabbath go to the house of the preacher and quietly hold service, as is customary in other parts of the Empire in similar cases.

In this connection allow me to call your attention to the fact that we do not and can not ask the intervention of the United States legation in behalf of the Rev. Mr. Filian, and the Protestants of Kastamouni.

My only request to you was that if you saw fit you would ask the Porte to instruct the governor of Kastamouni concerning the rights of the American citizen, Dr. Herrick, or other American citizens who may be temporarily staying in Kastamouni, and who exercise their functions as religious and ordained men in the quiet way contemplated by the treaties.

Your fifth question applies to the case of Dr. Herrick.

(5) Have your ministers been, as a rule, hitherto allowed to hold public worship in private houses of natives (Turkish subjects) as in private houses of American citizens resident in Turkey?

They have been for more than fifty years, and are now, allowed to receive any persons, from outside the house who wish to attend the services which they hold wherever they are. I presume that if our ministers were to make any disturbance in the way of calling people together by a public method, there might be objections on the part of the authorities to such procedure, but this is never done. No case has ever come to my knowledge of an interference on the part of the authorities to prevent people from attending our services, whether held in private houses of natives or of American citizens.

In fact the local authorities have in times past interfered to protect such services from disturbance from ill-disposed persons. My own acquaintance with this subject extends over a period of about thirty-five years, and I find no record of any trouble in this line before my personal knowledge of the facts commences.

In the case in hand the authorities at Kastamouni did not deny the right of Dr. Herrick to hold service in the house in question. The only point of our complaint to the legation is the placing of a police guard about the house to prevent any from outside the house from holding communication with Dr. Herrick, not only on the

Sabbath, but on the next day also. Such an act is utterly without precedent, and seeing that Dr. Herrick's passport and teskere were in regular order, and were in the hands of the authorities, the act was from our point of view entirely unjustifiable.

* * * * * * *

Yours, etc.,

H. O. DWIGHT.

[Inclosure 4 in No. 257.]

Mr. King to the Sublime Porte.

LEGATION OF THE UNITED STATES,
Constantinople, October 18, 1886.

EXCELLENCY: I beg to call your attention to a case of recent interference with the rights and privileges of an American citizen, Rev. Dr. Herrick.

On the 7th August, 1886, Rev. Dr. Herrick, an American missionary, went to the city of Kastamouni to administer the sacrament to the Protestants residing there. On his arrival he found that the preacher, at whose house he was to stop, had been ordered by the local governor to desist from holding divine service in his house. Dr. Herrick then sent his passport and other papers to the local authorities, and pointed out that he had been for twenty-eight years an American missionary resident in the Turkish Empire, and during all that time in the habit of performing such service as the one now proposed. Therefore he begged the authorities to permit the holding of the service in a quiet way, in the house rented by the American mission, and occupied for more than a year by the Protestant preacher, Rev. Mr. Filian. Dr. Herrick added that of course there would be no objection to the presence of a functionary charged with seeing that at the service nothing was done contrary to good order; but that the prohibition of the service without assigning any reason did not accord with the laws of the Empire in reference to the freedom of worship.

Upon the receipt of Dr. Herrick's request, the local authorities sent police to the house, with orders to prevent any person from outside the house having access to it, either during the service or after it was over. The police formed a cordon about the house, and thus held it in a state of blockade during the whole time that Dr. Herrick remained within it—that is to say, until the afternoon of August 9, when he left the city.

This is a serious violation of the privileges enjoyed by Americans for the last sixty years of holding religious service in their own houses and in having the freedom to receive visitors. I am happy to state to your excellency that I am informed that these privileges have never before been called in question.

I respectfully request you to give such orders to the governor of that province as will prevent the recurrence of such an incident, should Dr. Herrick or any other American missionary visit Castamouni again.

I avail, etc.,

PENDLETON KING.

No. 681.

Mr. Bayard to Mr. King.

No. 171.] DEPARTMENT OF STATE,
Washington, November 11, 1886.

SIR: I have to acknowledge the receipt of your No. 257, of the 19th ultimo, in which you inclose the correspondence relating to the complaints of Rev. Dr. Herrick, an American missionary, who was prohibited by the local authorities from holding divine service in a house rented by the American mission at Kastamouni.

Your note to the foreign office protesting against the action of the local authorities is approved. * * *

The true point at issue is the arbitrary interference with the right of an American citizen, whatever be his faith or profession, to come and go and follow the dictates of his own conscience, where and how he will, in Turkey. Setting an armed guard around the place of Dr. Herrick's

temporary sojourn and forbidding all communication with him was an act which can only be attributed to the ignorance or arbitrary will of the officer who ordered it, and which it is not supposed for a moment the Government of the Sublime Porte will sanction in the face of the guaranties of freedom, of peaceable movement, and worship which have grown up and for so many years been unquestioned in favor of aliens in Turkey, and which are confirmed by international law.

It should also be remembered that the exercise of their religious functions and the maintenance of their hospitals by American missionaries in Turkey have been for many years acquiesced in by the Sublime Porte. Under its toleration many benevolent institutions, in which large amounts of money have been invested, have grown up on Turkish soil. It can hardly be supposed that men exercising, so unselfishly and prudently as do Dr. Herrick and his associates, offices, many of which are of non-sectarian charity, should be subjected, by the deliberate action of the Turkish Government, to indignities such as are here reported.

These men were received as missionaries; as missionaries they were permitted to establish and endow hospitals and schools. It is an assumption, not only irrational in itself, but in conflict with the past dealing of the Turkish Government with these very men, that, while authorized by it to conduct these benevolent works, the conditions should have been imposed that, though received as missionaries, they should not be permitted to perform the religious services incidental, to their profession.

The rebuke of the local authority who subjected Dr. Herrick to this insult, and positive measures to prevent its recurrence, are therefore confidently expected.

I am, etc.,

T. F. BAYARD.

No. 682.

Mr. King to Mr. Bayard.

[Extract.]

No. 276.] UNITED STATES LEGATION,
Constantinople, January 11, 1887. (Received February 1.)

SIR: I have the honor at last to make a definite report upon the vexed problem of the American schools in the Ottoman Empire, which has been the source of discussion between the legation and the Sublime Porte for several years.

In his dispatches, No. 191, of July 13, 1886; No. 210, August 9; and No. 218, August 23, Mr. Cox reported to you his action in the matter. When I became chargé d'affaires (September 14, 1886) there were several dispatches awaiting attention from Mr. Heap, consul-general, and Mr. Bissinger, consul at Beirut, and letters from the missionaries stating their difficulties. Since that time I have had numerous interviews with the missionaries and with the minister of public instruction on this subject, and I am now glad to report a favorable conclusion of the whole matter.

I can not hope that the matter will cease to present difficulties, but it has at any rate been brought to a point where I can make a comprehensible report.

In July, 1869, the Turkish Government made a law regarding schools, of which I inclose a translation of article 129. It is this article which has furnished them the pretext of demanding from schools that they (the schools) should apply for "permission." Interference with American schools began in 1874, but it did not become very serious till the year 1886, when about 30 schools were closed (mostly in January and February, 1886) in the Beirut consular district; and in November, 1886, Mr. Bissinger, consul at Beirut, reported that 62 more, scattered over Mt. Lebanon, were "seriously menaced," as "peremptory orders had been issued to close all foreign schools not provided with an imperial firman."

This dispatch from Mr. Bissinger was received by this legation through Mr. Heap, consul-general, on December 11, 1886.

A similar permission was demanded from various other schools, including several large, long established and purely American schools—like the girls' seminary at Broussa and the Marsovan College.

In the course of my discussions of the subject with the Turkish minister of public instruction and with the missionaries, I asked Rev. H. O. Dwight to prepare a statement of the history of these schools and of the standpoint taken by the missionaries in regard to them.

He accordingly furnished me a clear statement, a copy of which I inclose. You will see from his "Conclusions C," page 7 of his memorandum, that the missionaries take their stand firmly on the capitulations for the protection of the American schools.

This view I believe to be correct and strong, and the proper one to take for schools which are really American, which unfortunately is not the case with more than half of the so-called American schools. Finding that the French schools are having similar difficulties, I had different interviews on the subject with the Comte de Montebello, the ambassador of France. He has had about 30 schools closed and others seriously threatened, but he hopes also to protect them under the capitulations.

As above stated, 200 or more of our schools are not American except in a limited sense of the word; that is to say, they are taught by natives, in houses owned by natives (*i. e.*, Turkish subjects), and are American only in the sense that the expenses, or a portion of them are paid by the American missionaries, who exercise a kind of supervision of them.

It seemed to me very important to bring about a settlement of the whole question, if possible, and in a way that would save all the schools yet open.

Finding it reasonable that the Turkish Government should know that no dangerous nor revolutionary doctrines were taught in our schools, and that the missionaries were willing to allow the text-books and courses of study to be examined by the ministry of public instruction, I asked the minister of that department whether (dropping for the present the discussion of fundamental rights and the question of the necessity of asking "permission" to establish or to continue a school) he would issue orders not to interfere with any of our schools, provided we would allow the examination of our text-books, courses of study and the diplomas or certificates of the teachers. This he finally agreed to, and moreover promised that the schools previously closed might be reopened.

I had previously had conversation with him about them, and as the result of these conversations had in November sent him a list of them, with a short dispatch, a copy of which I inclose.

Immediately after coming to the above understanding with him regarding all the schools, I gave directions to their managers, through Mr. Heap, consul-general, a copy of which I inclose; and that I might impress on the minister that I was acting frankly and earnestly in the matter, I sent the same directions through the missionaries, and wrote to the minister, sending a copy of these instructions, and asking him for a copy of his circular to the provincial governors, which he had promised me.

The missionaries, in order to put the whole matter clearly before the schools, have issued a printed circular.

At the present time all parties concerned in these schools seem to be hopeful that a long, difficult, and very important matter has been brought to a satisfactory conclusion. In the meantime I very much hope that my action will meet your approval.

I have, etc.,

PENDLETON KING.

[Inclosure 1 in No. 276.—Translation of article 129 of the Law on Public Instruction.]

The free schools are those founded by communities or by private Ottoman or foreign subjects. The teaching is free or paid, and their expenses are defrayed by their founders, or by the vacoufs to which they are attached.

The foundation of free schools shall be authorized in the provinces by the governor-general and the academical council, and at Constantinople by the ministry of public instruction. This authorization will not be given except under the following conditions: 1. Teachers and professors must be furnished with a certificate of efficiency, or diploma, delivered by the ministry of public instruction or by the academical council of the place. 2. There shall be no course against public policy (la politique) and morality; to that effect the programs of study and the books which will be studied in the free schools shall carry the approval of the ministry of public instruction or of the academical council of the place.

Any free school which shall be opened without having fulfilled these conditions will be closed.

The heads of the aforesaid establishments will be bound to have legalized by the ministry of public instruction, or the academical council, the diplomas or the certificates with which their professors are furnished.

[Inclosure 2 in No. 276.]

MEMORANDUM IN REGARD TO THE SCHOOLS OF THE AMERICAN MISSIONARIES IN TURKEY.

A. *Their history.*—The first school established by American missionaries in the Turkish Empire was opened at Beirut in the year 1824. Since that time the missionaries have continued to extend their educational system without objection on the part of the Turkish Government, and indeed often aided by the Government, until now there are some 400 schools in Turkey which are supported in whole or in part by the Americans. Of these schools about 75 are on the premises of American missionaries. Perhaps 100 more are in premises owned or rented by Americans, but occupied by native agents of the missionary societies, and the remainder are held in premises furnished by the natives.

To meet the needs of these schools the missions have published text-books of the various elementary sciences in the various native languages, and in order to avoid offending the sensibilities of the Turkish Government these books have been published only after the approval of the ministry of public instruction had been secured.

Previous to the year 1869 there was no law of the Turkish Empire relating to the establishment of schools by foreigners in Turkey, and the carrying on of such schools was regarded as one of the privileges belonging to the inmates of religious establishments. In 1869 the school law of the Empire was enacted, containing a provision that schools could be opened by foreigners in Turkey on obtaining a permit for the same from the ministry of public instruction, the permit to be issued upon approval by the proper authorities of the teachers, the course of study, and the text-books of the

school applying for such permit. The law further provides that schools which lack the approval of the ministry of public instruction in these particulars will be closed.

This law makes no specific mention of schools conducted by the missionary organizations, and no steps were taken to make it known to them through the legation or otherwise. Hence the existence of the law remained unknown to the missionaries. The attention of an American missionary society which has schools in Syria was called to the existence of such a law by the attempt of a local governor to close some of their schools on the ground that they had not been authorized. This was in the year 1874. The case was appealed to the governor-general of the province, Esaad Pasha, and he decided that the law had no reference to schools established before the date of the law, and the schools were allowed to continue. Since the year 1879 isolated cases have occurred in other parts of Turkey of demands that American schools should provide themselves with permits, and in 1886 such demands have been pressed in a somewhat peremptory form. It is thus seen that full fifteen years have elapsed since the enactment of this law before any intimation is given to Americans that the school law is interpreted as applying to their educational establishments, and before any general attempt is made to enforce such an interpretation of the law. The American missionaries engaged in this educational work have always desired to be guided by the reasonable wishes of the Turkish Government as to the character of the schools which they conduct on Turkish soil. But they soon found that the demand that they should ask for permits was regarded by the local authorities as giving to the Government the right to close long-established schools on other grounds than resistance to the supervision of the ministry of public instruction. In 1882 an American school in Kara Hissak, in the province of Sivas, reopened its doors after a temporary suspension. It had been in operation for sixteen years, but at this time was required to apply for a permit. The application was made in due form, but resulted in a peremptory order to close the school, without assigned reason. A similar case occurred the next year at Enderes, in the same province. In both cases permission was afterwards granted to the schools, but it was only after more than a year of needless interruption to work, with corresponding injury to the interests of the schools. Similar difficulties in other cases have led the missionaries to feel that to apply for permits for their schools brings upon them unjust treatment, to which the authorities would have not ventured to subject them if they had not applied for the permit. To apply for such permits is to admit that the application may be denied, and such applications, therefore, put it in the power of Turkish officials to extinguish at a stroke the fruit of many years' labor, and a large investment of American capital, the protection of which by the United States is guarantied by the capitulations.

The American missionaries have not the least wish to withhold from the Turkish Government the right of assuring itself that these schools do not impart what is morally or politically bad to subjects of His Imperial Majesty. But they believe the securing of this end is a question of detail which can be arranged without attacking the indubitable right of the missionaries to continue to conduct these schools in a lawful manner.

B. *The rights of American missionaries in these schools.*—That the American missionaries are entitled to protection for their schools under the treaties will appear from the following considerations:

(1) It is an axiom of the capitulations that foreigners residing in Turkey can not be molested by the Turkish authorities so long as they attend peaceably to their business or other lawful occupation, their business interests as well as their persons being under the protection of the laws of the country to which they may belong. In the case of religious organizations established in the Turkish Empire the capitulations extend to them the immunity and the protection given to other foreigners, and moreover grant them special privileges. (See French Capitulations of 1740, arts. 1, 32, 33, 34, 35, 36, and 82.)

(2) The absence of any law prohibiting the opening of schools by foreigners has always been regarded as leaving them free to carry on schools at will under the protection of their own Government.

On the basis of this understanding of the capitulations schools have been opened at will by foreigners in Turkey, without objection on the part of the Turkish Government, and with their assistance, during very many years.

In fact, the usage of the Turkish Government in times past shows that it has put this interpretation on the rights conferred by the capitulations. It has not only not interfered with the establishment of these schools or their unrestricted continuance to the present time, but it has repeatedly intervened to protect them against unlawful aggression on the part of ill-disposed persons. Even when, as in Talas (province of Cesarea), in 1881, it has seen fit to refuse permits for the construction of new buildings for one of these schools, it has never deemed itself competent to prevent its continuance in its old locality.

(3) The attitude of the Turkish Government toward the foreign religious bodies having establishments in Turkey has always shown that the privileges anciently ac-

corded to them are understood to cover their right to conduct schools without interference.

In the East a school is always regarded as a necessary part of a religious establishment, whether native or foreign; and that the Turkish Government has also understood the ancient guaranties enjoyed by such establishments as including liberty to open schools is shown by the modern interpretation given to the ancient guaranties. In 1864 the Government issued an imperial decree explaining and regulating the privilege of immunity from customs dues enjoyed *ab antiquo* by religious establishments. This decree, being a declaration on the part of the Imperial Government of its understanding of a treaty obligation, and being agreed to by the various powers concerned, has the same force as the original treaty. It defines what institutions the Turkish Government understands to have been meant when the privilege of exemption was anciently given to religious establishments. Among these institutions are included, as they must be, free boarding and day schools directed by the inmates of these establishments. These "are, or may be," says the decree in question, "connected wholly or partially with the convents mentioned in article second." And therefore each free pupil in them is entitled to receive from abroad, for the necessities of his education, goods to the annual value of 450 piasters. The privilege in question was originally accorded to convents and monasteries, but the Turkish Government has agreed that the establishments of the American missionaries, although not called by the name of convents and monasteries, are entitled to the same privileges, as being the abode of benevolent religious bodies who are not occupied with the affairs of a worldly nature. Accordingly, the American missionaries participate for themselves and for their schools, to the full number of their free pupils, in the privileges secured by the ancient treaties to the religious bodies of other nations.

Such schools enjoy the custom-house franchise, not by a certificate of permission from the Turkish Government, but by means of a certificate of their existence from their consul. And to-day, while the Turkish Government is seeking to invalidate the right of these schools to exist, the law of Turkey compels the administrator of the imperial custom-houses, on receiving a notice from the American consul that a new school of this class has been opened by the American missionaries, to enter that school without further inquiry on the free list at the custom-house. This fact shows conclusively that at the time of the framing of these regulations the Turkish Government acknowledged the correctness of that interpretation of the treaties which considers the foreign religious bodies established in Turkey as authorized to open and conduct schools at their pleasure. (See decree of 1864 on the customs franchise enjoyed by religious establishments; especially arts. 3 and 8.)

C. *Conclusions from these facts.*—(1) That the educational system built up in the past sixty years in Turkey, whereby many thousands of indigent children are instructed by the American missionaries, is authorized by the ancient treaties, and has in fact grown up under their protection.

(2) That under the principle that a diplomatic document only, agreed to and signed by the two powers, can lawfully invalidate or modify the capitulations, a law of the Turkish Empire of recent date, like the educational law of 1869, can not, in the absence of such an agreement, be enforced as regards the American missionary schools.

(3) That the demand that the existing schools of the American missionaries apply for permits or close their doors, by implying that they have no legal right to exist, is a direct attack upon one of the privileges secured to foreigners by the capitulations.

It is desirable that the legation should meet the views of the Imperial Government as far as possible in the matter of allowing the ministry of public instruction to supervise these schools for the purpose of guarding against possible injury to the interests of the Ottoman Empire through their means. But the schools being authorized by the treaties and by all ancient usages, the legation can not, without imperiling the whole of the invested capital, admit that they now require a further authorization from the Government in order to have the right to exist.

In behalf of the American Mission.

HENRY O. DWIGHT.

CONSTANTINOPLE, *November* 23, 1886.

[Inclosure 3 in No. 276.]

Mr. King to Munif Pacha.

No. 37.] UNITED STATES LEGATION,
Constantinople, November 12, 1886.

EXCELLENCY: I have the honor to inclose, in accordnace with your request, a list of the schools closed in Syria.

It is admitted by your local authorities that many of these schools were doing a useful work by improving the welfare and intelligence of the people.

I should be greatly obliged to you if you would give directions to the provincial governor to allow these schools to be reopened immediately, provided that they apply for permission in accordance with the existing law.

Accept, etc.,

PENDLETON KING,
Chargé d'Affaires ad interim.

[Inclosure 4 in No. 276.]

Mr. King to Mr. Heap.

No. 138.] UNITED STATES LEGATION,
Constantinople, December 17, 1886.

SIR: In reference to the question of schools, after repeated discussion of the subject with the minister of public instruction and with others, I deem it advisable to request you to instruct the managers of all the American schools in the Ottoman Empire (including those recently closed in Syria, and elsewhere, if any) to inform the local Turkish authorities that they are ready to submit the programmes of studies, the text-books, and the diplomas or certificates of the teachers to an examination.

I am informed by his excellency, Munif Pacha, minister of public instruction, that he will instruct the local authorities not to interfere with any of these schools conforming to this request, provided that the said programs of studies, text-books, and diplomas be found to be in conformity to section 129 of the law on public instruction.

It is considered that the principle and rights conferred by the capitulations and by long usage in regard to the establishment of schools are kept intact, and that the examination of the courses of study and of the text-books comes within the territorial rights of the country.

I have, etc.,

PENDLETON KING.

[Inclosure 5 in No. 276.]

Mr. King to Munif Pacha.

No. 38.] UNITED STATES LEGATION,
Constantinople, December 18, 1886.

EXCELLENCY: I have the honor to inclose you a copy of my dispatch to Mr. Heap, United States consul-general, in regard to the American schools. It is at the same time an exact copy of my directions to the secretary of the missionaries.

Will you be kind enough to furnish me a copy of your directions to the provincial governors?

I desire to thank you again for your patient and liberal discussion of this subject.

Accept, etc.,

PENDLETON KING,
Chargé d'Affaires ad interim.

[Inclosure 6 in No. 276.—Copy of instructions from Munif Pacha to provincial governors on schools.]

A number of schools within the Imperial provinces having been established without permission, general instructions were issued some time ago with the object that three months' time should be given them, and if within that time they did not comply with the requisite rule, action should be taken against them in accordance with the law.

Now, according to the information which reaches us, some of these schools have for some reasons been closed; but several of them have now given assurances of their readiness to conform to the terms of the law, consequently you will see fit to allow the reopening of such schools as shall conform to article 129 of the law of the public instruction, the closed schools of the Jesuits to be excepted until further instructions.

[Inclosure 7 in No. 276.]

Mr. King to Mr. Heap.

No. 141.] UNITED STATES LEGATION,
Constantinople, December 29, 1886.

SIR: In further reply to your dispatches, numbered 129 and 140, of September 1, 1886, No. 145, of September 15, and No. 156, of December 10, I have the honor to inclose a copy of the instructions spoken of in my dispatches to you, No. 138, of 17th instant,

sent by his excellency Munif Pacha, minister of public instruction, to the provincial governors regarding the American schools.

In order to be rightly understood, these instructions must be considered in connection with the minister's explanations and distinctpromise that none of the American schools conforming to section 129 of the law on public instruction shall be interfered with, and moreover that those heretofore closed may be reopened.

You will communicate these instructions and the above explanations to the managers of the different schools, through the proper channels, so that they may promptly report any difficulties they may have with the provincial governors or other local authorities in carrying out the clear and definite understanding which I have finally arrived at with the minister of public instruction on this subject.

I have, etc.,

PENDLETON KING.

[Inclosure 8 in No. 276.]

Mr. King to Rev. Mr. Dwight.

No. 144.] UNITED STATES LEGATION,
Constantinople, December 30, 1886.

DEAR SIR: I inclose a copy of the instructions spoken of in my letter to you, No. 137 of the 13th instant, sent by the minister of public instruction to the provincial governors.

In order to be rightly understood these instructions must be considered in connection with the minister's explanations and distinct promise that none of the American schools conforming to section 129 of the law on public instruction shall be interfered with, and moreover that those heretofore closed may be reopened.

You will please communicate these instructions and the above explanations to the managers of the different schools, so that they may promptly report any difficulties they may have with the provincial governors or other local authorities in carrying out the clear and definite understanding which I have finally arrived at with the minister of public instruction on this subject.

I would suggest that the managers of the schools in dealing with this matter should use tact and conciliation where it is possible, in order to give the local authorities no ground for putting difficulties in our way.

Yours, very respectfully,

PENDLETON KING,
Chargé d'Affaires ad interim.

No. 683.

Mr. King to Mr. Bayard.

No. 277.] LEGATION OF THE UNITED STATES,
Constantinople, January 15, 1887. (Received February 1.)

SIR: Interference with the colporteurs employed by the missionaries has been a difficulty of long standing between this legation and the Turkish Government. Recently, however, they agreed to prepare certain regulations for the control of these colporteurs, which, when finished, will put an end to these difficulties, we hope.

A commission was appointed to prepare these regulations, but at one time ceased to hold meetings and apparently came to an end; but they were urged to take the matter up again, and they have at length finished framing the articles. These are to be submitted to two or more councils and, finally, to the Sultan.

In the mean time the arrest of the colporteurs, notwithstanding the agreement to leave them alone for the present, continues to give trouble to our missionaries. Verbal remonstrances have been made several times, but they have proved ineffective.

Accordingly I have sent a dispatch to the minister of foreign affairs on the subject, a copy of which I inclose for your consideration.

I have, etc.,

PENDLETON KING.

[Inclosure in No. 277.]

Mr. King to Said Pacha.

LEGATION OF THE UNITED STATES,
Constantinople, January 13, 1887.

EXCELLENCY: I beg to ask your attention to the matter of the frequent interference by the municipal authorities with the colporteurs employed by the American Bible Society, especially of those in Constantinople, in the sale of books, which have been submitted to and authorized by the board of public instruction.

A few years ago these interferences were carried to such an extent that my Government laid claim to an indemnity. This claim it afterwards relinquished under the express condition that such interference should not occur again, as you will see by referring to dispatch No. 118, of June 22, 1882, from this legation to the Sublime Porte, and from dispatch of March 22, 1883, from the Sublim Porte in reply, and finally to dispatch No. 156, of March 30, 1883, from this legation to the Sublime Porte.

Recently a commission was appointed to frame regulations on this subject, with the distinct understanding between this legation and your department that colporteurs quietly pursuing their business should not be interfered with until said regulations were completed.

I therefore beg your excellency to issue positive instructions to the competent authorities which will prevent further interference with said colporteurs.

Accept, etc.,

PENDLETON KING.

No. 684.

Mr. Bayard to Mr. King.

No. 187.] DEPARTMENT OF STATE,
Washington, February 2, 1887.

SIR: I have received your No. 277, of the 15th ultimo, inclosing a copy of your note to the Sublime Porte in regard to the interference with colporteurs employed by American missionaries in Turkey, and have to approve your interest in the matter.

I am, etc.,

T. F. BAYARD.

No. 685.

Mr. King to Mr. Bayard.

[Extract.]

No. 286.] LEGATION OF THE UNITED STATES,
Constantinople, February 7, 1887. (Received March 1.)

SIR: In connection with my dispatch No. 257, of October 19, 1886, and your reply No. 171, of 11th November, I have the honor to inclose a copy (in translation) of the dispatch received from the Sublime Porte, and likewise a copy of my reply to it.

I learn from the missionaries that, as a result of the visit of Rev. Mr. Filian to Constantinople, he has obtained permission to continue preaching, which he had been prevented from doing.

I have insisted on the right of Dr. Herrick and our missionaries to visit that city and preach, notwithstanding the smallness of the congregation.

Hoping that my action will meet your approval,

I have, etc.,

PENDLETON KING.

[Inclosure 1 in No. 286.—Translation.]

The Sublime Porte to Mr. King.

SUBLIME PORTE, DEPARTMENT OF FOREIGN AFFAIRS,
January 26, 1887.

MR. CHARGÉ D'AFFAIRES: On receipt of the dispatch you kindly addressed me on the 18th of October last, No. 32, I hasten to apprise the governor-general of the province of Kastamouni of the complaint drawn up by the Rev. Dr. Herrick against the local authorities.

In his reply his highness, Abdurrahman Pacha observes firstly that there are no Protestants in the province, and that no American missionary had made his appearance there till recently. Only within a few years three or four Protestant Armenians from Cesarea having come temporarily to Kastamouni on commercial business, a certain Filian, an Ottoman subject from Antioch, took advantage of their presence in that city to go and establish a school there.

That school was soon after transformed into a temple, where Filian used to proselyte, which excited to such an extent the religious feelings of the population, that the local authorities had, on their complaint and in order to quiet their minds, to invite Mr. Filian to shut up his establishment, which after all had been established without permission.

It was during that interval that Dr. Herrick, accompanied by a certain Gulbenk, came to Castamouni, and stopped at Yacoub Filian's. Without presenting himself personally to the authorities to exhibit his papers, he contented himself with having his passport registered, after which he left for Marsovan. A few days later Yacoub Filian himself left Kastamouni for Constantinople.

These are the facts in the case. It results from what precedes, and you cannot refrain from acknowledging it yourself, Mr. chargé d'affaires, in your enlightened appreciation, that the unfounded complaints of the doctor could not have been drawn up but on the instigation of said Filian.

I think proper to add that since there are no Protestants at Kastamouni, where moreover there exists neither temple nor school belonging to that creed, the arrival of pastors or American missionaries would have no reason, and would be sure to raise new difficulties.

Accept, etc.,

SAÏD.

[Inclosure 2 in No. 286.]

Mr. King to the Sublime Porte.

LEGATION OF THE UNITED STATES,
Constantinople, February 7, 1887.

EXCELLENCY: I have the honor to acknowledge the receipt of your dispatch of 26 January, 1887, and in reply I beg to say that the number of Protestants living in Kastamouni is not the matter under consideration. The point I desire clearly to present to you is the right of Dr. Herrick or any other American citizen to visit that city and quietly hold religious services, whether the number of Protestants be large or small; whether they be permanent or temporary residents of that city.

I beg you therefore to give positive directions to the provincial governor not to interfere and not to allow interference with such service in the future.

Accept, etc.,

PENDLETON KING.

No. 686.

Mr. King to Mr. Bayard.

[Extract.]

No. 307.] UNITED STATES LEGATION,
Constantinople, April 12, 1887. (Received April 30.)

SIR: Some weeks ago I received a note from the minister of police stating that he desired to send an official from the board of public instruction, accompanied by a police agent, to search the *book-store*

opening on the street, forming a part of the Bible House. I sent the dragoman of this legation to accompany him, and instructed him not to allow him to search the *whole* Bible House accompanied by a policeman. The official expressed his desire to search not only the bookstore but the entire building, and on being informed that he would not be allowed to do that, he refused to make any search whatever. He was then asked to go through the entire Bible House *alone* and search it as carefully as he desired; this he refused to do.

In my dispatch No. 277, of January 15, 1887, I inclosed a copy of a note addressed to the Porte regarding the interference with the colporteurs. Shortly afterwards there were three more arrests of colporteurs; whereupon I sent another note to the Porte.

In these dispatches I made no mention of the Bible House incident, but the Porte has seen fit to connect the two matters, probably because they both touch the sale of books.

I inclose for your consideration a copy of my reply.

I hope that my dispatch will be found correct in its claims, and will meet your approval.

I have, etc.,

PENDLETON KING.

[Inclosure 1 in No. 307.]

The Sublime Porte to Mr. King.

SUBLIME PORTE, DEPARTMENT OF FOREIGN AFFAIRS,
March 22, 1887.

Mr. CHARGÉ d'AFFAIRES: I have received the two dispatches that you kindly addressed to me under the dates of 13th of January and the 21st of February last, Nos. 40 and 47, with regard to the colportage of the books of the Bible Society.

The information which has been furnished on this subject to the legation seems to be incomplete. According to the reports of the prefecture of the police, the missionaries of that society having commenced the spreading of certain tracts which are injurious and calumnious to the Mussulman religion, it had been decided to enforce the seizure of them. A search made in the Bible House, with the assistance of the consular dragoman, brought the discovery of many volumes of those tracts and others not less injurious, but the dragoman opposed their seizure by the agents of the authority. This opposition of the dragoman is the less justifiable, as under the clauses of the protocol annexed to the law of the seventh Sepher, "the action of the police outside of an abode must be exercised freely and without reserve." Now the Bible House is not a private abode; it is a vast establishment, containing a printing establishment, a book-store, an editing bureau of a journal, and a school—the whole making a public place, where the imperial authorities could have free access, and practice, in case of need, a direct supervision.

The foreign and native printing and newspaper establishments being governed by the same law, the consular assistance itself would not be necessary. But as long as it has been requested, the dragoman could not oppose the seizure of subversive books pointed against the religion of the state or against the public order, and obstruct in this way the action of the authority. Therefore I would be very much obliged to you if you would give the necessary instructions to whom it belongs, so that similar difficulties shall not be raised any more, in the absence of which the imperial authorities would be justified in acting by themselves, as moreover the aforesaid protocol confers upon them the power.

As regards the colporteurs themselves, who are all Ottoman subjects and not citizens of the United States, and of the promulgation a regulation on the bookhawking, a question purely interior, the imperial authorities will not fail to take the measures which they will consider useful and necessary.

Accept, etc.,

SAÏD.

[Inclosure 2 in No. 307.]

Mr. King to the Sublime Porte.

No. 57.] UNITED STATES LEGATION,
Constantinople, April 6, 1887.

EXCELLENCY: In your dispatch of 22d March, you state that "d'après les rapports de la préfecture de police les missionaires de cette société ayant commencé à répandre certaines brochures injurieuses et calomnieuses pour la religion musulmane, il avait été décidé d'en opérer la saisie et de les détruire."

I am glad to be able to say, and I think that you will be pleased to learn, that the information which has been furnished you on this point is totally devoid of truth. On the contrary, the missionaries do not offer for sale, either at the Bible House or through their colporteurs, a single book or pamphlet which they are not ready to have examined by the proper authorities; no book nor pamphlet which has not been sanctioned by the ministry of public instruction or passed the censorship of the custom-house.

They offer for sale nothing against the Mussulman religion or public order.

A grave charge of this kind, which does great injustice to our missionaries, should be accompanied by definite facts. What books or pamphlets have been offered for sale to which objection can be made?

Possibly the erroneous information furnished you arose from the fact that some years ago the missionaries offered for sale some copies of a Greek book, which came from Athens, passed the censorship, and paid duties, but later it proved to be objectionable.

But being informed that such was the case, they immediately withdrew them from sale, and struck the title from their catalogue.

Furthermore, your statement that, when the Bible House was recently visited by an official of the board of public instruction and an agent of the police and our dragoman, this "perquisition avait amené la découverte de plusieurs exemplaires de ces brochures et d'autres ouvrages non moins nuisibles" likewise rests on false information.

How can such an assertion be made, when said official refused to make a search in the store, contemplated in the request of the minister of police, unless he was also allowed to make a search through the whole Bible House, accompanied by the police agent and the dragoman?

This request was not granted, but he was invited to visit the whole establishment and examine it by himself; this he refused to do.

Afterwards two of our missionaries called on his excellency Munif Pacha, minister of public instruction, and explained to him that nothing objectionable was offered for sale, and at their request the same agent visited the Bible House, accompanied by another gentleman, made a search and said that he found nothing objectionable.

The Bible House is free to be visited at any time by officials in an unofficial manner and without police.

Your claim of right to search it officially without the assistance of the legation can not for a moment be granted by this legation and has never been granted. By reference to dispatches from this legation, No. 25, of April 4, 1874; No. 38, of June 6, 1874; No. 77, of March 12, 1875, your excellency will see that not only was such a claim disputed, but in No. 77, it is stated that "la Sublime Porte s'engagea à prendre les mesures nécessaires à ce que l' incident du Bible House ne se renouvelle pas par la suite."

This legislation can not admit that the protocol to which your excellency refers grants the right of officially visiting the Bible House, and if such visits are at times granted it is a matter of courtesy and convenience, and not from any admission of your right to make an official search.

Finally, in reference to the colporteurs, your excellency knows that within a few years many of them have been arrested and hundreds of books taken from them. How many of these books, excellency, have been found objectionable? Since not a single one of them has been found objectionable, I hope you will see that the necessary measures are promptly taken (as requested in my dispatches No. 40, of January 13, and No. 47, of February 21) to prevent further interference with said colporteurs.

A cessation of such interference will remove a chronic cause of complaint, and will be not only a great benefit to this legation, but, as it seems to me, a great convenience to your Government.

Accept, etc.,

PENDLETON KING.

Mr. Bayard to Mr. Straus.

No. 7.] DEPARTMENT OF STATE,
Washington, April 20, 1887.

SIR: Permit me to attract your attention to the relations of citizens of the United States as a nationality to the Ottoman Porte, in connection with which two important questions present themselves for consideration, the first being the position of citizens of the United States residing continuously in Turkey for business or other purposes; the second, the position in respect to the Porte, of educational, eleemosynary, and religious institutions established and carried on by citizens of the United States on Turkish soil.

So far as concerns missionary status, the question now immediately presented is one which does not exclusively concern the schools of the American Board of Commissioners of Foreign Missions. Excellent as is their work, and entitled to the highest respect, I have simply to say that the efforts the Department is now making, and has heretofore steadily made, in support of those schools is wholly divested of sectarian preferences, and would be exerted with equal earnestness in support of the schools in Turkey of any other and all other American charitable or religious associations.

And, further, in view of the general question of the rights of citizens of the United States in Turkey, it is important to maintain that the rights of extraterritoriality, claimed to a greater or less extent for these schools, are part of the same system by which rights of extraterritoriality are claimed by this Government in Turkey (1) for our citizens in certain juridical relations, and (2) for our diplomatic and consular establishments, so as to enable them to extend protection to the extent to which such protection is enjoyed by other Christian embassies, legations, and consulates in Turkey. The basis of this jurisdiction may be thus stated:

Constantinople and the domain of which it is the capital have, from a very early period down to the present day, been populated by distinct and diverse nationalities, to which rights of government by their own especial laws have always been conceded. We have this thus conceded (during the Greek Empire) by Cassiodorus, the secretary of Theodoric the Great: "*Romanis, Romanus judex erit; Gothis, Gothus; et sub diversitate judicum una justitia complectabatur.*"

When the Ottoman Porte was established by conquest in Turkey the same system of recognition and assignment of self-government to each distinct nationality was not only adopted but extended. Not only were Armenians and other nationalities whom the Turks, after the conquest, found in their domains, recognized as entitled to a large measure of local self-government, but similar privileges were from time to time accorded to foreign Christian nations. For this course on the part of the Porte—a course which has led to the non-application to Turkey of the principles of territorial sovereignty generally recognized elsewhere—the following reasons may be given:

When the Porte took possession of Turkey its population was largely made up of Christian nationalities to which local self-government had been previously more or less assigned. These nationalities could not be expelled from Turkey without expelling the population by which its fields were tilled and its business exchanges conducted. On the other hand, the Porte could not undertake the municipal control of

such nationalities, nor the settlement of their business differences, nor the supervision of their religious functions. Those who rejected Mohammed were, to the Turk, not merely enemies, but Giaours—unclean persons—persons with whom the Turk could have no business or even social relations. Hence they were to be excluded from Turkish armies. While they might be taxed for imperial purposes, they were, so far as concerns their own particular interests, to determine themselves the taxes which they were to bear. In Turkish schools their children could not be received; and, therefore, they were entitled to have schools of their own, in which the teaching was to be distinctively Christian, and which were regarded as part of the system of diverse nationality recognized by ancient usage and essential to the existence of the Empire. And so it was with regard to the settlement of business disputes. As the Porte, or its courts, whatever they might have been, could not, without abandoning its fundamental doctrine of creed isolation, take cognizance of business disputes between unbelievers, these disputes must be settled by courts of the nationalities to which these unbelievers respectively belonged. And if questions of religion were involved, such disputes must be referred for determination to the head of the church to which the disputants belonged.

This demarkation of jurisdictions will not appear strange when it is recollected that a similar policy and practice are adopted in this country by the dominant race toward the North American Indians. We can scarcely rate the incapacity of these Indians to adopt and apply our institutions as greater than the Ottoman conquerors regarded the incapacity of the Christian nationalities in Turkey at the conquest to adopt and apply Ottoman institutions, nor regard the political capacity of these Indians as of a less grade than the Ottoman conquerors regarded that of their new Christian subjects. And we continue to do for the Indians what the Ottoman conquerors of Turkey did for the Christian races who at the conquest were found there. Just as the Ottomans professed themselves unable to understand the laws of those Christian races, or to establish over them Moslem law, therefore leaving them to their own courts, so we, declining to absorb Indian law into our own, or even to apply to Indians our own municipal jurisprudence, leave the adjudication of questions arising in Indian tribes to the determination of their tribal law.

This renunciation by the Porte of legislative and judicial control over Christian nationalities, which was worked into the traditions of the Empire, acquired not only greater municipal force but more fully recognized international validity, when the great European powers sent to Turkey not only diplomatic and consular agents, but merchants, to conduct business with the Christian subjects of the Porte, and missionaries to minister not only to persons of their own nationality but to whomsoever might apply. These visitors could not be repelled. Turkey could not afford to quarrel with the leading sovereigns of civilization, nor could she preclude that civilization from pouring, through its agents, into her domains. Those agents came and remained in great numbers; not merely merchants and capitalists, but religionists, devoted to the work of maintaining worship, according to their views, with hospitals and schools. To these energetic and influential settlers Turkish law, for the following reasons, was even less applicable than to the native Christians. The new-comers were protected by foreign powers whom Turkey was unwilling to offend; and they belonged to Western races who, from their idiosyncrasies, can not be fused with the Orientals. They are, to adopt Lord Stowell's language, frequently cited

with approval in the United States (The Indian Chief, 3 C. Rob. Adm. Rep., 29), "immiscible," so that by no comity of international law can the institutions of the one be applied to the other. No foreigner with ordinary business capacity or ordinary self-respect would live in a country where he could not be heard in the local courts of justice, or, if he were heard, it would be as degraded by the disabilities of an inferior and abject race. Yet, on the other hand, the presence in Turkey of foreigners of business capacity and of self-respect is essential to the maintenance of the Empire. By them its monetary affairs are conducted, its soldiers drilled, its schools taught in all that concerns liberal civilization, and its relations with the outside world regulated. Turkey could not, and can not now, be expected to surrender the policy which, nominally at least, treats the Ottomans as the dominant race on her soil; and the only alternative open to her has been, therefore, to permit foreigners of the classes so necessary to her political prosperity to enjoy, as far as practicable when living within her borders, their own distinctive institutions. The Porte could not exist if it were to surrender the political exclusivism of Islamism. It could not exist, also, if it were deserted by those foreigners to whom its progress in civilization is due. Hence the local self-government conceded to foreign communities in Turkey, evidenced in the old capitulations and gradually extending to meet the exigencies of the times, is a necessary emanation of the political and social conditions of that Empire as they now exist. It is for the legation of the United States at Constantinople to see that American citizens in Turkey enjoy in their various relations the rights of extraterritoriality which, under the system I have outlined, are among the essential conditions of the continuous political existence of Turkey under its present dynasty.

The most important of the prerogatives growing out of these conditions is that of the distinctive jurisdiction assigned to our ministers in Turkey under treaty, and as applied by Revised Statutes, section 4125, which gives these officers such jurisdiction as "is permitted by the laws of Turkey *or* [in the alternative] "its usages in its intercourse with the Franks or other Christian nations." By the same standard of usage, as evolved by the processes above stated, are to be determined the territorial rights exercised by our legations and consulates in the East, and the prerogatives of American missionaries, under the limitations above mentioned.

The effect of the treaty of 1830 on this extraterritoriality is thus stated by Mr. Cushing (7 Op., 567, 568):

> Commerce, in the treaty, means *any subject or object of residence or intercourse whatsoever; * * * as to all civil affairs to which no subject of Turkey is a party, Americans are wholly exempt from the local jurisdiction; and, * * * in civil matters as well as in criminal, Americans in Turkey are entitled to the benefit* of "the usage observed towards other Franks."
>
> I think the "causes" spoken of in the second sentence of the fourth article are of the same nature as to parties as the "litigations and disputes" mentioned in the first sentence—that is, between citizens of the United States and subjects of the Porte; the meaning of which is, that causes between such parties under five hundred piasters in amount are to be decided by the ordinary local magistrates, assisted by the dragoman, and causes above that amount by the Porte itself—that is, the Sultan or his appropriate minister, with intervention of the minister or consul of the United States.
>
> My conclusions in this respect are founded, first, on the phrase in the second article which engages that citizens of the United States in Turkey shall not be "treated *in any way* contrary to established usages." What are the "established usages?" Undoubtedly the absolute exemption of all Franks, in controversies among themselves, from the local jurisdiction of the Porte.
>
> I will not repeat here what has been said in previous communications as to the ground or principle of the right of extraterritoriality asserted by, and fully conceded to, Franks generally, that is—Western Christians, in Turkey.

One of the distinctive incidents of this extraterritoriality is thus noticed by Mr. Marcy in his note of September 26, 1853 (Dig. Int. Law, section 198):

By the laws of Turkey and other Eastern nations the consulates therein may receive under their protection strangers and sojourners whose religion and social manners do not assimilate with the religion and manners of those countries. The persons thus received become thereby invested with the nationality of the protecting consulate. These consulates and other European establishments in the East are in the constant habit of opening their doors for the reception of such inmates, who are received irrespective of the country of their birth or allegiance. It is not uncommon for them to have a very large number of such *protegés*. International law recognizes and sanctions the rights acquiesced [*sic*, acquired?] by this connection.

In the law of nations, as to Europe, the rule is that men take their national character from the general character of the country in which they reside; and this rule applies equally to America. But in Asia and Africa an immiscible character is kept up, and Europeans trading under the protection of a factory take their national character from the establishment under which they live and trade. This rule applies to those parts of the world from obvious reasons of policy, because foreigners are not admitted there as in Europe and the western parts of the world, into the general body and mass of the society of the nation, but they continue strangers and sojourners, not acquiring any national character under the general sovereignty of the country. (1 Kent Com., 78, 79.)

In a report to the Institute of International Law on this subject, by M. F. de Martens (Annuaire, 1882–'83, p. 225), is found the following statement:

D'autre part, les gouvernements musulmans eux-mêmes n'ont jamais insisté sur leur pouvoir territorial pour juger les procès mixtes entre sujets des États chrétiens. Les contestations entre giaours étaient trop impures aux yeux des musulmans pour qu'une intervention de leur part fût permise.

And in the same volume, page 231, M. J. Hornung says:

Cette exterritorialité des colonies européennes et américaines trouve sa justification dans les défauts de la justice et de la police locale et dans le déplorable état des prisons. Souvent, en outre, les pays de l'Orient sont encore, au point de vue religieux, dans leur droit et leur justice, ce qui—soit dit pour leur défense—était encore le cas, dans les pays chrétiens, il y a cent ans ou même moins. Ainsi, devant les tribunaux ottomans de l'empire turc, le témoignage des chrétiens n'est pas, en fait, admis sur le même pied que celui des musulmans, le cheikulislam n'ayant pas encore donné son autorisation aux cadis. (Voir le rapport de Sir Travers Twiss dans le tome V de l'Annuaire.)

Concessions by the sovereigns ot Constantinople and the region which it dominates of extraterritorial privileges were issued by the Christian Emperors to Venice early in the eleventh century; to the Amalfians in 1056; to the Genoese in 1098; to Pisa in 1110. The charters granting these privileges were called "capitulations," from the fact that they were divided into chapters; and this title they continued to hold after the Moslem conquest. When the Turks took possession of Constantinople, after the conquest of 1453, they found the Genoese in possession, under a specific capitulation, of the town of Galata, which was surrounded by an intrenched camp. This capitulation was confirmed by Mahomet when master of Constantinople. Capitulations to Venice, dated October 2, 1540, granted to Venetians the right of having all differences between Venetians in Turkey decided by judges to be appointed by Venice, while to the trial before Turkish courts of differences between Venetians and Turks, the presence of a Venetian interpreter was an essential condition. In the same capitulations was given to Venice the right of having permanently at Constantinople a magistrate, as a sort of Venetian viceroy, by whom general supervision over Venetians was to be exercised. Venetians, by the same instrument, were exempted not merely from military service, but from the tax to which other Christians were subjected.

The law in this respect is thus summed up by M. F. Laurent, in his Droit Civil International, vol. 1, page 239, as translated in this Department:

The conquerors left to the conquered their law and a sort of autonomy; the Greeks, Armenians, Slavs retained their religious and civil establishment as it existed at the epoch of the conquest; the Turks confine themselves to ruling, and this rule consists merely in levying the tribute imposed on conquered populations; they do not interfere with the administration of justice. As is the case with the Turks, the civil law is closely interwoven with the religious law; the conquerors left to the vanquished, together with their religion, a quite extensive civil autonomy, clothing the heads of the various religious communities with an authority analogous to the Sultan's. This system was extended to the Europeans who settled in the ports of the Levant for commercial purposes. In them the settlers are governed by their own laws; this autonomy is guarantied them by the capitulations, a kind of convention made between the Sultan and the foreigners represented by their Government. The capitulations can not be altered without the consent of the contracting parties. Hence this peculiar consequence, that the laws respecting foreigners and the rights assured to them only bind them when their respective sovereign states have accepted them. It can scarcely be said that the state is sovereign, for it does not proceed by the course of ordering and commanding; the relations between the Government and the foreigners are governed by international and not by municipal law. It will certainly not be asserted that this peculiar establishment is due to a liberal disposition of mind or even to the tolerance of the conqueror, for the latter may easily leave to the conquered and to foreigners entire religious liberty without granting them an autonomy which destroys the very conception of the state. It is simply incapacity, oriental barbarism. It has been said of the Turks that they have camped in Europe; they rule over peoples who dwell side by side, among whom there is no bond of connection, and between the conquerors and the conquered there is no connecting link save that of force.

To the same effect writes Mr. W. B. Lawrence, Commentaire sur Wheaton, vol. 4. pp. 106 *ff.*

To French subjects specific extraterritorial rights were given in the capitulations issued in February, 1535, or, according to Von Hammer, in February, 1536. (See De Testa's Traités de la Porte Ottomane, vol. 1, pp. 15 *ff.*) These capitulations were from time to time renewed and amplified, until they took the shape of the capitulations, or "Lettres Patentes" of May 30, 1740. De Testa, vol. 1, pp. 186, 187.) Of the articles in this document, so far as they bear on the question of extraterritorial rights to foreign religious communions, I inclose a translation made in this Department and marked Exhibit A.

I have referred in detail to these capitulations, because they have sometimes been put forward as the basis on which rests the right of our missionaries in Turkey to the protection they claim. But, accepting the view of Mr. Pendleton King, by whom the mission at Constantinople has been recently ably conducted, I doubt the expediency of relying solely on the capitulations for this purpose, since I think it may be questioned whether under the text the "religieux," to whom privileges are given, are not to be limited to persons of French nationality. It is not necessary, however, to thus limit ourselves. In the eighteenth article of the "capitulations and articles of peace between Great Britain and the Ottoman Empire, as agreed upon, augmented, and altered at different periods (beginning in 1675), and finally confirmed by the treaty of peace concluded at the Dardanelles in 1809," as published by the Levant Company, 1816 (1 Br. and For. St. Pap., 750), we have the following:

XVIII. That all the capitulations, privileges, and articles granted to the French, Venetian, and other princes, who are in amity with the Sublime Porte, having been in like manner, through favor, granted to the English, by virtue of our special command, the same shall be always observed according to the form and tenor thereof, so that no one in the future do presume to violate the same or act in contravention thereof.

As illustrating the nature of the rights subsequently recognized as residing not merely in Protestant missionaries in Turkey but in their converts I inclose several important documents, marked Exhibit B.

I also inclose a protocol of the conference which preceded the treaty of Paris of March 30, 1856, bearing on the same questions. This protocol is marked Exhibit C.

In the treaty of Paris referred to is the following article:

ART. IX. His Imperial Majesty the Sultan having, in his constant solicitude for the welfare of his subjects, issued a firman, which, while ameliorating their condition without distinction of religion or race, records his generous intentions towards the Christian populations of his Empire, and wishing to give a further proof of his sentiments in that respect has resolved to communicate to the contracting parties the said firman emanating spontaneously from his sovereign will.

The contracting powers recognize the high value of this communication. It is clearly understood that it can not, in any case, give to the said powers the right to interfere, either collectively or separately, in the relations of His Majesty the Sultan with his subjects, nor in the internal administration of his Empire. (Holland's Eastern Question, 246.)

The firman to which the ninth article, as given above, refers, is the Hatti-Humayoun of February 18, 1856 (*ibid.*, 329, *ff*), which virtually makes general the concessions of extraterritoriality given in the capitulations above cited.

From the report of the conferences which resulted in the treaty of Berlin of July 13, 1878, I make several extracts, marked in the Exhibit D.

Among the articles of the treaty of Berlin, July 13, 1878, are the following:

ART. LXI. The Sublime Porte undertakes to carry out, without further delay, the improvements and reforms demanded by local requirements in the provinces inhabited by the Armenians, and to guarantee their security against the Circassians and Kurds.

It will periodically make known the steps taken to this effect to the powers, who will superintend their application.

ART. LXXII. The Sublime Porte, having expressed the intention to maintain the principle of religious liberty, and give it the widest scope, the contracting parties take notice of this spontaneous declaration.

In no part of the Ottoman Empire shall difference of religion be alleged against any person as a ground for exclusion or incapacity as regards the discharge of civil and political rights, admission to the public employments, functions, and honors, or the exercise of the various professions and industries.

All persons shall be admitted, without distinction of religion, to give evidence before the tribunals.

The freedom and outward exercise of all forms of worship are assured to all, and no hinderance shall be offered either to the hierarchical organizations of the various communions or to their relations with their spiritual chiefs.

Ecclesiastics, pilgrims, and monks of all nationalties traveling in Turkey in Europe, or in Turkey in Asia, shall enjoy the same rights, advantages, and privileges.

The right of official protection by the diplomatic and consular agents of the powers in Turkey is recognized both as regards the above-mentioned persons and their religious, charitable, and other establishments in the holy places and elsewhere. (Holland's Eastern Question, 306.)

As an exposition of the effect of the articles above cited, I inclose, marked Exhibit E, a translation made in this Department of a passage from an article by Mr. Ed. Engelhardt, in the Revue de droit international et legislation comparée, vol. xii, p. 373.

This passage shows the construction assigned by the British Government, and accepted by Turkey, to the treaty of Berlin, so far as concerns the religious liberty of Protestants.

I have inclosed the above documents in this instruction because (1) they indicate the basis on which rests the extraterritoriality in Turkey of our citizens both as to religious liberty and as to distinctive judicial organizations, and (2) these documents may not be readily accessible in Constantinople. From them you will see that there is no

necessity of basing the claim of American missionaries in Turkey on the French capitulations. They are maintained far more effectively under the treaties of Paris and of Berlin, under the Turkish decrees which preceded these treaties, and under the settled customs of the Porte.

The construction given by Turkey to these treaties, and especially to the capitulations to Great Britain quoted above, is evidenced by her continued protection of the American missions in Turkey, with their hospitals and schools, in which Turkish patients are received and Turkish children instructed. These missions have been in existence for many years. They have now connected with them six colleges, forty-three seminaries and high schools, attended by two thousand pupils, and five hundred primary and secondary schools with over ten thousand pupils. Of these schools Mr. Hyde Clarke, in the Journal of the British Statistical Society for December, 1867, page 526, thus speaks:

> By the assistance of American funds and the devoted exertions of the American missionaries, men and women, a great influence has been exerted in the Armenian body generally; their services have not been so much devoted to theological propagandism as to rendering service as physicians, teachers, and social reformers. In these institutions a million of dollars, sent from the United States, has been invested, and from the United States their pecuniary support as well as most of their teachers are obtained. For more than half a century Turkey has seen these funds flow in, these schools built, these hospitals in beneficent operation, these children in process of instruction. "During the sixty years that American schools have existed in Turkey," so it is stated in an official communication from the American Board of Commissioners of Foreign Missions, which has these missions in charge, "it (Turkey) has not only not interfered with or objected to them, but it has repeatedly protected them against unlawful aggression on the part of ill-disposed persons."

The protection by Turkey of the schools established by other religious communions on Turkish soil, a protection which has existed from a time coincident with the establishment of such schools, shows that Turkey regarded them as among the incidents of the territorial rights assigned by the capitulations to those religious communions. We have, therefore, in this protection not merely a contemporaneous construction of the Turkish capitulations, treaties, and edicts, but a construction so continuous that it has the force of settled law. And this construction is strengthened by the fact that the Porte has ordered that no duties should be charged on goods coming to the American missions or schools. There could be no stronger proof that these missions and schools are regarded by Turkey as having not merely a protected but a favored existence on her soil.

It has been argued by high authority that the right on the part of American missionaries in Turkey to the continued maintenance of their churches, hospitals, and schools may be rested on the "favored-nation" clause of our treaty of 1862 with Turkey, applying to us privileges granted to other sovereignties. Turkey has claimed that this treaty has terminated by notice; and though there is little strength in this contention, it is not necessary that the question should now be raised. The rights of the missionaries above noticed find abundant support in ancient usage and in the Turkish legislation prior and consequent to the treaties of Paris and Berlin, applied, as this legislation has been, in such a way as to grant what are virtually charters to the missions in question for their hospitals and schools.

From what has been said it will be seen, therefore, that the right of Protestant citizens of the United States to conduct their missions, chapels, hospitals, and schools in Turkey in the way they have been heretofore conducted, rests on the privileges of extraterritoriality granted to Christian foreigners in Turkey, as expanded in the present

case by usage established by Turkey, so as to enable persons of Turkish nationality to be received in such hospitals and schools.

So far as concerns the right of Americans, whatever may be their religious faith, to protection in the exercise of that faith, the right rests on the concessions of extraterritoriality above stated. So far as it concerns their right to receive in their hospitals and schools (otherwise than as servants) persons of Turkish nationality, it rests on usage, amounting, from duration and the incidents assigned to it by law, to a charter. It is not, however, claimed that as to such persons of Turkish nationality extraterritorial rights in American missions can be acquired. They must remain subject to the sovereignty of the Porte, which is entitled to prescribe the terms on which they can be permitted to attend such missions. It is, therefore, with peculiar satisfaction that the Department learns that, in part through the instrumentality of Mr. Pendleton King, as chargé d'affaires, an arrangement has been effected with the Turkish authorities by which the missions are enabled to pursue, as heretofore, their meritorious, unselfish, and beneficent work among Turks in Turkey.

I inclose herewith, as a matter of information, an opinion by Mr. Edwin Pears, lately forwarded to this Department by American citizens residing in Constantinople, as to their legal rights. Mr. Pears is well known as president of the European bar at Constantinople, and as an accomplished lawyer and historian.

I am, etc.,

T. F. BAYARD.

EXHIBIT A.

ARTICLE 1. There will be no interference with Frenchmen who come and go to visit Jerusalem or with members of religious orders who are in the Church of the Holy Sepulcher, called *Camamat*. (In the appendix to this document, No. 1, clause 1, by De Testa, he quotes Blanchi as saying: "While the official translation of Deval appears to extend indifferently to all members of religious orders who are in the Church of the Holy Sepulcher the protection accorded by this article 1, the Turkish text limits it to those who are French. * * * (Turkish) * * * We must not, however, conclude from that that the Porte holds rigorously to that limitation. The members of Catholic orders, who are at Jerusalem, are nevertheless protected by France even if they are Spaniards or Italians (see articles 33, and 82, which are still more explicit in this respect").

ART. 33. As the hostile (*i. e.*, non-Mahometan) nations who have no special ambassadors at my Sublime Porte went and came up to the present time in our territories under the banner of France, whether for commercial purposes or on pilgrimages, in accordance with the Imperial permission which they had received under our predecessors of glorious memory, as is likewise also conveyed by the ancient capitulations accorded to the French; and as, further, for certain reasons, the entrance into our states had been absolutely forbidden to these same nations, and they had been restricted by these same capitulations, nevertheless, the French Emperor having shown by a letter which he addressed to our Sublime Porte that he desired that the hostile (non-Mahometan) nations which were forbidden to trade in our territories should have the liberty of coming and going to Jerusalem as they had been accustomed to do, without being in any way molested, and that if, consequently, it were permitted to them to come and go on business in our territories, it should be under the French flag as before, the request of the French Emperor should be acceded to in consideration of the ancient friendship which from the time of my noble predecessors has subsisted from father to son between His Majesty and the Sublime Porte, and that an Imperial decree should be issued of the following tenor, to wit:

"That the Christian and hostile (non-Mahometan) nations which are at peace with the French Emperor, and who may wish to visit Jerusalem can go and come there, within the bounds of their status (or in the exercise of their business or profession) in the usual manner with complete liberty and safety without any one's causing them trouble or hinderance, and if subsequently it is desirable to accord the said nations the liberty of trade in our territories they shall go and come in that case

under the flag of the French Emperor as before, without permission to come and go under any other flag.

"The ancient Imperial capitulations which are in the hands of the French from the time of my illustrious predecessors until now, and which have just been above referred to in detail, having now been renewed with the addition of some new articles, conformably with the Imperial order issued by my *hattu-cherif;* the first of these articles provides that the bishops belonging to France, and other members of religious orders who profess the Frankish religion, of whatever nation or race they may be, when they confine themselves to their calling, shall not be at all troubled in the exercise of their functions in those localities of our Empire where they have been for a long time."

It is to be observed, however, that De Testa, in a note to this clause, states that the Turkish text reads not "of whatever nation," but "of whatever order."

"ART. 82. When the places of which the members of religious orders subjects of France have possession and enjoyment at Jerusalem, as is stated in the articles previously accorded and now renewed, shall need repairs to prevent the ruin to which they would be exposed by the lapse of time, permission shall be given on the demand of the French authorities residing at my Sublime Porte for orders to have those repairs made in a manner conformable with the decrees of justice, and the cadi, commanders, and other officers shall not put any hinderance to the things accorded by command. And, as it has happened that our officers, under pretext that secret reparations had been made in the above mentioned places, have made several visits there in the course of a year and imposed a fine on the members of religious orders (religieux), we decree that, on the part of the pashas, cadis, commanders, and other officers stationed there, that only one visit a year should be made to the church at the place which they call the Sepulchre of Christ, as also the other churches and places visited. The bishops and members of religious orders under the French Emperor who are in my Empire shall be protected as long as they keep within the limits of their calling, and no one shall prevent them from exercising their rites, according to their custom, in the churches which are in their hands, as also those in the other places where they dwell; and when our tributary subjects and the French go and come between their respective residences for sales, purchases, or other business, they must not be molested contrary to sacred law on account of these visits; and, as it is provided by the above-mentioned articles that they may read the Scriptures in the line of their duty in their hospital of Galata—that, however, not yet having been carried out—we decree that, at whatever place that hospital may in future be legally situated, they may, conformably with ancient capitulations, there read the Scriptures in pursuance of their duties without being interfered with in so doing."

EXHIBIT B.

[Extract from British and Foreign State Papers, 1850-'51, vol. 40, p. 226.]

M. S. Pisani to Sir Stratford Canning.

PERA, *November* 25, 1850.

I have the honor to transmit, inclosed herewith, a legalized copy of the firman in favor of the Raya Protestants, as sanctioned by the Sultan, which Aali Pasha requested me to forward officially to your excellency.

S. PISANI.

Firman in favor of Protestant Rayas.

[Communicated October 24, 1850.]

[Translation.]

To my vizier Mehemed Pasha, minister of police at my capital.

Whereas the Christian subjects of my Empire who are Protestants suffer under some difficulties and inconvenience owing to their not having been yet placed under a separate and special jurisdiction, and to the natural inability of the patriarch and chiefs of the sect which they have abandoned to administer their affairs; and, whereas, conformably to the royal solicitude and benevolence which I entertain toward all classes of my subjects, it is against my royal pleasure that any of them

should be exposed to trouble—the Protestants now forming a separate community—it is my royal will that measures should be taken for insuring the proper administration of their affairs, and for enabling them to live in peace and security: It is, therefore, my imperial will and command that a respectable and trustworthy member of that sect should be chosen by themselves and appointed, with the title of "Agent of the Protestants," and be attached to the department of the minister of police; that the register of the community kept in his charge should be deposited in that department; that the births and deaths should be there entered by their agent; and that their passports, marriage licenses, and other matters appertaining to the community to be transacted at the Porte or elsewhere should be procured and transacted by means of memorials sealed with the seal appertaining to the office of the aforesaid agent. And the present royal edict has been issued from my imperial divan to the above effect.

You, therefore, the aforesaid mushir, on learning that such are my royal commands, will attend to the strict execution of the regulations in question as aforestated. As the issue of passports and the assessments of the taxes come under a special regulation, you will not suffer any thing to be done in contravention thereto; you will not permit any fees of "haratch" to be taken from them for the issue of their marriage licenses or for their registration.

You will afford them every assistance and facility in the transaction of all their affairs, and in all matters concerning their burial places and their places of worship like unto the other communities which are subjects of my Empire. You will not permit any interference whatsoever on the part of other communities in their religious rites or in their temporal concerns—in none of their temporal or spiritual affairs in short—but will enable them to perform the religious observances of their sect in security. You will be careful that they do not suffer any molestation whatever either in this or in other respects, and that proper means are taken to enable them to live in peace and security, with free access, when necessary, by their agents to my Sublime Porte.

You will be mindful that the present imperial edict be registered at the proper office and confirmed in favor of the aforesaid subjects, and you will continue to pay strict attention to the injunctions contained therein.

Be it thus known unto you, and give full credence to my imperial cipher.

Viscount Palmerston to Sir Stratford Canning.

FOREIGN OFFICE, *December* 24, 1850.

SIR: I have received your dispatch of the 26th November, inclosing a translation of the firman in favor of Protestants in the Turkish Empire which has received the sanction of the Sultan, and I have to state to your excellency that the version of that document inclosed in your dispatch appears to Her Majesty's Government to be as complete and as satisfactory as possible; and Her Majesty's Government look forward with extreme interest to the permanently beneficial effects which this firman must necessarily produce.

I am, etc.,

PALMERSTON.

[Extract from British and Foreign State Papers, 1854–'55, vol. 45, p. 799.]

Imperial firman of June, 1853, *addressed to the Agent of the Protestants.*

[Translation.]

To the Agent of the Protestants, Stephen; may his honors increase. Decreed:

God, the dispenser of mercies, in placing my august person, in pursuance of his eternal will, upon the glorious and exalted throne of the Imperial Caliphate, having confided to my royal hands and sovereign rule as a sacred and a special deposit—to him be the thanks and glory—numerous countries and cities and many people of all classes and nations: Ever since the glorious day on which I ascended the throne, according to the imperial duties imposed upon the Caliphate, my Government has never ceased (by the divine grace), conformably with my royal will and sincere and benevolent intentions, to give practically their constant and careful attention, that all classes of my imperial subjects should enjoy full protection, and that they should be more especially, one and all, at perfect ease with regard to their religious and spiritual affairs.

The beneficial effects and advantages accruing thereby have been at all times manifest, and it is my ardent imperial desire that no abuses whatever should arise out of negligence or carelessness. I therefore wish and require that the special concessions granted by me in favor of my faithful Protestant subjects, concerning their worship and religious affairs and all other concerns relating thereto, should be at all times preserved inviolate; and my peremptory imperial orders have been issued, to-wit, that no contravention whatever of those concessions should take place, and that any persons acting in contravention thereto should know that they will thereby incur my royal displeasure.

In order to remove all grounds of excuse on the part of those who should be guilty of negligence in these matters, communication hereof has been made to the necessary authorities, and this high decree has been issued from my imperial divan, in public confirmation of my royal intentions, for the complete and truthful execution thereof.

You, the aforesaid agent, shall, on receipt of these presents, act always in conformity with this imperial order, and be careful in abstaining from any contravention thereof. On the occurrence of anything inconsistent with this peremptory decision, you will hasten to make immediate representation thereof to our Sublime Porte.

Be it therefore thus made known unto you, giving full credence to my Imperial cypher.

Given in the third decade of the illustrious moon of Shaban, in the year 1269 (beginning of June, 1853).

The Earl of Clarendon to Lord Stratford de Redcliffe.

FOREIGN OFFICE, *July* 4, 1853.

I have to acquaint your excellency that Her Majesty's Government have received with satisfaction the firman issued by the Sultan in behalf of his Protestant subjects, inclosed in your dispatch of the 18th instant.

CLARENDON.

Lord Stratford de Redcliffe to the Earl of Clarendon.

CONSTANTINOPLE, *December*, 6, 1853. (Received January 12, 1854.)

MY LORD: Although the firman which was granted some time ago, at my request, to the Sultan's Protestant subjects, placing them on the same footing with other religious communities, not Mussulman, in the Empire, contained every privilege which it was reasonable for them to enjoy, I had long endeavored in vain to obtain its official transmission to the pashas commanding in the province. I have now to state that the Porte has at length acceded to my earnest and repeated solicitations. The firman in question has been promulgated by its official transmission to all governors of places wherever a Protestant society is said to exist. For your lordship's more complete information, a copy of M. Pisani's report to me upon the subject is inclosed herewith, and I trust that the fresh mark of Imperial favor now conferred upon the Protestants of this Empire will be agreeable to Her Majesty's Government.

I have, etc.,

STRATFORD DE REDCLIFFE.

M. E. Pisani to Lord Stratford de Redcliffe.

PERA, *December* 5, 1853.

MY LORD: I have the honor to report that the Porte, out of consideration for your excellency's repeated representations, has just promulgated the firman acknowledging the Rayah Protestants as a separate community in such of the provinces pointed out in a list given by their vakeel, namely, Broussa, Adrianople, Sivas, Trebizond, Salonica, Adana, Hodgaelli, Amassia, Bodosto, Sarouhan, Bojouk, Marash, Saida, Moussool, Aintab, Toultcha, Arabkir, Kaisserieh, and Diarbekir. At Smyrna, Aleppo, and Erzeroum, it was communicated some time ago. This firman, which is respectively addressed to the governors of the above-mentioned places, has been delivered to the vakeel for transmission to the authorities to whom it is directed.

I have, etc.,

E. PISANI.

EXHIBIT C.

[Extract from the proceedings of the Conference of Paris.]

[Translation.]

Protocol No. 14—Session of March 25, 1856.

The plenipotentaries of Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey.

The protocol of the preceding session was read and approved.

The plenipotentiaries of Russia were requested to communicate to the Congress the observations whose presentation they had reserved relative to the wording inserted in protocol No. 13, and to the fourth point.

Baron Brunnow stated that by the securing of the full enjoyment of their privileges to the Christians of the Ottoman Empire, an additional guaranty to peace, and by no means the least valuable, had been furnished; that consequently the importance of the *hattischerif* which had recently emanated from the sovereign will of the Sultan could not be too highly appreciated; that the plenipotentiaries of Russia did not hesitate to admit, and that they were, moreover, happy to declare that that instrument, each paragraph of which furnished abundant evidence of the benevolent intentions of the Sovereign who had issued it, fulfilled and even exceeded all their hopes; that it would be rendering homage to the profound wisdom of the Sultan, and furnishing evidence of the solicitude by which all the Governments of Europe were equally actuated, to make mention thereof in the treaty of peace; that they were agreed on that point, and that all that was thenceforth necessary was to reach an understanding with regard to the terms. Baron Brunnow added that the particular interest felt by Russia in the Christians of Turkey had induced him fully to assent to the first wording, which, however, appeared to have given rise to certain objections, although that wording, according to the unanimous opinion of the Congress, made the execution of the instrument which it is proposed to mention in the treaty entirely dependent upon the sovereign will of the Sultan, and stipulated that no power could derive any right of interference therefrom.

"Out of regard," he added, "for susceptibilities which we respect, we therefore renounce this, and propose to the congress a wording which seems to meet all requirements, while it remains within the limits which we have drawn." Baron Brunnow then read the proposed wording, which was as follows:

"His Majesty the Sultan, in his constant solicitude for the welfare of all his subjects, without distinction of religion or race, having issued a firman which gives evidence of his generous intentions towards the Christian population of his Empire, has resolved to bring the said firman to the knowledge of the contracting powers.

"Their Majesties the Emperor of the French, etc., recognize the high value of this spontaneous act of the Sultan's sovereign will. Their aforesaid Majesties accept this communication as a new pledge of the amelioration of the lot of Christians in the East, which is the common object of their desires, in the general interest of humanity, civilization, and piety.

"In thus stating the unanimity of their intentions, the high contracting parties declare, with one accord, that the communication of the above instrument can be the occasion of no collective or isolated interference in the internal affairs of the Ottoman Empire to the detriment of the independence and dignity of the authority of the sovereign in his relations with his subjects." (British and Foreign State Papers, 1855–1856, vol. 46, page 97).

EXHIBIT D.

[Extract from the proceedings of the Conference of Berlin.]

[Translation.]

In the second proposition, having special reference to Catholic bishops and monks, Count Schouvaloff moved to substitute for these words "foreign ecclesiastics and monks."

Lord Salisbury desired to have the same laws enacted on this subject for Roumelia and the other Turkish provinces.

Caratheodori Pasha declared that a proposition concerning the free exercise of religion in the province of Eastern Roumelia seemed altogether superfluous, since that province was to be subject to the authority of the Sultan, and consequently to the

principles which were common to all parts of the Empire, and which established toleration for all religions without distinction. (British and Foreign State Papers, vol. 69, 1877–1878, page 935.)

The president stated that the Congress unanimously shared the desire of France to place on record the declarations made by Turkey in favor of religious liberty. Such was the object of the French plenipotentiaries, and it has been attained. Lord Salisbury would be glad to go farther, and to extend the original proposition not only to Bulgaria and Roumelia, but to the entire Ottoman Empire. As to Germany, Prince Bismarck, who had given in his adhesion to the French proposition, would also have willingly accepted that of Lord Salisbury, but the discussion of so complex a question would divert the congress from the object of its present session. His Most Serene Highness nevertheless asked Lord Salisbury whether he intended to present a special motion on this subject.

The second plenipotentiary of Great Britain reserved the privilege of returning to this point in connection with Article XXII of the treaty of San Stefano.

Count Schouvaloff added that Lord Salisbury's wish to see religious liberty extended as far as possible in Europe and Asia seemed to him to be very proper. His Highness would like to have mention made in the proctol of his adhesion to the wish of the plenipotentiary of England, and remarked that, as the congress had sought to obliterate all ethnographical frontiers, and to substitute commercial and strategical frontiers therefor, the plenipotentiaries of Russia were all the more desirous that those frontiers should not become religious barriers.

The president summed up the discussion by stating that it would be mentioned in the protocol that the congress had unanimously accepted the French proposition, and that the majority of the plenipotentaries had expressed the wish that religious liberty might be extended. This point would be included, moreover, in the discussion of Article XXII of the treaty of San Stefano. (British and Foreign State Papers, vol. 69, 1877–1878, page 943.)

The Marquis of Salisbury reminded his colleagues that he had distributed among them, before the session, a proposition to substitute the following provisions for Article XXII:

"All the inhabitants of the Ottoman Empire in Europe, whatever may be their religion, shall enjoy full equality of rights. They shall be eligible to all public offices and honors, and shall be equally allowed to testify before the courts.

"The exercise and outward practice of all religions shall be entirely free, and no obstacle shall be placed in the way of the hierarchical organization of the different communions, or of their relations with their spiritual heads.

"Ecclesiastics, pilgrims, and monks of all nationalities traveling or sojourning in Turkey in Europe or Turkey in Asia shall enjoy entire equality of rights, advantages, and privileges.

"The right of official protection is recognized as belonging to the diplomatic and consular officers of the powers in Turkey, both as regards the persons above mentioned and their possessions, religious, charitable, and other establishments in the holy places and elsewhere.

"The monks of Mount Athos shall be allowed to retain their possessions and the privileges which they have hitherto enjoyed, and shall, without exception, enjoy entire equality of rights and prerogatives."

Lord Salisbury explained that the first two paragraphs of this proposition represented the enforcement in the Ottoman Empire of the principles adopted by the congress, at the request of France, with regard to Servia and Roumania. The object of the last three paragraphs, he said, was to extend the benefit of the stipulations of Article XXII (which had special reference to Russian ecclesiastics) to ecclesiastics of all nationalities.

The president also remarked that the object of the English proposition was to substitute all christendom for a single nationality, and began the reading of the document by paragraphs.

With regard to the first paragraph, Caratheodori Pasha remarked that the principles of the proposition were, beyond a doubt, acceptable to Turkey, but that he would not wish them to be regarded in the light of an innovation. He then read the following communication on this subject, which he had just received from his Government:

"In view of the declarations made before the congress on various occasions in favor of religious toleration, you are authorized to declare that the sentiment of the Sublime Porte is in all respects favorable to the object had in view by Europe. Its most constant traditions, its ancient policy, the instinct of its people, everything induces it to feel as it does in this matter. Throughout the Empire the most different religions are professed by millions of the Sultan's subjects, and not one has been molested in his belief or in the exercise of his mode of worship. The Imperial Government is determined to maintain this principle in its full force, and to give it all the extension that it calls for."

The first plenipotentiary of Turkey would therefore be glad (if the congress should adopt the English proposition) to have it at least stated in the text that the principles in question were in harmony with those by which his Government was guided. His excellency added that, contrarily to what was the case in Servia and Roumania, there existed, according to Ottoman law, no inequality or incapacity in the Empire that was based upon religious grounds. He then asked for the addition of a few words indicating that this rule had always been enforced in the Ottoman Empire, not only in Europe, but in Asia also. The congress, he thought, might add, for instance, "according to the declarations of the Porte and the previous regulations, which it declares that it desires to maintain."

Lord Salisbury said that he had no objections to the request of Caratheodori Pasha, but he desired to remark that those regulations or provisions were, indeed, to be found among the declarations of the Porte, but that they had not always been observed in practice. His excellency, however, was not opposed to a request being made to the committee on wording to insert the addition desired by the Ottoman plenipotentiaries.

After a discussion on the words "in Europe," for which Caratheodori Pasha proposed to substitute "in Europe and Asia," the congress decided that the special designation of Europe should be stricken out, and that the paragraph should be referred to the committee on wording, with a recommendation that the declarations of the Sublime Porte be considered.

The second and third paragraphs were adopted without change.

With regard to the fourth paragraph, Caratheodori Pasha asked the attention of the congress to the fact that the right to official protection was recognized by this passage in the case of the possessions of ecclesiastics, etc. His excellency asked that the word "possessions" might be stricken out, basing his request on the protocol of 1868, relative to the right of foreigners to hold property, which excluded all special protection in the case of real property. If the real estate held by ecclesiastics, which, according to the protocol of 1868, was subject to local jurisdiction, should, by the terms of the fourth paragraph, be placed also under the official protection of diplomatic and consular officers, serious administrative and judicial difficulties would arise.

Mr. d'Oubril said that the word "possessions" was in the text of the treaty of San Stefano.

Caratheodori Pasha having insisted upon the practical difficulties to which the paragraph thus worded would give rise, Prince Bismarck called attention to the circumstance that the privilege in question was, in fact, granted to Russian ecclesiastics by the treaty of San Stefano, and asked whether Turkey preferred to extend that privilege to all the powers.

Mehemed Ali Pasha said that Ottoman jurisdiction, in the case of real property, had been the condition on which the right of foreigners to hold property in Turkey had been recognized. If consular protection on some real property should be re-established, the right to the property might be contested.

Count Corti, without opposing the suppression of the word "possessions," thought that they might add to the article simply the words "according to the laws and conventions now in force."

After further observations by the Ottoman plenipotentiaries, the congress consented to the suppression of the word "possessions."

Mr. Waddington, alluding to the last line of the fourth paragraph, deemed it his duty to remind the congress of the rights which France had acquired, and remarked, moreover, that express reservations had been presented by his Government, before the meeting of the congress, with regard to the holy places.

The president said that those reservations had been made by France as a condition of her participation in the congress, and that the observation of Mr. Waddington was fully justified.

Count Andrassy added that they had, indeed, at the very outset, been communicated to the Austro-Hungarian Government, which had assented thereto.

The first plenipotentiary of France desired that account should be taken of the rights of France in the paragraph itself, which would thus furnish evidence of the maintenance of the *status quo*.

The president proposed to add "without detriment, however, to the rights acquired by France."

Prince Gortchacow expressed a desire that the *status quo* should be mentioned as maintained by all the powers.

Mr. Waddington submitted the following wording to the congress as an ending of the fourth paragraph:

"The rights acquired by France are expressly reserved, and it is understood that there shall be no infringement of the *status quo* in the holy places."

This proposition was unanimously adopted. It was to be inserted in the fourth paragraph, which was likewise adopted.

Mr. d'Oubril asked that in paragraph 5 the words "the monks of Mount Athos" might be followed by these: "whatever may be the country of their origin." Paragraph 5 was adopted with this addition.

(British and Foreign State Papers, vol. 69, 1877–1878, pages 1009, 1010, 1011, and 1012.)

EXHIBIT E.

[Translation made in the Department of State of an extract from an article by Mr. Ed. Engelhardt in the Revue de droit international et législation comparée, Vol. XII, p. 373.]

It remained for the congress of Berlin to strike the most effective blow at the Porte's autonomy respecting religious government. By article 62 of the treaty of July 13, 1878, the Turkish Government not only recognized the existence in the foreign diplomatic and consular officers of a right of official protection over the ecclesiastics, pilgrims, and monks of their nationality, and over their establishments; it bound itself generally to maintain the principle of religious liberty, thus rendering itself liable to a control from which its own Mahometan establishment could not escape.

The sequence of the steps is clear; foreign intervention was first limited to the holy places, to the priests officiating in them, and to foreign visitors. It afterwards extends to the other foreign persons in holy orders, both of the Frankish or Catholic religion, and of the Greek faith; next comes the Ottoman Christians, the patronage of whom, unjustly contended for by Russia,* has devolved upon the great powers; lastly, the mussulman religion itself is threatened in its ancient and jealous independence.

The autonomy of Islam, regarded solely from the religious point of view, had already been impaired at the time of the discussion of the fourth paragraph of the preliminaries of peace in 1856. The four deliberating powers, England particularly, had indicated the interest they felt in the suppression of the Mahometan law which punished apostasy and public blasphemy by death, representing that inasmuch as Turkey was about to form part of the European concert, it was impossible to acquiesce in the maintenance of a rule which was of the character of an insult to every civilized nation.†

Moreover, during the years 1856 and 1857 the British embassy had more than once officially interceded in behalf of Mussulmen who had been converted or were about to be converted, and whom the local authorities were prosecuting as criminals, and long diplomatic correspondence had been exchanged on this delicate point of foreign intervention.‡

After the treaty of Berlin, so delicate a treatment was not deemed necessary, and Europe was the spectator of an incident which in certain respects recalled the adventure of which Prince Mentchikoff was the hero, in 1853. Towards the close of the year 1879 the Turkish police arrested a mollah who had assisted an Anglican missionary in translating Christian works hostile to the Mahometan faith. In the eyes of the followers of Islam a more culpable act could not be conceived or one more odious than that of a priest of the national religion lending his personal assistance to a work of propagandism directed against that religion.

Ahmet Tewfik Effendi was therefore condemned as proven guilty of a crime defined by the law of the land.

The English embassador, whose intervention in this case had been asked by the agent of the London Church Missionary Society, did not content himself with intervening in behalf of his fellow-subject, who had himself been put under examination and arrest; he demanded of the Porte the immediate release of the ulema as well as his immunity from all punishment, alleging the liberty of conscience which the Sultans had promised their subjects, and the religious liberty embodied in article 62 of the treaty of Berlin. (Note of Sir H. Layard to the Porte, dated December 24, 1879.)

The ultimatum of Sir H. Layard was successfully supported by the representatives of Germany, Austria, Hungary, and Italy.

It would scarcely be possible to show more clearly that to the abdication of judicial functions, a result of the first capitulations, had succeeded in Turkey a second and not less grave abdication, that of absolute autonomy in religious matters.

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*According to an interpretation, based upon contemporary facts, the clause of the treaty of Kutchuk-Kainaidji, by which the Porte promised to protect the Christian religion, only applied to the Christian provinces of the Danube and of the Archipelago which Russia had occupied and which she restored to the Sultan.

†Dispatches from the British embassy, 4th, 18th, and 26th Feb., 5th Mar., 25th Apr., 30th May, 1856.

‡Dispatches from British embassy, 23d Sept., 1856, 26th Nov., 1857, 14th Aug., 1860.

EXHIBIT F.

Legal opinion of Edwin Pears, barrister at law, on the naturalization treaty.

CONSTANTINOPLE, *January* 21, 1887.

My opinion is asked as to the effect upon the rights of American citizens of Turkish origin of the clauses of a treaty between the United States and Turkey containing the following provisions (*inter alia*):

"His Majesty the Sultan agrees to recognize as citizens of the United States of America those subjects of his dominions who may have been or may be duly naturalized pursuant to the laws of the former country.

"If a citizen of the United States, naturalized in the Turkish dominions, shall resume his abode in the United States, without an intent to return to Turkey, he shall be held to have forfeited his naturalization. Reciprocally, if a subject of the Sultan, naturalized in the United States of America, shall resume his abode in the dominions of the former, without an intent to return to the United States, he shall be held to have forfeited his naturalization. The intent not to return shall be held to have been determined upon when the person naturalized in the one country shall have resided more than two years in the other.

"The intention not to return shall be assumed although before the expiration of the two years adverted to the person should temporarily leave the country the nationality of which he has abandoned. And the effect produced by a residence of two years shall not be interrupted by said temporary absence.

"American citizens naturalized in Turkey who four months after the exchange of ratifications of this convention shall have resided in the United States for more than two years, shall at the expiration of four months from the exchange of the ratifications of this convention be considered as having forfeited their Ottoman naturalization. And, reciprocally, Ottoman subjects naturalized in the United States of America, who shall have resided in Turkey for more than two years, shall, at the expiration of four months from the exchange of the ratifications of this convention, be considered as having forfeited their American citizenship."

The first question which arises is, whether such clauses would be retrospective. In other words, Is there to be an irrebuttable presumption that an Ottoman subject who, having already duly obtained American citizenship, returns to Turkey for two years, shall lose his American naturalization, or are such clauses only to apply to those who obtain American naturalization in future?

There is nothing in the clauses to prevent them being retrospective. I think, in fact, that a fair interpretation makes them apply to all Ottoman subjects of origin who have obtained at any time American naturalization. Their effect, therefore, upon such American citizens will be to deprive them of American protection after two years from the time of their return to Turkey.

Once the treaty containing them is adopted by the two countries this is the effect, I believe, which any American court would give to the clauses in question.

My opinion, however, is asked what effect such clauses would have upon the rights of American citizens of Turkish origin now resident in Turkey. It becomes necessary to ask whether such American citizens have rights in the country of their origin, and if so how far do they exist. When a subject of a European state abandons his country of origin and obtains his naturalization in America, his status on his return to his country of origin must either be regulated by treaty or, in the absence of such treaty, by the municipal law of the country to which he has returned, unless the naturalizing state chooses to risk a constant conflict of laws. England provides for this difficulty in her "naturalization act of 1870," and in the regulations drawn up by Her Majesty's secretary of state in accordance therewith, by expressly stipulating that the protection accorded to the naturalized subject shall be afforded to him in every country except the country of which he was a subject previous to his naturalization.

The case of Turkey is, however, somewhat different, as I shall subsequently show. Still the proposition holds good that the status of an Ottoman subject by origin who has acquired American citizenship, and who returns to Turkey, is to be determined by treaties between the two powers, if such exist.

I ask, therefore, What is, in accordance with treaty, the status of an American citizen of Ottoman origin who has returned to Turkey? I answer without hesitation that if he acquired his naturalization before 1869 he is, under treaty, as completely under American protection and subjection in Turkey as a natural-born citizen of America in Turkey and within certain treaty limitations, applicable alike to naturalized and natural-born citizens, as he would be in New York.

In examining the position of an Ottoman subject who, before 1869, had acquired foreign or American naturalization, the following points are worth noting:

(1) There existed no Turkish law by which an Ottoman subject was prevented from acquiring foreign naturalization.

(2) It was a well established and entirely recognized custom that when an Ottoman subject acquired foreign naturalization, such naturalization and the protection it afforded were continued to the person on his return to Turkey.

The Porte did indeed occasionally object to the granting of protection to its subjects who had never left Turkey, though in hundreds of cases such protection was afforded and continues still to be afforded. Thus, to cite one among many classes of cases, the English Government, between 1839 and 1842, gave "protection," that is, the right to be under English jurisdiction in Turkey and not under Ottoman jurisdiction, to many families of Jews who were suffering persecution at the hands of the Turks, and such protection is continued to the families of these Jews to the present hour. These classes of persons, called usually "protected persons" or "protégés," who enjoy English rights and were subject to English liabilities and jurisdiction in Turkey, were Ottoman subjects who had never left Turkey. The case is far stronger of persons who had been abroad and had acquired foreign naturalization. Their right to the privileges of such naturalization, on their return, was indisputable and undisputed.

In 1869 a "loi sur la nationalite" was promulgated in Turkey, by imperial decree, by which it was declared that no Ottoman subject who acquired foreign naturalization should have the benefit of such naturalization on his return to Turkey, unless he had obtained the consent of the Porte to subtract himself from subjection to the Sultan. This decree was accompanied by a vizirial letter, which in Turkey has the force of an official interpretation, and this expressly declares that this law on nationality shall have no retrospective effect.

Hence all subjects of Turkish origin who had acquired foreign naturalization before 1869 were entitled to the benefit of such naturalization in Turkey. This principle is well established, and there is not a consulate in Constantinople which does not contain among its members subjects of Ottoman origin who had acquired foreign naturalization. They had acquired the naturalization of the State in which they had resided and no opposition had been made to their continued protection on their return to Turkey.

This right they continue to exercise, as I have already stated, by treaty. But they had not violated Ottoman law in thus becoming naturalized. Nay more, such naturalized subjects who acquired this right before 1869 are, by Turkish law itself, as completely under American protection and subjection in Turkey as natural-born citizens, cause the "loi sur la nationalite" and the "Vizirial letter," already referred to, distinctly except those who have acquired foreign nationality from its operation, and expressly provide that they shall be allowed to continue to enjoy such nationality. Their status, therefore, both by treaty and by Turkish law, is fixed, and can only be disturbed by a new contract between the sovereign states, abrogating their privileges and abrogating them by what the Turkish vizirial letter itself recognizes as an act of injustice when it states that the "law as indeed all law is not intended to be retrospective."

In reference, therefore, to the class of American citizens of Ottoman origin who acquired naturalization before 1869, and who have returned to Turkey, they are as completely entitled to the privileges of American citizens in Turkey as are the natural-born citizens of America. Their status, as American citizens, is recognized by Ottoman law, and it is only by an act of the American legislature or by treaty that they can be deprived of their rights.

In reference to those who have acquired American naturalization since 1869 the case is somewhat different. Before that year no permission was necessary to Ottoman subjects to enable them to abandon their nationality. If they have obtained the permission of the Ottoman Government to change their nationality, it is expressly provided that the Porte will have nothing more to say in regard to them. There is no stipulation regarding their status should they return to the dominions of the Sultan. Many Ottoman subjects have obtained the permission provided for; have obtained, also, naturalization in some other European country, and have then returned to Turkey to be recognized and registered as subjects of and under the jurisdiction of the state in which they have been naturalized. Such subjects and citizens of Ottoman origin are recognized by Turkey to be as completely outside her jurisdiction as the natural born and subjects or citizens of other states.

In the case of those Ottoman subjects who have not obtained the permission required since 1869, the practice which exists among the consulates and legations in Constantinople is somewhat different. Some treat the naturalized subject as entitled to protection in Turkey, and assume jurisdiction over him, and probably all are willing to grant him temporary protection during the time of a mere visit to the country. England, as I have already mentioned, has by her "Naturalization act, 1870," established a general principle that protection shall not be afforded in the country to which the naturalized person belonged, but it has been judicially decided that this act is not retrospective. I need not remark that the status of the person would depend upon the municipal law of the country in which he was naturalized, or there would be a conflict of the laws of the two countries to which the person had

been successively subject. I may add, however, that in reference to the class of persons now under discussion, namely, those who have acquired naturalization since 1869, and without the consent of the Porte, no European nation has gone to the extent suggested in the clause under examination, of providing that two years' residence here shall be held to determine the intent not to return; that is, to raise a presumption *juris et de jure* of an intention to abandon the acquired naturalization, and shall be followed with forfeiture of such privilege. The principle which England has adopted is perhaps that which goes furthest in such a direction, but it differs widely in favor of the naturalized subject. England in such case merely allows her naturalization to be in abeyance during residence in Turkey. The person does not lose it. It springs into existence the instant he leaves Turkey. The fact that the person is known to be an English subject out of Turkey is itself a protection to him and helps to prevent those acts of oppression to which he might be subject if he were simply, as the clauses in question in the American treaty propose, cast out of protection. The effect, therefore, of them upon the rights of American citizens of Ottoman origin, would be to place them in a worse position than the corresponding class of persons subject to England, and indeed to every other European power.

It is hardly necessary to point out that great inconvenience and injustice would be caused all around if the persons in question were cut off from American protection by the adoption of the treaties in question. Business arrangements, partnerships, contracts, settlements, testaments, have been made on the belief that the persons in question were permanent American citizens. These matters affect third and innocent parties who would be grossly injured if, for the redress of their wrongs or the enforcement of contractual obligations, they were sent before the notoriously corrupt courts of the Ottoman Empire instead of before the American consular courts. Women and children, many of the former American natural born, would find themselves subjects of an Eastern despotism instead of citizens of a free State. It would be easy to multiply instances of inconvenience and injustice which must necessarily occur if the clauses were adopted, but the indication of the above is sufficient.

I would suggest that in draughting the clauses in question the peculiar circumstances of Turkey have been overlooked.

The chief point of difference between Turkey and the European states arises from the existence of the treaties called capitulations, which places Turkey in an altogether exceptional position. It is difficult for one who has not lived in Turkey to conceive that there is here a series of *imperia in imperio*, and that by the fiction of international law every American citizen resident in Turkey is supposed to be in the United States. In technical words, the doctrine of exterritoriality applies to and covers the ordinary citizens of the United States, and of other Christian countries resident in Turkey, in the same way that it does here and elsewhere to the ambassadors and ministers of countries residing in the courts to which they are accredited. As it is of prime necessity to the understanding of the position of foreigners in this country that a clear notion of the capitulations should be given, I may be excused for referring to a sketch of their history which appears in a volume written by me and published by Longman, Greene & Co., of London, and Messrs. Harpers & Bros., of New York, and in extracting the following passage from that work—that is:

"These privileges" (namely, the privileges granted to foreigners) "were embodied in the capitulations with France in 1536, and though this treaty has been often withdrawn and embodied in many treaties with each European power, its provisions still remain the essential articles of the capitulations under which foreigners now live in the Ottoman Empire. The system which was then formulated in the French capitulations has not materially changed from that day to this. Each nation has now its treaty with the Porte. But as each treaty contains a most-favored-nation clause, the whole of the treaties or capitulations form a body of law which constitutes the capitulations under which foreigners live and under which their Governments exercise jurisdiction in the Ottoman Empire.

"In the best days of the Byzantine Empire something approaching a fusion or welding together of the various races into one people had taken place. But the influx of the new-comers into the Empire during the century immediately preceding the Latin conquest formed a population of so many different races, languages, and manners that the process of fusion stopped. As soon as the city came under Moslem rule fusion became impossible, and has been so ever since. The Mahometan is forbidden by his religion to grant equality to unbelievers. Christian subjects are rayahs or sheep. Hence, as might have been expected, there has never been a serious attempt to weld the various races under the rule of the Sultan into one people. But if it be impossible for the Moslem to grant equal rights to Christian and Moslem subjects, it is none the less impossible to extend similar rights to Christian foreigners. On the other hand, foreigners could not consent to live in a country where, by law, the Christian can hardly be said to have legal rights against a Mahometan. Hence the preservation of the system of capitulations became a necessity if Christian foreigners were to be induced to remain or to settle in the Empire. The Turks were compelled to recognize this,

and as they found capitulations in full vigor—Galata being, as we have seen, a fortified city in the hands of foreigners at the time of the capture of the city in 1453—they continued the system. The history of the last four and a half centuries in Constantinople has been the history of the development of the system of capitulations.

"Such a judicial anomaly is only now possible or tolerable in a country where foreigners have and are entitled to have no confidence in the administration of the Government as the protector of life and property. Other nations have outgrown this system. The Turks have not done so. But though other European nations have progressed beyond the legal conception of a former time, there are many traces of the old system in their laws. The exterritoriality of ambassadors and the privileged of their retainers is a survival of this system. In Turkey, also, all the rights of jurisdiction enjoyed by foreigners are grouped round and closely connected with the rights conferred on ambassadors. But it is to be noted that in Constantinople the existing system is the direct lineal representative in unbroken succession of a wider exterritoriality which existed during the middle ages and had been continued from Roman times. Englishmen residing in France or other European states are properly left to seek redress in the courts of the country where they are dwelling. It is worth remembering, however, that Englishmen have had to fall back upon the early type of a colony in a strange country in several instances. The factories of India, of Lisbon, and of St. Petersburg, during the last century, and the consular courts of China and Japan owed their judicial system to a conception of law resembling that which led to the establishment of the capitulations in Constantinople, and all ultimately develop the legal fiction that the territory in the foreign country is a portion of the Empire from whose shores they have been planted." (The Fall of Constantinople, "page 150, American edition.")

Under the most favored nation clause, as I have already stated, America possesses the same privileges which have been granted to other states. Under these privileges many thousands of Ottoman subjects by origin have acquired the right of receiving the protection of other powers without having been out of the country of their origin and, still less, without their having acquired the rights of naturalization in accordance with the laws of the country whose protection they received.

The capitulations giving such rights to any country give it to the United States. As a fact, many of the capitulations expressly recognize the right to protect not only the subjects of the state with whom the treaty is made but others who are not only such subjects and who have always been recognized to be Ottoman subjects enjoying foreign protection. Thus, in the treaty of Denmark, article 13 provides that "si quelqu'un parmi les Danois ou dépendant d'eux vient à mourir," his property is to be administered by Danish law.

Article 4 of the Spanish treaty says: "Les biens de tout sujet ou individu" under the protection of His Catholic Majesty. In article 19 of the same treaty it says "les sujets et protégés de sa Majesté Catholique."

In the French treaty, article 64 reads: "Les négociants et les protégés de France." Article 65 says "Si un français ou un protégé de France."

In the treaty of the royal court of Naples, which holds good for Italy, article 4 says: "En cas où un négociant ou autre sujet du susdit Roi ou toute autre personne placée sous la protection de son pavillon," and others might be added.

It results, therefore, that until quite lately Turkey made no objection to her own subjects passing under the protection of Christian powers and acquiring a semi-naturalization equivalent in Turkey, though perhaps in Turkey alone, to complete naturalization.

A fortiori, when they had duly acquired naturalization abroad, they were regarded by the Porte as being as completely subjects of a foreign State as if they were natural born. The fiction of exterritoriality covered such subjects or citizens of Ottoman origin, and they were regarded by the protecting power and by Turkey itself as domiciled in the country which had naturalized them.

With these explanations, it will be seen at once that the proposed treaty is, in spirit, altogether at variance with the treaties which have been entered into between Turkey and the other powers. It is, indeed, a great step in the direction of abandoning, on the part of America, the benefit of the capitulations which they in common with other Christian countries have acquired. But, it may be asked, why should not those capitulatory rights be abandoned? In the words of the late President Grant, uttered while in Constantinople, one may ask the question, as he had to ask himself while President of the United States: "How should we Americans like to see the Turks and other nations having their courts, their own systems of laws, and their own judges, administering the laws of the country to which they belong in New York?" The General had felt that there was an apparent injustice to Turkey. But he was careful to add that while these doubts had once troubled him, now that he had traversed the Ottoman Empire from Egypt to Constantinople, he had come fully to understand why capitulations were necessary, and he entirely recognized that neither Americans nor the citizens of any other civilized power would consent to live in Turkey if they were not under the shelter and protection of such treaties.

I may perhaps, as an Englishman, be permitted, in conclusion, to add the expression of my surprise that America, which has always shown herself regardful of the rights of her citizens, should be the first nation to think of accepting clauses which would place American citizens of Ottoman origin in a position of inferiority to the corresponding subjects of any other Christian nation. The act of injustice which would be committed if the clauses in question were adopted is so flagrant, will do so much injury to the American citizens in question, to women, who are natural born subjects of the United States, and will inflict so severe a blow upon American commerce with Turkey, that I feel sure the facts have only to be known to insure the rejection of these clauses. A large number of the citizens in question are men who have been brought under the educational and other moral influence of the noble band of American missionaries, which, I venture to think, is doing more to leaven the East with the principles of Western civilization and of a lofty morality than any other instrumentality in use. It is natural that some of the men who have been brought under their influence should have gone to America for professional education and commercial purposes. It is equally natural that some few of them should return to this country, some to practice their profession, some as missionaries, some in partnership with their fellow-citizens in America for the purposes of commerce. To throw such men out of American protection and to drive them back under the barbaric power which they have renounced, is an act of injustice to them which no nation has yet perpetrated on similar subjects, and which I am certain will never be tolerated by America if the facts of the case are understood and the effects of the clauses of the treaty be once realized.

EDWIN PEARS,
Barrister at Law.

CONSTANTINOPLE, *January* 21, 1887.

EXHIBIT "G."

Notes on the treaty rights of missionaries in Turkey as shown by the usage of past years.

The missionaries hold that their rights in the Turkish Empire rest upon the two fundamentals: Treaty prescription and established usage.

Usage alone establishes a right, but it also serves to show the interpretation put upon the treaties in the past, in cases where a new interpretation is proposed. It is this view of usage, as reinforcing our interpretation of treaties, which it is desired to place before the State Department.

(1) The usage of past years indicates that the Turkish Government has always interpreted the old French treaties liberally as conferring rights upon members of religious organizations not referred to in the treaty.

For instance: (1) Convents and their inmates, latin clergy, monks, and nuns (religieux) are allowed, under ancient treaties, the custom-house franchise as to their needful supplies imported from abroad. This franchise is unhesitatingly granted to American missionaries on the ground that although they are not monks or nuns, and their established stations are not monasteries, they are in their religious system what monks and nuns and other "religieux" are in the Roman Catholic system.

(2) The usage of the past shows that the Turkish Government has hitherto interpreted the treaties as conferring the right of worship in private houses upon Americans. (See French treaty of 1740, art. 82.)

During sixty years American missionaries have enjoyed this right in all parts of Turkey unquestioned. The American Board has aided in opening some 300 or more evangelical places of worship in Turkey, and I believe that I am within the truth in saying that not 10 of these have been opened with permission of the authorities, it having been understood until within two or three years that any American clergyman is entitled to the rights conferred on the French clergy by this treaty, and hence that no official may question the opening of places of worship.

(3) The usage of the past also gives Americans the right of receiving natives in their houses for any purpose whatever (as conferred on the French by article 82, treaty of 1740).

The Turkish words indicating the objects for which French ecclesiastics may pay and receive visits may be interpreted "business," as in the State Department translation, but they have never been so interpreted. During sixty years American missionaries in Turkey have enjoyed as one of their treaty rights the privilege of receiving natives (Ottoman subjects) in their houses for any purpose, including religious meetings and religious instructions. I call this a treaty right because when enemies of evangelical work have asked the refusal of this freedom, the universal reply of the Turkish authorities has been, "We have no right to interfere."

It is evident from these remarks that (1) the Turkish Government, if left to itself, has given the treaties the interpretation that includes protestant missionary bodies under the head of "religieux." (2) That while American missionary institutions now existing in Turkey can be defended from attack on the basis of usage, the usage proves that Turkey has ever regarded them as protected by the treaties, and therefore the State Department should take the broad ground that they have their rights under the treaties, fortified by usage.

No. 688.

Mr. Bayard to Mr. Straus.

No. 13.] DEPARTMENT OF STATE,
Washington, May 4, 1887.

SIR: The course of Mr. Pendleton King in respect to the late searching of the Bible House, as given in his No. 307, of the 12th ultimo, meets with my entire approval, and I desire again to express my satisfaction with the discretion and success with which he has conducted the difficult and delicate negotiations relative to the schools, hospitals, and publication agencies managed by citizens of the United States in Turkey. The principles on which the rights of our citizens in this respect rest are fully detailed to you in my instructions of April 20, 1887, No. 7. These principles which sustain Mr. King's action in the past will guide you in similar emergencies in the future.

I am, etc., T. F. BAYARD.

No. 689.

Mr. King to Mr. Bayard.

No. 318.] LEGATION OF THE UNITED STATES,
Constantinople, May 6, 1887. (Received May 24.)

SIR: In connection with my dispatch, No. 286, of February 7, 1886, I have the honor to inclose a copy of the Porte's reply to mine, No. 42, to the Porte.

It seems to me that they have replied to my No. 42 without rereading my former dispatch No. 32 (sent you with my dispatch, No. 257, October 19, 1886). At any rate I have considered it proper to insist upon the reasonableness of my request.

In the mean time, as I learn from Dr. Herrick, the governor-general is throwing serious obstacles in the way of Rev. M. Filian at Kastamouni, and in fact has ordered him to leave that city. As he is not an American citizen we can not protect him, and the efforts of our missionaries at that point will, consequently, be seriously interfered with.

I have, etc.,

PENDLETON KING.

[Inclosure 1 in No. 318.]

The Sublime Porte to Mr. King.

SUBLIME PORTE, MINISTRY OF FOREIGN AFFAIRS,
April 7, 1887.

Mr. CHARGÉ D'AFFAIRES: I have had the honor to receive your dispatch of the 7th of February last, No. 42, by which, in pleading for the right of Dr. Herrick or

of any other American citizen to visit Kastamouni and hold quietly a religious service, you request that orders be forwarded to the authorities of that province prescribing them not to oppose any obstacles to it.

The sojourn of foreigners and the religious services of the different creeds having never been hindered in the Empire, I do not see, permit me to say to you, the necessity of similar instructions.

As regards the case of Dr. Herrick, I must refer to my preceding dispatch of the 26th of January.

Accept, etc.,

SAÏD.

[Inclosure 2 in No. 318.]

Mr. King to the Sublime Porte.

LEGATION OF THE UNITED STATES,
Constantinople, May 6, 1887.

EXCELLENCY: I have the honor to acknowledge the receipt of your dispatch of of April 7, touching Dr. Herrick and the holding of religious service at Kastamouni.

You are good enough to inform me that the sojourn of strangers and the holding of religious service have never been prevented in the Empire, and therefore you do not see the necessity of sending instructions to that city not to interfere with him or any other American missionary who may visit that city.

I am glad to say that interference with such service is rare, and I took occasion in my dispatch No. 32, of October 18, 1886, to compliment you on this state of affairs; but permit me to add that if you will examine that dispatch you will find that the religious service by Dr. Herrick was seriously interfered with, and for that very reason I asked that orders be given to the governor-general to prevent such interference in the future.

On again going over the circumstances as presented in said dispatch No. 32 (but not in No. 42), I can not but consider my request a reasonable one.

Accept, etc.,

PENDLETON KING.

No. 690.

Mr. Bayard to Mr. Straus.

No. 18.] DEPARTMENT OF STATE,
Washington, June 2, 1887.

SIR: I have received Mr. King's dispatch, No. 318, of the 6th ultimo, relative to the case of Dr. Herrick, and have to approve the chargé's note to the Porte of that date, renewing his request that instructions may be addressed to the governor-general to prevent future interference with the religious services of Dr. Herrick at Kastamouni.

I am, sir, etc.,

T. F. BAYARD.

No. 691.

Mr. Bayard to Mr. Straus.

No. 25.] DEPARTMENT OF STATE,
Washington, June 18, 1887.

SIR: I inclose for your information copies of correspondence mentioned below, lately exchanged between the representatives of the American Bible Society at New York and this Department concerning the unjust treatment of their agents, and the obstacles constantly interposed to the sale and circulation of the imprint of the Bible, pub-

lished in Turkey by the authorities thereof. These appear fully set forth in the printed letter of the Rev. Isaac G. Bliss, the society's agent at Constantinople, one of the inclosures herewith.

While I think it desirable to bring these matters to your knowledge, I deem it necessary to do but little more in the way of an instruction for your guidance than to refer you to my No. 7, of April 20, 1887, wherein are discussed the rights of our citizens in the Ottoman dominions who are peaceably pursuing their vocations and violating none of its ordinances.

That instruction, and those of a kindred nature, to your predecessors, of which there are a number among your legation's archives, as well as your own observations, will, I doubt not, have convinced you that the cause of the missionaries and their beneficent labors in Turkish territory is a fruitful source of trouble and complaint because of the absence of stringent and firm measures, as a rule, when complaint is made to check a repetition, not only of petty annoyances, but greater offenses.

Your presence on the spot, however, makes you the better judge of the merits of these complaints and how they can best be dealt with successfully, and gives assurance that whatever can be accomplished for the protection of the interests and the rights of American missionaries will be done.

I am, etc., T. F. BAYARD.

[Inclosure 1 in No. 25.]

American Bible Society to the President.

BIBLE HOUSE, ASTOR PLACE,
New York, April 7, 1887.

SIR: The board of managers of the American Bible Society, through the undersigned, its committee, begs leave to call your attention to the injustice done to its agents and employés in the Turkish Empire while engaged in the sale of Bibles and Testaments whose publication has been approved by the ministry of public instruction, and of the copies of the Holy Scriptures which have passed through the custom-house, after examination and the payment of duties. Our information is that those agents and employés are constantly and wrongfully interrupted in their lawful work, and are subjected to imprisonment and other indignities. Not only in provinces remote from the capital, but in Constantinople itself, the police in repeated instances have disregarded treaty and law, so that our employés have been arrested and imprisoned, and their books have been seized in an unjust and arbitrary manner. In support of these statements we append a printed but unpublished letter from Dr. Isaac G. Bliss, agent of the Society for the Levant, and we beg leave to ask that instructions may be given, through the State Department, to the United States legation at Constantinople to protest against these interruptions to the society's lawful work, and, if possible, to prevent their recurrence.

We are, etc.,

ENOCH L. FANCHER,
President of American Bible Society.
EDWARD W. GILMAN,
ALEXANDER MCLEAN,
Corresponding Secretaries.

[Inclosure 2 in No. 25.]

Letter from Rev. I. G. Bliss.

[Extract.]

CONSTANTINOPLE, *March* 4, 1887.

In a recent letter I informed you of the arrest of Colporteur Abraham, while quietly pursuing his work in Galata. His detention in prison was less than two hours, but on his release all his books were taken from him. The following day Colporteur Theodore was arrested in Scutari and his books taken from him. The succeeding day

Colporteur Paul was quietly passing through the market-place in Scutari, when he was taken in charge by one of the police and marched to the station. After being detained for an hour or two, he was allowed to go on his way, on condition of leaving his books with the officer. In three successive days three of our best and law-abiding men were most arbitrarily and unjustly taken into custody, and their books, 242 in number, taken from them.

On the fourth day these brethren, accompanied by one of our clerks, went to the above-mentioned station to look after the books and inquire the reason of such arbitrary proceedings. Were the colporteurs disturbers of the peace? Was their conduct in any respect to be impugned? Not at all. No fault was found with the men. The trouble was with the books. Such books were not allowed to be sold in the streets; they were injurious and dangerous. When the attention of the officers was called to the permit of the Government on the title-page of the books, their reply was that they had nothing to do with that matter. It was a thing to be settled at the censor's office whither the books must be taken.

After a day or two, inquiry was made at this Department, and it was found that the books had been received. Some of the officials manifested annoyance at the doings of the police, and when questioned said that several years ago there was an order that books should not be sold in the streets, but that it had been almost at once rescinded. The books will no doubt be in a day or two returned to the Bible House.

* * *

This method of dealing is not confined to Constantinople. In one of the cities in the interior a package of Bibles which had passed the custom-house was dispatched to a village for sale. It was seized at the gate of the city, sent to the governor, examined by him and found all right, returned by him to our agent, and started again on its way to its distination. Once more it was seized (although the officer was told that it was the package he had previously taken), sent to the police the second time, examined and returned to our agent. This occurred several times before it was allowed to go on to the village. This system of "Bible circulation" is, to say the least, somewhat novel. * * *

Many of our friends marvel at this state of things and can not understand why Bible printing and distribution should encounter opposition in so many forms in the Turkish Empire. They have supposed that the Bible was recognized as a book above all suspicion, and in the estimation, even of Mohammedans, as second only to the Koran. Furthermore, it is asked, "Is not religious liberty the law of the Turkish Empire?" To this we may answer, yes; it is so written. Various protocols have been issued. All read well and abound in pledges and assurances very nicely worded. If diplomacy ever earned a crown, a magnificent diadem was its due when it secured the pledges referred to. Many years ago these documents were a source of comfort to all workers for Christ in Turkey. Sultans recognized their validity. Grand viziers and cabinet ministers did not quite like to be known as those who disregard the pledges found in those protocols.

There is, however, a remoteness about all this law of liberty which gives it a very shadowy look to us of to-day. It is of very little use in these days to refer to the pledges of the Government in the past. Even the utterances of that astute statesman, Ali Pasha, are growing of less and less account. He ruled that the Bible had never been and could in no respect be regarded an interdicted book in the Turkish Empire. We have not forgotten how, with his rulings and decisions before them, the authorities only a few years ago were most reluctant to give permission to the reprinting of the Turkish Bible. When this was at last secured, a most persistent refusal for a long time was given to our request for authority to print the New Testament, single gospels, and other portions of this same Turkish Bible. You will also recall the difficulties encountered a little more than a year ago, when permissson was asked to print two gospels in Bulgarian for distribution among the Bulgarian soldiers in Constantinople hospital.

We take issue with the authorities in this land in this matter. It is their privilege, if they deem it important, to exercise a strict surveillance over the printing and distribution of the sacred Scriptures in the various languages in this Empire. They have the right to enact laws on this subject, and this they have done. According to the present law no book, not even the Bible or any part of it, can be printed in any language in any part of the Empire without special permission from the mooarif, or censorship, connected wit hthe ministry of public instruction. It is a part of this regulation that when the permission for printing of any book is given, the authorization in the Turkish language is to be printed on the title-page, with the number and date of the permit, and the name of the individual or society at whose expense the book is printed. This law has been in operation for several years at Constantinople, but only within a short time has it been insisted on at Beirut and other places. All books introduced through the custom-house from other countries are subjected to a strict examination and duty. Any thing objectionable being found in any such book, it is confiscated, and the person introducing it is liable to imprisonment. One would

suppose that having fully conformed to the law of the land in respect to book publication, and having paid duty on all books introduced through the custom-houses from other countries, our work of Bible distribution would be comparatively free from embarrassment. This, however, is by no means the case, and herein we take issue with the Turkish authorities and complain of the injustice done to us. Our Bibles are not dynamite. They are a safe commodity. Our business is as legitimate as the trade in cotton cloth. We claim that the sale of all books published with the authority of the central government, showing on their title-page its imprimature, and also the books on which we have paid customs, should be protected fully by the authorities in every part of the Empire. Evidently the police of Constantinople should have no authority to arrest a man engaged in selling authorized books; nor should governors of the interior provinces be allowed to sit in judgment on the decisions and imprimaturs of the central government. Can not our own Government be persuaded to consider this question in the light of treaty arrangements, and protect a business so legitimate and so extensive as is our own Bible and book work in Turkey?

Yours,

I. G. BLISS.

No. 692.

Mr. Straus to Mr. Bayard.

[Extract.]

No. 14.] LEGATION OF THE UNITED STATES,
Constantinople, July 18, 1887. (Received August 1.)

SIR: Your dispatch No. 25, of June 18 last, with inclosures of copies of correspondence exchanged between the State Department and the representatives of the American Bible Society concerning the unjust treatment of the agents of that society, and the obstacles interposed to the sale and circulation of Bibles and tracts, was received at this legation on the 7th instant. The complaints referred to come under the head of colportage, a subject that has for many years past received the attention of this legation. Since I have been here I have given the matter my most careful consideration, having before me as a guide your carefully prepared argument contained in your dispatch No. 7, of April 20 last, together with such additional information as is contained in the archives of the legation.

In the early part of the present year some three or four unjustifiable arrests of colporteurs by the Turkish police were made in this city and elsewhere, and the matter was promptly brought to the attention of the Sublime Porte by this legation, with the result as stated in the inclosed letter, dated July 14, 1887, of Rev. E. M. Bliss, acting agent in the Levant (in the absence of his father, the Rev. I. G. Bliss, who is now in America) of the American Bible Society. It will be seen from this inclosure that the books seized, which formed the subject of the last complaint arising under this head, were returned to the agent a few days since.

It was my impression, which, as will be observed, is entirely concurred in by Rev. E. M. Bliss, that it would not be advisable to renew remonstrances until some new violations might occur, but better to follow up the general subject, which has been intrusted to a commission with a view of making regulations for the sale of books in general.

It seems that an understanding relative to the regulations for colporteurs was arrived at in March, 1884, but no sooner was this done than it was ignored by the local authorities. Finally, at the instance of this legation and the British embassy another commission was appointed

by the Sublime Porte, which is still in existence, for the purpose of formulating regulations to govern the sale of books in general, and thus put an end to all these obstructions. This commission formulated a draught of regulations, but it was found that they were not sufficiently broad or definite in the opinions of the representatives of the American Bible Society.

About the 1st of March last, the representatives of the American Bible Society submitted certain amendments. In this position the matter now stands, and efforts have been made and will be continued by this legation to have the regulations so framed as shall meet the requirements of the agents of the Bible Society. Pending this, an understanding was had with the minister of public instruction that the authorities would cease from interference with the colporteurs who were peaceably and quietly pursuing their vocation. And whenever any interference on the part of the police takes place, the Sublime Porte is firmly reminded of this understanding.

In the meantime the matter shall have my careful attention. It is to be borne in mind that the colporteurs are all Turkish subjects, over whom the Ottoman authorities claim exclusive jurisdiction. This being a matter of internal regulation, the legation has only unofficially taken part in suggesting the form of the regulations, reserving, however, to itself the right to object to them in the event that they, as finally promulgated, should interfere with any of the rights we claim for our citizens by usage, capitulations, or treaty.

Hoping this will meet your approval,

I have, etc.,

O. S. STRAUS.

[Inclosure in No. 14.]

Rev. E. M. Bliss to Mr. Straus.

[Extract.]

AMERICAN BIBLE SOCIETY,
LEVANT AGENCY BIBLE HOUSE,
Constantinople, July 14, 1887.

DEAR SIR: In reporting to you the present condition of the colportage question it gives me pleasure to state that the delivery to our agent yesterday of the books seized from our colporteurs in this city in February last closes the last claim of this nature of any particular importance that we have against the Turkish Government. It is our sincere hope that no new cases will arise, and you may rest assured that our men are under constant instructions to so comport themselves as to arouse as little opposition as possible, and to avoid public discussions, especially in the vicinity of mosques and churches. Thus, with the exercise of due care and by overlooking some minor matters, we may, perhaps, pending the formation and promulgation of the new general law in regard to book-hawkers, be free from the necessity of entering new complaints.

Permit us, however, to call your attention to the necessity that in our judgment exists, of watching very carefully the progress of that law through its various stages.

With the details of administration we, of course, have no special concern. There is, however, one principle involved that we consider of vital importance, and in regard to which we consider it legitimate for our Government to express a decided opinion. This is, that an authorization once granted by the central authorities at Constantinople shall be good for the whole Empire; that a book once indorsed by the censorship here, whether printed in Constantinople or introduced through the custom-house, shall have free sale in all the provinces. This may seem a self-evident proposition, yet it is one whose recognition it has been exceedingly difficult to secure. In fact the very law in question, as first presented by the commission, left it within the power of any private irresponsible person anywhere in the provinces, by raising an

objection, to prevent the sale of books already authorized, and to thus entirely nullify that authorization. At the present time every book sent from Constantinople to Monastin, even though it bear the imprint of the board of censorship here, has to pass a local censor at Salonica and receive his stamp before it can be offered for sale, and he has absolutely refused his stamp to certain books bearing the authorization of the censors at Constantinople. It is true that the commission accepted the presentation of the legation, adopted this principle, and incorporated it into law as forwarded to the council of state.

If this can be done in such a way as to secure the final recognition of this principle, then the questions involved will have a definite standing before the courts, and very many of the most vexing questions that now are brought before the legation will be decided in due form of law.

To accomplish this, two things seem to us of importance:

(1) That the Turkish Government understand clearly that the end in view, viz, perfect freedom, under universally applied regulations, for the sale in all parts of the Empire of all books duly authorized by the central authorities at Constantinople, is kept distinctly and constantly in mind by those intrusted with the interests of American publishing-houses.

(2) That the Turkish Government also understand that there is no desire to interfere in their own internal regulations. That we ask no favors, simply claim the same rights that are accorded to others who transact business in the Empire.

In the hope that this question will in due time be removed from the troublesome list, and with many thanks for the cordial interest you have shown,

I remain, etc.,

EDWIN M. BLISS.

No. 693.

Mr. Porter to Mr. Straus.

No. 33.] DEPARTMENT OF STATE,
Washington, August 4, 1887.

SIR: I have to acknowledge with approval the receipt of your dispatch No. 14, of the 18th ultimo, concerning the question of interference by the Turkish authorities with colporteurs.

I am, etc.,

JAS. D. PORTER,
Acting Secretary.

No. 694.

Mr. Bayard to Mr. Straus.

No. 37.] DEPARTMENT OF STATE,
Washington, August 11, 1887.

SIR: I inclose for your information a copy of a dispatch from the consul of the United States at Smyrna, No. 27, of July 8, 1887, relative to the status of descendants of American citizens born in Turkey; also a copy of Department's reply, No. 22, of the 9th instant, calling his attention to the Department's instruction of April 20, 1887, No. 7, upon the general subject of the rights of American citizens in the Ottoman dominions.

I am, etc.,

T. F. BAYARD.

[Inclosure 1 in No. 37.]

Mr. Emmet to Mr. Porter.

No. 27.] UNITED STATES CONSULATE,
Smyrna, July 8, 1887.

SIR: I have the honor to inclose herewith a memorial signed by some residents, who have heretofore and still do enjoy the protection of this consulate.

For your better understanding of these cases I beg to make a few prefatory remarks, to show the origin of the question involved.

My dispatch No. 17, of February 12, brought to your notice "the status of the second generation of descendants of American citizens born abroad, whose fathers never resided in the United States." In answer to the above I had the honor to receive yours of March 30, No. 14, on the 20th April, and thereupon made known its contents to Mr. F. Blackler, father of one of the children whose right to be enrolled on the consular register I had challenged.

In the third paragraph of your No. 14 the following appears: "When Blackler's father became of full age and elected to remain in Smyrna and make his home there, his rights to the benefits of American citizenship ceased."

On imparting this to Mr. Blackler he seemed utterly taken aback, and compared his status with others whose forefathers were native-born Americans, but who have left descendants who were born and are resident here.

Ten memorialists constitute this class of American citizens.

The statement made by the petitioners as to their performing the duties required of them by the several consuls at this port, I believe to be correct. In fact, Mr. Langdon is one of the associate judges of this consular court at present, continued on the list since my predecessor's term, reappointed by me and confirmed by the United States minister at Constantinople, Hon. S. S. Cox. He assisted me in one case, tried shortly after my arrival here.

The memorial was drawn by E. S. Offley, formerly United States consul at this post. He has availed himself of his experience in drawing his argument. One point strikes me as likely to lead to considerable trouble if he is sustained in his theory of "perpetual citizenship on the ground of exterritoriality."

Provided this right is accorded to the descendants of native-born Americans, can it be likewise granted to those of naturalized Turks? As it is, the authorities here look upon the children of naturalized Turks, who have returned to their native land to reside, with much jealousy, and are loath to accord to their offspring, born here, the rights of American protection, which the parent has acquired and enjoys by right of naturalization.

If the limitation of citizenship, as fixed by section 1993 of Revised Statutes, is waived on the ground of its being a Mohammedan country and the right of exterritoriality, which the memorialists claim to be inalienable, prevails, the consular registers will in future be much augmented, as likewise the duties of consuls in the Orient.

A question which has been asked me several times since this matter came under discussion, and which I now respectfully submit to the Department, is, What specific act or form of election of citizenship must a descendant of a native-born or naturalized American perform or go through when he comes of age and is resident abroad in order to be entitled to the protection of the United States Government?

Can he appear before a United States minister or consul, declare his intentions, take the oath of allegiance, and receive a passport if he satisfies the officer of his American descent?

Can these acts be performed simultaneously?

I have, etc.,

W. C. EMMET.

Epitome of the annexed memorial.

The memorial submits:

(1) That the decision of the Department of State affecting the rights of citizenship of one of the memorialists and of his child is founded on a misapprehension of facts, which are submitted for reconsideration. The memorialists are sons of native-born citizens and neither they nor their children owe allegiance to or are subjects of the Government and country of their birth. Hence section 173 of the Consular Regulations of 1881 on which the decision of the Department rests, does not apply to their case, and

(2) That their and their children's rights of citizenship proceed from treaty stipulations, which confer on them the rights of exterritoriality; and residing as they do

in a Mohammedan and not a Christian country, they are entitled to the benefits issuing from these rights, which not only exempt both themselves and their children from the jurisdiction of the Turkish tribunals and Government, but also they are deemed by the law of nations to be still within the territory and jurisdiction of their own country, the United States.

The memorialists copiously quote, textually, from Wheaton's El. Int. Law, Kent's Com., the Consular Regulations of 1856, the Opinions of Attorneys-General, especially those of the Hon. Caleb Cushing, and from the Constitution in support of the aforesaid principle.

And they conclude, praying for the rescission of the decision aforementioned and for an official copy of the findings of the Hon. Secretary of State in the premises.

[Memorial.]

Messrs. D. and J. H. Offley et al. to Mr. Bayard.

SMYRNA, *June* 30, 1887.

SIR: We, the undersigned, David and John Holmes Offley, James Davee Langdon, and Francis Blackler, born and residing in this city of Smyrna, Turkey, legitimate grandsons and sons of native-born citizens of the United States of America, who came to reside in this country for mercantile purposes, most respectfully submit:

That Francis Blackler aforesaid informed his co-subscribers to the present memorial that the United States consul in this city did refuse to register his son as a citizen of the United States, for the reason that he (Francis Blackler) had never resided in the United States, and hence the right of citizenship could not descend to his child;

That thereupon he, the said Francis Blackler, demurred, and the consul kindly referred the subject-matter to the Department of State for further instructions;

That on receipt of the aforesaid instruction the United States consul informed Blackler contrary to his just expectation that not only did the Department of State approve his (the consul's) refusal to register his (Blackler's) son as a citizen, but further declared that Blackler himself had forfeited his rights of citizenship and consequent protection of the Government of the United States on the following grounds:

A.—That when he attained full age, he, the said Blackler, elected to remain in this country and make it his home; and

B.—That the right of protection of the Government may be waived or lost by long-continued avoidance and silent withdrawal from the performance of the duties of citizenship, as well as by open renunciation.

That whereas the aforesaid decision of the Department of State equally affects the rights of citizenship of the undersigned David and John Holmes Offley and James Davee Langdon, they, conjointly with Francis Blackler, take the liberty to memorialize herewith the honorable Secretary of State on the subject-matter.

That the consul, in support of the decision aforesaid, showed us section 173 of the "Regulations prescribed for the guidance of the consular service of the United States," dated 1881, and kindly allowed us to take a copy thereof.

To the foregoing we respectfully reply and say, respecting the grounds A and B aforesaid:

That we never elected this country as our home; and that we do claim, in conformity with the laws of the United States, to possess the same rights and privileges of citizenship and to nourish the same feelings of affection and love for our country as those citizens who have had the better fortune of being born therein.

That we neither impliedly nor openly did ever renounce our rights, nor have we forfeited them by the non-performance of our share of the duties of citizenship imposed by law upon citizens of the United States residing in Turkey.

We are conscious of never having failed to obey the summons of the United States consul whenever served upon us—

To assist as "associates" in the trial of cases brought before the United States consular agent;

To act as American delegates before the Turkish tribunals on civil cases in which the claimant or defendant was a citizen of the United States, and the defendant or claimant an Ottoman subject, in obedience to the provisions of the treaty of May 7, 1830, between the United States and the Turkish Government;

To appear as witnesses and to perform every and all other duties required from us by the laws of the United States.

Respecting section 173 of the regulations aforementioned:

That the section above mentioned of the regulations may apply to citizens born in Christendom, but not to ourselves, who were born in this a Mohammedan country.

That we fail to see how section 173 of the regulations aforesaid can be so construed as to affect our rights of citizenship, *even* had we been born and did reside in a Christian and not a Mohammedan country.

We quote verbatim from the aforesaid section: "It is provided by law that persons born out of the limits and jurisdiction of the United States whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered to be citizens of the United States, provided that the rights of citizenship shall not descend to persons whose fathers never resided in the United States." Within the sovereignty and jurisdiction of the United States such persons are entitled to all the privileges of citizens.

Now, E. S. Offley, the father of David and John Holmes Offley, was born under the flag of the United States, at the time when his father, David Offley, native-born citizen of Philadelphia, Pa., was proconsul of the United States and since consular commercial agent, and by instructions from the Department of State he carried on the long and protracted negotiations between the United States and Turkey which ultimately resulted in the conclusion of the treaty of May 7, 1830, and was duly commissioned on the 12th September, 1829, with Charles Rind and Commodore James Biddle, by President Jackson, as joint and several commissioners of the United States to conclude, and did conclude, the treaty of May 7, 1830, aforesaid, when he was appointed their consul in this city. After the death of his father the said E. S. Offley held the office of United States consul at this place for nearly twenty years, during which period the said David and John Holmes Offley were born. Hence the latter were likewise born under the flag of the United States; besides which he, the said E. S. Offley, did reside in the United States for some time.

Both the fathers of the other two memorialists, James Davee Langdon and Francis Blackler, were native-born citizens of Boston, Mass.

Hence our own individual rights of citizenship are clearly and uncontrovertibly within the pale of the provisions of the section above last quoted, which entitles us to all the privileges of citizens.

Respecting the status of our children, for such of us as have or may hereafter have any, their rights of citizenship are equally clear, and their fathers are entitled to have them registered in the United States consulate of this city as citizens of the United States.

The aforesaid section 173 of the regulations provides that "if by the laws of the country of their birth children of American citizens born in such a country are subjects of its Government, the legislation of the United States will not be construed so as to interfere with the allegiance which they (our children) owe to the country of their birth while they continue within its territory."

The legal rationale of the above maxim is that if our children were not subject or do not owe allegiance to the Turkish Government, then they are entitled to citizenship.

Now, the practice of the Turkish Government, a practice imposed on the same by treaty stipulations with all the powers of Christendom represented in this Empire, is that this Government does and can indeed consider as its subjects only such children born in its territory whose fathers are or were at the time of their birth Turkish subjects, and not children therein born or the descendants of such children whose fathers and forefathers were or are subjects of or citizens of a foreign Christian state. This Government having thus invariably looked upon the latter class as subjects or citizens of foreign nations, and having never raised the least pretense of jurisdiction over them, the sequence is that according to the text of the aforesaid section of the regulations our children and their descendants are citizens of the United States.

We hope the above statement will be regarded as having conclusively demonstrated our rights and those of our children to citizenship, although the same are founded on a law which does not apply to Turkey but to foreign Christian countries.

Our rights of citizenship, however, rest, as we have already said, on treaty stipulations, as we will now proceed to show.

"* * * Hence the international law of the civilized Christian nations of Europe and America is one thing and that which governs the intercourse of the Mohammedan nations of the East with each other and with Christians is another and a very different thing." * * * (Wheaton's E. Int. Law, p. 40, 3d ed., R. and C.)

"In the law of nations, as to Europe the rule is that men take their national character from the general character of the country in which they reside, and this rule applies equally to America; but in Asia and Africa an immiscible character is kept up, and Europeans trading under the protection of a factory take their national character from the establishment under which they live and trade. This rule applies to those parts of the world from obvious reasons of policy, because foreigners are not admitted there as in Europe and the western part of the world into the general body and mass of the society of the nation, but they continue strangers and sojourners, not

acquiring any national character under the general sovereignty of the country." (See Kent, vol. 1, p. 87, ed. 8.)

* * * "The resident consuls of the Christian powers in Turkey, the Barbary States, and other Mohammedan countries exercise both civil and criminal jurisdiction over their countrymen to the exclusion of the local magistrates and tribunals. This jurisdiction is subject * * * to an appeal to the superior tribunals of their own country. * * *" (Wheaton's El. Int. Law, p. 168, 3d ed., R. C.)

"The subjects or citizens of Christian states who may happen to be sojourning or were permanently residing in Turkey and its dependencies, are privileged persons, politically as well as commercially. In all cases the ministers and consuls of their country have exercised not only a protecting political authority, but also, under sundry qualifications, varying according to treaty or usage, judicial functions and jurisdiction." (Regulations prescribed by the President for consular officers of the United States, 1856, p. 181.)

The jurisdiction of the United States commissioners and consuls in China and ministers and consuls in Turkey is regulated by the act of Congress August 11, 1848, and subsequent acts of Congress, having for object the carrying into effect certain provisions in this relation contained in the respective treaties between the United States and China and the United States and the Ottoman Porte.

"It (the act of 1848) is avowedly based on the two treaties in question * * * and it is to be construed in subordination to that and to the Constitution. In substance it accepts and gives actual form to those stipulations of treaty which confer on all citizens of the United States the right of exterritoriality in China and Turkey." (Opinion of the Attorney-General of the United States, Hon. C. Cushing, dated September 19, 1855.)

"In our relations with nations out of the pale of Christendom, we must and shall retain for our own citizens and consuls, though we can not concede to theirs, the rights of exterritoriality. Religion is the chief representative sign here, and it is an element of the question of public law. * * * But the critical fact is the difference of law. The legislation of Mohammed, for instance, is inseparable from his religion. We can not submit to one without also undergoing the other." * * * (Consular marriages and exterritoriality of consuls in certain countries. Opinion of the Attorney-General, Cushing, dated July 14, 1855, p. 143.)

"In the cases of China and Turkey * * * such exterritorial * * * privileges as they really enjoy, they enjoy not because they are consuls * * * but because they are citizens of the United States." (*Ibid.*, p. 147.)

EXTERRITORIALITY DEFINED.

"To the regular jurisdiction, however, of each country over persons, things, and acts being or done within it, there exist by received public law certain absolute exceptions. These exceptions are the several cases of exterritoriality—that is, the various conditions in which a person, though abroad, is exempt from the foreign jurisdiction, and is deemed to be still within the territory and jurisdiction of his own country." (Opinion of the Attorney-General, Hon. C. Cushing, "on consular marriages," dated November 4, 1854, p. 126.)

As already stated in the beginning of our present memorial, the grandfather of David and John Holmes Offley, and the fathers of both James Davee Langdon and Francis Blackler, were all native-born citizens of the United States. They came to Turkey with the full knowledge that the law of nations and the laws of their own country followed them here and deemed them, as above shown, "to be still within the territory and jurisdiction of their own country." Were it not so, they would have certainly not ventured to leave their country. So long as this country continues to be Mohammedan, so long as our treaty with same continues in force and unrepealed, both ourselves, our children, and their descendants are deemed to be born within the territory and jurisdiction of the United States, and hence their rights to citizenship can not be challenged.

The said rights, proceeding as we have shown from the existing treaty between the United States and Turkey, which secures to American citizens all the rights and privileges enjoyed by the subjects and citizens of the most favored nations residing in the Ottoman Empire, the Constitution of the United States relieves us from any apprehension of losing the said rights so long as the said treaty continues in force.

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land." (Art. VI, sec. 2 of the Constitution.)

"If a treaty be the law of the land, it is as much obligatory upon Congress as upon any other branch of the Government, or upon the people at large, so long as it continues in force and unrepealed." (Kent's Com., vol. 1, pp. 305, 306, 8th ed.)

"When the countries now Mohammedan shall be resubjected to the doctrines of the Roman law * * * not until then can they be admitted to the same reciprocal community of private rights with us which prevails in Christian Europe and America. Until that event happens, Turkey * * * may enter into the sphere of our public law in the relation of Government to Government, but not in the relation of Government to men. That full interchange of international rights is admissible only among the nations which have unity of legal thought, in being governed by or constituted out of the once dissevered, but since then partially reunited, constituents of the Græco-Roman Empire." (Attorney-General Hon. C. Cushing's Opinion, dated July 14, 1855, pp. 151, 152.)

Having only in pamphlet form the Attorney-General's opinion aforesaid, we regret we can not refer to the volume since published.

We most respectfully call the earnest attention of the honorable Secretary of State of the United States to the evidence produced in our present memorial in support of our rights of citizenship, and humbly pray that, should his honor see fit, he will be pleased to order the recission of the finding we complain of, and to favor us with an official copy of his honor's decision.

And as in duty bound we shall ever pray. His honor's most obedient humble servants,

F. BLACKLER.
DAVID OFFLEY.
JOHN HOLMES OFFLEY,
Per DAVID OFFLEY,
Attorney in fact.
JAMES D. LANGDON.

[Inclosure 2 in No. 37.]

Mr. Porter to Mr. Emmet.

No. 22.] DEPARTMENT OF STATE,
Washington, August 9, 1887.

SIR: The Department recently made a careful and thorough examination of the question of the status of citizens of the United States who are members of continuous communities of American nationality existing in Turkey for business or religious purposes. The result of this examination is embodied in instruction of April 20, 1887, to our minister at Constantinople, a copy of which may be found in section 68, page 854 of the Appendix to Wharton's Digest of International Law, which is just published, and will be sent to you.

Applying these instructions to the questions raised by you in your dispatch No. 27, dated the 8th ultimo, the following positions may be laid down:

(1) Persons who are members in Turkey of a community of citizens of the United States, of the character above described, do not lose their domicile of origin, no matter how long they remain in Turkey, provided that they remain as citizens of the United States, availing themselves of the extraterritorial rights given by Turkey to such communities, and not merging themselves in any way in Turkish domicile or nationality.

(2) The American domicile they thus retain they impart to their descendants, so long as such descendants form part of such distinctive American communities, subject to the above proviso.

(3) Section 1993 of the Revised Statutes, providing that "the rights of citizenship shall not descend to children whose fathers never resided in the United States," does not apply to the descendants of citizens of the United States members of such communities. Such descendants are to be regarded, through their inherited extraterritorial rights recognized by Turkey herself, as born and continuing in the jurisdiction of the United States. That this is the construction to be given to section 4125 of the Revised Statutes, coupled with our treaty of 1830 with Turkey, is fully shown by the above-mentioned instruction of April 20, 1887, to which I again refer as binding you in this relation.

I am, etc.,

J. D. PORTER,
Acting Secretary.

No. 695.

Mr. Straus to Mr. Bayard.

No. 20.] LEGATION OF THE UNITED STATES,
Constantinople, August 20, 1887. (Received September 5.)

SIR: I have the honor to submit for the supervisory consideration of the State Department the facts concerning the application of Alexander Hatchdoorian for a passport. I have refused the application, pending your instructions. The facts are the following: The applicant's father, Serkis Hatchdoorian, a dentist, was born in Turkey and emigrated to the United States, where he was naturalized on June 14, 1854, in the United States circuit court at Boston. In 1856 he returned to Turkey bearing passport No. 14557, dated September 12, 1856. He has resided here ever since, claiming to be an American citizen, and is registered as such at the consulate. The son was born here on January 1, 1865; he has never been in the United States; he claims to be an American citizen and has registered himself as such at the consulate. He says he does not intend to go to the United States to reside, but he intends some time to visit it.

I have examined the law on the subject, sections 1993–1999, etc., of the Revised Statutes, as well as your dispatch, No. 144, "Foreign Relations," 1886, p. 303, upon a somewhat analogous state of facts.

As a number of similar cases are likely to present themselves at this legation in the course of the next few years, as the sons of naturalized citizens attain their majority, I deem it of importance to obtain your instructions for my guidance in this and similar cases.

I have, etc.,

O. S. STRAUS.

No. 696.

Mr. Straus to Mr. Bayard.

No. 24.] LEGATION OF THE UNITED STATES,
Constantinople, September 6, 1887. (Received September 19.)

SIR: Referring to my dispatch No. 14, of July 18, 1887, subject, "Interference with Colporteurs," I have the honor to make the following additional report of what has been done by me since that date. On the 19th July I had occasion to call on the Grand Vizier and he informed me that the regulations concerning colporteurs had recently been formulated by the commission appointed several years ago, and that they had been forwarded to the legislative section of the council of state, and that they were now before the entire council of state, and would doubtless be passed very soon and promulgated as a law. Upon my suggesting that I would like to have a copy of the proposed law with a view of considering it together with the representative of the American Bible Society for the purpose of proposing amendments, provided that upon consultation with the agents of the society it should be deemed necessary, he agreed with me in the suggestion that if by that means a mutually satisfactory law could be arrived at it would avoid a great source of discussion between the legation and the Sublime Porte.

Inclosure No. 1 is a translation of the law now before the council of state, designated as "the Porte's project of the law of colporteurs," which was given to me in Turkish by the Grand Vizier.

After considering it with the agents of the American Bible Society, it was found to be entirely too restrictive in its provisions, and I suggested to them to draught amendments upon the basis of the Porte's project. They conferred with the representatives of the British Bible Society and draughted such amendments, which were concurred in by the representatives last named. These amendments are inclosure No. 2, designated as "Law of book-hawkers, with proposed amendments incorporated."

I had occasion to call the matter incidentally to the attention of Sir William A. White, the British ambassador. He agreed with me that it would be much more feasible to endeavor to have the law shaped satisfactorily at this stage, if the Grand Vizier would concede the opportunity, than to contend against the law when promulgated, especially as the matter is one over which the Sublime Porte had undisputed jurisdiction, and that he desired to unite with me in this matter, as it had likewise been brought to his attention by the representatives of the British Bible Society.

I drew up a memorandum as to the proposed law concerning colporteurs, which was concurred in by the British embassy, a copy of which is inclosed (inclosure No. 3). Yesterday I laid the matter before the Grand Vizier, being accompanied by Mr. Fane, the first secretary of the British embassy, who was delegated to represent Sir William A. White, and also by Mr. Gargiluo and Mr. Block, dragoman of the British embassy. I discussed the matter fully with his highness. The substance of my presentation is contained in inclosure No. 3, which I left with the Grand Vizier.

I am perhaps justified in expecting that the amendments, in the main, will be adopted.

I have, etc., O. S. STRAUS.

[Inclosure 1 in No. 24.]

[Translation.]

The Porte's project of the law of colporteurs.

ARTICLE I.

Those who sell in the streets or other places books or tracts of any description, or pictures or photographs, or any printed or written papers excepting newspapers, by carrying them or by placing them on some means of conveyance or by spreading them out in a temporary exhibition, are styled colporteurs.

ARTICLE II.

Colporteurs are obliged to obtain a license, in the capital from the prefecture of the city, and in the provinces from the offices of the municipality.

ARTICLE III.

In order to obtain a license those who wish to become colporteurs are required to draw up a petition, containing name, title (or profession), age, residence, nationality (1), and the names of the places where they are to carry about (books) as well as the promise not to sell books or tracts or other papers or pictures or photographs (2) that are opposed to the public peace, to morals, or to the religious denominations; to this is to be attached a testimonial from some honorable quarter as to their good repute. This petition is to be presented in Constantinople and its dependencies to the prefecture, and in the provinces to the vali, or in the independent districts to the mutessarif (3). In case the petitioner is a foreign subject he is required to add to his petition and his testimonial a bond certified by the legation of the Government of his allegiance, whereby he agrees to be treated as an Ottoman subject (4).

ARTICLE IV.

Those who have not entirely followed the course (fulfilled the conditions) necessary in accordance with Article III will not be given licenses for colportage.

ARTICLE V.

If colporteurs shall call out the books which they sell by any words aside from the title that suggest the contents of the books, their licenses are to be given up, and they themselves to be fined in accordance with article 254 of the penal code.

ARTICLE VI.

Colporteurs who knowingly sell any kind of pernicious or immoral books, tracts pictures, photographs, or other papers, either openly or secretly, are regarded as accessories in crime with the authors or printers, and besides suffering the treatment prescribed by law they will be restrained from exercising their calling for from one to three months.

ARTICLE VII.

The force of the license is limited to the time specified, and if the books and tracts sold relate to religious matters they are not to be sold in the vicinity of any place of worship (5).

ARTICLE VIII.

Those who sell books, tracts, pictures, photographs, or other papers printed or prepared without permission, or imported from abroad, and those who engage in colportage without obtaining official license, are fined from 3 to 10 Osmanli pounds (6).

ARTICLE IX.

It is in the hands of the Government to prevent the purchase and sale of books, tracts, and other papers, whose printing and publication rest upon an official authorization, when their circulation in some places is thought to be harmful for the time being. Booksellers selling such books within the prohibited districts give up their license, and they are punished in conformity with Article VIII (7).

ARTICLE X.

The term of validity of the license and the course to be pursued in regard to its being limited to its owner conform to the system in vogue with regard to trade licenses (8).

ARTICLE XI.

Colporteurs are subjected to the inspection of the officers of the ministry of public instruction, of the municipality, and of the police.

ARTICLE XII.

The ministry of the interior and the ministry of public instruction are charged with the execution of this law.

[Inclosure 2 in No. 24.]

The law of book-hawkers, with the proposed amendments incorporated.

ARTICLE 1.

Those who sell in the streets or other places books or tracts of any description, or pictures, or photographs, or any printed or written papers excepting newspapers, by carrying them or by placing them on some means of conveyance, or by spreading them out in a temporary exhibition, are styled book-hawkers.

ARTICLE 2.

Book-hawkers are obliged to obtain a license, in the capital and its dependencies from the prefecture of the city, and in the provinces from the offices of the municipality.

ARTICLE 3.

Licenses are granted on the condition that those who desire to become book-hawkers shall draw up a petition, containing name, title (or profession), age, residence, nationality, and the district in which they wish to carry on their trade, as well as the promise not to sell books, tracts, or other papers which have not received the permit of the department of public instruction, or any pernicious or immoral pictures or photographs; to this is to be attached a testimonial from some honorable quarter as to their good repute.

This petition is to be addressed to the authorities mentioned in article 2. It is legitimate, however, for the valis or independent mutessurifs in the provinces to issue such licenses to cover the entire district under their jurisdiction.

In case the petitioner is a foreign subject he shall present in addition a certified passport from his legation.

ARTICLE 4.

Those who have not entirely followed the conditions necessary in accordance with article 3 will not be given licenses for book-hawking; but licenses once granted are renewed at the expiration of the term, provided that the book-hawker has not been guilty of any violation of the law. They are also extended to include other districts, by the visa of the authorities of the district in which the book-hawker wishes to work.

ARTICLE 5.

If any book-hawkers shall call out the books that they sell by any words aside from the title that suggest the contents of the books, their licenses are to be given up, and they themselves are to be fined in accordance with article 254 of the penal code.

ARTICLE 6.

Book-hawkers who knowingly sell books unathorized by the department of public instruction, or any kind of pernicious or immoral pictures or photographs, either openly or secretly, are regarded as accessories in crime with the authors or printers, and besides suffering the treatment prescribed by law they will be restrained from exercising their calling for from one to three months.

ARTICLE 7.

The force of the license is limited to the time specified, and if the books and tracts sold relate to religious matters, they are not to be sold on the premises or near the gates to the premises of any place of worship, except on the consent of those in charge of such places of worship.

ARTICLE 8.

Those who sell books, tracts, or other papers printed or prepared without permission, or imported from abroad and not authorized by the proper authorities, or pernicious or immoral pictures or photographs, and those who engage in book-hawking without obtaining official license, are fined from 3 to 10 Osmanuli lire.

ARTICLE 9.

It is in the power of the Government to restrict the action of book-hawkers in districts where martial law has been proclaimed, when their presence is deemed to be harmful for the time being, even though the book-hawkers possess licenses. Book-hawkers found within the prohibited districts in such a case are deprived of their licenses and are punished in accordance with article 8. Except for proven fault, the holding of a license shall be sufficient authority for the free exercise of the trade within the limits of time and territory prescribed by the license.

ARTICLE 10.

The term of validity of the license and the course to be pursued in regard to its being limited to its owner conform to the system in vogue with regard to trade licenses.

ARTICLE 11.

Book-hawkers are subjected to the inspection of the officers of the ministry of public instruction, of the municipality, and of the police.

ARTICLE 12.

The ministry of public instruction and the ministry of the interior are charged with the execution of this law.

[Inclosure 3 in No. 24.]

Memoranda on law of colporteurs.

Memoranda as to the proposed law concerning colporteurs submitted by the British embassy and the United States legation to His Highness the Grand Vizier:

The commission which formulated the proposed law concerning colporteurs which is now before the imperial council of state was appointed upon the application of General Wallace, late minister of the United States, and at the instance of the British embassy.

The object sought to be attained was to have a definite law promulgated, that thereby the agents of the British and American Bible societies might be protected from arbitrary interference by the police and the officials in the provinces.

It was understood that the two societies above named should each have a delegate as members of such commission. It appears that at the first meeting of such commission these delegates attended, but were subsequently excluded.

The present proposed law is not, therefore, in any sense due to the operation of the societies above named; on the contrary, amendments proposed by them were not only not adopted by the commission, but provisions of a contrary import were adopted.

The legation of the United States and the British embassy, desirous that such a law be promulgated as may for the future eliminate the vexatious discussions that so continually arise by reason of the arbitrary arrests of the agents of the Bible societies, have the honor to submit herewith certain amendments to the proposed law.

The proposed law is in conflict with the rights as to commerce as well as with the guarantees of religious liberty, and it is confidently believed that the Sublime Porte has no intention of derogating from these important principles. That such would be the effect under the proposed law will now be briefly shown.

(1) Books, when once sanctioned by the censors, are as legitimate an article of commerce as any other kind of merchandise. The proposed law as to colporteurs refers to the sale of books which previously obtained the sanction of the censors to be printed or which have obtained their permit if imported. The authorization of the censors to print and publish a book once obtained, any obstacles placed in the way of its sale are in restraint of commerce, and no reason is apparent why different regulations should be made in respect to book-hawkers than in respect to hawkers of any other article, excepting for the purpose of ascertaining whether the books of the hawker have the requisite authorization of the censors.

It will be seen that article 9 is in direct conflict with the principles stated, that it places in the power of the Government, and presumably this implies the local authorities in the provinces, to disregard the permit of the censors as well [as] the license of the hawker at their pleasure. That is to say, article 9 could be, and experience justifies the conclusion that it frequently would be, so construed as to prohibit absolutely the sale of books by hawkers in certain provinces whenever it might suit the pleasure of the local authorities.

(2) It is further respectfully submitted, that the permit to print and publish a book having been once regularly obtained, the publishers or their agents should not be subjected to the caprices of the local or other officials to interdict the sale and circulation of such books.

Article 3 construed together with article 2 makes the local official in each district and province the judge as to what books are opposed to "public peace," "morals," or "religion," and thereby substantially vests in him the power to override the authorization of the censors and to disregard at pleasure a license regularly obtained.

The amendments proposed are submitted with a view of preventing that contingency.

(3) Article 8 should be more definite, in that, as it now stands, the words "vicinity of any place of worship" are capable of unlimited extension, so as to cover any given

district, however extensive, within which the colporteur is not permitted to sell religious books.

The effect of such interpretation would be as prohibitive as if a law were enacted absolutely prohibiting the sale of books within the limits of any inhabited district. It is to be presumed that such is not the intent.

(4) Attention is called to the fact that in article 9 the ordinary term in Turkish for "bookseller" is used instead of the one signifying "colporteur," or "book-hawker." It is desirable that this be corrected, as it doubtless was not so intended.

No. 697.

Mr. Bayard to Mr. Straus.

No. 46.] DEPARTMENT OF STATE,
Washington, September 22, 1887.

SIR: I have received your No. 24, of the 6th instant, concerning the proposed law for the regulation of colporteurs, and desire to say that you appear to have acted in this matter very discreetly. There is no objection to your associating the British embassador with you in your efforts to secure satisfactory amendments to a law which in its operations affect the interests of British societies as much as our own. Your course is therefore approved, and a favorable outcome awaited.

I am, etc.,

T. F. BAYARD.

No. 698.

Mr. Bayard to Mr. Straus.

No. 48.] DEPARTMENT OF STATE,
Washington, September 30, 1887.

SIR: In your No. 20, of August 20, 1887, you report your action in declining to grant a passport in the case of Alexander Hatchdoorian.

The facts appear to be these: The applicant, Alexander, is the son of Serkis Hatchdoorian, an Ottoman subject by birth, who emigrated to the United States, and was naturalized by the United States circuit court at Boston on June 14, 1854. In 1856 he returned to Turkey bearing a passport dated September 12 of that year, and has since resided there, claiming American citizenship, and being registered at the American consulate. It is not stated that he has at any time returned to the United States or expressed any intention or made any effort to return, or that he is engaged in any business in Turkey which keeps him there as the representative of American interests, or that he is a member of any particular American community in Turkey recognized in Turkey as having distinctive and continuous American privileges.

Alexander, the son, the present applicant, was born in Turkey on January 1, 1865, and therefore attained his majority on January 1, 1886. He has never resided in the United States, and now seeks a passport, not for the purpose of adopting a permanent domicile in this country or assuming any duties of such citizenship, but simply for the purpose of "visiting it some time." Under these circumstances he falls within the rule repeatedly laid down in this Department that when a foreigner,

after naturalization in the United States, returns to his native land and there, after merging himself in the society and nationality of that land, has a son, that son, should he remain there till his majority, is required, in order to have the protection of American nationality, not merely to elect American citizenship, but to carry that election out by taking immediate measures to come to the United States as a permanent abode. The latter condition does not exist in the present case, and therefore I am of opinion that the passport applied for by Alexander was properly refused by you.

From what has been said you will see that, while reiterating this rule, I am careful to exclude from its operation cases of persons who, with their families, remain in Turkey as the representatives of distinctively American business interests, and of persons belonging to particular American communities settled in Turkey, whose right to preserve a distinctive corporate and continuous American nationality is recognized by Turkey, and was affirmed by me in instructions to you, No. 7, of April 20, 1887, and repeated by me in instructions to W. C. Emmet, United States consul at Smyrna, inclosed in instructions to you, No. 37, of August 11, last. But the present applicant does not claim to fall within either of these classes, and is not, therefore, so far as the case presented by him shows, entitled to the immunities assigned to them.

I am, etc.,

T. F. BAYARD.

CIRCULARS.

No. 699.

To diplomatic and consular officers abroad.

[Circular.]

DEPARTMENT OF STATE,
Washington, February 8, 1887.

GENTLEMEN: Information has reached the Department that it is the practice with some of its diplomatic and consular representatives to issue, at the request of American citizens proposing to marry abroad, certificates as to the freedom of such parties from matrimonial disabilities, and as to the law in the United States regulating the mode of solemnizing marriage.

Waiving other objections to certificates of this class, it is enough now to say that the practice of issuing them is objectionable, because they may contain erroneous statements which may be productive of difficulty.

Diplomatic and consular agents can ordinarily certify in respect to the matrimonial disabilities of individuals (*e. g.*, as to prior marriage, or parental control) upon hearsay only, and therefore unreliably.

In certificates as to the laws in the United States regulating the solemnization of marriage the possibilities of error are great and manifest. Of these laws no accurate or reliable summary could be given. It is essential, for instance, to the validity of a marriage solemnized in Massachusetts and other New England States, that it should be solemnized by a local clergyman or magistrate after a license taken out in the office of the town clerk, which is virtually a publication. In other States [it is alleged] it is necessary to the ceremony that it should be solemnized by a minister of the gospel. In most States a marriage by consent, so far as concerns ceremonial form, is valid; but even in these States law is frequently undergoing alteration.

Serious consequences may ensue from errors made in this relation in diplomatic or consular certificates. A foreign local official may solemnize a marriage on such a certificate, but when a question involving the validity of the marriage arises in a superior court of law, it may well be decided that such certificate can not prove matters of fact, nor the law in that particular State, Territory, or District of the United States in which the parties were domiciled.

The issue of these certificates is not authorized by statute nor by the instructions to diplomatic agents or consuls.

The withholding of such certificates may prevent serious disaster. If citizens of the United States desire to be married before a foreign officer who requires information as to their individual status and the laws of their domicile, the information can be obtained from persons familiar with the facts, or from experts acquainted with the laws of such domicile; and in matters involving the validity of marriages and the legitimacy of children, too great trouble in this respect can not be taken.

To the position that it is not competent for diplomatic or consular officers to state the law of the United States as to marriage, there is, however, one important exception to which your attention has been heretofore directed. Throughout the United States is recognized the principle of international law that a solemnization of marriage valid by the law of the place of solemnization will be regarded as valid everywhere. Hence, where persons domiciled in any part of the United States propose to be married in a foreign land, the forms of solemnization prescribed by the law of the domicile are of consequence only when the law of such foreign land adopts those forms as sufficient.

Nothing in this order is intended to preclude a chief diplomatic representative of the United States, having obtained permission of the Department for that purpose, from certifying as to the law of any particular jurisdiction in the United States when called upon by a judicial tribunal, or a consul, who is an expert as to such law, from testifying thereto when called upon in a court of justice, or from certifying thereto when excused from testifying in such court.

I am, etc.,

T. F. BAYARD.

Ordered by the Secretary. It is not competent, without the special authority of this Department, for diplomatic agents, consuls, or consular agents, to certify officially as to the *status* of persons domiciled in the United States and proposing to be married abroad, or as to the law in the United States, or in any part thereof, relating to the solemnization of marriages.

T. F. BAYARD.

No. 700.

To diplomatic officers abroad.

DEPARTMENT OF STATE,
Washington, February 23, 1887.

SIR: In order to secure more uniformity than at present exists in the quarterly returns of passports issued by our diplomatic representatives abroad, blank forms for passport applications have been prepared in this Department, a package of which will be sent you soon, adapted to both native and naturalized citizens. They are to be filled out and sworn to in duplicate by the applicant, one copy being retained, filed, and indexed in the legation, and the other transmitted here, with a statement of the fees received during the quarter for passports. These forms being intended to suit all countries, may contain some statements inapplicable or superfluous in yours, but too much care cannot be exercised in granting passports, especially to persons representing themselves as naturalized citizens, and it is often found important in this Department to have on file the statements made by applicants at the legations abroad. The oath of allegiance alone, which is transmitted by many of the legations, is of itself not a conclusive evidence of citizenship, and should be accompanied by such further details as it is the object of these forms to supply. These forms will be supplied to you as needed, by this Department, on application, and any suggestions from your legation, as to desirable additions or alterations, will be carefully considered.

I am, etc.,

T. F. BAYARD.

No. 701.

To diplomatic officers abroad.

DEPARTMENT OF STATE,
Washington, July 9, 1887.

SIR: In the act of Congress approved June 19, 1886, entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes," the following provisions are found:

SECTION 11. That section fourteen of "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June twenty-sixth, eighteen hundred and eighty-four, be amended so as to read as follows:

"SECTION 14. That in lieu of the tax on tonnage of thirty cents per ton per annum imposed prior to July first, eighteen hundred and eighty-four, a duty of three cents per ton, not to exceed in the aggregate fifteen cents per ton in any one year, is hereby imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or the Sandwich Islands, or Newfoundland; and a duty of six cents per ton, not to exceed thirty cents per ton per annum, is hereby imposed at each entry upon all vessels which shall be entered in the United States from any other foreign ports, not, however, to include vessels in distress or not engaged in trade: *Provided*, That the President of the United States shall suspend the collection of so much of the duty herein imposed, on vessels entered from any foreign port, as may be in excess of the tonnage and light-house dues, or other equivalent tax or taxes imposed in said port on American vessels by the Government of the foreign country in which such port is situated, and shall, upon the passage of this act, and from time to time thereafter as often as it may become necessary by reason of changes in the laws of the foreign countries above mentioned, indicate by proclamation the ports to which such suspension shall apply, and the rate or rates of tonnage duty, if any, to be collected under such suspension: *Provided, further*, That such proclamation shall exclude from the benefits of the suspension herein authorized the vessels of any foreign country in whose ports the fees or dues of any kind or nature imposed on vessels of the United States, or the import or export duties on their cargoes, are in excess of the fees, dues, or duties imposed on the vessels of the country in which such port is situated, or on the cargoes of such vessels; and sections forty-two hundred and twenty-three and forty-two hundred and twenty-four, and so much of section forty-two hundred and nineteen of the Revised Statutes as conflicts with this section, are hereby repealed."

SECTION 12. That the President be, and hereby is, directed to cause the governments of foreign countries which, at any of their ports, impose on American vessels a tonnage tax or light-house dues, or other equivalent tax or taxes, or any other fees, charges, or dues, to be informed of the provisions of the preceding section, and invited to co-operate with the Government of the United States in abolishing all light-house dues, tonnage taxes, or other equivalent tax or taxes on, and also all other fees for official services to, the vessels of the respective nations employed in the trade between the ports of such foreign countries and the ports of the United States.

SECTION 17. That whenever any foreign country whose vessels have been placed on the same footing in the ports of the United States as American vessels (the coastwise trade excepted) shall deny to any vessels of the United States any of the commercial privileges accorded to national vessels in the harbors, ports, or waters of such foreign country, the President, on receiving satisfactory information of the continuance of such discriminations against any vessels of the United States, is hereby authorized to issue his proclamation excluding, on and after such time as he may indicate, from the exercise of such commercial privileges in the ports of the United States as are denied to American vessels in the ports of such foreign country, all vessels of such foreign country of a similar character to the vessels of the United States thus discriminated against, and suspending such concessions previously granted to the vessels of such country; and on and after the date named in such proclamation for it to take effect, if the master, officer, or agent of any vessel of such foreign country excluded by said proclamation from the exercise of any commercial privileges shall do any act prohibited by said proclamation in the ports, harbors, or waters of the United States for or on account of such vessel, such vessel, and its rigging, tackle, furniture, and boats, and all the goods on board, shall be liable to seizure and to forfeiture to the United States; and any person opposing any officer of the United States

in the enforcement of this act, or aiding and abetting any other person in such opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and, upon conviction, shall be liable to imprisonment for a term not exceeding two years.

Copies of the act above quoted, and of the prior act of June 26, 1884, are inclosed herewith for your information. Circumstances having heretofore delayed the extension of the general invitation authorized by section 12 of the act of 1886, as above quoted, you are now instructed to invite the Government of ——— ——— to co-operate with the Government of the United States toward the contemplated ends.

It will be seen that the provisions of the sections above quoted are broad enough to cover either a reduction or a complete abolition, by reciprocal action, of tonnage and equivalent charges on navigation; and it is open to any foreign country, in all or any of whose ports a less charge is made than that now imposed in the ports of the United States, to obtain forthwith a reduction of the charge in the United States, on vessels coming from such port or ports, to an equality with that levied in the port or ports designated. An example of this is furnished by the arrangement lately entered into between the Government of the United States and that of The Netherlands, as shown by the inclosed copy of the President's proclamation of April 22, 1887,* whereby complete exemption from tonnage dues is secured to all vessels, of whatever nationality, entering ports of the United States from the ports of The Netherlands in Europe, or from certain named ports of the Dutch East Indies.

It is to be observed that the invitation herein contained is extended equally to all countries, both those having ports within the geographical zone to which, under the shipping acts of 1884 and 1886, the rate of 3 to 15 cents per ton applies, and those which have no ports within that zone and to which the rate of 6 to 30 cents per ton now applies. The rate of 3 to 15 cents per ton was geographical and involved no test of flag. The object and intent of the present invitation is to deal, on the basis of reciprocity, with countries *as nationalities*, whether situated within or without the geographical limits referred to.

Besides extending the invitation herein authorized, you are also instructed to ascertain whether, in the ports of ——— ———, or in any dependency thereof, any discrimination exists against vessels of the United States as compared with the vessels of ——— ——— (other than those engaged in the coasting or colonial trade), or the vessels of any third country. If such discrimination be found to exist, its precise nature and extent should be reported, when this Government will be in a position to determine how far the commerce between the United States and the ports of such country (if such ports are found within the defined geographical limits), or how far the vessels of such country (if it be outside of the geographical limits aforesaid), are to be restricted in or excluded from the privileges created, either under the express provisions of the shipping acts of 1884 and 1886, or under the special arrangements of reciprocity effected under the authorizations of those acts and proclaimed by the President.

In communicating the invitation herein contained, you will convey the fullest assurance to the minister for foreign affairs of its entire friendliness, and the desire of the United States to treat the commerce and flag of ——— ——— on the footing of the most complete reciprocity in those matters to which the invitation relates.

I am, sir, your obedient servant,

T. F. BAYARD,
Secretary of State.

* Printed page 907 *ante.*

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