A DIGEST

OF

INTERNATIONAL LAW

AS EMBODIED IN

DIPLOMATIC DISCUSSIONS, TREATIES AND OTHER INTERNATIONAL AGREEMENTS, INTERNATIONAL AWARDS, THE DECISIONS OF MUNICIPAL COURTS, AND THE WRITINGS OF JURISTS,

AND ESPECIALLY IN

DOCUMENTS, PUBLISHED AND UNPUBLISHED, ISSUED BY PRESIDENTS AND SECRETARIES OF STATE OF THE UNITED STATES, THE OPINIONS OF THE ATTORNEYS-GENERAL, AND THE DECISIONS OF COURTS, FEDERAL AND STATE.

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CHAPTER XIX.

INTERVENTION.

I. *POLITICAL INTERVENTION.*

1. General Principles.

§ 897.

"Intervention," says Hall, "takes place when a state interferes in the relations of two other states without the consent of both or either of them, or when it interferes in the domestic affairs of another state irrespectively of the will of the latter for the purpose of either maintaining or altering the actual condition of things within it. *Prima facie* intervention is a hostile act, because it constitutes an attack upon the independence of the state subjected to it. Nevertheless its position in law is somewhat equivocal. Regarded from the point of view of the state intruded upon it must always remain an act which, if not consented to, is an act of war. But from the point of view of the intervening power it is not a means of obtaining redress for a wrong done, but a measure of prevention or of police, undertaken sometimes for the express purpose of avoiding war. . . . Hence although intervention often ends in war, and is sometimes really war from the commencement, it may be conveniently considered abstractedly from the pacific or belligerent character which it assumes in different cases."

Hall, Int. Law, 5th ed. 284.

See Bluntschli, trans. by Lardy, ed. 1881, §§ 68–69, 431–441, 474–480; Bonfils-Fauchille, Manuel, ed. 1901, §§ 295–323; Creasy, First Platform, 278–296; Heffter, Bergson's ed. 1883, §§ 108–111; Phillimore, 3d ed., I. 553–638; Wheaton, Dana's ed., §§ 125–133.

Much that is found on the subject of intervention in the books on international law is specially applicable to the situation in Europe, and can be applied only indirectly or by analogy to the situation in America or in other parts of the non-European world.

Thus, coupled with intervention on the ground of self-preservation, which is of course universally applicable, we find intervention to preserve rights of succession, which has never been exemplified in America.

We also find in the books the following additional causes assigned as grounds of intervention: 1. Intervention in restraint of wrongdoing (1) against illegal acts, (2) against immoral acts. 2. Intervention under a treaty of guarantee. 3. Intervention by invitation of a party to a civil war. 4. Intervention under the authority of the body of states.

Hall, Int. Law, 5th ed. 285–296.

See De Martens, Précis, § 75; Calvo, Le Droit Int. §§ 141–142; Fiore, I. 421–455; Mamiani, 100–101, 112.

As to intervention to preserve the balance of power in Europe, see Phillimore, 2d ed., I., Preface, vii–ix.

As an example of intervention to put an end to abhorrent conditions, the case of Bulgaria in 1876 may be taken.

As an example of intervention on the invitation of the parties to a civil war, we may take the case of Belgium, in 1830, which is fully narrated in Wheaton's History of the Law of Nations, pt. 4, sec. 26.

As an example of intervention under the collective authority of a body of states, Rolin-Jaequemyns cites the case of Turkey, as regulated by the concert of the Great Powers. (Rev. de Droit Int. XVIII. 603.) After the war of 1897 the powers intervened in behalf of Greece, and regulated the affairs of Crete.

"As the government of the United States of America is not in any sense founded on the Christian religion: as it has in itself no character of enmity against the laws, religion, or tranquillity of Mussulmen; and as the said States never have entered into any war or act of hostility against any Mehomitan nation, it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries."

Art. X., treaty between the United States and Tripoli, signed by Hassan Bashaw and Joel Barlow, Jan. 3, 1797. See, also, Moore, American Diplomacy, 133–135.

See, also, Art. XIV., treaty with Tripoli, 1805.

"As the government of the United States of America has, in itself, no character of enmity against the laws, religion, or tranquillity of any nation, and as the said States have never entered into any voluntary war or act of hostility except in defense of their just rights on the high seas, it is declared, by the contracting parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two nations; and the consuls and agents of both nations shall have liberty to celebrate the rites of their respective religions in their own houses." (Art. XV., treaty with Algiers, June 30, 1815, and treaty of Dec. 22, 1816.)

"Phillimore (I. ccccii–iv) is the only writer who seems to sanction intervention on the ground of religion." (Hall, Int. Law, 5th ed., 291.)

The laws of Turkey "whereby the penalty of death is denounced against the Mussulman who embraces Christianity," however outrageous, do not justify an appeal from this Government for their repeal.

Mr. Marcy, Sec. of State, to Mr. Spence, Dec. 28, 1855, MS. Inst. Turkey, I. 392.

"The main difficulty connected with intervention is the following: It may be admitted that there are possibilities of tyrannical usage, barbarous practices, or persistent and hopeless anarchy, out of which the friendly aid of a generous, impartial, and truly disinterested by-

stander may be the only way to a deliverance. But two cautions have to be interposed: First, it has to be provided that the aid is accorded at a time and under circumstances which do not in any way prejudge the issue of a struggle yet undetermined, and which ought, in the interests of the state concerned, to be decided by the real and internal, and not by the factitious and external, elements of victory. The importance of this consideration was signally illustrated in the late insurrection of the Southern States of the American Union, and in the controversy that long hung round the questions whether England had chosen the proper moment for according to the Southern Confederacy the rights of a belligerent state, and what was the meaning and political significance of recognition for belligerent purposes. . . . A second caution in respect of intervention is, that, admitting the propriety and duty of intervention in certain extreme crises, it is always open to a state, influential, designing, and unscrupulous, to foster in another state, subject to moral control, the very condition of things which will, sooner or later, bring about a fit opportunity for its own overt interference. Whether Russia was guilty of this conduct in the case of the late Servian war and the Herzegovinian insurrection, is of less importance here than the fact that she was constantly reproached with it. It is a danger which is almost inherent in the nature of the doctrine of a right of intervention in certain emergencies."

Amos, Remedies for War (N. Y. 1880), 60.

See an article by Mr. Senior, 77 Edinburgh Review (1843), 334, 358.

See, also, British Circular, Jan. 19, 1821, 8 Br. & For. State Papers (1820–'21), 1160.

As to the circular issued by Russia, when France and Great Britain suspended diplomatic relations with Naples because of the inhumanity with which the latter was ruled, see Martin, Life of the Prince Consort, III. 510.

On Sept. 26, 1815, the Emperors of Austria and Russia and the King of Prussia concluded at Paris a treaty which was known as the Holy Alliance. In course of time this league, the object of which was professedly benevolent, came more and more to assume the form of a league for the protection of the principle of "legitimacy" against the encroachment of liberal ideas. The league was joined by the King of France. Congresses of the allies were held at Aix-la-Chapelle, Troppau, and Laybach; and popular movements were suppressed in Piedmont and Naples. In 1823 France, acting for her associates, intervened in Spain, for the purpose of restoring the absolute monarch Ferdinand VII. A proposal to intervene to restore to Spain her colonies in America led to the promulgation of the Monroe doctrine.

The "sympathy" expressed in the United States with the Greek insurrection against Turkey never took the shape of intervention. Of the intervention of Great Britain, France, and Russia in that struggle, Mr. Abdy, in his edition of Kent, thus speaks: "The intervention . . . was based on three grounds. First, in order to

comply with the request of one of the parties; secondly, on the ground of humanity, in order to stay the effusion of blood; and, thirdly, in order to put a stop to piracy and anarchy. If the recognition of the Greek insurgents and the intervention in their favour are to be looked upon as precedents, it is fitting that all the facts connected with them should be investigated, all the documents examined, and a careful distinction made between the policy and the legality of what was done. And then, in spite of the vigorous defense of the British minister of the day, it is difficult to withhold our assent from the judgment passed by an able writer of our own time [Sir W. Harcourt, in 'Historicus'] upon the event, when he says that 'The emancipation of Greece was a high act of policy above and beyond the domain of law. As an act of policy it may have been and was justifiable; but it was not the less a hostile act, which if she had dared Turkey might properly have resented by war.'"

Abdy's Kent (1878), 50.

It is not permissible for one sovereign to address another sovereign on political questions pending in the latter's domains unless invited so to do.

The treaty between France, Great Britain, and Russia, signed at London July 6, 1827, for the pacification of Greece, sets forth the specific grounds on which the three powers intervened. In the preamble the contracting parties declare that, "penetrated with the necessity of putting an end to the sanguinary struggle which, while it abandons the Greek provinces and the islands of the archipelago to all the disorders of anarchy, daily causes fresh impediments to the commerce of the states of Europe, and gives opportunity for acts of piracy which not only expose the subjects of the high contracting parties to grievous losses, but also render necessary measures which are burthensome for their observation and suppression;" and that two of the high contracting parties (France and Great Britain) having besides "received from the Greeks an earnest invitation to interpose their Mediation with the Ottoman Porte," and being, together with the Emperor of Russia, "animated with the desire of putting a stop to the effusion of blood, and of preventing the evils of every kind which the continuance of such a state of affairs may produce," they had all resolved to combine and regulate their efforts by a formal treaty with a view to reestablish peace between the contending parties by means of an arrangement demanded "no less by sentiments of humanity, than by interests for the tranquillity of Europe."

Hertslet's Map of Europe by Treaty, I. 769–770.

"Her Majesty's government deeply lament the outbreak of hostilities in North America, and they would gladly lend their aid to the restoration of peace.

"You are instructed, therefore, in case you should be asked to employ your good offices either singly or in conjunction with the representatives of other powers, to give your assistance in promoting the work of reconciliation.

"But as it is more probable, especially after a recent letter of Mr. Seward, that foreign advice is not likely to be accepted, you will refrain from offering it unasked. Such being the case, and supposing the contest not to be at once ended by signal success on one side or by the return of friendly feeling between the two contending parties, her Majesty's government have to consider what will be the position of Great Britain as a neutral between the two belligerents.

"So far as the position of Great Britain in this respect toward the European powers is concerned, that position has been greatly modified by the Declaration of Paris of April 16, 1856."

Earl Russell, British for. sec., to Lord Lyons, British min. at Washington, May 18, 1861, 55 Brit. & For. State Papers, 550; Dip. Cor. 1861, 131.

"The steadfast determination of the [British] government neither to say nor do anything which could reasonably be construed into an interference [in the civil war in the United States] was tested in November, 1862, when it was proposed by the Emperor of the French that the courts of France, Russia, and Great Britain should tender their good offices to both belligerents, in the hope of preparing the way for an accommodation. M. Drouyn de Lhuys, in addressing himself to the British government, dwelt on the 'innumerable calamities and immense bloodshed' which attended the war, and on the evils which it inflicted upon Europe. The two contending parties, he said, had up to that time fought with balanced success, and there appeared to be no probability that the strife would soon terminate. He proposed, therefore, that the three courts should join in recommending an armistice for six months, during which means might be discovered for effecting a lasting pacification. The British government declined to take part in such a recommendation, being satisfied that there was no reasonable prospect of its being entertained by that of the United States."

Bernard, The Neutrality of Great Britain during the American Civil War, 467–468.

The proposal was also rejected by Russia, unless it should be found to be acceptable to both parties. (Dip. Cor. 1863, II. 765, 768.)

"As soon as the news of the second battle of Bull Run reached England, Palmerston sent a note to Russell in which he spoke precisely but unsympathetically of the result as 'a very complete smashing' of the Federals. He also suggested that, in case Baltimore or Washington should fall into the hands of the Confederates,

it would be time for Great Britain and France to address the contending parties and recommend an arrangement upon the basis of separation. Russell expressed the opinion that what was known already would warrant 'offering mediation to the United States, with a view to the recognition of the independence of the Confederates.' . . . October 30, 1862, he [Louis Napoleon] instructed the French ambassadors to Great Britain and to Russia to invite those powers to join France in requesting the belligerents to agree to an armistice of six months, so as to consider some plan for bringing the war to an end. . . . Great Britain promptly and unqualifiedly declined the proposition. . . . The complete change of mind on the part of Palmerston and Russell was probably due to three facts, which they had not anticipated: The 'smashing' of the Federals at Bull Run did not demoralize the Washington Government or lead to other results that were expected; the Confederates had lost in Maryland the prestige they had won in Virginia; and the preliminary proclamation of emancipation showed that the war was to become positively antislavery. . . . Russia's reply to Napoleon was also discouraging. She was unwilling to adopt the proposed course because she believed that it would not lead to peaceful results; yet if France and Great Britain should agree to act together on this question, Russia's reprsentative at Washington would be instructed to lend to his colleagues, 'if not his official aid, at least moral support.'"

Bancroft, Life of Seward, II. 304, 307, 308, citing 2 Walpole's Russell, 349; Dip. Cor. 1862, 405; Dip. Cor. 1863, I. 3.

"Your private letter of October 7th has been received. There was no mystery in the Department's reply to Prince Gortschakoff. His admirable letter was throughout responsive to our own past communications through Mr. Clay to Russia. We are not prepared to accept counsels of mediation with the rebels, although they were generously offered. We could not, without rudeness, distinctly decline them. We were grateful for the generosity of the Czar, so strikingly in contrast with that of some other potentates, and at the same time thought it proper to avoid any seeming excitement resulting from it. The occasion was a proper one for showing that, as we are not provoked by European hostility, we are not unnaturally flattered by European friendship." (Mr. F. W. Seward, Acting Sec. of State, to Mr. Harvey, No. 16 (private), Nov. 5, 1861, MS. Inst. Portugal, XIV. 219.)

"There are speculations in the European press of propositions by some of the southern European powers to the states of northern Europe, for their concurrence in representations to be made to us, with a view to produce a deflexion from the policy of maintaining the union, which has been hitherto so constantly pursued. While we attach no credit to these rumors, the President nevertheless expects that you will be watchful of any such designs. There is only one road to peace in this country, and that is the one which the government has adopted under the inspiration of the will of the na-

tion." (Mr. Seward, Sec. of State, to Mr. Cameron, min. to Russia, No. 6, June 23, 1862, MS. Inst. Russia, XIV. 264.)

"The explanations of the views of the Russian government made to you by Prince Gortchacow, and his assurances of its fidelity and constancy towards the United States are deeply interesting and eminently gratifying. . . . Naturally the first thought which, in a time of apparent danger to our country, occurs to a foreign friend is the desirableness of an adjustment or arrangement of the strife. This suggestion is enforced by a contemplation of the calamities and sufferings which are wrought upon the battlefield. The generous mind, glowing with friendly zeal, refuses to admit the fact, however obvious, that composition of such troubles is impossible. This has been the case, especially with the excellent Russian minister plenipotentiary here. He has for some time pressed upon us the same sentiments which were expressed to you by Prince Gortchacow. Mr. Adams has informed us that Baron Brunnow, at London, has equally urged them, though with great delicacy, upon him. The Russian government need not doubt for a moment that the President will hail the first moment when any proposition of peace can be made which will arrest the strife without a sacrifice of the nation's Constitution and life. That period can not now be far off." (Mr. Seward, Sec. of State, to Mr. Taylor, chargé at St. Petersburg, No. 5, Nov. 22, 1862, MS. Inst. Russia, XIV. 297.)

Dec. 14, 1862, Mr. Seward enclosed to Mr. Taylor, for the latter's information, a copy of his No. 263, of Dec. 13, 1862, relative to the proposal of the French Emperor to Great Britain to unite in recommending an armstice. (Mr. Seward, Sec. of State, to Mr. Taylor, chargé at St. Petersburg, No. 8, Dec. 14, 1862, MS. Inst. Russia, XIV. 301.)

With reference to "the report of an intended new design" on the part of the French Emperor "to propose mediation in our civil war," Mr. Seward wrote: "Any such proceeding would meet with a prompt and decided answer from the United States. The principle of foreign mediation in our affairs can not be, in any form or under any circumstances, admitted. You will make this explanation, or refrain from making it, in the exercise of your own discretion." (Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 621, July 30, 1864, Dip. Cor. 1864, III. 134–135.)

A copy of the foregoing instruction was sent to Mr. Adams, at London. (Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 1058, Aug. 1, 1864, MS. Inst. Gr. Br. XIX. 411.)

"I leave the French proposal to take its place among the incidents already past of the lamentable civil war of which we again think we are beginning to see an approaching end."

Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 414, Nov. 30, 1862, Dip. Cor. 1863, I. 2.

See circular of Mr. Seward to the diplomatic officers of the United States, No. 20, Aug. 18, 1862, giving the views of the President as to any possible attempt at intervention or mediation by European powers in the American civil war. (Dip. Cor. 1862, 176.)

In a circular to the diplomatic officers of the United States, March 9, 1863, Mr. Seward transmitted a copy of concurrent resolutions of Congress concerning intervention in the civil war. These resolutions recited that it appeared from the diplomatic correspondence submitted to Congress that a proposition, friendly in form, looking to pacification through foreign mediation, had been made to the United States by the Emperor of the French and promptly declined by the President, and that, as the idea of mediation or intervention in some shape might be regarded by foreign governments as practicable, and as such governments might thus be led to proceedings tending to embarrass the friendly relations existing between them and the United States, it seemed fit, in order to remove all chance of misunderstanding on the subject and to secure for the United States the full enjoyment of that freedom from foreign interference which was one of the highest rights of independent states, for Congress to declare its convictions on the subject. The resolutions concluded by announcing it as the "unalterable purpose" of the United States that the war would be "vigorously prosecuted, according to the humane principles of Christian states, until the rebellion shall be overcome."

Dip. Cor. 1863, II. 812–814.

As to rumors of intervention on the part of France, see Dip. Cor. 1862, 173 et seq.

The French minister of foreign affairs declared that no thought of intervention was entertained. (Dip. Cor. 1862, 404.)

"Your despatch of August 20th has been submitted to the President. I give you herewith extracts from Mr. Dayton's latest communication treating of French proposals for British intervention in our affairs, and of the condition of Mexico. We are quite sure that the French government can not practice insincerity in its official communications with us. You will perceive, therefore, that what your informant in Scotland told you in regard to the Emperor is erroneous. You have confirmed the expectations which we had entertained concerning the opinion of Great Britain in regard to the proceedings of the Emperor in relation to Russia, and in relation to Mexico. What seems difficult to understand here, however, is that Great Britain gives no indications of concurrence in these opinions, and that the press of the country seems to become more intolerant of the United States the more clearly the failure of the intervention is revealed." (Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 700, Sept. 5, 1863, MS. Inst. Great Britain, XIX. 5.)

"The correspondence which took place between this government and that of Her Majesty at an early stage of the insurrection shows that the United States deemed the formation of a mutual engagement by Great Britain with France, that those two powers would act in concert with regard to the said insurrection to be an unfriendly proceeding, and that the United States, therefore, declined to receive from

either of those powers any communication which avowed the existence of such an arrangement. I have, therefore, now to regret that Earl Russell has thought it necessary to inform this government that Her Majesty's government have found it expedient to consult with the government of France upon the question whether Her Majesty's government will now recognize the restoration of peace in the United States.

"It is a further source of regret that Her Majesty's government avow that they will continue still to require that any United States cruisers which shall hereafter be lying within a British port, harbor, or waters, shall be detained twenty-four hours, so as to afford an opportunity for any insurgent vessel, she actually being within the said port, harbor, or waters, to gain the advantage of the same time for her departure from the same port, harbor, or waters."

Mr. Seward, Sec. of State, to Sir F. Bruce, Brit. min., June 19, 1865, Dip. Cor. 1865, I. 407, 408.

"The fact that the national attachment of this country to France is so pure and so elevated, constitutes just the reason why it could be more easily supplanted by national insult or injustice than our attachment to any other foreign state could be. It is a chivalrous sentiment, and it must be preserved by chivalrous conduct and bearing on both sides. I deduce from the two positions which I have presented a conclusion which has the most solemn interest for both parties, namely, that any attempt at dictation—much more any aggression committed by the government of France against the United States—would more certainly and effectively rouse the American people to an attitude of determined resistance than a similar affront or injury committed by any other power. There is reason to believe that interested sympathizers with the insurrection in this country have reported to the French government that it would find a party here disposed to accept its mediation or intervention. I understand that they reckon upon a supposed sympathy between our Democratic citizens and the French government. It may as well be understood as soon as possible that we have no Democrats who do not cherish the independence of our country as the first element of Democratic faith, while, on the other hand, it is partiality for France that makes us willingly shut our eyes to the fact that that great nation is only advancing towards, instead of having reached, the democratic condition which attracts us in some other countries."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 278, Dec. 29, 1862, Dip. Cor. 1863, I. 639, 640–641.

See Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 771, Nov. 30, 1863, Dip. Cor. 1863, II. 1321.

By the treaty of peace between China and Japan, concluded at Shimonoseki, April 17, 1895, the Liaotung peninsula, including Port Arthur, was ceded to Japan. Russia, however, secured the support of France and Germany in a "friendly representation" to Japan to the effect that she would not be permitted to retain any increase of territory on the mainland. Japan, on the advice of Great Britain, reluctantly yielded to what appeared to be inevitable, and abandoned her conquest. Subsequently, Russia took possession of Port Arthur under a "lease," and virtually assumed control of the Liaotung peninsula. This incident and its consequences eventually brought about the war of 1904 between Japan and Russia.

Hall, Int. Law, 5th ed., 295–296.
See, as to the "lease" of Port Arthur, supra, §§ 807, 813.

2. Policy of Nonintervention.

(1) declarations of policy.

§ 898.

John Adams.

"'You are afraid,' says Mr. Oswald to-day, 'of being made the tools of the powers of Europe.' 'Indeed I am,' says I. 'What powers?' said he. 'All of them,' said I. 'It is obvious that all the powers of Europe will be continually manœuvering with us to work us into their real or imaginary balances of power. They will all wish to make of us a make-weight candle, when they are weighing out their pounds. Indeed, it is not surprising: for we shall very often, if not always, be able to turn the scale. But I think it ought to be our rule not to meddle; and that of all the powers of Europe, not to desire us, or, perhaps, even to permit us, to interfere, if they can help it.'"

Mr. John Adams's Diary, Nov. 18, 1782, 3 John Adams's Works, 316.
"Peace is made between Russia and the Porte, and the definitive treaty between England and Holland is expected to be soon signed. May the world continue at peace! But if it should not, I hope we shall have wisdom enough to keep ourselves out of any broil, as I am quite in sentiment with the Baron de Nolken, the Swedish ambassador at St. James's, who did me the honor to visit me, although I had not visited him. 'Sir,' said he, 'I take it for granted, that you will have sense enough to see us in Europe cut each other's throats with a philosophical tranquillity.'" (Mr. J. Adams to the President of Congress, February 10, 1784, 8 John Adam's Works, 177, 178.)

"Our form of government, inestimable as it is, exposes us more than any other, to the insidious intrigues and pestilent influence of foreign nations. Nothing but our inflexible neutrality can preserve us. The public negotiations and secret intrigues of the English and the French have been employed for centuries in every court and country of Eu-

rope. Look back to the history of Spain, Holland, Germany, Russia, Sweden, Denmark, Prussia, Italy, and Turkey, for the last hundred years. How many revolutions have been caused! How many emperors and kings have fallen victims to the alternate triumphs of parties, excited by Englishmen or Frenchmen! And can we expect to escape the vigilant attention of politicians so experienced, so keen-sighted, and so rich? If we convince them that our attachment to neutrality is unchangeable, they will let us alone; but as long as a hope remains, in either power, of seducing us to engage in war on his side and against his enemy, we shall be torn and convulsed by their manœuvres."

"Patriot Letters," 1809, 9 John Adams's Works, 277.

"The principle of foreign affairs, which I then advocated, has been the invariable guide of my conduct in all situations, as ambassador in France, Holland, and England, and as Vice-President and President of the United States, from that hour to this. . . . This principle was, that we should make no treaties of alliance with any European power; that we should consent to none but treaties of commerce; that we should separate ourselves, as far as possible and as long as possible, from all European politics and wars. In discussing the variety of motions which were made as substitutes for Mr. Chase's, I was remarkably cool, and, for me, unusually eloquent. On no occasion, before or after, did I ever make a greater impression on Congress." (Mr. J. Adams to Dr. Rush, Sept. 30, 1805, 1 John Adams's Works, 200.)

"If I could lay an embargo, or pass a new importation law against corruption and foreign influence, I would not make it a temporary but a perpetual law, and I would not repeal it, though it should raise a clamor as loud as my gag-law, or your grog-law, or Mr. Jefferson's embargo." (Mr. Adams to Mr. Rush, Sept. 27, 1808, 9 John Adams's Works, 604.)

Washington.

"Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course."

President Washington's Farewell Address, Sept. 1796, Writings of Washington, by Ford, XIII. 277, 316.

As to the French alliance, see, supra, § 821.

Jefferson.

"I have ever deemed it fundamental for the United States never to take an active part in the quarrels of Europe. Their political interests are entirely distinct from ours. Their mutual jealousies, their balance of power, their complicated alliances, their forms and principles of government, are all

foreign to us. They are nations of eternal war. All their energies are expended in the destruction of the labor, property and lives of their people. On our part, never had a people so favorable a chance of trying the opposite system, of peace and fraternity with mankind, and the direction of all our means and faculties to the purposes of improvement instead of destruction."

Mr. Jefferson to the President, June 11, 1823, 7 Jefferson's Works, 287.
See Jefferson's letter of Oct. 24, 1823, to President Monroe, infra, § 933.
See Mr. Jefferson, Sec. of State, to Mr. Morris, min. to France, March 12, 1793, supra, § 43; Mr. Jefferson, Sec. of State, to Messrs. Carmichael and Short, June 30, 1793, 4 Jefferson's Works, 9.

Madison.

"A participation in it [a congress proposed by Mr. Canning for the settlement of the difficulties between Spain and her colonies] would not be likely to make converts to our principles; whilst our admission under the wing of England would take from our consequence what it would add to hers. Such an invitation, nevertheless, will be a mark of respect not without a value, and this will be more enhanced by a polite refusal than by an acceptance, not to mention that the acceptance would be a step leading us into a wilderness of politics and a den of conspirators."

Mr. Madison to Mr. Monroe, Dec. 26, 1823, Madison's Works, III. 353, 354.

Monroe.

"Separated as we are from Europe by the Great Atlantic Ocean, we can have no concern in the wars of the European governments nor in the causes which produce them. The balance of power between them, into whichever scale it may turn in its various vibrations, can not affect us. It is the interest of the United States to preserve the most friendly relations with every power and on conditions fair, equal, and applicable to all. But in regard to our neighbors our situation is different. It is impossible for the European governments to interfere in their concerns, especially in those alluded to, which are vital, without affecting us: indeed, the motive which might induce such interference in the present state of the war between the parties, if a war it may be called, would appear to be equally applicable to us. It is gratifying to know that some of the powers with whom we enjoy a very friendly intercourse, and to whom these views have been communicated, have appeared to acquiesce in them."

President Monroe's annual message, Dec. 7, 1824, Richardson's Messages, II. 260.

J. Q. Adams.

"Compare our situation and the circumstances of that time [that of Washington's farewell address] with those of the present day, and what, from the very words of Washington then, would be his counsels to his countrymen now? Europe has still her set of primary interests, with which we have

little or a remote relation. Our distant and detached situation with reference to Europe remains the same. But we were then the only independent nation of this hemisphere, and we were surrounded by European colonies, with the greater part of which we had no more intercourse than with the inhabitants of another planet. Those colonies have now been transformed into eight independent nations. [We may therefore say that] *America* has a set of primary interests which have none or a remote relation to Europe; that the interference of Europe, therefore, in those concerns should be spontaneously withheld by her upon the same principles that we have never interfered with hers, and that if she should interfere, as she may, by measures which may have a great and dangerous recoil upon ourselves, we might be called in defense of our own altars and firesides to take an attitude which would cause our neutrality to be respected, and choose peace or war, as our interest, guided by justice, should counsel."

President J. Q. Adams, special message, March 15, 1826, Richardson's Messages, II. 337.

Mr. Macon, from the Committee of Foreign Relations of the Senate, January 16, 1826, referring to the message of the President nominating Richard C. Anderson and John Sergeant to be envoys extraordinary and ministers plenipotentiary to the assembly of the American nations at Panama, said: "By the principles of this policy, inculcated by our wisest statesmen in former days and approved by the experience of all subsequent time, the true interest of the United States was supposed to be promoted by avoiding all entangling connections with any other nation whatsoever." (International American Conference, IV. 53, 55.)

The government of the United States scrupulously refrains from taking part in the internal dissensions in foreign states, whether in the Old World or the New. (Mr. Clay, Sec. of State, to Mr. Revenga, Jan. 30, 1828, MS. Notes to For. Legs. III. 421.)

Van Buren.

"The President desires that you should not identify yourself with the feelings or objects of either of the contending parties. It is the ancient and well-settled policy of this government not to interfere with the internal concerns of any foreign country. However deeply the President might regret changes in the governments of the neighboring American States, which he might deem inconsistent with those free and liberal principles which lie at the foundation of our own, he would not, on that account, advise or countenance a departure from this policy."

Mr. Van Buren, Sec. of State, to Mr. Moore, min. to Colombia, June 9, 1829, MS. Inst. Am. States, XIV. 12.

"An invariable and strict neutrality between belligerents and an entire abstinence from all interference in the concerns of other nations, are cardinal traits of the foreign policy of this Government. The obligatory character of this policy is regarded by its constituents with a degree of reverence and submission but little, if anything, short of that

which is entertained for the Constitution itself. To enable it to preserve the one, we have penal laws which subject to the severest punishment all attempts, within the scope of their authority, to aid or abet either party in a war prosecuted between foreign nations with which the United States are at peace; and it is made a standing instruction to our ministers abroad to observe the other with scrupulous fidelity." (Mr. Van Buren, Sec. of State, to Mr. Butler, min. to Mexico, Oct. 16, 1829, MS. Inst. Am. States, XIV. 165.)

"One of the settled principles of this government is that of noninterference in the domestic concerns of nations; and as it would not tolerate it in others, so must every act of its own functionaries, which might be construed into a departure from this principle, incur the decided disapprobation of the President." (Mr. Van Buren, Sec. of State, to Mr. Hamm, chargé d'affaires to Chile, Oct. 15, 1830, MS. Inst. Am. States, XIV. 83.)

See, also, President Van Buren, annual message, Dec. 3, 1838, Richardson's Messages, III. 483; and discussion in 2 Benton's Thirty Years' View, 276.

"If, indeed, an attempt should be made to disturb them [the Spanish West Indies] by putting arms in the hands of one portion of their population to destroy another, and which, in its influence, would endanger the peace of a portion of the United States, the case might be different. Against such an attempt the United States (being informed that it was in contemplation) have already protested, and warmly remonstrated in their communications, last summer, with the government of Mexico. But the information lately communicated to us, in this regard, was accompanied by a solemn assurance that no such measures will, in any event, be resorted to; and that the contest, if forced upon them, will be carried on, on their part, with strict reference to the established rules of civilized warfare."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, min. to Spain, Oct. 13, 1830, MS. Inst. U. States Ministers, XIII. 184.

Forsyth.

In the adoption (in 1834–35) by the new South American states of their commercial policy, "the United States, . . . consistent throughout in the disinterestedness of their conduct towards them [the South American states] desire no preference. But they know too well what is due to themselves to be satisfied if a preference be granted to others."

Mr. Forsyth, Sec. of State, to Mr. Butler, min. to Mexico, Nov. 11, 1834, MS. Inst. Mex. XV. 42.

Webster.

"The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and government, while all in their mutual intercourse are understood to submit to the established rules and principles governing such intercourse: And the perfecting of this system of communication among nations, requires the strictest application of

the doctrine of nonintervention of any with the domestic concerns of others."

Mr. Webster, Sec. of State, to Mr. Everett, Jan. 29, 1842, MS. Inst. Great Britain, XV. 38.

For message of President Tyler of Jan. 9, 1843, in reference to quintuple alliance for the suppression of the slave trade, see 6 MS. Rep. Book.

"In proclaiming and adhering to the doctrine of neutrality and nonintervention, the United States have not followed the lead of other civilized nations; they have taken the lead themselves and have been followed by others. . . .

"'Friendly relations with all, but entangling alliances with none,' has long been a maxim with us. Our true mission is not to propagate our opinions or impose upon other countries our form of government by artifice or force, but to teach by example and show by our success, moderation, and justice, the blessings of self-government and the advantages of free institutions. Let every people choose for itself, and make and alter its political institutions to suit its own condition and convenience. But while we avow and maintain this neutral policy ourselves, we are anxious to see the same forbearance on the part of other nations, whose forms of government are different from our own. The deep interest which we feel in the spread of liberal principles and the establishment of free governments, and the sympathy with which we witness every struggle against oppression, forbid that we should be indifferent to a case in which the strong arm of a foreign power is invoked to stifle public sentiment and repress the spirit of freedom in any country."

President Fillmore, annual message, Dec. 2, 1851 (Mr. Webster, Sec. of State), Richardson's Messages, V. 116.

See Mr. Webster, Sec. of State, to Mr. Rives, min. to France, Jan. 12, 1852, supra, § 43, I. p. 126; also, Mr. Webster, Sec. of State, to Mr. Hülsemann, Austrian chargé d'affaires, Dec. 21, 1850, supra, § 72, I. 223 et seq.

Everett.

"Your dispatch No. 174 of the 25th of November was received yesterday. It announces the result of the appeal to the people of France, on the subject of the restoration of the Empire, as far as the returns of the votes had come in. That event has already no doubt been consummated and the Empire formally proclaimed. This change will of course in no degree affect the friendly relations between the United States and France. A deep interest was felt by the government and people of this country in those events of February, 1848, which for a while promised to assimilate the institutions of France with our own. But it is the fundamental law of the American Republic, that the will of the people constitutionally expressed is the ultimate principle of government,

and it seems quite evident that the people of France have, with a near approach to unanimity, desired the restoration of the Empire."

Mr. Everett, Sec. of State, to Mr. Rives, Dec. 17, 1852, MS. Inst. France, XV. 165.

See Mr. Everett, Sec. of State, to Count Sartiges, French min., Dec. 1, 1852, MS. Notes to France, VI. 196; infra, § 951.

Cass.

No matter how strongly the sympathies of the United States may be with the liberal constitutional party in Mexico, "our government can not properly intervene in its behalf without violating a cardinal feature of our foreign policy."

Mr. Cass, Sec. of State, to Mr. McLane, min. to Mexico, March 7, 1859, MS. Inst. Mex. XVII. 209. See supra, § 51.

"Your despatches to No. 20, inclusive, have been received.

"Having taken into consideration the subject referred to in your No. 19, together with the request of the minister of foreign affairs of Venezuela, that this government would communicate to that of France thro' our minister in that country, the explanations of the Venezuelan government in regard to the recent peremptory dismissal of the French representative in that republic for an alleged interference in the domestic affairs of the country, I have to inform you that the Department does not feel warranted in complying with that wish. The difficulty between the Venezuelan government and the French chargé d'affaires is one in which this government is in no way involved. And while our interest in the peace and prosperity of Venezuela is as earnest and sincere as it ever has been, the interposition which it is proposed we should exercise would be a departure from our general policy in regard to the intervention in the concerns of other nations. I trust, therefore, that, after your explanations in conformity with the foregoing view of the case, the secretary of foreign relations will perceive the reasonableness of our nonintervention and will be convinced that the direct expression of the motives of his government in the course pursued towards Monsieur Levrand would probably be more acceptable to the government of His Majesty the Emperor of the French.

"And yet I can not close this despatch without desiring you to signify to the secretary of relations how highly this government appreciates the confidence which that of Venezuela has manifested in its justice and impartiality as indicated in its choice of the United States as the channel thro' which it preferred to offer explanations to the government of France."

Mr. Cass, Sec. of State, to Mr. Turpin, min. to Venezuela, No. 21, Nov. 5, 1859, MS. Inst. Venezuela, I. 211.

Seward.

"Your able and very interesting despatch of June 10th, No. 36, has been submitted to the President.

"I think that in the main you have rightly apprehended the sentiments of the government and people of this country in regard to the Spanish-American states, as well as the instructions of their history, their present political condition, their resources, their wants, the benefits they offer and the claims they have upon other nations.

"But it would be disingenuous on the part of the United States and injurious to the Spanish-American republics to encourage an expectation on their part that at the present conjuncture treaties guaranteeing their sovereignty can be contracted with this Government. Even if the traditional policy of this country derived from the teachings and practice of Washington could be proved to be erroneous its hold upon the mind of the American people would nevertheless prove to be too strong to be broken at this moment when the distractions of civil war are encouraging foreign intrigues and even inviting foreign aggression.

"The country, however, has tried and proved that policy and has hitherto found its ways to be ways of wisdom and all its paths to be the paths of peace.

"It may well be said that Washington did not enjoin it upon us as a perpetual policy. On the contrary, he inculcated it as the policy to be pursued until the union of the States, which is only another form of expressing the idea of the integrity of the nation, should be established, its resources should be developed and its strength, adequate to the chances of national life, should be matured and perfected. Whatever pleasant dreams upon that subject we have heretofore indulged are now broken by a conclusive shock, and we are trying through a civil war of unexampled severity the great question whether the Union of the States is indeed impregnable, and whether we are to remain, as we hitherto have been, one strong and enduring nation. It is not at such a time that the policy of the fathers which forbids entangling alliances is likely to be reviewed or discussed.

"Nor indeed ought it to be. Assuming the condition of the Spanish-American states to be one urgently demanding our national protection, the question whether we shall accord it is at least a practical one. We can not enter into covenants to render physical aid which we are not able and do not intend to keep. The people of the United States have a sensibility concerning engagements as just as it is peculiar. They never have contracted an obligation which they did not mean to fulfill and did not with all diligence fulfill in its letter and spirit. While we are engaged in a fearful and exhausting civil war at home, it could be only surplus treasure and surplus force that we could send abroad to protect and defend other states. Thus far

we had no such surplus force. True we shall have it when our domestic troubles shall have been ended. But we may well postpone the question how it shall be employed until the superfluous force itself shall be found in our hands. You appeal to us to heal the Spanish-American states. We are ourselves at this moment even more disordered than they, and the national conscience and national heart cry out to us 'Physician, heal thyself.' This is indeed just what we are doing.

"Again, our own difficulties and dangers are present, actual, engaging, absorbing. Those of the Spanish-American states are at most but probable and future.

"Moreover, the most effective aid which we can at any time render them is to be afforded hereafter as heretofore by the moral influences resulting from the stability and strength of our republican institutions. So far as the improvement of society and the increase of national strength are concerned, each of the Spanish-American republics must of course work out the case for itself. It is only foreign intervention, to occur while they are working it out, that they have to fear. No foreign nation disturbed them, all foreign nations grew forbearing towards them, while we remained undivided and impregnable.

"Their exposure and their apprehensions result from our own embarrassments. When we shall have surmounted them, the Spanish-American states will regain their accustomed safety.

"In giving you this view of the President's policy, I am not for a moment to be thought wanting in just apprehension of the importance of the commercial, moral and political advantages of fraternal and affectionate relations with the states in whose behalf your appeal is made. Americanism is one interest and ought to be one sentiment throughout this continent. Republicanism is one interest and has one destiny for the weal or woe of mankind throughout not only this continent, but throughout the world. But the policy which diffuses these two sentiments and advances these two interests is a policy of time, prudence, and peace, not of war and conquest."

Mr. Seward, Sec. of State, to Mr. Riotte, min. to Costa Rica, No. 20, July 7, 1862. MS. Inst. Am. States, XVI. 225.

"Your despatch of Aug. 27th, No. 44, together with the papers enclosed and marked IV., have been submitted to the President.

"These papers contain a letter written by the minister for foreign affairs of Costa Rica to a representative of the revolutionary government in New Granada, concerning a proposed congress of the American States to be held at Panama with a view of effecting arrangements for their mutual stability and safety. In this correspondence, his excellency the minister for foreign affairs of Costa Rica,

Mr. Iglesias, discusses the question whether the United States ought to be invited to attend such congress and become a party to the proposed arrangement. You inform me that the publication of this letter has produced some uneasiness in Costa Rica, on the ground that the remarks of Mr. Iglesias on that subject might be disagreeable to the United States.

"My despatch of July 7th, 1862, No. 20, has already informed you that the United States could not at present depart from their traditional policy so far as to enter into such a congress. You have already communicated to Mr. Iglesias in a general way the effect of that despatch. The President perceives no reason why you should not read to him the despatch itself if, for any reason, you deem it expedient to do so. At the same time you are authorized to assure Mr. Iglesias that so far from experiencing any sensibility concerning the views he has expressed in relation to the character of this Government, its past policy in regard to Spanish-American States, its present views, and its possible change of those views hereafter, the President sees nothing in the letter of Mr. Iglesias but the exercise of a rightful freedom of debate upon a legitimate question in a manner perfectly respectful to the government and people of the United States. The United States are conscious that jealousy of foreign states is an essential element in the political constitution of every nation which intends and hopes to preserve and maintain its own real sovereignty and independence. They would therefore rather encourage than complain of the expression of such jealousies in the republics of Spanish America, even although the watchfulness thus manifested bear upon the United States themselves."

Mr. Seward, Sec. of State, to Mr. Riotte, min. to Costa Rica, No. 25, Sept. 17, 1862, MS. Inst. Am. States, XVI. 243.

"This government acts directly and sincerely in its intercourse with foreign nations, and no less directly and sincerely with New Granada than with all others. It regards the government of each state as its head until that government is effectually displaced by the substitution of another. It abstains from any interference with its domestic affairs in foreign countries, and it holds no unnecessary communication, secret or otherwise, with revolutionary parties or factions therein. It neither seeks to prevent social or political reforms in such countries nor lends its aid to reforms of them rightfully of which it has neither the authority nor the means to judge."

Mr. Seward, Sec. of State, to Mr. Burton, Oct. 25, 1862, MS. Inst. Colombia, XVI. 47.

"The first duty of a foreign minister is to maintain and practice in behalf of his government good faith and friendship towards the government to which he is accredited. It is not easy to conceive any case in which a minister could rightfully intervene and give aid or coun-

tenance to an insurrectionary movement in derogation of the sovereign to which he is accredited. Doubtlessly there are revolutions which deserve the sympathies and favor of all civilized states, but even in such cases the representatives of foreign governments should act by their direction and make their protests direct and explicit, taking the responsibilities of the termination of diplomatic intercourse. No such circumstances are known to us as existing in regard to the revolution in New Granada." (Mr. Seward, Sec. of State, to Mr. Burton, July 18, 1861, MS. Inst. Colombia, XVI. 7.)

"This government has not now, it seldom has had, any special transaction, either commercial or political, to engage the attention of a minister at Rome. Indeed, until a very late period the United States were without any representation at that ancient and interesting capital. The first colonists in this country were chiefly Protestants, who not merely recognized no ecclesiastical authority of the Pope, but were very jealous lest he might exert some ecclesiastical influence here which would be followed by an assumption of political power unfavorable to freedom and self-government on this continent. It was not seen that the political power of the Catholic Church was purely a foreign affair, constituting an important part of the political system of the European continent. . . . It is believed that ever since the tide of emigration set in upon this continent the head of the Roman Church and states has freely recognized and favored the development of this principle of political freedom on the part of the Catholics in this country, while he has never lost an opportunity to express his satisfaction with the growth, prosperity and progress of the American people. It was under these circumstances that this government, in 1848, wisely determined that while it maintained representatives in the capitals of every other civilized state, and even at the capitals of many semicivilized states which reject the whole Christian religion, it was neither wise nor necessary to exclude Rome from the circle of our diplomatic intercourse. Thus far the new relation then established has proved pleasant and beneficent.

"Just now Rome is the seat of profound ecclesiastical and political anxieties, which, more or less, affect all the nations of Europe. The Holy Father claims immunity for the temporal power he exercises, as a right incident to an ecclesiastical authority which is generally respected by the European states.

"On the other hand, some of those states, with large masses in other states, assert that this temporal power is without any religious sanction, is unnecessary and pernicious. I have stated the question merely for the purpose of enabling myself to give you the President's views of what will be your duty with regard to it. That duty is to forbear altogether from taking any part in the controversy. The reasons for this forbearance are three: First, that so far as spiritual

or ecclesiastical matters enter into the question they are beyond your province, for you are a political representative only. Second, so far as it is a question affecting the Roman States, it is a domestic one, and we are a foreign nation. Third, so far as it is a political question merely, it is at the same time purely an European one, and you are an American minister, bound to avoid all entangling connection with the politics of that continent.

"This line of conduct will nevertheless allow you to express, and you are therefore instructed to express, to His Holiness the assurances of the best wishes of the government and of the people of the United States for his health and happiness, and for the safety and prosperity and happiness of the Roman people."

Mr. Seward, Sec. of State, to Mr. Blatchford, Sept. 25, 1862, Dip. Cor. 1862, 851.

With reference to an invitation from France to cooperate with the governments of Paris, London, and Vienna in the exercise of a moral influence with the Emperor of Russia with reference to affairs in Poland, Mr. Seward said:

"This government is profoundly and agreeably impressed with the consideration which the Emperor has manifested towards the United States by inviting their concurrence in a proceeding having for its object the double interests of public order and humanity. Nor is it less favorably impressed with the sentiments and the prudential considerations which the Emperor has in so becoming a manner expressed to the court of St. Petersburg. . . .

"Notwithstanding, however, the favor with which we thus regard the suggestion of the Emperor of the French, this government finds an insurmountable difficulty in the way of any active cooperation with the governments of France, Austria, and Great Britain, to which it is thus invited.

"Founding our institutions upon the basis of the rights of man, the builders of our Republic came all at once to be regarded as political reformers, and it soon became manifest that revolutionists in every country hailed them in that character, and looked to the United States for effective sympathy, if not for active support and patronage. Our invaluable Constitution had hardly been established when it became necessary for the government of the United States to consider to what extent we could, with propriety, safety, and beneficence, intervene, either by alliance or concerted action with friendly powers or otherwise, in the political affairs of foreign states. An urgent appeal for such aid and sympathy was made in behalf of France, and the appeal was sanctioned and enforced by the treaty then existing of mutual alliance and defense, a treaty without which it may even now be confessed, to the honor of France, our own sovereignty and independence

could not have been so early secured. So deeply did this appeal touch the heart of the American people that only the deference they cherished to the counsels of the Father of our Country, who then was at the fullness of his unapproachable moral greatness, reconciled them to the stern decision that, in view of the location of this republic, the characters, habits, and sentiments of its constituent parts, and especially its complex yet unique and very popular Constitution, the American people must be content to recommend the cause of human progress by the wisdom with which they should exercise the powers of self-government, forbearing at all times, and in every way, from foreign alliances, intervention, and interference.

"It is true that Washington thought a time might come when, our institution being firmly consolidated and working with complete success, we might safely and perhaps beneficially take part in the consultations held by foreign states for the common advantage of the nations. Since that period occasions have frequently happened which presented seductions to a departure from what, superficially viewed, seemed a course of isolation and indifference. It is scarcely necessary to recur to them. One was an invitation to a congress of newly emancipated Spanish-American states; another, an urgent appeal to aid Hungary in a revolution aiming at the restoration of her ancient and illustrious independence; another, the project of a joint guarantee of Cuba to Spain in concurrence with France and Great Britain; and more recently, an invitation to a cooperative demonstration with Spain, France, and Great Britain in Mexico; and, later still, suggestions by some of the Spanish-American states for a common council of the republican states situated upon the American continent. These suggestions were successively disallowed by the government, and its decision was approved in each case by the deliberate judgment of the American people. Our policy of nonintervention, straight, absolute, and peculiar as it may seem to other nations, has thus become a traditional one, which could not be abandoned without the most urgent occasion, amounting to a manifest necessity. Certainly it could not be wisely departed from at this moment, when the existence of a local, although as we trust only a transient disturbance, deprives the government of the counsel of a portion of the American people, to whom so wide a departure from the settled policy of the country must in any case be deeply interesting.

"The President will not allow himself to think for a single moment that the Emperor of the French will see anything but respect and friendship for himself and the people of France, with good wishes for the preservation of peace and order, and the progress of humanity in Europe, in the adherence of the United States on this occasion to

the policy which they have thus far pursued with safety, and not without advantage, as they think, to the interests of mankind."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 342, May 11, 1863, Dip. Cor. 1863, I. 667.

See, further, Mr. Seward, Sec. of State, to Mr. Motley, min to Austria, Nos. 34 and 37, June 20, July 14, 1863, Dip. Cor. 1863, II. 926.

"Within the last three years it has seen an attempt at revolution in the ancient kingdom of Poland, a successful revolution in what was New Granada, but now is Colombia, a war between France and Mexico, a civil war in Venezuela, a war between three allied Spanish-American republics and Salvador, and a war between Colombia and Ecuador. It now sees a probability of a war between Denmark and Germany. In regard to such of these conflicts as have actually occurred, the United States have pursued the same policy, attended by the same measure of reserve, that they have thus far followed, in regard to the civil war in Santo Domingo. It is by this policy that the United States equally avoid throwing themselves across the way of human progress, or lending encouragement to factious revolutions. Pursuing this course, the United States leave to the government and people of every foreign state the exclusive settlement of their own affairs and the exclusive enjoyment of their own institutions. Whatever may be thought by other nations of this policy, it seems to the undersigned to be in strict conformity with those prudential principles of international law—that nations are equal in their independence and sovereignty, and that each individual state is bound to do unto all other states just what it reasonably expects those states to do unto itself."

Mr. Seward, Sec. of State, to Mr. Tassara, Feb. 3, 1864, MS. Notes to Spain, VII. 451.

As to keeping aloof from foreign interests, see 9 John Adams's Works, 108, 109, 118, 129, 136, 202, 277, 579.

As to nonintervention generally, see 3 John Adams's Works, 316; 7 id. 151; 8 id. 9, 178; (and see also discussions in 103 N. Am. Rev. 476, October, 1866).

As to special mission in reference to claims of Costa Rica on Nicaragua, see Mr. Cass, Sec. of State, to Mr. Jones, July 30, 1857, MS. Inst. Special Missions, III. 96.

"It is not deemed unreasonable on the part of the government of Hayti that it should ask leading maritime states to guarantee their sovereignty over Samana. The government of Hayti very properly consults the United States government with reference to such a guarantee. The President is gratified, also, that the Haytian government has submitted its views in a proper spirit to Great Britain. Nevertheless, the question unavoidably calls up that ancient and settled policy of the United States which disinclines them to the

constituting of political alliances with foreign states, and especially disinclines them to engagements with foreign states in regard to subjects which do not fall within the range of necessary and immediate domestic legislation. This policy would oblige the United States to refrain from making such a guarantee as Hayti desires, but disclaiming for themselves all purpose or desire to disturb the peace and security of Hayti, the United States would be gratified if Great Britain and other maritime states should see fit to regard the wish of the government of Hayti in the same spirit of justice and magnanimity."

Mr. Seward, Sec. of State, to Sir F. Bruce, British min., Aug. 15, 1865, Dip. Cor. 1865, II. 191.

This note of Mr. Seward's was written in reply to a note from Sir F. Bruce, stating that the chargé d'affaires of Hayti had requested the British government to concur in guaranteeing the neutrality of the peninsula of Samana.

"In the opinion of the President, the most beneficent policy which this government can practice with reference to foreign states is to abstain from all authoritative or dictatorial proceedings in regard to their own peculiar affairs, while it employs at all times whatever just influence it enjoys to promote peace, and to recommend to them, by its own fidelity to justice and freedom, the institutions of free popular government. In this respect you have proceeded in harmony with the policy of the United States."

Mr. Seward, Sec. of State, to Mr. Kilpatrick, min. to Chile, No. 6, May 5, 1866, Dip. Cor. 1866, II. 411.

This instruction referred to the action of Mr. Kilpatrick in endeavoring to avert the bombardment of Valparaiso. In the course of the instruction, Mr. Seward said: "The conclusion at which you arrived upon an examination of the circumstances, that it was not your duty to advise or instruct Commodore Rodgers to resist the bombardment by force, is accepted and approved." (Id. 412.)

The instruction above quoted is recorded in MS. Inst. Chile, XV. 327.

The American commissioner and consul-general at Port au Prince having reported that there existed between Hayti and Santo Domingo jealousies which derived support from some imaginary political designs on the part of the United States, Mr. Seward said:

"The United States sincerely desire and hope that Hayti and St. Domingo may become cordial friends, and may dwell together in peaceful neighborhood, each maintaining its own sovereignty, integrity and independence. The forbearing and friendly policy of this government towards all the free states of the American continent and islands has been so often exposed and illustrated during the last five years, that it is deemed unnecessary now to make a distinct utterance on that subject, when no event has occurred which could bring

uncertainty or suspicion over it. If any such uncertainty or suspicion exist, either in Hayti or in St. Domingo, it is exclusively a creation of parties there, who have no grounds for claiming any interest or sympathy here."

Mr. Seward, Sec. of State, to Mr. Peck, No. 13, May 11, 1866, MS. Inst. Hayti, I. 71.

Mr. Seward added: "Perhaps I could not more clearly elucidate the policy of the United States in regard to other American governments than is already done in the correspondence which has recently taken place between the United States and some of the European powers with regard to Mexico. I give you, therefore, for your information, a copy of that correspondence. The President does not think that it would be expedient under the present circumstances to direct a formal conference between yourself and the representative of the United States in St. Domingo. The office of mediation is always a delicate one. It is never to be resorted to where alienation has not become flagrant, and it can not, even then, be safely or wisely resorted to without first obtaining the consent of the alienated parties."

Fish.

"The intelligent and sympathetic interest which you manifest in the fortunes and destinies of the people of Greece, gives satisfaction to the Department. Although the United States look with favor upon the increase of material power of all governments that represent liberal and progressive ideas, and that are clothed with constitutional forms, even though those forms may not be the ones which we have adopted in our own case, and which, in communities trained to self-government, are the best preservatives of liberty; yet, can we never give to that favor any form other than a moral one. Your course in making that clear to the court and nation to which you are accredited is approved by the Department."

Mr. Fish, Sec. of State, to Mr. Tuckerman, min. to Greece, No. 26, Sept. 30, 1869, MS. Inst. Greece, I. 20, acknowledging the receipt of Mr. Tuckerman's No. 78 of the 27th July.

See, also, Mr. Fish to Mr. Tuckerman, No. 42, June 21, 1870, MS. Inst. Greece, I. 29, acknowledging Mr. Tuckerman's No. 134 of the 19th of May.

It is against the policy of the United States to interfere in contests between the titular government of Hayti and insurgents.

Mr. Fish, Sec. of State, to Mr. Bassett, min. to Hayti, No. 16, Oct. 31, 1869, MS. Inst. Hayti, I. 158. Same to same, No. 138, March 26, 1873, MS. Inst. Hayti, I. 287.

"The settled foreign policy of the United States is in the familiar knowledge of all Europe and America. That policy forbids, on our part, all intercourse in the mutual affairs of other governments, and excludes interference by them in ours. It is the policy established by

the venerated founder of the American Republic, under circumstances of great difficulty pending the European wars growing out of the French Revolution. It has been steadfastly adhered to by every successive President of the United States, and is firmly rooted in the conviction and judgment and approval of the American people. It is the well-considered fixed idea, consecrated by experience, which lies at the foundation of all our intercourse with other powers. It has proved of signal benefit to the United States, and in the long run not less so to every friendly power. It commends itself unqualifiedly to the judgment of the President for the time being. Against this fundamental policy of the United States Mr. Catacazy has deliberately offended and is now daily deliberately offending. He has made himself busy, in season and out of season, in efforts to obstruct, embarrass, and defeat the recent negotiations between the United States and Great Britain for the adjustment of their mutual differences; and he continues in the same way now to interfere with the due execution of the treaty of Washington of 8th May last.

"As the government of the United States would not tolerate such conduct on the part of the minister of our close ally, the French Republic, in a similar emergency in the early days of our history, so it will not tolerate that conduct on the part of Mr. Catacazy, intimate as are the ties of amity between us and his government.

"The President directs me to say that he can not look on with indifference to see this extraordinary attempt to introduce at Washington the diplomatic practices of Constantinople."

Mr. Fish, Sec. of State, to Mr. Curtin, min. to Russia, No. 110, Nov. 16, 1871. S. Ex. Doc. 5, 42 Cong. 2 sess. 17.

Frelinghuysen.

"Treaties of foreign offensive and defensive alliance are contrary to the declared policy of this government. In the early years of our independence certain compacts of this nature were projected. A notable instance is found in the treaty with France, concluded in 1778, during the Revolutionary war, by the 11th article of which the United States guaranteed the French possessions in this hemisphere. The fulfillment of this stipulation proved to be the occasion of much embarrassment, and eventually of serious misunderstanding between the two countries, which defeated its object and rendered further 'entangling alliances,' as Mr. Jefferson characterized them, objectionable to the people of the United States."

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 326, July 25, 1884, MS. Inst. Venezuela, III. 390.

By treaty of Nov. 18, 1903, the United States guarantees the independence of the Republic of Panama. See supra, § 368, vol. 3, p. 261.

See also the treaty with New Granada of 1846, supra, § 337.

"It is not our policy to intervene in the affairs of foreign nations to decide territorial questions between them."

Mr. Frelinghuysen, Sec. of State, to Mr. Kasson, min. to Germany, No. 37, Oct. 17, 1884, S. Ex. Doc. 196, 49 Cong. 1 sess. 13, in relation to the Congo question and the Berlin conference of 1884–5.

See, also, President Cleveland, annual message, Dec. 8, 1885, supra, § 42; Mr. Bayard, Sec. of State, to Mr. Tree, min. to Belgium, No. 5, Sept. 11, 1885, S. Ex. Doc. 196, 49 Cong. 1 sess. 330; For. Rel. 1885, 60.

January 9, 1884, the House of Representatives of the United States, having heard of the death of the German statesman, Dr. Edward Lasker, while on a visit to the United States, adopted a resolution declaring: "His loss is not alone to be mourned by the people of his native land, where his firm and constant exposition of and devotion to free and liberal ideas have materially advanced the social, political, and economic conditions of those people, but by the lovers of liberty throughout the world." It was further resolved that a copy of the resolutions should be forwarded to the family of the deceased, and another copy to the American minister at Berlin for communication to the presiding officer of the Reichstag, of which Dr. Lasker was a member. The resolutions were sent to Mr. Frelinghuysen, Secretary of State, by whom they were transmitted to Mr. Sargent, then American minister in Berlin. Mr. Sargent handed one copy to a brother of Dr. Lasker, and the other he sent to the German foreign office, with the request that it be communicated to the Reichstag. This step Prince Bismarck declined to take, on the ground that the opinion which was expressed in the resolutions, as to the advantageous results of Dr. Lasker's political course, was not in accordance with the facts as he viewed them. "I would not venture," said Prince Bismarck, "to oppose my judgment to that of an illustrious assembly like the House of Representatives of the United States, if I had not gained during an active participation in German internal politics of more than thirty years an experience which encourages me to attach also to my opinion a certain competency *within these limits*." Prince Bismarck instructed the German minister at Washington to communicate these views to Mr. Frelinghuysen and also to leave with him, if he desired it, the engrossed copy of the resolutions. When the German minister carried out these instructions, Mr. Frelinghuysen stated that the President could not be supposed to have any wish as to what the German government might do in regard to the copy of the resolutions after it had decided not to transmit them to the body for which they were intended. The German minister observed that this reply relieved his government from the obligation to return the resolutions, and there the matter appears to have ended.

Message of President Arthur to the House of Representatives, March 10, 1884, H. Ex. Doc. 113, 48 Cong. 1 sess.

Bayard.

"At Cartagena, as at any other point in Colombia, not on the direct line of isthmian transit, the only question presented for our consideration is the general one of the protection of the lives and property of citizens of the United States established there. Our right in this respect is of course neither more nor less than that of any other government whose citizens or subjects may be found at such points under similar circumstances. Interests of other nationalities than our own are understood to exist at Cartagena. Consequently no measure could be taken by forces of the United States for the protection of their citizens there, which we would not admit the perfect right of another government—that of England, France, or Germany, for instance—to employ for the like protection of its subjects.

"Generally speaking, persons who quit the shelter of their own flag to take up a voluntary residence in a foreign land do so at their own risk and subject to the vicissitudes of foreign invasion or domestic insurrection in the country where they cast their lot in common with the natives thereof. Their own government could not invade the country of their sojourn there to protect them from the consequences of war from without or from within, without committing a distinctly hostile act. Their rights are simply those of neutrals in a belligerent territory.

"But where the place of their sojourn is a port open to the world's commerce, to which foreign vessels have a right to resort, the presence of war vessels of their nation is proper to protect the national shipping in port and the lives and property of neutral citizens on shore, from any injurious treatment contrary to the received international rules of warfare. Such war vessels may properly afford asylum to our own noncombatant citizens and moral protection to their interests within the limits of legitimate warfare, and extreme cases may be conceived where the supreme law of self-preservation may require more effective measures if the bounds of legitimate warfare be overpassed. In no event, however, should such measures amount to an intervention in the domestic disturbances of that country by aiding one belligerent against the other."

Mr. Bayard, Sec. of State, to Mr. Whitney, Sec. of Navy, April 15, 1885, 155 MS. Dom. Let. 101.

"At this late day, when, after more than a century of national existence, the policy of this nation has been manifested against aggrandizement by conquest and in favor of sustaining by example and counsel the independence of its neighbors, there would seem to be no occasion for denial of any designs on the part of the United States against the political independence and territorial integrity of the sovereign commonwealths which lie between our southern

frontier and the Isthmus of Panama or elsewhere in the Western Hemisphere. The singleness and friendliness of our purposes toward them has been signally evidenced during the late occurrences on the Isthmus and in Central America; and every new proof of the growth among them of the forces of civilization, under the forms of consititutional and popular government, is welcomed by this Government.

"I should, however, be sorry if your remark that the people of the United States, 'considering the character and training of the Mexican people, do not think them a desirable accession to our population,' were to leave on the President's mind any impression that we disparage Spanish-American civilization by contrast with our own. Their efforts in the path of progress have been no less earnest, and, in view of the geographical and physical obstacles to be overcome, their success has been scarcely less marked than ours. No question of race contrast, especially with regard to the mixed races which preponderate in certain localities, can enter as a factor in our treatment of peoples to whom we are allied by so many ties of common advantages and political sympathy."

Mr. Bayard, Sec. of State, to Mr. Roberts, min. to Chile, No. 3 (confid.), Aug. 21, 1885, MS. Inst. Chile, XVII. 178.

Blaine.

November 9, 1891, Mr. Blaine, as Secretary of State, instructed the American minister at Rio de Janeiro to express the hope that Brazil would, in her domestic affairs, pursue a policy of wise moderation. This instruction had reference to the action of the President of Brazil in dissolving Congress and declaring martial law. The Brazilian government, November 15, 1891, instructed its minister at Washington to reply that moderation was "born in the character of the Brazilian people, in the sentiment and in the policy of its President, and has been practiced by his government. The President acknowledges with great satisfaction that in this instance, as in so many others, the two Republics find themselves in perfect accord. And you may add that the friendly advice would be cherished with the feelings worthy such a friend."

For. Rel. 1891, 42, 51–52.

Day.

"The rule of this government is to observe the most absolute impartiality in respect to questions arising between its neighbors; to refrain from forming a judgment upon the merits of the mutual recriminations which may attend such disputes; to abstain from advising either party to the difference; and to exert mediatorial offices only when acceptable to both parties.

"It is moreover an established rule of action with us to refrain from all appearance of union with other neutral powers looking

to intervention or mediation in the affairs of disputing states. It is regretted that you did not recall this salutary rule, and find some discreet way of avoiding even the semblance of concerted action with your British colleague in the sense of advising Guatemala as to its treatment of the questions existing with Mexico. It would be doubly unfortunate if your utterances had left on the mind of the Guatemalan executive an impression that the government of the United States inclined to the Guatemalan view of Mexico's intentions and might even thwart by force a hostile act of Mexico growing out of the present strained situation.

"This government, as the impartial friend of both Guatemala and Mexico, can not but deplore the tension which has arisen between them, and were the way open for our friendly action in a manner equally acceptable to both of them, we would gladly do what we properly might, in the same spirit of impartiality, to induce a friendly composition of their differences. This government conceives that it can only be useful toward such a result by maintaining, for itself and through its agencies, an attitude of unbiased reserve as to the merits of the points at issue. Were it to authorize such declarations as you appear to have made to President Cabrera, the maintenance of that neutral position would be impossible.

"I am therefore constrained to disapprove and disavow your action."

Mr. Day, Sec. of State, to Mr. Hunter, min. to Guatemala, No. 78, Sept. 16, 1898, MS. Inst. Cent. Am. XXI. 364, citing Mr. Adee, Act. Sec. of State, to Mr. Mizner, min. to Guatemala, No. 38, Sept. 19, 1889.

McKinley.

"This government has maintained an attitude of neutrality in the unfortunate contest between Great Britain and the Boer States of Africa. We have remained faithful to the precept of avoiding entangling alliances as to affairs not of our direct concern."

President McKinley, annual message, Dec. 5, 1899, For. Rel. 1899, xxii.

Roosevelt.

"In asserting the Monroe doctrine, in taking such steps as we have taken in regard to Cuba, Venezuela, and Panama, and in endeavoring to circumscribe the theater of war in the Far East, and to secure the open door in China, we have acted in our own interest as well as in the interest of humanity at large. There are, however, cases in which, while our own interests are not greatly involved, strong appeal is made to our sympathies. Ordinarily it is very much wiser and more useful for us to concern ourselves with striving for our own moral and material betterment here at home than to concern ourselves with trying to better the condition of things in other nations. We have plenty of sins of our own to

war against, and under ordinary circumstances we can do more for the general uplifting of humanity by striving with heart and soul to put a stop to civic corruption, to brutal lawlessness and violent race prejudices here at home than by passing resolutions about wrong-doing elsewhere. Nevertheless there are occasional crimes committed on so vast a scale and of such peculiar horror as to make us doubt whether it is not our manifest duty to endeavor at least to show our disapproval of the deed and our sympathy with those who have suffered by it. The cases must be extreme in which such a course is justifiable. There must be no effort made to remove the mote from our brother's eye if we refuse to remove the beam from our own. But in extreme cases action may be justifiable and proper. What form the action shall take must depend upon the circumstances of the case; that is, upon the degree of the atrocity and upon our power to remedy it. The cases in which we could interfere by force of arms as we interfered to put a stop to intolerable conditions in Cuba are necessarily very few. Yet it is not to be expected that a people like ours, which in spite of certain very obvious shortcomings, nevertheless as a whole shows by its consistent practice its belief in the principles of civil and religious liberty and of orderly freedom, a people among whom even the worst crime, like the crime of lynching, is never more than sporadic, so that individuals and not classes are molested in their fundamental rights—it is inevitable that such a nation should desire eagerly to give expression to its horror on an occasion like that of the massacre of the Jews in Kishenef, or when it witnesses such systematic and long-extended cruelty and oppression as the cruelty and oppression of which the Armenians have been the victims, and which have won for them the indignant pity of the civilized world."

President Roosevelt, annual message, Dec. 6, 1904, For. Rel. 1904, xlii.

(2) THE FRENCH REVOLUTION.

§ 899.

Genet, when he came to the United States in 1793, brought instructions to negotiate "a national agreement, in which two great peoples shall suspend their commercial and political interests, and establish a mutual understanding, to defend the empire of liberty, wherever it can be embraced; to guarantee the sovereignty of the people, and punish those powers who still keep up an exclusive colonial and commercial system, by declaring that their vessels shall not be received in the ports of the contracting parties." In a note of May 23, 1793, Genet proposed that the two peoples should by "a true family compact," establish a "commercial and political system," on a "liberal and fraternal basis." Washington had already, by his proclamation

of April 22, 1793, adopted the policy of nonintervention and neutrality.

Am. State Papers, For. Rel. I. 708–709, 147, 140. See supra, § 821.

(3) SPAIN AND HER COLONIES.

§ 900.

In the contest between Spain and her colonies, in which the latter achieved their independence, the United States adhered to the policy of neutrality and nonintervention. See supra, §§ 28–36; infra, § 930–936, 1320.

(4) GREEK INDEPENDENCE.

§ 901.

"The war of the Greeks for independence early attracted attention in this country. Mr. Dwight, of Massachusetts, on the 24th of December, 1822, presented to the House a memorial in their favor. The sentiment of the House was against meddling with the subject, and the memorial was ordered to lie on the table.

"Early in the next session (December 8, 1823), Mr. Webster submitted to the House a resolution that provision ought to be made by law for defraying the expense incident to the appointment of an agent or commissioner to Greece, whenever the President shall deem it expedient to make such appointment. On the 19th of the same month the House requested the President to lay before it any information he might have received, and which he might deem it improper to communicate, respecting the condition and future prospects of the Greeks.

"On the 29th a memorial was presented from citizens of New York, requesting the recognition of the independence of Greece. On the 31st the President transmitted the desired information to Congress. On the 2d of January, 1824, Mr. Poinsett laid before the House a resolution of the general assembly of South Carolina that that State would hail with pleasure the recognition by the American government of the independence of Greece. On the 5th Webster presented a memorial from citizens of Boston. The debate upon Webster's resolution began upon the 19th of January and continued until the 26th. It took a wide range, developed great diversity of sentiment, and produced no result.

"The sympathy for the Greeks continued to manifest itself. On the 2d of January, 1827, Edward Livingston moved to instruct the Committee on Ways and Means to report a bill appropriating $50,000 for provisions for their relief. The bill was negatived on the 27th. Private relief was given, and in his annual message to Congress in the

following December the President transmitted to Congress correspondence respecting it with Capo d'Istrias and with the president and secretary of the Greek national assembly.

"The first and only treaty with Greece was concluded in London in 1837 between the ministers of the respective powers at that court. It was sent to Congress with the President's message of December 4, 1838."

Davis, Notes, Treaty Vol. (1776–1887), 1341; supra, § 41.
For correspondence in relation to the Greeks, in 1823–1824, see Ex. Papers 14, 18 Cong. 1 sess.; Am. State Papers, For Rel. V. 251, 252.

(5) HUNGARIAN REVOLUTION.

§ 902.

As to the efforts made to induce the United States to depart from the policy of nonintervention in the Hungarian revolution of 1848, see supra, § 72; infra, § 905.

(6) CHILE-PERUVIAN WAR.

§ 903.

With reference to an inquiry as to the attitude of the United States in case a proposal should be received from Germany and Great Britain to act with them in a mediation between Chile and Peru in the war in South America, in the interest of the protection of commerce, Mr. Evarts said: "While as keenly alive as the governments of Germany or Great Britain can be to the dangers arising to commerce from the existence of so deplorable a war between kindred peoples, as well as to the greater prospective danger that the Argentine Republic and other South American States may yet be involved in the quarrel, and while it has been from the commencement of the struggle and is now ready to assist in the restoration of peace between the belligerents, whenever its good offices may be usefully proffered, yet this government does not look with favor upon any premature effort, nor any effort in combination with other neutral powers, which would carry the impression of dictation or coercion in disparagement of belligerent rights. Inquiry having been made of this government, through Her Britannic Majesty's minister at this capital, in the same sense as that addressed to you through Mr. Bucher, an identical answer was returned to Sir Edward Thornton. You will, of course, carefully note and report any tendencies you may observe toward further action by Germany in the direction of South American intervention, either with or without the cooperation of other powers."

Mr. Evarts, Sec. of State, to Mr. White, min. to Germany, No. 22, July 19, 1879, MS. Inst. Germany, XVI. 486.

In 1879 Mr. S. Newton Pettis, American minister to Bolivia, paid a visit to Lima and to Santiago in the interest of peace between the parties to the war then existing in South America. His mission was avowedly undertaken without the knowledge or direction of his government, and seems to have been limited to the endeavor to make each of the three governments concerned privately acquainted with the others' views with regard to a settlement of differences, especially by arbitration if a direct settlement should be unattainable. "Unauthorized and even rash," said the Department of State, "as Mr. Pettis' experiment might appear, the United States could not but rejoice at the result should the knowledge thus gained by the belligerents of each other's views conduce to an eventual settlement." The United States was "not, however, disposed to dictate a peace, or to take any steps looking to arbitration or intervention in disparagement of belligerent rights, or even to urge the conditions under which it may be reached. Its good offices have not been officially tendered, but if sought, on a practical basis of arbitration submitted by the several parties to the struggle, the President would not hesitate to use them in the interest of peace. . . . The Department dismisses, as unbased rumor of a hostile press, the statement in some of the Chilean journals that you have indicated a purpose on the part of this government to end the war by intervention or by arbitration on terms proposed by itself."

Mr. Hunter, Act. Sec. of State, to Mr. Pettis, min. to Bolivia, No. 26, Oct. 1, 1879, MS. Inst. Bolivia, I. 262.

See, also, Mr. Evarts, Sec. of State, to Mr. Pettis, No. 25, Sept. 19, 1879, id. 261.

"The deplorable condition of Peru, the disorganization of its government, and the absence of precise and trustworthy information as to the state of affairs now existing in that unhappy country, render it impossible to give you instructions as full and definite as I would desire.

"Judging from the most recent dispatches from our ministers, you will probably find on the part of the Chilean authorities in possession of Peru a willingness to facilitate the establishment of the provisional government which has been attempted by Señor Calderon. If so, you will do all you properly can to encourage the Peruvians to accept any reasonable conditions and limitations with which this concession may be accompanied. It is vitally important to Peru that she be allowed to resume the functions of a native and orderly government, both for the purposes of internal administration and the negotiation of peace. To obtain this end it would be far better to accept conditions which may be hard and unwelcome than by demanding too much to force the continuance of the military control of Chile. It is

hoped that you will be able, in your necessary association with the Chilean authorities, to impress upon them that the more liberal and considerate their policy, the surer it will be to obtain a lasting and satisfactory settlement. The Peruvians can not but be aware of the sympathy and interest of the people and government of the United States, and will, I feel confident, be prepared to give to your representations the consideration to which the friendly anxiety of this government entitles them.

"The United States can not refuse to recognize the rights which the Chilean government has acquired by the successes of the war, and it may be that a cession of territory will be the necessary price to be paid for peace. It would seem to be injudicious for Peru to declare that under no circumstances could the loss of territory be accepted as the result of negotiation. The great objects of the provisional authorities of Peru would seem to be to secure the establishment of a constitutional government, and next to succeed in the opening of negotiations for peace without the declaration of preliminary conditions as an *ultimatum* on either side. It will be difficult, perhaps, to obtain this from Chile; but as the Chilean government has distinctly repudiated the idea that this was a war of conquest, the government of Peru may fairly claim the opportunity to make propositions of indemnity and guarantee before submitting to a cession of territory. As far as the influence of the United States will go in Chile, it will be exerted to induce the Chilean government to consent that the question of the cession of territory should be the subject of negotiation and not the condition precedent upon which alone negotiations shall commence. If you aid the government of Peru in securing such a result, you will have rendered the service which seems most pressing. Whether it is in the power of the Peruvian government to make any arrangements at home or abroad, singly or with the assistance of friendly powers, which will furnish the necessary indemnity or supply the required guarantee, you will be better able to advise me after you have reached your post.

"As you are aware, more than one proposition has been submitted to the consideration of this government looking to a friendly intervention by which Peru might be enabled to meet the conditions which would probably be imposed. Circumstances do not seem at present opportune for such action; but if, upon full knowledge of the condition of Peru, you can inform this government that Peru can devise and carry into practical effect a plan by which all the reasonable conditions of Chile can be met without sacrificing the integrity of Peruvian territory, the government of the United States would be willing to offer its good offices toward the execution of such a project.

"As a strictly confidential communication, I inclose you a copy of instructions sent this day to the United States minister at Santiago.

You will thus be advised of the position which this government assumes toward all the parties to this deplorable conflict. It is the desire of the United States to act in a spirit of the sincerest friendship to the three republics, and to use its influences solely in the interest of an honorable and lasting peace."

Mr. Blaine, Sec. of State, to Mr. Hurlbut, min. to Peru, No. 2, June 15, 1881, For. Rel. 1881, 914; War in South America, 500.

For the communication to the American minister at Santiago, see Mr. Blaine, Sec. of State, to Mr. Kilpatrick, min. to Chile, No. 2, June 15, 1881, For. Rel. 1881, 131; War in South America, 157.

In an instruction of November 22, 1881, Mr. Blaine, referring to Mr. Hurlbut's reports of his proceedings, expressed regret that a construction had been put upon the latter's language and conduct indicating a policy of active intervention on the part of the United States beyond the scope of his instructions. Mr. Hurlbut had stated, in a memorandum to Admiral Lynch, that the United States would "regard with disfavor" the annexation by Chile of Peruvian territory by right of conquest. "You were," said Mr. Blaine, "distinctly informed that this government could not refuse to recognize that such annexation might become a necessary condition in a final treaty of peace;" and the main purpose of Mr. Hurlbut's effort was expected to be "not so much a protest against any possible annexation, as an attempt by friendly but unofficial communications with the Chilean authorities (with whom you were daily associated), to induce them to support the policy of giving to Peru, without the imposition of harsh and absolute conditions precedent, the opportunity to show that the rights and interests of Chile could be satisfied without such annexation." Mr. Blaine also criticised some of the language used by Mr. Hurlbut in a letter to Señor Garcia, the secretary of General Piérola—language which might seem to imply that the United States had recognized the government of Calderon instead of that of General Piérola, because of the former's resolution not to cede Peruvian territory. "No such motive," said Mr. Blaine, "has ever been declared by this government. The government of Calderon was recognized because we believed it to the interest of both Chile and Peru that some respectable authority should be established which could restore internal order, and initiate responsible negotiations for peace. We desired that the Peruvian government should have a fair opportunity to obtain the best terms it could, and hoped that it would be able to satisfy the just demands of Chile without the painful sacrifice of the national territory. But we did not make, and never intended to make, any special result of the peace negotiations the basis of our recognition of the Calderon government." Mr. Blaine also expressed his dissatisfaction with Mr. Hurlbut's action in sending a telegram to the American minister at Buenos Ayres suggesting that a

minister be sent by the Argentine government to Peru. Mr. Blaine especially deprecated this action because there then existed a serious difference between Chile and the Argentine Republic, so that such a recommendation would naturally be considered by Chile as an effort to effect a political combination against her. Mr. Blaine also disapproved the course of Mr. Hurlbut in negotiating with regard to a convention by which Peru was to cede to the United States a naval station in the Bay of Chimbote. Mr. Blaine thought such an arrangement desirable, but considered the time inopportune. But, having thus stated his impressions as to Mr. Hurlbut's action, Mr. Blaine said: "It becomes my duty to add that this Government is unable to understand the abolition of the Calderon government and the arrest of President Calderon himself by the Chilean authorities, or I suppose I ought to say by the Chilean government, as the secretary for foreign affairs of that government has in a formal communication to Mr. Kilpatrick declared that the Calderon government 'was at an end.' As we recognized that government in supposed conformity with the wishes of Chile, and as no reason for its destruction has been given us, you will still consider yourself accredited to it, if any legitimate representative exists in the place of President Calderon. If none such exists, you will remain in Lima until you receive further instructions, confining your communications with the Chilean authorities to such limits as your personal convenience and the maintenance of the rights and privileges of your legation may require." In conclusion, Mr. Blaine stated that circumstances had imposed upon the President the necessity of sending out a special mission.

Mr. Blaine, Sec. of State, to Mr. Hurlbut, min. to Peru, No. 19, Nov. 22, 1881, For. Rel. 1881, 948; War in South America, 565.

See, also, Mr. Blaine, Sec. of State, to Mr. Kilpatrick, min. to Chile, No. 16, Nov. 30, 1881, For. Rel. 1881, 141; War in South America, 171.

November 30, 1881, Mr. Blaine enclosed to Mr. William Henry Trescot a commission as special envoy with the rank of minister plenipotentiary to the Republics of Chile, Peru, and Bolivia. This commission was not to supersede the ordinary duties of the ministers plenipotentiary and resident then accredited to those governments, but, as those ministers were informed, all communications and negotiations connected with the settlement of pending difficulties between Chile, Peru, and Bolivia were to be transferred to Mr. Trescot's charge. Mr. Trescot was also informed that the President had directed the Third Assistant Secretary of State, Mr. Walker Blaine, to accompany him and to act under his directions.

Mr. Blaine, Sec. of State, to Mr. Trescot, No. 1, Nov. 30, 1881, For. Rel. 1881, 142; War in South America, 172.

See, also, Mr. Blaine, Sec. of State, to Mr. Walker Blaine, Nov. 30, 1881, For. Rel. 1881, 143; War in South America, 173.

Mr. Blaine's full instructions to Mr. Trescot bear date December 1, 1881. In these instructions Mr. Blaine referred to the defeat of General Piérola in January, 1881, his retreat across the mountains, and the surrender of Lima to the Chilean forces. Some of the leading citizens of Lima and Callao, said to have been encouraged by the Chilean authorities, sought to set up a new government under Señor Calderon. On May 9, 1881, the American minister at Lima was instructed by the Department of State that if the Calderon government was "supported by the character and intelligence of Peru," and was endeavoring to restore constitutional government with a view both to order within and negotiations with Chile for peace, he might recognize it as the existing provisional government and aid it by his advice and good offices. Acting on these instructions, Mr. Christiancy, on June 26, 1881, formally recognized the Calderon government. Subsequently a minister from the Calderon government was received at Washington. The adherents of Piérola gradually gave their adhesion to it, and the Peruvian Congress, which assembled within the neutral zone set apart for that purpose by the Chilean authorities, authorized President Calderon to negotiate a peace, on condition that no territory should be ceded. The Chilean military authorities thereupon issued an order forbidding the Calderon government to exercise its functions within the territory occupied by the Chilean army. Mr. Blaine said that, unable to understand this "sudden" and "unaccountable" change of policy on the part of Chile, the United States had instructed its minister at Lima to continue to recognize the Calderon government till more complete information would enable the Department of State to send further instructions. Immediately afterwards the Chileans arrested President Calderon and extinguished his government. "The President," continued Mr. Blaine, "does not now insist upon the inference which this action would warrant. He hopes that there is some explanation which will relieve him from the painful impression that it was taken in resentful reply to the continued recognition of the Calderon government by the United States. If, unfortunately, he should be mistaken, and such a motive be avowed, your duty will be a brief one. You will say to the Chilean government that the President considers such a proceeding as an intentional and unwarranted offense, and that you will communicate such an avowal to the government of the United States, with the assurance that it will be regarded by the government as an act of such unfriendly import as to require the immediate suspension of all diplomatic intercourse. You will inform me immediately of the happening of such a contingency and instructions will be sent you."

Mr. Blaine added that he did not anticipate such an occurrence, and that the course of the Chilean government would probably be

explained on other grounds. The objects which the President had at heart were, said Mr. Blaine, first, to prevent the misery, confusion, and bloodshed which the existing relations between Chile and Peru seemed only too certain to renew; and, secondly, to take care that in any friendly attempt to reach this desirable end the government of the United States was treated with the respectful consideration to which its disinterested purpose, its legitimate influence, and its established position entitled it. Should the Chilean government, while disclaiming any intention of offense, maintain its right to settle its difficulties with Peru without the friendly intervention of other powers, and refuse to allow the formation of any government in Peru which did not pledge its consent to the cession of territory, it would be Mr. Trescot's duty, "in language as strong as is consistent with the respect due an independent power, to express the disappointment and dissatisfaction felt by the United States at such a deplorable policy." The United States would not interpose to deprive Chile of the fair advantages of military success, nor put any obstacle in the way of the attainment of her future security; but, said Mr. Blaine, "We can not regard with unconcern the destruction of Peruvian nationality. If our good offices are rejected, and this policy of the absorption of an independent state be persisted in, this government will consider itself discharged from any further obligation to be influenced in its action by the position which Chile has assumed, and will hold itself free to appeal to the other republics of this continent to join it in an effort to avert consequences which can not be confined to Chile and Peru, but which threaten with extremest danger the political institutions, the peaceful progress, and the liberal civilization of all America."

Mr. Blaine, Sec. of State, to Mr. Trescot, No. 2, Dec. 1, 1881, For. Rel. 1881, 143; War in South America, 174.

As to the proposed conference of American republics, see Mr. Blaine to Mr. Trescot, No. 3, Dec. 2, 1881, For. Rel. 1881, 150.

"The President wishes in no manner to dictate or make any authoritative utterance to either Peru or Chile as to the merits of the controversy existing between those republics, as to what indemnity should be asked or given, as to a change of boundaries, or as to the personnel of the Government of Peru. The President recognizes Peru and Chile to be independent republics, to which he has no right or inclination to dictate.

"Were the United States to assume an attitude of dictation towards the South American republics, even for the purpose of preventing war, the greatest of evils, or to preserve the autonomy of nations, it must be prepared by army and navy to enforce its mandate, and to this end tax our people for the exclusive benefit of foreign nations.

"The President's policy with the South American republics and other foreign nations is that expressed in the immortal address of Washington, with which you are entirely familiar. What the President does seek to do, is to extend the kindly offices of the United States impartially to both Peru and Chile, whose hostile attitude to each other he seriously laments; and he considers himself fortunate in having one so competent as yourself to bring the powers of reason and persuasion to bear in seeking the termination of the unhappy controversy; and you will consider as revoked that portion of your original instruction which directs you on the contingency therein stated as follows:

"'You will say to the Chilean government that the President considers such a proceeding as an intentional and unwarranted offense, and that you will communicate such an avowal to the government of the United States with the assurance that it will be regarded by the government as an act of such unfriendly import as to require the immediate suspension of all diplomatic intercourse. You will inform me immediately of the happening of such a contingency, and instructions will be sent to you.'

"Believing that a prolific cause of contention between nations is an irritability which is too readily offended, the President prefers that he shall himself determine after report has been made to him whether there is or is not cause for offense.*

"It is also the President's wish that you do not visit (although indicated in your original instruction you should do so), as the envoy of this government, the Atlantic republics after leaving Chile.

"The United States is at peace with all the nations of the earth, and the President wishes hereafter to determine whether it will conduce to that general peace, which he would cherish and promote, for this government to enter into negotiations and consultation for the promotion of peace with selected friendly nationalities without extending a like confidence to other peoples with whom the United States is on equally friendly terms.

"If such partial confidence would create jealousy and ill-will, peace, the object sought by such consultation, would not be promoted."

Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, No. 6, Jan. 9, 1882, For. Rel. 1882, 57; War in South America, 186.

"On the other hand, he remains convinced that the United States has no right which is conferred either by treaty stipulations or by public law to impose upon the belligerents, unasked, its views of a just settlement, and it has no interests at stake commensurate with the evils that might follow an interference, which would authorize it to interpose between these parties, further than warranted by treaties, by public law, or by the voluntary acts of both parties." (Mr. Frelinghuysen, Sec. of State, to Mr. Trescot, No. 7, Feb. 24, 1882, For. Rel. 1882, 73, 75.)

The representatives of the United States in South America were directed by Mr. Frelinghuysen harmoniously to join in a courteous and friendly effort to aid the belligerent powers in reaching an agreemen for peace, which, while securing to Chile the legitimate results of success, should at the same time not be unduly severe upon Peru and Bolivia. The American minister at Santiago was instructed to suggest to the Chilean government, as the basis for a treaty of peace, the cession to Chile of the Peruvian territory of Tarapacá and the submission to arbitration of the question whether any additional territory should be ceded, and if so, how much and on what terms. When this instruction reached Santiago, a substantial agreement had been effected by Chile with General Iglesias, as the representative of Peru. By this agreement Chile was to receive the province of Tarapacá and was to occupy for ten years the provinces of Tacna and Arica, at the end of which time a plebiscite was to be taken to determine which of the two powers should permanently hold those provinces, the successful power to pay to the other the sum of $10,000,000. These terms, said Mr. Frelinghuysen, were more severe upon Peru than those which Chile and previously been willing to grant. It was after Señor Calderon had declined the terms of settlement offered by Chile, through the mediation of the American minister at Santiago, that Chile turned to General Iglesias and obtained from him the settlement above described. Under the existing conditions one of the most delicate and important questions to be decided was as to who should be recognized as the executive representative of the sovereignty of Peru. "It is not for this government," said Mr. Frelinghuysen, "to dictate to sovereign belligerent powers the terms of peace to be accepted by them, nor is it the right or duty of the United States in the premises to do more than to aid by their unprejudiced counsels, their friendly mediation, and their moral support the obtainment of peace—the much-desired end. If such an end can be reached in a manner satisfactory to all parties more speedily through negotiations with Peruvian authority other than that heretofore recognized by this government as the *de facto* ruler of Peru, this government will not, through any spirit of pride or pique, stand in the way of the hoped-for result."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, No. 6, July 26, 1883, For. Rel. 1883, 709.

"I transmit herewith for your information a copy of a dispatch from Mr. Logan, communicating the text of the protocol signed between General Iglesias and the Chilean general, Norva, leading to a definitive treaty of peace.

"An examination of the terms of the protocol shows that the foreign debt of Peru is guaranteed only to a limited extent by a por-

tion only of the guano product, the overplus, as well as all future discoveries of guano, to go to Chile.

"This government does not undertake to speak for any other than the lawful interests of American citizens which may be involved in this settlement, but as to them it must be frankly declared and unmistakably understood that the United States could not look with favor upon any eventual settlement which may disregard such interests.

"It may be difficult for you, in concert with your colleagues, to advocate any determinate solution of the embarrassing questions relating to the other foreign debt of Peru, since this government can not undertake to advocate the interests of any class of bondholders or other legitimate creditors of Peru without exercising a like watchful consideration for the interests of all. It seems, however, to be essential to a just and lasting peace either that Peru should be left in a condition to meet obligations toward other governments which were recognized prior to the war or which may be legitimately established, or that if Chile appropriates the natural resources of Peru as compensation for the expenses of the war she should recognize the obligations which rest upon those resources, and take the property with a fair determination to meet all just incumbrances which rest upon it.

"The President would see with regret any insistence by Chile upon a policy which would impose upon Peru heavier burdens than she has been disposed to impose during the past negotiations.

"Better terms, if offered, would be appreciated by him as a friendly recognition of the earnestness which this government has shown in endeavoring to bring about an honorable and equitable end to the painful strife."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, No. 8, Aug. 25, 1883, For. Rel. 1883, 711.

"The opinion of the United States heretofore has been, that as the foreign obligations of Peru, incurred in good faith before the war, rested upon and were secured by the products of her guano deposits, Chile was under a moral obligation not to appropriate that security without recognizing the lien existing thereon. This opinion was frankly made known to Chile, and our belief was expressed that no arrangement would be made between the two countries by which the ability of Peru to meet her honest engagements towards foreigners would be impaired by the direct act of Chile. This government went so far as to announce that it could not be a party, as mediator, or directly lend its sanction to any arrangement which should impair the power of Peru to pay those debts."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, No. 27, Dec. 29, 1883, MS. Inst. Peru, XVII. 33.

See, also, Mr. Frelinghuysen to Mr. Phelps, tel., Feb. 28, 1884, MS. Inst. Peru, XVII. 41.

"Your several dispatches, so far as received to date, reporting the military and political situation in Peru, have been considered with the attention demanded by the importance of the occurrences you narrate. As supplemented by your later telegrams, they show the conclusion of a treaty of peace between General Iglesias and the Chilian plenipotentiary, on what are understood here to be bases substantially in accord with the terms of the protocol previously signed between General Iglesias and the representative of Chile; the evacuation of Lima by the Chilean forces; the installation there of a form of provisional administration under the Presidency of General Iglesias; and the revolt of the residents or garrison of Arequipa against the authority of Vice-President Montero, who thereupon escaped by flight. Besides this, it appears that the first public act of General Iglesias on assuming control of the provisional government thus established, was to issue a convocation for an assembly of delegates, to be chosen by the people of Peru, to whom is to be referred the question of accepting and ratifying the treaty which has been signed, and who are further to decide the Presidency of the Peruvian government.

"Of the terms of the treaty itself I can not at present speak. You are already acquainted with the views of this government upon the main point involved. It remains to be seen whether the people of Peru, in the expression of their national sovereignty, are disposed to accept the terms proposed to them. With this the government of the United States has no desire to interfere. It respects the independence of Peru as a commonwealth entitled to settle its own affairs in its own way. It recognizes too keenly the calamities of protracted strife, or the alternative calamity of prolonged military occupation by an enemy's forces, to seek, by anything it may say or do, to influence an adverse decision of the popular representatives of Peru. And a due respect for their sovereign independence forbids the United States from seeming to exert any positive or indirect pressure upon these representatives to influence their course.

"The state of facts reported by you makes it necessary to give you instructions respecting your relations with the provisional government. With the people of Peru this country aims, as it has always aimed, to maintain relations of friendship and sympathy. With the particular administration which may for the time assume to control the affairs of Peru we have little direct concern, except so far as our attitude towards it shall express our friendliness to the nation; hence we have no partiality for the Calderon-Montero government or desire that you should manifest any. Should the assembly which is about to convene be elected under circumstances entitling it to represent the people of Peru and declare for General Iglesias, this government would no doubt recognize him. This, however, it is unnecessary to say, as such an announcement in advance of the action of the assembly

might in effect exert an influence upon its deliberations, which we seek to avoid. . . ."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, No. 18, Nov. 15, 1883, For. Rel. 1883, 727.

"Your energy in seeking to reach some conclusion is appreciated, but for this government to direct you to tell Peru that it should surrender Tarapacá, Tacna, and Arica, on receiving $10,000,000, would be assuming to decide a question between two nations when we have not been requested to arbitrate, and it would be telling Chile it might properly make claim for the territory. Peru's condition may be so deplorable that it is wise for her to accept these terms, but Peru and not the United States as to this must decide."

Mr. Frelinghuysen, Sec. of State, to Mr. Logan, min. to Chile, tel., Jan. 5, 1883, MS. Inst. Chile, XVII. 48.

(7) SYMPATHY WITH LIBERAL POLITICAL STRUGGLES.

§ 904.

"Born, sir, in a land of liberty; having early learned its value; having engaged in a perilous conflict to defend it; having, in a word, devoted the best years of my life to secure its permanent establishment in my own country, my anxious recollections, my sympathetick feelings, and my best wishes are irresistibly excited, whensoever, in any country, I see an oppressed nation unfurl the banners of freedom. But above all, the events of the French Revolution have produced the deepest solicitude, as well as the highest admiration. To call your nation brave, were to pronounce but common praise. Wonderful people! Ages to come will read with astonishment the history of your brilliant exploits! I rejoice, that the period of your toils and of your immense sacrifices, is approaching. I rejoice that the interesting revolutionary movements of so many years have issued in the formation of a constitution designed to give permanency to the great object for which you have contended. I rejoice that liberty, which you have so long embraced with enthusiasm—liberty, of which you have been the invincible defenders, now finds an asylum in the bosom of a regularly organized government—a government, which, being formed to secure the happiness of the French people, corresponds with the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States, by its resemblance to their own. On these glorious events, accept, sir, my sincere congratulations.

"In delivering to you these sentiments, I express not my own feelings only, but those of my fellow-citizens, in relation to the commencement, the progress, and the issue of the French Revolution: and they will cordially join with me in purest wishes to the Supreme

Being, that the citizens of our sister Republick, our magnanimous allies, may soon enjoy in peace, that liberty which they have purchased at so great a price, and all the happiness which liberty can bestow.

"I receive, sir, with lively sensibility, the symbol of the triumphs and of the enfranchisement of your nation, the colours of France, which you have now presented to the United States. The transaction will be announced to Congress; and the colours will be deposited with those archives of the United States, which are at once the evidences and the memorials of their freedom and independence. May these be perpetual! and may the friendship of the two Republicks be commensurate with their existence."

Answer of President Washington to the address of the French minister, Mr. Adet, on his presenting the colors of France to the United States, January 1, 1796. (2 Wait's State Papers, 98.)

(8) HOSPITALITY TO POLITICAL REFUGEES.

§ 905.

See supra, § 72.

"You are well aware that the deepest interest is felt, among the people of the United States, in the fate of Kossuth and his compatriots of Hungary, who have hitherto escaped the vengeance of Austria and Russia by seeking an asylum within the boundaries of the Ottoman Empire. The accounts respecting them have been so conflicting—sometimes representing them as having escaped, and at others as being captive—that we have not known what to credit, and have, therefore, declined to interfere in their behalf; nor do we now desire to interfere by entangling ourselves in any serious controversy with Russia or Austria. But we can not suppose that a compliance with the dictates of humanity, now that the contest with Hungary is over, would involve our friendly relations with any other power. Should you be of the opinion that our good offices would avail anything to secure their safety and their escape from the hands of those who still pursue them, it is desired by your Government that you should intercede with the Sultan in their behalf. The President would be gratified if they could find a retreat under the American flag, and their safe conveyance to this country, by any one of our national ships which may be about to return home, would be hailed with lively satisfaction by the American people."

Mr. Clayton, Sec. of State, to Mr. Marsh, Jan. 12, 1850, MS. Inst. Turkey, I. 338. Extracts from this instruction were published in S. Ex. Doc. 43, 31 Cong. 1 sess. 13.

"By a dispatch of my predecessor, you were instructed to offer to the Sublime Porte to receive Mr. Kossuth and his companions on

board of one of the national ships of the United States, to convey them to this country.

"It would be extremely gratifying to the government and people of the United States if this proposition could have been, at that time, accepted; but it is understood that its not having been complied with, by the Sublime Porte did not arise from a wish, on His Imperial Majesty's part, to detain them, or from any unwillingness that they should proceed to the United States, but was in consequence of the Sultan's offer to Austria, to detain these persons for one year, at the expiration of which time, unless further conventions should be entered into to prolong their detention, they should be at liberty to depart.

"If this be so, the time is near at hand when their release may be expected, and when they may be permitted to seek an asylum in any part of the world to which they shall be able to procure the means of transportation.

"It is confidently hoped that the Sublime Porte has not made, and will not make, any new stipulation, with any power, for their further detention; and you are directed to address yourself urgently, though respectfully, to the Sublime Porte on this question.

"You will cause it to be strongly represented that while this Government has no desire or intention to interfere, in any manner, with questions of public policy, or international or municipal relations of other governments, not affecting the rights of its own citizens, and while it has entire confidence in the justice and magnanimity and dignity of the Sublime Porte, yet on a matter of such universal interest, it hopes that suggestions proceeding from no other motive, than those of friendship and respect for the Porte, a desire for the continuance and perpetuity of its independence and dignified position among the nations of the earth, and a sentiment of commiseration for the Hungarian exiles, may be received by the Porte in the same friendly spirit in which they are offered, and that the growing good feeling and increasing intercourse between the two governments may be still further fostered and extended by a happy concurrence of opinion and reciprocity of confidence upon this as upon all other subjects. Compliance with the wishes of the government and people of the United States in this respect will be regarded as a friendly recognition of their intercession, and as a proof of national good will and regard.

"The course which the Sublime Porte pursued in refusing to allow the Hungarian exiles to be seized upon its soil by the forces of a foreign state or to arrest and deliver them up itself to their pursuers was hailed with universal approbation, it might be said with gratitude, everywhere throughout the United States, and this sentiment was not the less strong because the demand upon the Sublime Porte was made

by governments confident in their great military power, with armies in the field of vast strength, flushed with recent victory, and whose purposes were not to be thwarted or their pursuit stayed by any obstacle less than the interposition of an empire prepared to maintain the inviolability of its territories and its absolute sovereignty over its own soil.

"This government, jealous of its own territorial rights, regarded with great respect and hearty approbation the firm and lofty position assumed by His Imperial Majesty at that time, and so proudly maintained under circumstances well calculated to inspire doubt, and against demands urged with such gravity and supported by so formidable an array. His Imperial Majesty felt that he should be no longer an independent prince if he consented to be anything less than the sovereign of his own dominions.

"While thus regarding the political position and conduct of the Sublime Porte in reference to other powers, His Majesty's generosity in providing for the wants of the fugitives, thus unexpectedly and in so great numbers throwing themselves upon his protection, is considered equally worthy of admiration. . . .

"For their attempt at independence they have most dearly paid, and now, broken in fortune and in heart, without home or country, a band of exiles, whose only future is a tearful remembrance of the past, whose only request is to spend the remainder of their days in obscure industry, they await the permission of His Imperial Majesty to remove themselves, and all that may remain to them, across the ocean to the uncultivated regions of America, and leave forever a continent which to them has become more gloomy than the wilderness, more lone and dreary than the desert.

"The people of the United States expect from the generosity of the Turkish monarch that this permission will be given. They wait to receive these exiles on their shores, where, without giving just cause of uneasiness to any government, they may enjoy whatever of consolation can be afforded by sympathy for their sufferings and that assistance in their necessities which this people have never been late in offering to any, and which they are not now for the first time called upon to render. Accustomed themselves to high ideas of national independence, the people of the United States would regret to see the government of the vast Empire of Turkey constrained, by the force of circumstances, to exercise the duty of keeping prisoners for other powers.

"You will further say to the Sublime Porte that if, as this government hopes and believes, Mr. Kossuth and his companions are allowed to depart from the dominions of His Imperial Majesty at the expiration of the year commencing in May, 1850, they will find conveyance to the United States in some of its national ships now in the

Mediterranean Sea which can be spared for that purpose, and you will, on receiving assurances that these persons will be permitted to embark, ascertain precisely their numbers, and immediately give notice to the commander of the United States squadron on that station, who will receive orders from the proper authorities to be present with such of the ships as may be necessary or can leave the station to furnish conveyance for Kossuth and his companions to the United States."

Mr. Webster, Sec. of State, to Mr. Marsh, Feb. 28, 1851, MS. Inst. Turkey, I. 346.

"On the 3d of March last both Houses of Congress passed a resolution requesting the President to authorize the employment of a public vessel to convey to this country Louis Kossuth and his associates in captivity.

"The instruction above referred to was complied with, and, the Turkish government having released Governor Kossuth and his companions from prison, on the 10th of September last they embarked on board of the United States steam frigate *Mississippi*, which was selected to carry into effect the resolution of Congress. Governor Kossuth left the Mississippi at Gibraltar for the purpose of making a visit to England, and may shortly be expected in New York. By communications to the Department of State he has expressed his grateful acknowledgments for the interposition of this government in behalf of himself and his associates. This country has been justly regarded as a safe asylum for those whom political events have exiled from their own homes in Europe, and it is recommended to Congress to consider in what manner Governor Kossuth and his companions, brought hither by its authority, shall be received and treated."

President Fillmore, annual message, Dec. 2, 1851 (Mr. Webster, Secretary of State), Richardson's Messages, V. 119.

That the government of the United States contemplated the coming of Kossuth and his companions to America as emigrants is shown not only by Mr. Webster's instructions to Mr. Marsh of Feb. 28, 1851, supra, but also by the joint resolution of Congress, which requested the President to employ a public vessel "if it [should] be the wish of these exiles to emigrate to the United States," and by the instructions of the Secretary of the Navy, who directed Commodore Morgan, the commander of the squadron of the United States in the Mediterranean, to send the steamer *Mississippi* to Constantinople as soon as he should be advised that they desired "to seek a home" in the United States, and that the Sultan had consented to their departure.

Kossuth, in his acceptance of the offer, did not refer to this aspect of it,[a] but it was soon ascertained by the representative of the United States, diplomatic as well as naval, in the East, that he had other views. He embarked on board the *Mississippi* Sept. 10, 1851. At Smyrna and other Mediterranean ports at which the vessel called his presence gave rise to revolutionary demonstrations, in which he himself participated. Especially was this the case at Marseilles, where he went ashore, expecting to proceed through France to England and afterwards to rejoin the *Mississippi* at Gibraltar. A great commotion ensued, and permission to pass through France was refused him. Leaving Marseilles in the midst of what Mr. Hodge, the United States consul, called a "mob valedictory," the *Mississippi* conveyed him to Gibraltar, where he took a steamer for England. He embarked for the United States on the 24th of November on the American steamer *Humboldt*, at Southampton, and arrived at New York on the night of the 4th of December. At Washington he was presented by Mr. Webster to the President. Jan. 5, 1852, he was received by the Senate, and on the 7th by the House. In the Senate the proceedings were purely formal, and there were no addresses; in the House the same formality was observed, but Kossuth, after his presentation, briefly expressed his thanks for the cordiality of his reception.

On the evening of January 7 Kossuth attended a Congressional banquet, at which Mr. William R. King, President of the Senate, assisted by the Speaker of the House, presided, it having been understood that nothing objectionable to those gentlemen as "nonintervention men" should be said at the dinner. Among the speakers was Mr. Webster, who, in concluding his remarks, said:

"The progress of things is unquestionably onward. It is onward with respect to Hungary; it is onward everywhere. Public opinion, in my estimation at least, is making great progress. It will penetrate all resources; it will come more or less to animate all minds; and, in respect to that country for which our sympathies to-night have been so strongly invoked, I can not but say that I think the people of Hungary are an enlightened, industrious, sober, well-inclined community, and I wish only to add that I do not now enter into any discussion of the form of government that may be proper for Hungary. Of course, all of you, like myself, would be glad to see her, when she becomes independent, embrace that system of government which is most acceptable to ourselves. We shall rejoice to see our American model upon the Lower Danube and on the mountains of Hungary. But this is not the first step. It is not that which will

[a] H. Ex. Doc. 78, 32 Cong. 1 sess. 26.

be our first prayer for Hungary. That first prayer shall be that Hungary may become independent of all foreign powers: that her destinies may be intrusted to her own hands and to her own discretion. I do not profess to understand the social relations and connections of races, and of twenty other things that may affect the public institutions of Hungary. All I say is that Hungary can regulate these matters for herself infinitely better than they can be regulated for her by Austria; and, therefore, I limit my aspirations for Hungary, for the present, to that single and simple point—Hungarian independence, Hungarian self-government, Hungarian control of Hungarian destinies."

Curtis, Life of Webster, II. 578. See, as to Mr. Webster's presence at the banquet, his letter to President Fillmore, Jan. 7, 1852, Webster's Private Correspondence, II. 503.

During his visit to Washington Kossuth sought and obtained an interview with Mr. Clay, who was then in feeble health. In the course of an extended conversation Mr. Clay said:

"For the sake of my country you must allow me to protest against the policy you propose to her. Waiving the grave and momentous question of the right of one nation to assume the executive power among nations, for the enforcement of international law, or of the right of the United States to dictate to Russia the character of her relations with the nations around her, let us come at once to the practical consideration of the matter. You tell us yourself, with great truth and propriety, that mere sympathy, or the expression of sympathy, can not advance your purposes. You require material aid. . . . Well, sir, suppose that war should be the issue of the course you propose to us, could we then effect anything for you, ourselves, or the cause of liberty? To transport men and arms across the ocean in sufficient numbers and quantities to be effective against Russia and Austria, would be impossible. . . . Thus, sir, after effecting nothing in such a war, after abandoning our ancient policy of amity and non-intervention in the affairs of other nations, and thus justifying them in abandoning the terms of forbearance and non-interference which they have hitherto preserved toward us; after the downfall, perhaps, of the friends of liberal institutions in Europe, her despots, imitating and provoked by our example, may turn upon us in the hour of weakness and exhaustion, and with an almost irresistible force of reason and of arms, they may say to us: 'You have set us the example; you have quit your own to stand on foreign ground; you have abandoned the policy you professed in the day of your weakness, to interfere in the affairs of the people upon this continent, in behalf of those principles the supremacy of which you say is necessary to your prosperity, to your existence. We,

in our turn, believing that your anarchical doctrines are destructive of, and that monarchical principles are essential to, the peace, security, and happiness of our subjects, will obliterate the bed which has nourished such noxious weeds; we will crush you, as the propagandists of doctrines so destructive of the peace and good order of the world.' The indomitable spirit of our people might and would be equal to the emergency, and we might remain unsubdued, even by so tremendous a combination, but the consequences to us would be terrible enough. You must allow me, sir, to speak thus freely, as I feel deeply, though my opinion may be of but little import, as the expression of a dying man. . . . By the policy to which we have adhered since the days of Washington we have prospered beyond precedent; we have done more for the cause of liberty in the world than arms could effect; we have shown to other nations the way to greatness and happiness. . . . Far better is it for ourselves, for Hungary and for the cause of liberty, that, adhering to our wise pacific system and avoiding the distant wars of Europe, we should keep our lamp burning brightly on this western shore, as a light to all nations, than to hazard its utter extinction, amid the ruins of fallen and falling republics in Europe."

Report of the special committee appointed by the common council of the city of New York to make arrangements for the reception of Gov. Louis Kossuth, Appendix, 574–577.

Kossuth left Washington January 12, 1852. He addressed to President Fillmore a farewell letter, with the request that it might be communicated to Congress. To this request the President, through Mr. Webster, declined to accede, at the same time suggesting that the letter might be sent to the presiding officers of the two Houses. On this suggestion Kossuth subsequently acted, but his letter was coldly received, a motion to print it being carried in the Senate by only one vote, after a debate characterized by much freedom of expression.

After the Congressional banquet Mr. Hülsemann, the Austrian chargé d'affaires, who, in consequence of differences with Mr. Webster, had become unable to communicate with the Department of State, sought an interview with the President, and, although he was not entitled to claim an audience of the head of the state, the President received him and assured him of his desire to maintain friendly relations with Austria. At the end of April, however, Mr. Hülsemann, his relations with the Department of State having undergone no improvement, gave notice of his withdrawal from Washington, assigning as the principal reason therefor the course of Mr. Webster at and previously to the Congressional banquet. Mr. Webster afterwards addressed to Mr. McCurdy, the chargé d'affaires of the United

States at Vienna, a communication in which he maintained that "no foreign government or its representative can take just offense at anything which an officer" of the United States "may say in his private capacity;" that "official communications only are to be regarded as indicating the sentiments and views of the Government of the United States;" and that, if those communications were of a "friendly character," the "foreign government has no right or reason to infer that there is any insincerity in them, or to point to other matters as showing the real sentiments of the government."

S. Ex. Doc. 92, 32 Cong. 1 sess.

Mr. Hülsemann afterwards returned to Washington on an intimation by Mr. Everett, who had succeeded Mr. Webster as Secretary of State, that it would be agreeable to the President if he should resume his post.

The following documents contain correspondence in relation to Kossuth: S. Ex. Doc. 43, 31 Cong. 1 sess., Parts I and II; S. Ex. Doc. 81, 31 Cong. 1 sess.; S. Ex. Doc. 9, 31 Cong. 2 sess.; S. Ex. Doc. 92, 32 Cong. 1 sess.; H. Ex. Doc. 78, 32 Cong. 1 sess.

"M. Kossuth [because of the President's repulse of his appeal for intervention] was in no amiable mood during his visit to Washington. He was reserved and moody, and received the attentions that were lavished upon him with a *distrait* and dissatisfied air, and with a scant return of courtesy. It so happened that I chanced to make my New Year's call on Mr. and Mrs. Webster at the moment that M. Kossuth and his party entered. He stood apart from the few guests that were then present, and his whole bearing threw a chill and restraint over the circle. I remarked to Mrs. Webster that her illustrious guest seemed to be in an unsocial mood, and she replied that when she had attempted to open conversation with him by remarking upon the brightness of the day, he replied that he took no interest in the weather—that his mind was absorbed in painful thoughts about his country—and the conversation, naturally enough, proceeded no further.

"I think it was on the following day that the President gave a dinner to M. Kossuth, to which General Scott and the Cabinet and a few other public men, and to which also I and my wife were invited. As we were about to proceed to the reception room we encountered Mr. and Mrs. Webster, and at the suggestion of the latter Mrs. Webster took my arm and he gave his own to my wife. As we were about to move in this order, a servant announced that M. Kossuth was immediately behind us, whereupon Mr. Webster turned to welcome him, announcing to his wife at the same moment—against her remonstrances, for she felt that he had been rude to her—that we must change 'the order of our going,' and that she must take M. Kossuth's arm. During and after dinner the bearing of the guest, in behalf of whom the banquet had been given, was stately and constrained. It was evident that he felt sore and angry. He stood apart after dinner, in a manner which repelled attempts to enter into conversation with him. His whole appearance, alike by his picturesque cos-

tume and his attitude and expression, suggested a moody Hamlet, whom neither man nor woman pleased. After a vain attempt to engage him in conversation on Hungarian topics, I asked Mr. Fillmore what had happened to his illustrious guest to have thrown him into such an evidently ungenial state of feeling. He said it was in consequence of what had occurred at his presentation. Mr. Fillmore told me that there had been an explicit understanding with M. Kossuth, through his secretary, that there was to be no allusion in his speech, upon being presented, to the subject of aid or intervention on the part of the Government of the United States, in behalf of the party in Hungary that aimed to secure its independence of Austria, and that he had prepared his reply on the assumption that such would be the character of the address. His surprise was therefore great when M. Kossuth in his address invoked that aid, and expressed the hope that it would be given. The President was compelled, on the spur of the moment, to omit what he had prepared to say, and to declare to him, with perfect courtesy, but with equal explicitness, that nothing like sanction, much less material aid, for the cause of the independence of Hungary could be given by the Government of the United States. The reply was admirable, and could not have been improved had Mr. Fillmore anticipated the tenor of Kossuth's address and prepared his answer. It was courteous, yet extremely dignified and decided. Indeed, it may be regarded as fortunate that an occasion so conspicuous occurred for proclaiming at home and to foreign states that the policy of the Government was then, as it had always been, that of absolute nonintervention in the affairs of European nations.

"Mr. Webster, who presented M. Kossuth to the President, wrote on the same day to a friend that 'Mr. Fillmore received him with great propriety, and his address was all right—sympathy, personal respect, and kindness, but no departure from our established policy.' I inferred from Mr. Fillmore's animated description of the scene that he regarded it as an unfair attempt to entrap him into some expression or some omission which might seem to countenance M. Kossuth's cherished hope of inducing the Government to give both its moral and material aid to renew the struggle for Hungarian independence. It is not strange that he should have passionately desired such a result; but it was a singular delusion to suppose it possible that our Government would enter upon the quixotic career of making the United States the armed champion of European nationalities struggling for liberty and independence.

'At the Congressional dinner given to M. Kossuth his reception was most enthusiastic. In common with all the audience, I was completely entranced by his singularly captivating eloquence. I was assigned a seat next to Mr. Seward, and his demonstrations of applause by hands and feet and voice were excessive. The 'Hungarian Whirlwind' certainly carried away everything on that occasion, and mingled all parties into one confused mass of admirers prostrate at Kossuth's feet. The speech seemed to me wanting in no element of a consummate masterpiece of eloquence. The orator's picturesque appearance, his archaic English style, his vibrant and thrilling voice, and his skillfully selected and arranged topics, all concurred in the production of an effect upon his audience such as I have never seen surpassed. As addressed to American statesmen, it exhibited, what

was very rare among foreigners, a perfect understanding of our Government, as the union of separate states with their autonomy in a given sphere, under a general constitution. His eulogium of this arrangement, and his description of its adaptation and its probable adoption by various nationalities in Europe, was very skillful. The union of Germany in one empire may be regarded by some as the first step toward that confederated German republic which he foretold.

"It was doubtful up to the last moment before Mr. Webster's appearance whether he would come and make a speech on that occasion. . . .

"The speech which Mr. Webster made, as we now read it, seems very appropriate to the occasion and to his own position; but his manner was constrained, and after the high pitch of enthusiasm to which the audience had been wrought up, it fell rather heavily upon them, and did not give that measure of encomium of M. Kossuth which their feelings at the moment craved. But Mr. Webster spoke to an audience, many of whom were bitter political foes or alienated friends, and his recent experience in connection with M. Kossuth, while it had not diminished his admiration of his brilliant ability, had convinced him that, though matchless as an orator, he was no statesman. Moreover, his position as Secretary of State made it incumbent upon him to speak with great caution. If there was an intention on the part of Mr. Seward to entrap Mr. Webster into any compromising declarations by which his influence or his prospects might be injured, it was not successful. The speech might not be vehemently admired: it could not justly be condemned." (The Rev. C. M. Butler, Reminiscences of Mr. Webster (pamphlet).)

"The sober second thought brought our public men and our people back to a sense of the true destiny of the Republic, and in this way they were greatly aided by Kossuth's own indiscreet conduct. It soon became apparent that in all this Hungarian business we had departed from the policy marked out by Washington to abstain from intermeddling in the political affairs of Europe, and that our action was inconsistent with the Monroe doctrine, whereby we sought to exclude European nations from extending their political influence on the American hemisphere." (Mr. John W. Foster, A Century of American Diplomacy, 331–332.)

Mr. Marcy, Secretary of State, in a letter to Mr. Mason, chairman of the Senate Committee on Foreign Relations, July 25, 1854, presented the claim of Mr. Marsh, United States minister at Constantinople, and of the United States consul at the same place, for reimbursement for expenses which they had incurred in respect of the Hungarian refugees. "The original number of the refugees," said Mr. Marcy, "was much diminished during their stay in Turkey; a large number escaped through the connivance of the Turkish authorities, and made their way by means of passports or official certificates, given by the United States agents, to different parts of Europe, and even to the United States, some returned to Hungary, others wandered into the interior, and many arrived in Constantinople. . . . Their necessities compelled the legation and the consulate of the United States—the latter then and for a considerable period previously in charge of the memorialist—to contribute, as it is alleged by both, to their relief to an extent which, as stated by Mr. Marsh, was a serious embarrassment to him. He was aware that he could not lawfully

claim any allowance for this expenditure in his account with the contingent fund, but the action of the Government and the expression of public sympathy in America had put him in a position which absolutely compelled him to go much beyond his means in supplying the wants of these suffering outcasts." (7 MS. Report Book, 126.)

With reference to the reception of Mr. A. Dudley Mann, when a Confederate agent, by His Holiness the Pope, and the letter of the Pope to Mr. Davis, see supra, § 72, I. 211. See, for another version of the letter, translated from the *Moniteur*, of Paris, and the letter of Mr. Davis, taken from the same journal, Dip. Cor. 1864, III. 13–14.

In Dip. Cor. 1862, 561, there is printed a dispatch from Mr. Motley, then minister to Austria, of February 12, 1862. From the dispatch, as printed, a passage is omitted. This passage related to an interview which Mr. Motley had had with the Austrian minister of foreign affairs, Count Rechberg, in which the latter stated that he had been informed of an intention on the part of those hostile to the United States Government to publish the secret instructions given by the United States to Mr. Mann when he was sent as an emissary to Hungary, in 1849. Count Rechberg declared that he did not mention the matter in an unfriendly spirit, but declared that, while the United States was "maintaining the principles of legal authority against insurrection and rebellion," the Austrian Government "had no disposition to throw impediments in their path, or to do them any injury." Count Rechberg referred to the instructions as being "secret," and later furnished Mr. Motley with a copy of them. The so-called "secret" instructions were Mr. Clayton's instructions to Mr. Mann, of June 18, 1849, which were published in full with President Taylor's message of March 28, 1850, S. Ex. Doc. 43, 31 Cong. 1 sess., which Mr. Motley had not seen. It was in reality the publication of the instructions in 1850 that led to the Webster-Hülsemann correspondence. Mr. Seward wrote to Mr. Motley that it was not worth while to take much trouble about Mr. Mann's revival of the Hungarian question, and that he had not taken the trouble to look it up. (Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria (confid.), March 10, 1862, MS. Inst. Austria, I. 169.)

3. Intervention in Cuba.

(1) Relations, 1825–1867.

§ 906.

"It appears, on looking into the papers of 1825 and 1826, that so far from our having prohibited Mexico and Colombia from making any attack upon Cuba, we uniformly abstained from doing anything of the kind. The Americans declared they could not see with indifference any state other than Spain in possession of Cuba, and further their disposition to interpose their power should war be conducted in Cuba in a *devastating* manner, and with a view to the excitement of a servile war."

2 Diary of Lord Ellenborough, 188, under date of Feb. 8, 1830, his lordship being then a cabinet minister in the Duke of Wellington's administration.

"The colonies of Spain are near to our own shores. Our commerce with them is large and important, and the records of the diplomatic intercourse between the two countries will show to Her Catholic Majesty's government how sincerely and how steadily the United States has manifested the hope that no political changes might lead to a transfer of these colonies from Her Majesty's Crown. If there is one among the existing governments of the civilized world which for a long course of years has diligently sought to maintain amicable relations with Spain, it is the government of the United States.

Lopez expedition.

"Not only does the correspondence between the two governments show this, but the same truth is established by the history of the legislation of the country, and the general course of the executive government. In this recent invasion, Lopez and his fellow-subjects in the United States succeeded in deluding a few hundred men, by a long-continued and systematic misrepresentation of the political condition of the island, and of the wishes of its inhabitants. And it is not for the purpose of reviving unpleasant recollections that Her Majesty's government is reminded that it is not many years since the commerce of the United States suffered severely from armed boats and vessels which found refuge and shelter in the ports of the Spanish islands. These violations of the law, these authors of gross violence towards the citizens of this republic, were finally suppressed, not by any effort of the Spanish authorities, but by the activity and vigilance of our Navy. This, however, was not accomplished but by the efforts of several years, nor until many valuable lives, as well as a vast amount of property, had been lost. Among others, Lieutenant Allen, a very valuable and distinguished officer in the naval service of the United States, was killed in an action with these banditti."

Mr. Webster, Sec. of State, to Mr. Barringer, Nov. 26, 1851, 6 Webster's Works, 513, 514; cited in 2 Curtis's Life of Webster, 557.

See further, as to the Lopez expedition, 6 Webster's Works, 535; S. Ex. Doc. 41, 31 Cong. 2 sess.; H. Ex. Doc. 2, 32 Cong. 1 sess. pt. 1; H. Ex. Doc. 19, 32 Cong. 1 sess.

As to the cases of the *Georgiana* and *Susan Loud*, and the Contoy prisoners, see Mr. Bayard, Sec. of State, to Mr. King, Oct. 30, 1885, 157 MS. Dom. Let. 499; to Mr. Allison, March 5, 1886, 159 id. 232, both citing H. Ex. Doc. 83, 32 Cong. 1 sess.

Case of the "Crescent City."

In September, 1852, the Spanish authorities at Havana, on the arrival at that port of the American mail steamer *Crescent City*, ordered the captain to keep Mr. Smith, the purser, on board, and not to permit him to come on shore, on the ground that he had written calumnies against the captain-general of the island. The political secretary of the island

subsequently stated that no vessel belonging to the company which owned the *Crescent City* would be permitted to enter the port of Havana with Mr. Smith on board, or with any other person who made use of his position in the line to write abusive articles against the captain-general. The captain denied that Mr. Smith had written or composed any such article as he was charged with having produced. The *Crescent City* returned to Havana in October, again having Mr. Smith on board as purser, and was at once ordered to sea. Neither mails nor passengers were permitted to land, and the ship was obliged to leave in a gale. The government of the United States complained of the action of the Cuban authorities. The right of the captain-general to prohibit the entrance into the island of any person whose presence might be dangerous was not questioned, but it was maintained that this right ought to be exercised on reasonable grounds, and that, in refusing to permit the passengers or mails of the *Crescent City* to be landed because Purser Smith was on board, or even to permit the vessel to enter the harbor, the captain-general had gone far beyond the necessities of the case, and had taken a step of which the United States had a right to complain.

Mr. Everett, Sec. of State, to Mr. Sharkey, consul at Havana, No. 18, Nov. 30, 1852, H. Ex. Doc. 86, 33 Cong. 1 sess. 45; Mr. Everett, Sec. of State, to Mr. Barringer, min. to Spain, No. 66, Dec. 4, 1852, id. 47; same to same, No. 73, Feb. 4, 1853, id. 69.

For a complaint of the United States as to the unnecessary detention at Havana of the American mail steamer *Ohio*, see Mr. Marcy, Sec. of State, to Mr. Barringer, min. to Spain, No. 77, April 19, 1853, H. Ex. Doc. 86, 33 Cong. 1 sess. 73.

As to the opening of the mails of the United States by the Cuban authorities, see H. Ex. Doc. 86, 33 Cong. 1 sess.

"The affairs of Cuba formed a prominent topic in my last annual message. They remain in an uneasy condition, and a feeling of alarm and irritation on the part of the Cuban authorities appears to exist. This feeling has interfered with the regular commercial intercourse between the United Staes and the island and led to some acts of which we have a right to complain. But the captain-general of Cuba is clothed with no power to treat with foreign governments, nor is he in any degree under the control of the Spanish minister at Washington. Any communication which he may hold with an agent of a foreign power is informal and a matter of courtesy. Anxious to put an end to the existing inconveniences (which seemed to rest on a misconception), I directed the newly appointed minister to Mexico to visit Havana on his way to Vera Cruz. He was respectfully received by the captain-general, who conferred with him freely on the recent occurrences, but no permanent arrangement was effected. In the meantime the refusal of the captain-general to allow pas-

sengers and the mail to be landed in certain cases, for a reason which does not furnish, in the opinion of this government, even a good presumptive ground for such a prohibition, has been made the subject of a serious remonstrance at Madrid; and I have no reason to doubt that due respect will be paid by the government of His Catholic Majesty to the representations which our minister has been instructed to make on the subject.

"It is but justice to the captain-general to add that his conduct toward the steamers employed to carry the mails of the United States to Havana has, with the exceptions above alluded to, been marked with kindness and liberality, and indicates no general purpose of interfering with the commercial correspondence and intercourse between the island and this country."

President Fillmore, annual message, Dec. 6, 1852, Richardson's Messages, V. 164.

"Black Warrior" case.

"The reply of Mr. Calderon de la Barca, Her Catholic Majesty's minister of foreign relations, to the demand for indemnity and satisfaction which you were instructed to make, is, as you must have anticipated, very unsatisfactory to the President. What further steps should be taken in respect to that case [of the *Black Warrior*], has been with him a matter of very serious deliberation. He has determined to make a final appeal for the adjustment of past difficulties, and for future quiet, in a way which he hopes will impress Spain with the solemn conviction that an adjustment, embracing the future as well as the past, must be made. He will not, however, recommend a resort to an extreme measure until milder means are exhausted. Satisfied with the spirited manner in which you have performed the duties of your mission, in his opinion it would give weight, and perhaps efficiency, to this final appeal he proposes to make, if he should associate with you, in presenting and enforcing it, two other of our most distinguished citizens. By a commission of this high character this country will evince, in the most emphatic manner, its deep solicitude to accomplish the objects in view without the hazard of those protracted delays which usually attend the ordinary course of diplomacy, particularly with such a court as Spain. In order to carry out this purpose of the President, the concurrence of Congress will be required, and it is proposed soon to bring this subject to its consideration.

"With this despatch you will receive another, commenting upon the reply of the Spanish government to the demand you made in the case of the *Black Warrior*, and exposing its unsatisfactory character. Though the President does not think it advisable, in view of what I have stated as to a commission, that you should take any further steps

at present in regard to that case, he has no objection, but on the contrary desires, that Her Catholic Majesty's government should know in what light he views its reply to our claim to reparation.

"You are therefore at liberty to read the accompanying despatch to the Spanish minister of foreign relations and may furnish him with a copy if he desires it."

Mr. Marcy, Sec. of State, to Mr. Soulé, min. to Spain (confidential), June 24, 1854, MS. Inst. Special Missions, III. 60.

See also Mr. Marcy to Mr. Soulé, March 11, March 17, June 22, and Aug. 16, 1854, MS. Inst. Spain, XV. 39, 43, 69.

"It was not until the 22d instant that I received your despatch, written so long ago as the 28th of July, at Barcelona, marked No. 2, separate.

"The survey of the condition of Spain which you have made, while it agrees with the opinion which I have constantly entertained, at the same time presents the salient points of the subject with a distinctness that renders the paper very valuable. The deplorable condition of the finances of that great country seems to be practically incurable by any process which could be endured by the Spanish nation. In the early part of the present year I received, indirectly, information that the Spanish government was then applying for a loan in Paris upon the hypothecation of the government chest of Cuba. Without asking for any explanation I took pains immediately to make it known to the Spanish government that while the United States will remain entirely content with the present relations of the island of Cuba to Spain, they would nevertheless claim a right to be informed of any proceeding in regard to the island which would involve, either directly or indirectly, its resignation by the Spanish Crown. I expressly stated on that occasion that I solicited no reply, but was content to leave the question with the simple but direct intimation which I now recite.

"Since that intimation was given, nothing has been heard or read by me on the subject of a transfer or hypothecation of the Spanish possessions in America. The situation in Spain, as you have described, is sufficiently grave to justify constant vigilance on the part of this government.

"I shall endeavor to practice it."

Mr. Seward, Sec. of State, to Mr. Bancroft, min. to Prussia, No. 22, Oct. 28, 1867, MS. Inst. Prussia, XIV. 486.

(2) TEN YEARS' WAR, 1868–1878.

§ 907.

President's annual message, 1869.

"As the United States is the freest of all nations, so, too, its people sympathize with all peoples struggling for liberty and self-government. But while so sympathizing, it is due to our honor that we should abstain from enforcing our views upon unwilling nations, and from taking an interested part, *without invitation*, in the quarrels between different nations or between governments and their subjects. Our course should always be in conformity with strict justice and law, international and local. Such has been the policy of the administration in dealing with these questions. For more than a year a valuable province of Spain, and a near neighbor of ours, in whom all our people can not but feel a deep interest, has been struggling for independence and freedom. The people and government of the United States entertain the same warm feelings and sympathies for the people of Cuba in their pending struggle that they manifested throughout the previous struggles between Spain and her former colonies in behalf of the latter. But the contest has at no time assumed the conditions which amount to a war in the sense of international law, or which would show the existence of a *de facto* political organization of the insurgents sufficient to justify a recognition of belligerency.

"The principle is maintained, however, that this nation is its own judge when to accord the rights of belligerency, either to a people struggling to free themselves from a government they believe to be oppressive or to independent nations at war with each other.

"The United States has no disposition to interfere with the existing relations of Spain to her colonial possessions on this continent. They believe that in due time Spain and other European powers will find their interest in terminating those relations and establishing their present dependencies as independent powers—members of the family of nations. These dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers.

"The United States, in order to put a stop to bloodshed in Cuba, and in the interest of a neighboring people, proposed their good offices to bring the existing contest to a termination. The offer, not being accepted by Spain on a basis which we believed could be received by Cuba, was withdrawn. It is hoped that the good offices of the United States may yet prove advantageous for the settlement of this unhappy strife. Meanwhile a number of illegal expeditions against Cuba have been broken up. It has been the endeavor of

the Administration to execute the neutrality laws in good faith, no matter how unpleasant the task, made so by the sufferings we have endured from lack of like good faith towards us by other nations."

President Grant, annual message, Dec. 6, 1869, Richardson's Messages, VII. 31.

"On the 26th of March last the United States schooner *Lizzie Major* was arrested on the high seas by a Spanish frigate, and two passengers taken from it and carried as prisoners to Cuba. Representations of these facts were made to the Spanish government as soon as official information of them reached Washington. The two passengers were set at liberty, and the Spanish Government assured the United States that the captain of the frigate in making the capture had acted without law, that he had been reprimanded for the irregularity of his conduct, and that the Spanish authorities in Cuba would not sanction any act that could violate the rights or treat with disrespect the sovereignty of this nation."

President Grant, annual message, Dec. 6, 1869, Richardson's Messages, VII. 32.

"Your despatch of the 13th ultimo, No. 55, in which you announce the definite postponement, in the Cortes, of the consideration of the subject of the proposed reforms in the government of Porto Rico has been received.

"As we have a material and moral interest in those reforms and have made representations on the subject to the Spanish government which have not only been received without objection but have led to a promise on their part that the reforms should be adopted, we necessarily feel pained at the hesitation and delay on this subject. Indeed, these may be regarded as so much having the aspect of bad faith, that you will firmly but with due consideration of national sensibilities protest against the delay which has already taken place in the matter and the seeming purpose indefinitely to postpone it."

Mr. Fish, Sec. of State, to Gen. Sickles, min. to Spain, No. 36, March 11, 1870, MS. Inst. Spain, XVI. 92.

Special message, June 13, 1870.

"In my annual message to Congress, at the beginning of its present session, I referred to the contest which had then for more than a year existed in the island of Cuba between a portion of its inhabitants and the government of Spain, and the feelings and sympathies of the people and government of the United States for the people of Cuba, as for all peoples struggling for liberty and self-government, and said that 'the contest has at no time assumed the conditions which amount to war in the sense of international law, or which would show the existence

of a *de facto* political organization of the insurgents sufficient to justify a recognition of belligerency.'

"During the six months which have passed since the date of that message, the condition of the insurgents has not improved; and the insurrection itself, although not subdued, exhibits no signs of advance, but seems to be confined to an irregular system of hostilities, carried on by small and illy armed bands of men, roaming, without concentration, through the woods and the sparsely populated regions of the island, attacking from ambush convoys and small bands of troops, burning plantations and the estates of those not sympathizing with their cause.

" But if the insurrection has not gained ground, it is equally true that Spain has not suppressed it. Climate, disease, and the occasional bullet have worked destruction among the soldiers of Spain; and although the Spanish authorities have possession of every seaport and every town on the island, they have not been able to subdue the hostile feeling which has driven a considerable number of the native inhabitants of the island to armed resistance against Spain, and still leads them to endure the dangers and the privations of a roaming life of guerrilla warfare.

" On either side the contest has been conducted, and is still carried on, with a lamentable disregard of human life, and of the rules and practices which modern civilization has prescribed in mitigation of the necessary horrors of war. The torch of Spaniard and of Cuban is alike busy in carry devastation over fertile regions: murderous and revengeful decrees are issued and executed by both parties. Count Valmaseda and Colonel Boet, on the part of Spain, have each startled humanity and aroused the indignation of the civilized world by the execution, each, of a score of prisoners at a time, while General Quesada, the Cuban chief, coolly and with apparent unconsciousness of aught else than a proper act, has admitted the slaughter, by his own deliberate order, in one day, of upward of six hundred and fifty prisoners of war.

"A summary trial, with few, if any, escapes from conviction, followed by immediate execution, is the fate of those arrested on either side on suspicion of infidelity to the cause of the party making the arrest.

"Whatever may be the sympathies of the people or of the government of the United States for the cause or objects for which a part of the people of Cuba are understood to have put themselves in armed resistance to the government of Spain, there can be no just sympathy in a conflict carried on by both parties alike in such barbarous violation of the rules of civilized nations, and with such continued outrage upon the plainest principles of humanity.

"We can not discriminate in our censure of their mode of conducting their contest between the Spaniards and the Cubans; each commit the same atrocities and outrage alike the established rules of war.

"The properties of many of our citizens have been destroyed or embargoed, the lives of several have been sacrificed, and the liberty of others has been restrained. In every case that has come to the knowledge of the government an early and earnest demand for reparation and indemnity has been made, and most emphatic remonstrance has been presented against the manner in which the strife is conducted, and against the reckless disregard of human life, the wanton destruction of material wealth, and the cruel disregard of the established rules of civilized warfare.

"I have, since the beginning of the present session of Congress, communicated to the House of Representatives, upon their request, an account of the steps which I had taken, in the hope of bringing this sad conflict to an end, and of securing to the people of Cuba the blessings and the right of independent self-government. The efforts thus made failed, but not without an assurance from Spain that the good offices of this government might still avail for the objects to which they had been addressed.

"During the whole contest the remarkable exhibition has been made of large numbers of Cubans escaping from the island and avoiding the risks of war; congregating in this country at a safe distance from the scene of danger, and endeavoring to make war from our shores, to urge our people into the fight which they avoid, and to embroil this government in complications and possible hostilities with Spain. It can scarce be doubted that this last result is the real object of these parties, although carefully covered under the deceptive and apparently plausible demand for a mere recognition of belligerency.

"It is stated, on what I have reason to regard as good authority, that Cuban bonds have been prepared to a large amount, whose payment is made dependent upon the recognition by the United States of either Cuban belligerency or independence. The object of making their value thus contingent upon the action of this government is a subject for serious reflection.

"In determining the course to be adopted on the demand thus made for a recognition of belligerency, the liberal and peaceful principles adopted by the 'Father of his Country' and the eminent statesmen of his day, and followed by succeeding Chief Magistrates and the men of their day, may furnish a safe guide to those of us now charged with the direction and control of the public safety.

"From 1789 to 1815 the dominant thought of our statesmen was to keep the United States out of the wars which were devastating Europe. The discussion of measures of neutrality begins with the

state papers of Mr. Jefferson when Secretary of State. He shows that they are measures of national right as well as of national duty; that misguided individual citizens can not be tolerated in making war according to their own caprice, passions, interests, or foreign sympathies; that the agents of foreign governments, recognized or unrecognized, can not be permitted to abuse our hospitality by usurping the functions of enlisting or equipping military or naval forces within our territory. Washington inaugurated the policy of neutrality and of absolute abstinence from all foreign entangling alliances, which resulted, in 1794, in the first municipal enactment for the observance of neutrality.

"The duty of opposition to filibustering has been admitted by every President. Washington encountered the efforts of Genet and the French revolutionists; John Adams, the projects of Miranda; Jefferson, the schemes of Aaron Burr. Madison and subsequent Presidents had to deal with the question of foreign enlistment or equipment in the United States, and since the days of John Quincy Adams it has been one of the constant cares of government in the United States to prevent piratical expeditions against the feeble Spanish-American republics from leaving our shores. In no country are men wanting for any enterprise that holds out promise of adventure or of gain.

"In the early days of our national existence the whole continent of America (outside of the limits of the United States), and all its islands, were in colonial dependence upon European powers.

"The revolutions which, from 1810, spread almost simultaneously through all the Spanish-American continental colonies, resulted in the establishment of new states, like ourselves, of European origin, and interested in excluding European politics and the questions of dynasty and of balances of power from further influence in the New World.

"The American policy of neutrality, important before, became doubly so from the fact that it became applicable to the new republics as well as to the mother country.

"It then devolved upon us to determine the great international question, at what time and under what circumstances to recognize a new power as entitled to a place among the family of nations, as well as the preliminary question of the attitude to be observed by this government toward the insurrectionary party, pending the contest.

"Mr. Monroe concisely expressed the rule which has controlled the action of this government with reference to revolting colonies pending their struggle, by saying, 'As soon as the movement assumed such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled, by the laws of nations as equal parties to a civil war, were extended to them.'

"The strict adherence to this rule of public policy has been one of the highest honors of American statesmanship, and has secured to this government the confidence of the feeble powers on this continent, which induces them to rely upon its friendship and absence of designs of conquest, and to look to the United States for example and moral protection. It has given this government a position of prominence and of influence which it should not abdicate, but which imposes upon it the most delicate duties of right and of honor regarding American questions, whether those questions affect emancipated colonies or colonies still subject to European dominions. [President Grant here discusses the "question of belligerency" as "one of fact," and argues that the circumstances do not warrant the recognition of Cuban belligerency. The passage may be found in Chapter III., § 67, vol. 1, pp. 194–196.] . . .

"In view of the gravity of this question, I have deemed it my duty to invite the attention of the war-making power of the country to all the relations and bearings of the question in connection with the declaration of neutrality and granting of belligerent rights.

"There is not a *de facto* government in the island of Cuba sufficient to execute law and maintain just relations with other nations. Spain has not been able to suppress the opposition to Spanish rule on the island, nor to award speedy justice to other nations, or citizens of other nations, when their rights have been invaded.

"There are serious complications growing out of the seizure of American vessels upon the high seas, executing American citizens without proper trial, and confiscating or embargoing the property of American citizens. Solemn protests have been made against every infraction of the rights either of individual citizens of the United States or the rights of our flag upon the high seas, and all proper steps have been taken and are being pressed for the proper reparation of every indignity complained of.

"The question of belligerency, however, which is to be decided upon definite principles and according to ascertained facts, is entirely different from and unconnected with the other questions of the manner in which the strife is carried on on both sides, and the treatment of our citizens entitled to our protection.

"These questions concern our own dignity and responsibility, and they have been made, as I have said, the subjects of repeated communications with Spain, and of protests and demands for redress on our part. It is hoped that these will not be disregarded; but should they be, these questions will be made the subject of further communication to Congress."

President Grant, special message, June 13, 1870, Richardson's Messages, VII. 64.

"I inclose a copy of a decree said to have been made by a military tribunal in Cuba, and published in the *Diario de la Marina* on the 9th of November, current.

"This decree purports to condemn to death sundry persons named in it as the central republican junta of Cuba and Porto Rico, established in New York, and to confiscate their property. It appears affirmatively in the decree that none of the condemned had appeared before the court.

"This revolutionary body, known as the Cuban junta, voluntarily disbanded itself about one month before this decree was made, and announced its intention to discontinue any hostile purpose it might have entertained against Spanish rule in Cuba. During its previous history its acts, so far as conflicting with the laws of the United States and the international duties of this government, were repressed by the President. This Department has also been officially informed by Mr. Roberts that the state of affairs in Cuba is regarded as a favorable one by the Spanish government, and that in consequence of that the extraordinary powers previously vested in him had been withdrawn. This government has, therefore, seen with surprise and regret the announcement of a policy in Cuba which is apparently uncalled for by any present emergencies, which is not in harmony with the ideas now entertained by the most enlightened nations as to the treatment of political offenses, and which, as it appears to us, will tend to continue the unhappy disturbances which exist in Cuba. We recognize, however, that, so far as this is a purely domestic question between the government of Spain and the persons or properties of those who are subject to that government, the United States have no other right to interpose than that growing out of the friendly relations which have always existed between them and Spain, and the good faith with which they have observed their duties and obligations in this contest. It appears, however, that on this list are to be found the names of some persons who claim to be citizens of the United States. As to each such person you will inform the minister for foreign affairs that, if it shall appear that his claim to be a citizen of the United States is valid, and that he has done no act to forfeit his rights as such, it will be claimed and insisted that he is entitled to the trial by civil tribunal, and in the ordinary forms of law which are guaranteed to citizens of the United States by the article of the treaty of 1795 which has already been made the subject of correspondence between you and the Spanish government."

Mr. Fish, Sec. of State, to Mr. Sickles, min. to Spain, No. 111, Nov. 25, 1870, For. Rel. 1871, 733.

"Although this [a proclamation by the governor-general of Cuba threatening death to insurgents taken prisoners with arms in

their hands] is a measure touching the internal affairs of a country which is within the exclusive jurisdiction of the government of that country, it seems to be of a character so inhuman and so much at variance with the practice of Christian and civilized states in modern times under similar circumstances, that this government regards it as its duty merely as a friend of Spain, to protest and remonstrate against the carrying it into effect."

Mr. Fish, Sec. of State, to Mr. Roberts, Jan. 8, 1872, MS. Notes to Spain, IX. 61.

For Mr. Webster's letter of intercession for the participants in the Lopez expedition, see 6 Webster's Works, 513; S. Ex. Doc. 41, 31 Cong. 2 sess.; H. Ex. Docs. 2 and 19, 32 Cong. 1 sess.

As to interposition with the British Government in favor of certain Fenian prisoners captured in Canada, see Mr. Seward, Report to the President, July 26, 1866; MS. Report Book No. 9. (See, also, H. Ex. Doc. 154, 39 Cong. 1 sess.)

For the application of Mr. Fish, Sec. of State, to the Spanish Government for the release of Santa Rosa, in 1872, see Mr. Fish to Admiral Polo, Dec. 17, 1872, For. Rel. 1873, II. 1047.

Annual message, 1870.

"It is not understood that the condition of the insurrection in Cuba has materially changed since the close of the last session of Congress. In an early stage of the contest the authorities of Spain inaugurated a system of arbitrary arrests, of close confinement and of military trial, and execution of persons suspected of complicity with the insurgents, and of summary embargo of their properties, and sequestration of their revenues by executive warrant. Such proceedings, so far as they affected the persons or property of citizens of the United States, were in violation of the provisions of the treaty of 1795 between the United States and Spain. Representations of injuries resulting to several persons claiming to be citizens of the United States, by reason of such violations, were made to the Spanish government. From April, 1869, to June last the Spanish minister at Washington had been clothed with a limited power to aid in redressing such wrongs. That power was found to be withdrawn, 'in view,' as it was said, 'of the favorable situation in which the island of Cuba' then 'was;' which, however, did not lead to a revocation or suspension of the extraordinary and arbitrary functions exercised by the executive power in Cuba, and we were obliged to make our complaints at Madrid. In the negotiations thus opened, and still pending there, the United States only claimed that, for the future, the rights secured to their citizens by treaty should be respected in Cuba, and that, as to the past, a joint tribunal should be established in the United States, with full jurisdiction over all such claims. Before such an impartial tribunal each claimant would be required to prove his case. On the other hand, Spain

would be at liberty to traverse every material fact, and thus complete equity would be done. A case which, at one time, threatened seriously to affect the relations between the United States and Spain has already been disposed of in this way. The claim of the owners of the *Colonel Lloyd Aspinwall*, for the illegal seizure and detention of that vessel, was referred to arbitration, by mutual consent, and has resulted in an award to the United States, for the owners, of the sum of nineteen thousand seven hundred and two dollars and fifty cents, in gold. Another and long-pending claim of like nature, that of the whaleship *Canada*, has been disposed of by friendly arbitrament during the present year. It was referred, by joint consent of Brazil and the United States, to the decision of Sir Edward Thornton, Her Britannic Majesty's minister at Washington, who kindly undertook the laborious task of examining the voluminous mass of correspondence and testimony submitted by the two governments, and awarded to the United States the sum of one hundred thousand and seven hundred and forty dollars and nine cents, in gold, which has since been paid by the imperial government. These recent examples show that the mode which the United States has proposed to Spain for adjusting the pending claims is just and feasible, and that it may be agreed to by either nation without dishonor. It is to be hoped that this moderate demand may be acceded to by Spain without further delay. Should the pending negotiations, unfortunately and unexpectedly, be without result, it will then become my duty to communicate that fact to Congress and invite its action on the subject."

President Grant, annual message, Dec. 5, 1870, For. Rel. 1870, 4.

Annual message, 1871.

"It is to be regretted that the disturbed condition of the island of Cuba continues to be a source of annoyance and of anxiety. The existence of a protracted struggle in such close proximity to our own territory, without apparent prospect of an early termination, cannot be other than an object of concern to a people who, while abstaining from interference in the affairs of other powers, naturally desire to see every country in the undisturbed enjoyment of peace, liberty, and the blessings of free institutions.

"Our naval commanders in Cuban waters have been instructed, in case it should become necessary, to spare no effort to protect the lives and property of bona fide American citizens, and to maintain the dignity of the flag.

"It is hoped that all pending questions with Spain growing out of the affairs in Cuba may be adjusted in the spirit of peace and conciliation which has hitherto guided the two powers in their treatment of such questions."

President Grant, annual message, Dec. 4, 1871, For. Rel. 1871, vii.

Colombian circular.

September 26, 1872, Señor Jil Colunje, secretary of interior and foreign relations of Colombia, issued a circular to the governments of America in relation to the Cuban question. He referred to the fact that the contest had lasted for four years, and that there was no prospect of its termination. Its horrors multiplied as time advanced. All "means of extermination," "from devastation to burning, and from confiscation to the gibbet," were brought into action; and the island would become "a field of ruin and desolation." The nations of the American continent could not remain "calm spectators of so desperate a struggle." Everything combined to "awaken the most earnest sympathy," which had been expressed by the President of the United States in his annual message of December, 1869. The rights of Cuba should no longer be ignored. Moreover, the elevation of Cuba to the rank of a nation would signify the disappearance of slavery. The government of Colombia therefore felt itself justified in proposing that all the governments of Spanish America in accord with the United States take "common action for the obtainment from that of Spain of the recognition of the independence of Cuba." Should the expenses incurred in the war be an obstacle to Spain's acceding to the views of the mediating governments, they might agree to reimburse her pro rata, while they themselves would require no reimbursement, though, if it should be required, the resources of Cuba would be ample. Should the proposal of mediation be accepted, the first step to be taken, in view of the possible protraction of the negotiations, would be "immediate regulation of the war by the discontinuance of confiscation and capital punishment for political offenses, as well as all other illegitimate means of warfare."

A copy of this circular was sent by Mr. Fish to certain diplomatic officers.

Mr. Fish, Sec. of State, to certain diplomatic officers, confidential circular, Jan. 30, 1873, enclosing a copy of Señor Jil Colunje's circular, MS. Inst. Argentine Republic, XVI. 29.

"Your despatch No. 56, of the 26th ultimo, relative to the circular of the Colombian government in regard to Cuban affairs, has been received. It is accompanied by a copy and translation of a note upon the subject, of the 3d of February last, addressed by the minister for foreign affairs of Peru to the minister for foreign affairs of Colombia. I am not, however, certain that I fully understand the views and purposes of the Peruvian government upon the subject as expressed in that paper. It contains at least one expression, however, to which I must take exception. At the close of the 4th paragraph of his note Mr. Aguero speaks of the inefficiency of the arbitrament (arbiter, as translated by you) to attain the object sought.

This seems to imply that the arbitrament of this government between the Spaniards and the insurgents in Cuba had been employed, but had failed. This is contrary to the fact. No such measure has been undertaken. In no event would it be attempted pursuant to the Colombian circular unless the answers of the Spanish-American states to that circular and the condition of affairs in Cuba had given ground to expect that our intervention would be successful. This event has not yet happened, and there does not seem to be any immediate prospect of its occurrence. It is certain, however, that our zeal in behalf of the step proposed by Colombia would not be increased by her having taken it for granted that our intervention would in any event be employed. The measure would have been much more acceptable to us, whatever might be the probability of its success, if, before the circular had been issued, we had been consulted as to our disposition to accept the functions of an arbiter."

Mr. Fish, Sec. of State, to Mr. Thomas, No. 50, June 23, 1873, MS. Inst. Peru, XVI. 252.

Efforts to use good offices.

"The present ministry in Spain has given assurance to the public, through their organs of the press, and have confirmed the assurance to you personally, (as you have reported in recent dispatches,) of their intention to put in operation a series of extensive reforms, embracing among them some of those which this government has been earnest in urging upon their consideration in relation to the colonies which are our near neighbors.

"Sustained, as is the present ministry, by the large popular vote which has recently returned to the Cortes an overwhelming majority in its support, there can be no more room to doubt their ability to carry into operation the reforms of which they have given promise than there can be justification to question the sincerity with which the assurance was given. It seems, therefore, to be a fitting occasion to look back upon the relations between the United States and Spain, and to mark the progress which may have been made in accomplishing those objects in which we have been promised her co-operation. It must be acknowledged with regret that little or no advance has been made. The tardiness in this respect, however, cannot be said to be in any way imputable to a want of diligence, zeal, or ability in the legation of the United States at Madrid. The Department is persuaded that no persons, however gifted with those qualities and faculties, could have better succeeded against the apparent apathy or indifference of the Spanish authorities, if, indeed, their past omission to do what we have expected should not be ascribable to other causes.

"The Spanish government, partly at our instance, passed a law providing for the gradual emancipation of slaves in the West India

colonies. This law, so far as this Department is aware, remains unexecuted, and it is feared that the recently issued regulations, professedly for its execution, are wholly inadequate to any practical result in favor of emancipation, if they be not really in the interest of the slaveholder and of the continuance of the institution of slavery. While we fully acknowledge our obligation to the general rule, which requires a nation to abstain from interference in the domestic concerns of others, circumstances warrant partial exceptions to this rule. The United States have emancipated all the slaves in their own territory, as the result of a civil war of four years, attended by a vast effusion of blood and expenditure of treasure. The slaves in the Spanish possessions near us are of the same race as those who were bondsmen here. It is natural and inevitable for the latter to sympathize in the oppression of their brethren, and especially in the waste of life, occasioned by inhuman punishments and excessive toil. Nor is this sympathy confined to those who were recently in bondage among us. It is universal, as it is natural and just. It rests upon the instincts of humanity, and is the recognition of those rights of man which are now universally admitted. Governments can not resist a conviction so general and so righteous as that which condemns as a crime the tolerance of human slavery, nor can governments be in fault in raising their voice against the further tolerance of so grievous a blot upon humanity. You will, consequently, in decisive but respectful terms, remonstrate against the apparent failure of Spain to carry into full effect the act referred to. We acknowledge that this may be a difficult task. The reproaches, open or covert, of those whose supposed interests may be affected by it, to say nothing of other underhand proceedings, must be trying to the patience and highly embarrassing to the statesmen who may be the best disposed toward the measure. All, however, who countenance lukewarmness or neglect in carrying it into effect must, more or less, be liable to the charge of duplicity or bad faith, a charge which every man of honor in high station ought to endeavor to avoid.

"By the enactment of the law of July, 1870, the government of Spain is practically committed to the policy of emancipation. It is true that the law was far from being as comprehensive a measure as was hoped for by the friends of emancipation both in Spain and throughout Christendom, but it was regarded as the entering wedge and the first step toward the extermination of a great wrong, and as the inauguration of a measure of justice and of peace, whereby Spain, to her high honor, declared herself in harmony with the general sentiment of modern civilization and with the principles of unquestioned human rights. It is so manifestly due to that sentiment and to those principles that their recognition, as thus evidenced, be made practical and effective by the enforcement of the law, that it can not be ques-

tioned that Spain, with the pride and the honor that mark her history, will no longer delay the execution of the law and the observance of the pledge to humanity and to justice which was implied in the enactment.

"There is another view which may be taken of this subject. The Spanish government and the Spanish people are understood to be almost unanimously adverse to the independence of Cuba. It will not be denied that the resistance to the enforcement of the emancipation law proceeds almost entirely from those interested in slave property in the island of Cuba, who have, through the successive ministries to which the government of Spain has been intrusted since the enactment of the law in July, 1870, been enabled hitherto to delay and to defeat its execution by preventing the promulgation of regulations effective for the end to which the law was directed.

"An important law is thus nullified through the influence and agency of a class in Cuba who are the most loud in profession of devotion to the integrity of the Spanish territory and to the continuance of Spanish dominion over the island. The example of disregard to laws thus set can not be without its influence. If Spain permits her authority to be virtually and practically defied in that island by a refusal or neglect to carry into effect acts of the home government of a humane tendency, is not this tantamount to an acknowledgment of inability to control? If she refuse to enforce her authority in one instance, why may it not be spurned in others, and will not her supremacy, sooner or later, become nominal only, with no real advantage to herself or her colonies, but to the serious detriment of both, as well as of those other powers whose relations, whether of neighborhood or of commerce, give them special interest in the welfare of those possessions?

"It is also represented that the grasping cupidity of sugar planters in Cuba has succeeded in enabling them virtually to annul their contracts with coolies for a limited term of service, coupled with the privilege of returning to their homes at its close, and that those unfortunate Asiatics, under regulations for an enforced re-engagement when their former contract may have expired, are being practically reduced to the same abject condition as the African slaves. If this be true, it is impossible for the government of any civilized country to be indifferent to so atrocious a proceeding. You will mention this subject to the Spanish minister for foreign affairs, and will not conceal the view which we take of it.

"The insurrection in Cuba has now lasted four years. Attempts to suppress it, so far futile, have been made probably at a sacrifice of more than a hundred thousand lives and an incalculable amount of property. Our commercial and other connections with that island

compel us to take a warm interest in its peaceful and orderly condition, without which there can not be prosperity.

"Cuba being separated from this country by a narrow passage, the temptations for reckless adventurers here to violate our law and embark in hostile expeditions thither is great, despite the unquestioned vigilance of this government to maintain its duty and the efforts with which the approaches to the island have been guarded by the Spanish cruisers. The said proximity has led Cubans and others, partisans of the insurgents, to take up their abode in the United States, actuated by the hope that that proximity would enable them advantageously to plot and act for the advancement of their cause in the island. We certainly have reason to expect that the great strain upon our watchfulness to thwart those schemes occasioned by the long duration of hostilities in Cuba, should have some termination through a cessation of the cause which hitherto has been supposed to make it necessary for the discharge of our duties as a neutral.

"Ever since the insurrection began, we have repeatedly been called upon to discharge those duties. In the performance of them we are conscious of no neglect, but the trial to our impartiality by the want of success on the part of Spain in suppressing the revolt is necessarily so severe that unless she shall soon be more successful it will force upon this government the consideration of the question whether duty to itself and to the commercial interests of its citizens may not demand some change in the line of action it has thus far pursued.

"It is intimated, and is probably true, that the corruption which is more or less inseparable from such protracted contests is itself a principal agent in prolonging hostilities in Cuba. The extortions incident to furnishing supplies for the troops, the hope of sharing in the proceeds of insurgent or alleged insurgent property, would of course be put an end to by the restoration of tranquillity. These must be powerful agencies in fettering the arm which ought to strike home for peace, for order, and the quiet enjoyment of the citizen. It is reasonable to suppose, too, that the saving of the public money which must result from a termination of the conflict would alone be a sufficient incentive for a patriotic government to exert itself to the utmost for that purpose.

"Besides a measure for the abolition of slavery, and assurances of the speedy termination of the contest in Cuba, we have been assured that extensive municipal reforms would be introduced in the colonies, and that their government would be liberalized. Certainly the Spanish government, with its experience of the past, and with the knowledge which it cannot fail to have of the tendencies of the age, can never expect peaceably to maintain the ancient colonial system in

those islands. The abuses of that system press heavily upon the numerous educated natives of the same race, and, if not reformed, must be a constant source of bitter antipathy to the mother country. The repeated assurances of the intention of the government to abolish slavery and to grant liberal reforms in the administration of the island are admissions by Spain of the wrong of slavery and of the existence of evils which need reform, but are still allowed on the illogical and indefensible ground that concession can not be made while resistance continues.

"A nation gives justification to resistance while admitted wrongs remain unredressed; resistance ceases to be justifiable when no wrongs are either admitted or alleged. Redress wrongs and resistance will cease.

"Spain is too great a power to fear to do what she admits to be right because it is asked vehemently; or because its attainment is sought improperly she need not apprehend that the reforming of abuses and of wrongs, which she admits to exist, and declares herself ready to correct, will be attributed to an unworthy motive, while delay in removing admitted wrongs which it is within her power to remove places her in a false position, and goes far to justify and to attract sympathy to those who are sufferers from the unredressed wrongs.

"Spain itself has been the scene of civil commotion, but prisoners taken in arms have not been put to death as they are in Cuba, nor have amnesties been regarded as dangerous in the peninsula; why should they be so regarded in the colonies? or why should concessions be dishonorable in Cuba that are not so considered at home? The suggestion that they would be is the offspring of the selfishness of those interested in prolonging the contest for private gain.

"A just, lenient, and humane policy toward Cuba, if it would not bring quiet and order and contentedness, would at least modify the judgment of the world that most of the evils of which Cuba is the scene are the necessary results of harsh treatment, and of the maladministration of the colonial government.

"You are aware that many citizens of the United States, owners of estates in Cuba, have suffered injury by the causeless seizure, in violation of treaty obligations, of those estates, and by the appropriation of their proceeds by those into whose hands they had fallen. Though in some one or two instances the property has been ordered to be restored, so far there has been no indemnification for the damage sustained. In other instances, where restitution has been promised, it has been evaded and put off in a way which cannot fail to excite the just resentment of the sufferers and of their government, whose duty it is to protect their interests.

"The decree of 31st August last, prescribing regulations for the proceedings concerning sequestrated property in Cuba, so far as it recognized the embargo or confiscation of the property of those charged with complicity in the insurrection, as a judicial proceeding, in which the parties are entitled to be fairly heard, may be regarded as a concession to the frequent remonstrances of this government, as well as to the requirements of justice. But, unless the action of the board to be constituted under that decree exhibit a very different measure of promptness and of activity from that which has been given to the remonstrances of this government against the proceedings whereby the property of citizens of the United States has heretofore been seized, the organization of the board will serve only to increase the very just causes of complaint of this government. It is hoped that it will not be allowed to become the means or the excuse of further procrastination, or of delaying beyond the extremest limits of patience, which have already been reached, the decision upon the many cases which have been the subject of protracted diplomatic correspondence. There will readily occur to you several cases, which need not be specifically enumerated, which have been referred backward and forward between Madrid and Havana to the very verge of the exhaustion of all patience. In the mean time the property of citizens of the United States has been held in violation of the treaty between this country and Spain.

"In some of these cases you have been promised the release of the embargo. It is expected that the tardy redress thus promised will not be further delayed by any alleged necessity of reference to this newly constituted board.

"It is hoped that you will present the views above set forth, and the present grievances of which this government so justly complains, to the government to which you are accredited, in a way which, without giving offense, will leave a conviction that we are in earnest in the expression of those views, and that we expect redress, and that if it should not soon be afforded Spain must not be surprised to find, as the inevitable result of the delay, a marked change in the feeling and in the temper of the people and of the government of the United States. Believing that the present ministry of Spain is in a sufficiently confirmed position of power to carry out the measures which it announces, and the reforms which have been promised, and to do justice by the removal of the causes of our well-founded complaints, and not doubting the sincerity of the assurances which have been given, the United States look confidently for the realization of those hopes which have been encouraged by repeated promises that all causes for estrangement, or for the interruption of those friendly feelings which are traditional, as they are sincere, on the part of this Government toward Spain, will be speedily and forever removed."

Mr. Fish, Sec. of State, to Mr. Sickles, min. to Spain, No. 270, Oct. 29, 1872, For. Rel. 1872, 580.

On April 19, 1872, General Sickles, on his return to Madrid to resume the active duties of his mission, was furnished with a letter of recall with a view to the suspension of diplomatic intercourse through a minister, leaving the business of the legation in the hands of the chargé d'affaires ad interim. This step was proposed in view of the apparent hopelessness at that time of bringing about any essential change in the situation in Cuba. It was declared that the President, in spite of the unsatisfactory relations between the two countries, had no disposition to foment a rupture with Spain, but that, on the contrary, he still hoped that the best understanding might be preserved with that government. But, in case General Sickles withdrew, no new minister was to be accredited to the government of Spain until there should be reason to expect such a change in the disposition of that government with reference to the execution of reforms in Cuba as might lead to greater hope of their success. (Mr. Fish, Sec. of State, to Gen. Sickles, min. to Spain, No. 219, April 19, 1872, MS. Inst. Spain, XVI. 300.)

In a dispatch, No. 452, of October 20, 1872, General Sickles reported an unofficial and confidential inquiry by the Spanish minister of foreign affairs whether the President would consent to exert his good offices for the purpose of endeavoring to restore peace in Cuba on the basis of reforms in the political, social, and administrative system, which reforms were to embrace municipal government, a provincial legislature, and the gradual abolition of slavery. The minister of foreign affairs stated that if assurances to this effect were given to the insurgents by the President, and if, accompanied by his advice and counsel, they should happily induce the insurgents to lay down their arms, Spain would at once proceed to the fulfillment of her promise. Commenting upon these suggestions, Mr. Fish remarked that an accommodation between contending parties should proceed with mutual and reciprocal advances, and that the proposal of the minister of foreign affairs involved an extreme concession on the one side with only an indefinite promise on the other. But, passing this question by, Mr. Fish said that, if Spain was in earnest in the desire for the President's interposition, the minister's informal and unofficial inquiry would be followed by a formal request to that effect. More than three years previously the President was induced to offer to the Spanish cabinet his good offices for the purposes of bringing the war in Cuba to a close. Those good offices were accepted by the then president of the council, but it was subsequently signified that their withdrawal would be convenient. The President was convinced that his good offices would be of no avail unless both parties were disposed to accept reasonable counsels. A definite statement of the particular reforms, and of the degree of self-government and of local administration, which Spain was prepared to concede was essential to any hope of success in an effort by a third party to promote a practical reconciliation. But, if Spain should officially and formally make the request which Mr. Martos's informal and unofficial conversation foreshadowed and should be prepared to state the extent of reforms, embracing among them a provincial legislature to be chosen by the free voice of the inhabitants, the abolition of slavery in all its forms, municipal governments, self-taxation, ample

guarantees of the rights of persons and of property, a strict limitation of the power of officials, exemption from standing armies, and the general control of the internal affairs of the island and of its inhabitants, the President would undertake to present such suggested reforms to those in Cuba who were resisting the authority of Spain and would use his influence to induce their acceptance. In this case it would probably be necessary to embody in a protocol the particulars of the several reforms which Spain proposed. In conclusion, Mr. Fish observed that, if no practical result could be attained, it would seem to be of little avail to continue an envoy extraordinary at Madrid. (Mr. Fish, Sec. of State, to General Sickles, min. to Spain, No. 272, Nov. 16, 1872, MS. Inst. Spain, XVI. 371.)

As to the previous tender of the President's good offices, mentioned by Mr. Fish, see Moore, Int. Arbitrations, II. 1026 et seq.

In acknowledging the receipt of dispatches from General Sickles, Nos. 670 and 672, of July 27 and 31, 1873, Mr. Fish expressed regret that the effort to establish a republican form of government in Spain did not give greater promise of success. The United States had promptly and cordially recognized that government and extended to it the moral effects of its sympathy, and had further manifested its friendly interest by abstaining from the exercise of pressure with regard to affairs in Cuba. Recent information from Havana showed, however, that the decree for the release of embargoed estates had not been proclaimed there and that influences were at work to prevent its publication and to nullify its effects. The President had also heard with deep concern and regret the announcement said to have been made by a member of the ministry of Spain that no reforms will be granted and no notice taken of the demands of the Cuban insurgents so long as they did not lay down their arms. In the interest of Spain, no less than in that of Cuba, of the United States, and of humanity, the President hoped that this might not be the determination of Spain, and General Sickles was to urge upon the ministry the disavowal or abandonment of a policy so inconsistent with the possibility of restoring peace.

Mr. Fish, Sec. of State, to Gen. Sickles, min. to Spain, No. 366, Aug. 27, 1873, For. Rel. 1873, II. 1032.

"Whatever general instructions you may need at the present time for your guidance in representing this government at Madrid have reference entirely to the actual state of the island of Cuba and its relation to the United States as well as to Spain.

"It is now more than five years since an organized body of the inhabitants of that island assembled at Yara, issued a declaration of independence, and took up arms to maintain the declaration. The movement rapidly spread, so as to occupy extensive regions of the

eastern and central portions of the island, and all the resources of the Spanish government have been exerted ineffectually to suppress the revolution and reclaim the districts in insurrection to the authority of Spain. The prosecution of the war on both sides has given rise to many questions, seriously affecting the interests and the honor of the United States, which have become the subject of diplomatic discussion between this government and that of Spain.

"You will receive herewith a selection, in chronological order, of the numerous dispatches in this relation which have passed between the two governments. From these documents you will derive ample information, not only respecting special questions, which have arisen from time to time, but also respecting the general purposes and policy of the President in the premises.

"Those purposes and that policy, as indicated in the accompanying documents, have continued to be substantially the same during the whole period of these events, except in so far as they may have been modified by special circumstances, seeming to impart greater or less prominence to the various aspects of the general question, and thus, without producing any change of principle, yet, according to the particular emergency, to direct the action of the United States.

"It will suffice, therefore, on the present occasion, first, briefly to state these general views of the President; and, secondly, to show their application to the several incidents of this desperate struggle on the part of the Cubans to acquire independence, and of Spain to maintain her sovereignty, in so far as those incidents have immediately affected the United States.

"Cuba is the largest insular possession still retained by any European power in America. It is almost contiguous to the United States. It is pre-eminently fertile in the production of objects of commerce which are of constant demand in this country, and, with just regulations for reciprocal interchange of commodities, it would afford a large and lucrative market for the productions of this country. Commercially, as well as geographically, it is by nature more closely connected with the United States than with Spain.

"Civil dissensions in Cuba, and especially sanguinary hostilities, such as are now raging there, produce effects in the United States second in gravity only to those which they produce in Spain.

"Meanwhile our political relation to Cuba is altogether anomalous, seeing that for any injury done to the United States or their citizens in Cuba we have no direct means of redress there, and can obtain it only by slow and circuitous action by way of Madrid. The captain-general of Cuba has, in effect, by the laws of Spain, supreme and absolute authority there for all purposes of wrong to our citizens; but this government has no adequate means of demanding immediate reparation of such wrongs on the spot, except through a

consul, who does not possess diplomatic character, and to whose representations, therefore, the captain-general may, if he choose, absolutely refuse to listen. And, grievous as this inconvenience is to the United States in ordinary times, it is more intolerable now, seeing that, as abundantly appears, the contest in Cuba is between peninsular Spaniards on the one hand and native-born Spanish-Americans on the other; the former being the real representatives of Spanish force in Cuba, and exerting that force when they choose, with little, if any, respect for the metropolitan power of Spain. The captain-general is efficient to injure, but not to redress, and if disposed to redress, he may be hampered, if not prevented, by resolute opposition on the part of the Spaniards around him, disobedient alike to him and to the supreme government.

"In fine, Cuba, like the former continental colonies of Spain in America, ought to belong to the great family of American republics, with political forms and public policy of their own, and attached to Europe by no ties save those of international amity, and of intellectual, commercial, and social intercourse. The desire of independence on the part of the Cubans is a natural and legitimate aspiration of theirs, because they are Americans. And while such independence is the manifest exigency of the political interests of the Cubans themselves, it is equally so that of the rest of America, including the United States.

"That the ultimate issue of events in Cuba will be its independence, however that issue may be produced, whether by means of negotiation, or as the result of military operations or of one of those unexpected incidents which so frequently determine the fate of nations, it is impossible to doubt. If there be one lesson in history more cogent in its teachings than any other, it is that no part of America large enough to constitute a self-sustaining state can be permanently held in forced colonial subjection to Europe. Complete separation between the metropolis and its colony may be postponed by the former conceding to the latter a greater or less degree of local autonomy, nearly approaching to independence. But in all cases where a positive antagonism has come to exist between the mother country and its colonial subjects, where the sense of oppression is strongly felt by the latter, and especially where years of relentless warfare have alienated the parties, one from another, more widely than they are sundered by the ocean itself, their political separation is inevitable. It is one of those conclusions which have been aptly called the inexorable logic of events.

"Entertaining these views, the President at an early day tendered to the Spanish government the good offices of the United States for the purpose of effecting, by negotiation, the peaceful separation of Cuba from Spain, and thus putting a stop to the further effusion of

blood in the island, and relieving both Cuba and Spain from the calamities and charges of a protracted civil war, and of delivering the United States from the constant hazard of inconvenient complications on the side either of Spain or of Cuba. But the well-intended proffers of the United States on that occasion were unwisely rejected by Spain, and, as it was then already foreseen, the struggle has continued in Cuba, with incidents of desperate tenacity on the part of the Cubans, and of angry fierceness on the part of the Spaniards, unparalleled in the annals of modern warfare.

"True it is that now, when the war has raged for more than five years, there is no material change in the military situation. The Cubans continue to occupy, unsubdued, the eastern and central parts of the island, with exception of the larger cities or towns, and of fortified points held by the government, but their capacity of resistance appears to be undiminished, and with no abatement of their resolution to persevere to the end in repelling the domination of Spain.

"Meanwhile this condition of things grows, day by day, more and more insupportable to the United States. The government is compelled to exert constantly the utmost vigilance to prevent infringement of our law on the part of Cubans purchasing munitions or materials of war, or laboring to fit out military expeditions in our ports; we are constrained to maintain a large naval force to prevent violations of our sovereignty, either by the Cubans or the Spaniards; our people are horrified and agitated by the spectacle, at our very doors, of war, not only with all its ordinary attendants of devastation and carnage, but with accompaniments of barbarous shooting of prisoners of war, or their summary execution by military commissions, to the scandal and disgrace of the age; we are under the necessity of interposing continually for the protection of our citizens against wrongful acts of the local authorities of Spain in Cuba; and the public peace is every moment subject to be interrupted by some unforeseen event, like that which recently occurred, to drive us at once to the brink of war with Spain. In short, the state of Cuba is the one great cause of perpetual solicitude in the foreign relations of the United States.

"While the attention of this government is fixed on Cuba, in the interest of humanity, by the horrors of civil war prevailing there, we can not forbear to reflect, as well in the interest of humanity as in other relations, that the existence of slave labor in Cuba, and its influence over the feelings and interests of the peninsular Spaniards, lie at the foundation of all the calamities which now afflict the island. Except in Brazil and in Cuba, servitude has almost disappeared from the world. Not in the Spanish-American republics alone, nor in the

British possessions, nor in the United States, nor in Russia, not in those countries alone, but even in Asia, and in Africa herself, the bonds of the slave have been struck off, and personal freedom is the all but universal rule and public law, at least to the nations of Christendom. It can not long continue in Cuba, environed as that island is by communities of emancipated slaves in the other West India Islands and in the United States.

"Whether it shall be put an end to by the voluntary act of the Spanish government, by domestic violence, or by the success of the revolution of Yara, or by what other possible means, is one of the grave problems of the situation, of hardly less interest to the United States than the independence of Cuba.

"The President has not been without hope that all these questions might be settled by the spontaneous act of Spain herself, she being more deeply interested in that settlement than all the rest of the world. It seemed for awhile that such a solution was at hand, during the time when the government of Spain was administered by one of the greatest and wisest of the statesmen of that country, or indeed of Europe, President Castelar. Before attaining power he had announced a line of policy applicable to Cuba, which, though falling short of the concession of absolute independence, yet was of a nature to command the approbation of the United States.

"'Let us,' he declared, on a memorable occasion, 'let us reduce to formulas our policy in America.

"'First, *the immediate abolition of slavery.*

"'Secondly, autonomy of the islands of Puerto Rico and Cuba, which shall have a parliamentary assembly of their own, their own administration, their own government, and a federal tie to unite them with Spain, as Canada is united with England, in order that we may found the liberty of those states and at the same time conserve the national integrity. I desire that the islands of Cuba and Puerto Rico shall be our sisters, and I do not desire that they shall be trans-Atlantic Polands.'

"I repeat, that to such a line of policy as this, especially as it relates to Cuba, the United States would make no objection; nay, they could accord to it hearty co-operation and support, as the next best thing to the absolute independence of Cuba.

"Of course, the United States would prefer to see all that remains of colonial America pass from that condition to the condition of absolute independence of Europe.

"But we might well accept such a solution of present questions as, while terminating the cruel war which now desolates the island and disturbs our political intercourse, should primarily and at the outset abolish the iniquitous institution of slavery, and, in the second place, should place Cuba practically in the possession of herself by means

of political institutions of self-government, and enable her, while nominally subject to Spain, yet to cease to be the victim of Spanish colonial interests, and to be capable of direct and immediate relations of interests and intercourse with the other states of America. . . .

"In these circumstances, the question what decision the United States shall take is a serious and difficult one, not to be determined without careful consideration of its complex elements of domestic and foreign policy, but the determination of which may at any moment be forced upon us by occurrences either in Spain or in Cuba.

"Withal the President can not but regard *independence*, and emancipation, of course, as the only certain, and even the necessary, solution of the question of Cuba. And, in his mind, all incidental questions are quite subordinate to those, the larger objects of the United States in this respect.

"It requires to be borne in mind that, in so far as we may contribute to the solution of these questions, this government is not actuated by any selfish or interested motive. The President does not meditate or desire the annexation of Cuba to the United States, but its elevation into an independent republic of freemen, in harmony with ourselves and with the other republics of America.

"You will understand, therefore, that the policy of the United States in reference to Cuba at the present time is one of expectancy, but with positive and fixed convictions as to the duty of the United States when the time or emergency of action shall arrive. When it shall arrive you will receive specific instructions what to do. Meantime, instructed as you now are as to the intimate purposes of the government, you are to act in conformity therewith in the absence of any specific instructions, and to comport yourself accordingly in all your communications and intercourse, official or unofficial, with persons or public men in Spain.

"In conclusion, it remains to be said that, in accordance with the established policy of the United States in such cases, as exemplified in the many changes of government in France during the last eighty years, and in the Mexican Republic since the time of its first recognition by us, and in other cases which have occurred in Europe and America, you will present your credentials to the persons or authorities whom you may find in the actual exercise of the executive power of Spain.

"The President has not, as yet, received any official notice of the termination of the authority of President Castelar and the accession of President Serrano, and, of course, we have no precise information as to the intention or views of the new executive of the Spanish Republic.

"While we can not expect from him any more hearty friendship for the United States than his predecessor entertained, it is to be hoped

that he may not be moved by any unfriendly sentiments toward us. If, however, such should, unhappily, prove to be the case, it would be all the more necessary that you should be vigilantly watchful to detect and report any signs of possible action in Spain to the prejudice of the United States."

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 2, Feb. 6, 1874, For. Rel. 1874, 859.

In a separate instruction, bearing the same date as the foregoing, Mr. Fish discussed the subject of the embargoed estates of American citizens under the decree of April 20, 1869. These estates, said Mr. Fish, had been seized by arbitrary executive act, without judicial hearing or judgment, and in manifest violation of the provisions of the treaty of 1795. Promises had from time to time been made to release some of the estates, but they remained unfulfilled. No relief in such cases could be obtained by the action of the mixed commission sitting at Washington, and the government of the United States had continually insisted that the property itself should be restored to the owners by the same executive authority which made the seizure, leaving only the question of resulting damages to the consideration of the commission. On July 12, 1873, the late government of Spain, on the recommendation of the minister of the colonies, had declared the embargoes to be removed, had ordered the property to be delivered up to its owners, and had appointed a commission to hear and decide summarily on the applications of interested parties. But for a long time no regard was paid to the decree in Cuba. It was not officially published there, and the local authorities even proceeded to advertise for sale embargoed property belonging to American citizens. These things led to further remonstrances by the United States. At length, contemporaneously with the official visit of Señor Soler y Pla, minister of ultramar, to Cuba, partial execution was given to the decree of July 12, 1873, but it was afterwards learned that the delivery of some of the estates covered by the decree was obstructed on the allegation that the estates were subject to leases to third parties for a series of years, although some of the leases were understood to have been given by some pretended authority subsequently to the act of embargo. Moreover, in some of the cases the authorities claimed that the property was under judicial embargo and finally confiscated. Mr. Cushing was instructed to say that the President expected the estates of American citizens seized in Cuba in violation of the provisions of the treaty of 1795, whether by embargo or by confiscation, restored to them without further delay and without any incumbrance imposed by Spanish authority in Cuba. (Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 3, Feb. 6, 1874, For. Rel. 1874, 863.)

Case of the "Virginius."

On April 24, 1874, Mr. Fish transmitted to some of the American ministers, for their confidential information, copies of further correspondence between the Department of State and the Spanish minister at Washington, respecting the case of the *Virginius* and the course of the United States toward the insurrection in Cuba.

Mr. Fish, Sec. of State, to Mr. Jay, min. to Austria, No. 402 (confid.), April 24, 1874, MS. Inst. Austria, II. 227.

The instruction enclosed the following notes: Admiral Polo, Span. min., to Mr. Fish, Dec. 30, 1873; Mr. Fish to Admiral Polo, Jan. 9, 1874; Admiral Polo to Mr. Fish, Feb. 2, 1874; Mr. Fish to Admiral Polo, April 18, 1874.

As to the case of the *Virginius*, see message of President Grant to Congress, Jan. 5, 1874, H. Ex. Doc. 30, 43 Cong. 1 sess.; message of President Grant to Senate, March 15, 1875, S. Ex. B, special sess. The injunction of secrecy was removed from the latter message and correspondence.

As to instructions to American naval commanders in Cuban waters, see message of President Grant to the Senate, Feb. 13, 1872, S. Ex. Doc. 32, 42 Cong. 2 sess.

"The deplorable strife in Cuba continues without any marked change in the relative advantages of the contending forces. The insurrection continues, but Spain has gained no superiority. Six years of strife give to the insurrection a significance which can not be denied. Its duration and the tenacity of its adherence, together with the absence of manifested power of suppression on the part of Spain, can not be controverted, and may make some positive steps on the part of other powers a matter of self-necessity. I had confidently hoped, at this time, to be able to announce the arrangement of some of the important questions between this government and that of Spain, but the negotiations have been protracted. The unhappy intestine dissensions of Spain command our profound sympathy, and must be accepted as perhaps a cause of some delay. An early settlement, in part at least, of the questions between the government is hoped. In the meantime, awaiting the results of immediately pending negotiations, I defer a further and fuller communication on the subject of the relations of this country and Spain."

President Grant, annual message, Dec. 7, 1874, For. Rel. 1874, ix.

It seems that a spurious text of this message was fabricated, upon the strength of which Spain made overtures to European governments looking to some joint action of the European powers in her favor. The correct text of the message was cabled to Mr. Cushing at Madrid on December 15, 1874. (Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, tel., Dec. 15, 1874, MS. Inst. Spain, XVII. 148; Mr. Fish, Sec. of State, to Mr. Davis, min. to Germany, No. 50, Jan. 21, 1875, MS. Inst. Germany, XVI. 12, acknowledging the receipt of Mr. Davis's No. 55, confidential, narrating the substance of an interview with Mr. Von Buelow in reference to Cuba and Spanish affairs.)

On January 21, 1876, President Grant sent to the House of Representatives, in response to a resolution of the 17th of that month, a report from the Secretary of State, with accompanying correspondence with Spain in relation to Cuba.

Instruction No. 266, Nov. 5, 1875.

First and most important among the documents transmitted was an instruction from Mr. Fish to Mr. Cushing, No. 266, of November 5, 1875. This instruction referred to the questions pending between the two countries, the most prominent of which were those arising from the embargo and confiscation of estates of American citizens in Cuba, those relating to the trial of American citizens in that island in violation of treaty obligations, and the claims arising out of the capture of the *Virginius*, including the trial and punishment of General Burriel. On all these subjects, said Mr. Fish, Mr. Cushing was instructed when he went to Madrid, and since that time more than eighteen months had elapsed. With regard to the embargo estates, no effectual result had been accomplished. The general question had been pending for more than six years. The kindred question as to the trial of American citizens in Cuba by court-martial, and their arrest and punishment without trial, in violation of the provisions of the treaty of 1795, was in substantially the same position. This simple narration of facts as to these two questions, the promises made and repeated, the assurances given from time to time that something should be done, the admission of the demands of justice at least to the extent of expressing regret for wrongs and promising redress, followed by absolutely no performance and no practical steps towards performance, needed, said Mr. Fish, no extended comment. As to the *Virginius*, he observed that the particulars of the delivery of the vessel to the United States and the payment of indemnities both to that government and to Great Britain had passed into history. But the higher and more imperative duty, which the Government of Spain assumed by the protocol of November 29, 1873, to bring to justice General Burriel and the other principal offenders in the tragedy, had been evaded and entirely neglected.

Having touched upon these particular questions, Mr. Fish referred to the general condition of affairs in Cuba as affecting the relations between the United States and Spain. It was more than five years, he said, since an organized insurrection had broken out, which the government of Spain had been entirely unable to suppress. Continuing, he said:

"At that time the firm conviction of the President was announced that whatever might be the vicissitudes of the struggle, and whatever efforts might be put forth by the Spanish power in Cuba, no doubt could be entertained that the final issue of the conflict would be to break the bonds which attached Cuba as a colony to Spain.

"While remembering and observing the duties which this government, as one of the family of nations, owes to another member, by public law, treaties or the particular statutes of the United States, it would be idle to attempt to conceal the interest and sympathy with which Americans in the United States regard any attempt of a

numerous people on this continent to be relieved of ties which hold them in the position of colonial subjection to a distant power, and to assume the independence and right of self-control which natural rights and the spirit of the age accord to them.

"When, moreover, this struggle, in progress on our very borders, from its commencement has involved the property and interests of citizens of the United States; has disturbed our tranquillity and commerce; has called upon us not infrequently to witness barbarous violations of the rules of civilized warfare, and compelled us for the sake of humanity to raise our voice by way of protest, and when more than all we see in the contest the final struggle in this hemisphere between slavery and freedom, it would be strange indeed if the Government and people of this country failed at any time to take peculiar interest in the determination of such contest.

"In this early instruction was expressed the sincere and unselfish hope of the President that the government of Spain would seek some honorable and satisfactory adjustment, based upon emancipation and self-government, which would restore peace and afford a prospect of a return of prosperity to Cuba.

"Almost two years have passed since those instructions were issued and those strong hopes expressed, and it would appear that the situation has in no respect improved.

"The horrors of war have in no perceptible measure abated; the inconvenience and injuries which we then suffered have remained, and others have been added; the ravages of war have touched new parts of the island and well-nigh ruined its financial and agricultural system and its relations to the commerce of the world. No effective steps have been taken to establish reforms or remedy abuses, and the effort to suppress the insurrection, by force alone, has been a complete failure.

"In the meantime the material interests of trade and of commerce are impaired to a degree which calls for remonstrance, if not for another line of conduct, on the part of all commercial nations.

"Whether it be from the severity and inhumanity with which the effort has been made to suppress the insurrection and from a supposed justification of retaliation for violations of the rules of civilized warfare by other violations and by acts of barbarism, of incendiarism and outrage, the world is witnessing on the part of the insurgents, whom Spain still claims as subjects, and for whose acts, if subjects, Spain must be held accountable in the judgment of the world, a warfare, not of the legitimate strife of relative force and strength, but of pillage and incendiarism, the burning of estates and of sugar mills, the destruction of the means of production and of the wealth of the island.

"The United States purchases more largely than any other people of the productions of the island of Cuba and therefore, more than any other for this reason, and still more by reason of its immediate neighborhood, is interested in the arrest of a system of wanton destruction which disgraces the age and affects every commercial people on the face of the globe.

"Under these circumstances, and in view of the fact that Spain has rejected all suggestions of reform or offers of mediation made by this government, and has refused all measures looking to a reconciliation, except on terms which make reconciliation an impossibility, the difficulty of the situation becomes increased.

"When, however, in addition to these general causes of difficulty, we find the Spanish government neglectful also of the obligations of treaties and solemn compacts, and unwilling to afford any redress for long-continued and well-founded wrongs suffered by our citizens, it becomes a serious question how long such a condition of things can or should be allowed to exist, and compels us to enquire whether the point has not been reached where longer endurance ceases to be possible.

"During all this time, and under these aggravated circumstances, this government has not failed to perform her obligations to Spain as scrupulously as toward other nations.

"In fact, it might be said that we have not only been long suffering because of the embarrassments surrounding the Spanish government, but particularly careful to give no occasion for complaint for the same reason.'

"I regret to say that the authorities of Spain have not at all times appreciated our intentions or our purposes in these respects, and while insisting that a state of war does not exist in Cuba, and that no rights as belligerents should be accorded to the insurrectionists, have at the same time demanded for themselves all the rights and privileges which flow from actual and acknowledged war.

"It will be apparent that such a state of things can not continue. It is absolutely necessary to the maintenance of our relations with Spain, even on their present footing, that our just demands for the return to citizens of the United States of their estates in Cuba, unincumbered, and for securing to them a trial for offenses according to treaty provisions, and all other rights guaranteed by treaty and by public law, should be complied with.

"Whether the Spanish government, appreciating the forebearance of this country, will speedily and satisfactorily adjust the pending questions—not by the issue of empty orders or decrees without force or effect in Cuba, but by comprehensive and firm measures which shall everywhere be respected—I anxiously await further intelligence.

"Moreover, apart from these particular questions, in the opinion of the President, the time has arrived when the interests of this country, the preservation of its commerce and the instincts of humanity alike demand that some speedy and satisfactory ending be made of the strife that is devastating Cuba.

"A disastrous conflict of more than seven years' duration has demonstrated the inability of Spain to maintain peace and order in an island lying at our door. Desolation and destruction of life and property have been the only results of this conflict.

"The United States sympathize in the fact that this inability results in a large degree from the unhappy condition of Spain at home, and to some extent from the distractions which are dividing her people. But the fact remains. Added to this are the large expanse of ocean separating the peninsula from the island, and the want of harmony and of personal sympathy between the inhabitants of the territory of the home government and those of the colony—the distinction of classes in the latter, between rulers and subjects—the want of adaptation of the ancient colonial system of Spain to the present times, and to the ideas which the events of the past age have impressed upon the peoples of every reading and thinking country.

"Great Britain, wisely, has relaxed the old system of colonial dependence, and is reaping the benefits in the contentedness and peaceful prosecution of the arts of peace, and in the channels of commerce and of industry, in colonies which under restraint might have questioned and resisted the power of control from a distant government, and might have exhibited, as does Cuba, a chronic condition of insurrection, turbulence, and rebellion.

"In addition to all this, it can not be questioned, that the continued maintenance, in the face of decrees and enactments to the contrary, of a compulsory system of slave labor, is a cause of disquiet and of excitement to a large class in the island, as also in the United States, which the government of Spain has led us, by very distinct assurances, to expect should be removed, and which the enlightened Christianity of the age condemns.

"The contest and disorder in Cuba affect the United States directly and injuriously by the presence in this country of partisans of the revolt who have fled hither (in consequence of the proximity of territory) as to a political asylum, and who, by their plottings, are disturbers of the public peace.

"The United States has exerted itself to the utmost, for seven years, to repress unlawful acts, on the part of these self-exiled subjects of Spain, relying on the promise of Spain to pacify the island. Seven years of strain on the powers of this government to fulfill all that the most exacting demands of one government can make, under any doctrine or claim of international obligation, upon another, have not

witnessed the much hoped for pacification. The United States feels itself entitled to be relieved of this strain.

"The severe measures, injurious to the United States and often in conflict with public law, which the colonial officers have taken to subdue the insurrection—the indifference, and ofttimes the offensive assaults upon the just susceptibilities of the people of the United States and their government which have characterized that portion of the peninsular population of Havana which has sustained and upheld, if it has not controlled, successive governors-general, and which have led to the disregard of orders and decrees which the more enlarged wisdom and the more friendly councils of the home government had enacted, the cruelty and inhumanity which have characterized the contest, both on the part of the colonial government and of the revolt, for seven years—and the destruction of valuable properties and industries by arson and pillage, which Spain appears unable, however desirous to prevent and stop, in an island three thousand miles distant from her shores but lying within sight of our coast, with which trade and constant intercourse are unavoidable, are causes of annoyance and of injury to the United States which a people can not be expected to tolerate without the assured prospect of their termination.

"The United States has more than once been solicited by the insurgents to extend to them its aid, but has for years hitherto resisted such solicitation, and has endeavored by the tender of their good offices in the way of mediation, advice and remonstrance, to bring to an end a great evil, which has pressed sorely upon the interests both of the government and of the people of the United States, as also upon the commercial interests of other nations.

"A sincere friendship for Spain, and for her people, whether peninsular or insular, and an equally sincere reluctance to adopt any measures which might injure or humble this ancient ally of the United States, has characterized the conduct of this government in every step during these sad and distressing years, and the President is still animated by the same feelings, and desires above all things to aid her and her people to enter once more upon the path of safety and repose.

"It will be remembered that the President, in the year 1869, tendered the good offices of the United States for the purpose of bringing to a close the civil war in Cuba. This offer was made delicately, in good faith and in friendship, to both parties to the contest.

"General Prim, as the representative of the Spanish government, while recognizing the good faith and friendship with which this offer was made, replied: 'We can better proceed in the present situation of things without even this friendly intervention. A time will come when the good offices of the United States will be not only useful, but indispensable, in the final arrangements between Spain and

Cuba. We will ascertain the form in which they can be employed and confidently count upon your assistance.'

"The United States replied that its good offices for that object would be at any time at the service of the parties to the conflict. This government has ever since been ready thus to aid in restoring peace and quiet.

"The government of the United States has heretofore given expression to no policy in reference to the insurrection in Cuba, because it has honestly and sincerely hoped that no declaration of policy on its part would be required.

"The President feels that longer reticence would be inconsistent with the interests of both governments.

"Our relations with Spain are in that critical position that another seizure similar to that of the 'Virginius;' other executions of citizens of the United States in Cuba; other wrongs of a less objectionable character even than many which have been already suffered by our citizens with simple remonstrance, or possibly even some new act of exceptional severity in Cuba, may suddenly produce a feeling and excitement which might force events which this Government anxiously desires to avoid.

"The President hopes that Spain may spontaneously adopt measures looking to a reconciliation, and to the speedy restoration of peace and the organization of a stable and satisfactory system of government in the island of Cuba.

"In the absence of any prospect of a termination of the war, or of any change in the manner in which it has been conducted on either side, he feels that the time is at hand when it may be the duty of other governments to intervene, solely with the view of bringing to an end a disastrous and destructive conflict and of restoring peace in the island of Cuba. No government is more deeply interested in the order and peaceful administration of this island than is that of the United States, and none has suffered as has the United States from the condition which has obtained there during the past six or seven years. He will therefore feel it his duty at an early day to submit the subject in this light, and accompanied by an expression of the views above presented, for the consideration of Congress.

"This conclusion is reached with reluctance and regret.

"It is reached after every other expedient has been attempted and proved a failure, and in the firm conviction that the period has at last arrived when no other course remains for this government.

"It is believed to be a just and friendly act to frankly communicate this conclusion to the Spanish government.

"You will therefore take an early occasion thus to inform that government.

"In making the communication it is the earnest desire of the President to impress upon the authorities of Spain the continued friendly disposition of this government, and that it has no ulterior or selfish objects in view, and no desire to become a party in the conflict, but is moved solely by the imperative necessities of a proper regard to its own protection and its own interests and the interests of humanity, and, as we firmly believe, in the ultimate interest of Spain itself.

"In informing the Spanish government of these conclusions pursuant hereto, you are authorized to read this instruction to the minister of state, or to state the substance and purport thereof, as you may deem most advisable.

"You will, of course, keep me advised, by telegraph and by post, of your proceedings pursuant to this instruction."

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 266, Nov. 5, 1875, H. Ex. Doc. 90, 44 Cong. 1 sess. 3; S. Doc. 213, 54 Cong. 1 sess. 2.

This instruction is recorded in MS. Circulars, II. 109.

Consultations with European powers.

In an instruction to Mr. Cushing, November 5, 1875, Mr. Fish stated that a copy of the foregoing instruction, No. 266, had been sent confidentially to General Schenck, American minister at London, with instructions to read it to Lord Derby, and to suggest that it would be agreeable to the United States and tend to the adjustment of the question of the pacification of Cuba, if not to the preservation of general peace, if the British government would support by its influence the position assumed by the United States.

Mr. Cushing was directed to postpone action in communicating the conclusions of the United States to Spain till General Schenck should have communicated the views of the British government by telegraph to the Department of State and telegraphic instructions could be sent based thereon.

Mr. Fish also stated that a copy of instruction No. 266 would shortly be sent to all the diplomatic representatives of the United States in confidence, for their information, and that the ministers to the principal European courts would be instructed to communicate its purport to the government to which they were respectively accredited.

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 267, Nov. 5, 1875, S. Doc. 213, 54 Cong. 1 sess.

A copy of the foregoing instruction, No. 267, to Gen. Schenck was published with President Grant's message to the House of Representatives of January 21, 1876, but the last paragraph, saying that a copy of instruction No. 266 would be sent to other ministers and that the American ministers to the principal European courts would be instructed to communicate its purport to the governments to which

they were respectively accredited, was omitted. (H. Ex. Doc. 90, 44 Cong. 1 sess. 12.)

For the instructions to General Schenck, see Mr. Fish, Sec. of State, to General Schenck, min. to England, No. 805 (confid.), Nov. 5, 1875, MS. Inst. Great Britain, XXIV. 135; and, for extract, S. Rept. 885, 55 Cong. 2 sess. 152, containing a reprint of S. Doc. 213, 54 Cong. 1 sess.

November 15, 1875, a circular instruction, enclosing a copy of instruction to Mr. Cushing, No. 266, was sent to the ministers of the United States at Paris, Berlin, St. Petersburg, Vienna, and Rome. Each of the ministers was directed to read No. 266, or to state orally the substance thereof, to the minister of foreign affairs confidentially, but not to give him a copy, and to assure him of the sincere and earnest desire of the President for a termination of the disastrous conflict in Cuba by the spontaneous action of Spain or by the agreement of the parties thereto, and further to state that the President was of opinion that, if the government to which the minister was accredited should find it consistent with its views, to urge upon Spain the importance and necessity of either terminating the contest or abandoning it, the friendly expression of such views to Spain might lead her to a dispassionate consideration of the hopelessness of the contest and tend to the earlier restoration of the peace and prosperity of Cuba, if not to the preservation of the peace of the world. A postscript stated, however, that, since the circular was prepared, a telegram had been received from Mr. Cushing which rendered it inadvisable that instruction No. 266 should be communicated to the governments in question till further directions should be sent by telegraph.

H. Ex. Doc. 90, 44 Cong. 1 sess. 13.

The circular is recorded in MS. Circulars, II. 107.

See, also, Mr. Fish, Sec. of State, to Mr. Moran, Nos. 21 and 22, Nov. 15, 1875, MS. Inst. Portugal, XV. 115.

The telegram from Mr. Cushing, referred to by Mr. Fish, stated that a note from the Spanish government, eminently amicable in spirit, had been received; that it conceded everything in effect or substance, and that it gave repeated assurances of the trial of General Burriel. (H. Ex. Doc. 90, 44 Cong. 1 sess. 14.)

Nov. 15, 1875, Mr. Fish sent out a circular to the diplomatic officers of the United States, inclosing a copy of his No. 265 to Mr. Cushing, of Nov. 5, 1875, in relation to the proceedings against Gen. Burriel and the authorities at Santiago in the matter of the *Virginius*. This instruction was communicated to them confidentially for their information. (MS. Inst. Argentine Republic, XVI. 93; MS. Circulars, II. 98.)

"Read inclosure to 805 as soon as opportunity will admit. You will explain that intervention is not contemplated as an immediate resort, but as a contingent necessity in case the contest be prosecuted, and satisfactory adjustment of existing griefs be not reached, and

that we sincerely desire to avoid any rupture, and are anxious to maintain peace and establish our relations with Spain on a permanent basis of friendship. I now state further, for your own information, and for your guidance in your interview with minister, that message will discountenance recognition of belligerency or independence; will allude to intervention as a possible necessity, but will not advise its present adoption. Cushing is instructed to communicate to minister without waiting result of your interview, but you will communicate with him in cipher after your interview."

Mr. Fish, Sec. of State, to Gen. Schenck, tel., Nov. 27, 1875, H. Ex. Doc. 90, 44 Cong. 1 sess. 16.

To the telegram, as thus published, there was added in the original the following sentence: "Take precaution that the purport of instruction or of information above be not given through minister to press or public." (MS. Inst. Great Britain, XXIV. 145.)

In saying "Read inclosure to 805," Mr. Fish referred to his No. 266 to Mr. Cushing, which formed an inclosure with Mr. Fish's confidential instruction to Gen. Schenck, No. 805, of Nov. 5, 1875.

November 27, 1875, Mr. Fish cabled Mr. Cushing that he might give a copy of instruction No. 266 to the Spanish minister of state. A copy was delivered by Mr. Cushing to the minister on the 30th of November. (H. Ex. Doc. 90, 44 Cong. 1 sess. 15–16.)

See Mr. Cushing to Mr. Fish, No. 692, Nov. 30, 1875, S. Ex. Doc. 213, 54 Cong. 1 sess. 15.

"The past year has furnished no evidence of an approaching termination of the ruinous conflict which has been raging for seven years in the neighboring island of Cuba. The same disregard of the laws of civilized warfare and of the just demands of humanity which has heretofore called forth expressions of condemnation from the nations of Christendom has continued to blacken the sad scene. Desolation, ruin, and pillage are pervading the rich fields of one of the most fertile and productive regions of the earth, and the incendiaries' torch, firing plantations and valuable factories and buildings, is the agent marking the alternate advance or retreat of contending parties.

"The protracted continuance of this strife seriously affects the interests of all commercial nations, but those of the United States more than others, by reason of close proximity, its larger trade and intercourse with Cuba, and the frequent and intimate personal and social relations which have grown up between its citizens and those of the island. Moreover, the property of our citizens in Cuba is large, and is rendered insecure and depreciated in value and in capacity of production by the continuance of the strife and the unnatural mode of its conduct. The same is true, differing only in degree, with respect to the interests and people of other nations; and the absence of any reasonable assurance of a near termination of the conflict must, of necessity, soon compel the states thus suffering to consider what the

interests of their own people and their duty toward themselves may demand.

"I have hoped that Spain would be enabled to establish peace in her colony, to afford security to the property and the interests of our citizens, and allow legitimate scope to trade and commerce and the natural productions of the island. Because of this hope, and from an extreme reluctance to interfere in the most remote manner in the affairs of another and a friendly nation, especially of one whose sympathy and friendship in the struggling infancy of our own existence must ever be remembered with gratitude, I have patiently and anxiously waited the progress of events. Our own civil conflict is too recent for us not to consider the difficulties which surround a government distracted by a dynastic rebellion at home, at the same time that it has to cope with a separate insurrection in a distant colony. But whatever causes may have produced the situation which so grievously affects our interests, it exists, with all its attendant evils operating directly upon this country and its people. Thus far all the efforts of Spain have proved abortive, and time has marked no improvement in the situation. The armed bands of either side now occupy nearly the same ground as in the past, with the difference, from time to time, of more lives sacrificed, more property destroyed, and wider extents of fertile and productive fields and more and more of valuable property constantly wantonly sacrificed to the incendiaries' torch. . . . [At this point the President discussed the questions of the recognition of independence and the recognition of belligerency. The passages are given under those titles, supra, §§ 40, 67, vol. 1, pp. 107, 196.] The recognition of independence or of belligerency being thus, in my judgment, equally inadmissible, it remains to consider what course shall be adopted should the conflict not soon be brought to an end by acts of the parties themselves, and should the evils which result therefrom, affecting all nations, and particularly the United States, continue.

"In such event, I am of opinion that other nations will be compelled to assume the responsibility which devolves upon them, and to seriously consider the only remaining measures possible, mediation and intervention. Owing, perhaps, to the large expanse of water separating the island from the peninsula, the want of harmony and of personal sympathy between the inhabitants of the colony and those sent thither to rule them, and want of adaptation of the ancient colonial system of Europe to the present times and to the ideas which the events of the past century have developed, the contending parties appear to have within themselves no depository of common confidence, to suggest wisdom when passion and excitement have their sway, and to assume the part of peacemaker. In this view, in the earlier days of the contest the good offices of the United States as a mediator were

tendered in good faith, without any selfish purpose, in the interest of humanity and in sincere friendship for both parties, but were at the time declined by Spain, with the declaration, nevertheless, that at a future time they would be indispensable. No intimation has been received that in the opinion of Spain that time has been reached. And yet the strife continues, with all its dread horrors and all its injuries to the interests of the United States and of other nations. Each party seems quite capable of working great injury and damage to the other, as well as to all the relations and interests dependent on the existence of peace in the island; but they seem incapable of reaching any adjustment, and both have thus far failed of achieving any success whereby one party shall possess and control the island to the exclusion of the other. Under these circumstances, the agency of others, either by mediation or by intervention, seems to be the only alternative which must, sooner or later, be invoked for the termination of the strife. At the same time, while thus impressed, I do not at this time recommend the adoption of any measure of intervention. I shall be ready at all times, and as the equal friend of both parties, to respond to a suggestion that the good offices of the United States will be acceptable to aid in bringing about a peace honorable to both. It is due to Spain, so far as this government is concerned, that the agency of a third power, to which I have adverted, shall be adopted only as a last expedient. Had it been the desire of the United States to interfere in the affairs of Cuba, repeated opportunities for so doing have been presented within the last few years; but we have remained passive, and have performed our whole duty and all international obligations to Spain with friendship, fairness, and fidelity, and with a spirit of patience and forbearance which negatives every possible suggestion of desire to interfere or to add to the difficulties with which she has been surrounded.

"The government of Spain has recently submitted to our minister at Madrid certain proposals which, it is hoped, may be found to be the basis, if not the actual submission, of terms to meet the requirements of the particular griefs of which this government has felt itself entitled to complain. These proposals have not yet reached me in their full text. On their arrival they will be taken into careful examination, and may, I hope, lead to a satisfactory adjustment of the questions to which they refer, and remove the possibility of future occurrences, such as have given rise to our just complaints.

"It is understood also that renewed efforts are being made to introduce reforms in the internal administration of the island. Persuaded, however, that a proper regard for the interests of the United States and of its citizens entitle it to relief from the strain to which it has been subjected by the difficulties of the questions and the wrongs and losses which arise from the contest in Cuba, and that the inter-

ests of humanity itself demand the cessation of the strife before the whole island shall be laid waste and larger sacrifices of life be made, I shall feel it my duty, should my hopes of a satisfactory adjustment and of the early restoration of peace and the removal of future causes of complaint be, unhappily, disappointed, to make a further communication to Congress at some period not far remote, and during the present session, recommending what may then seem to me to be necessary."

President Grant, annual message, Dec. 7, 1875, For. Rel. 1875, vi.

On December 6, 1875, Mr. Washburne was instructed to proceed as directed in the circular of November 15, 1875, and was informed that the President's message, which had just been sent in, would discountenance recognition of belligerency or independence, but would refer to the continuance of the struggle in Cuba and intimate that mediation or intervention by other powers would be an ultimate necessity unless an adjustment was reached.

December 13, 1875, Mr. Orth, at Vienna, and Mr. Boker, at St. Petersburg, were directed to proceed in accordance with the circular in question.

Mr. Fish, Sec. of State, to Mr. Washburne, min. to France, tel., Dec. 6, 1875, MS. Inst. France, XIX. 326; Mr. Fish, Sec. of State, to Mr. Orth, min. to Austria, Dec. 13, 1875, MS. Inst. Austria, II. 389; Mr. Fish, Sec. of State, to Mr. Boker, min. to Russia, tel., Dec. 13, 1875, MS. Inst. Russia, XV. 541.

December 19, 1875, Mr. Cushing cabled that the Spanish government had just heard from Austria of a circular addressed to European governments suggesting intervention in Cuba, and that instruction No. 266 was evidently intended. Mr. Cushing wished to know what he should say if he should be interrogated on the subject.

Mr. Fish replied that the instruction had been communicated to Russia, Italy, and Austria; that Prince Gortschakoff had promised, if the Emperor should consent, to make representations to Spain towards the preservation of good relations, but doubted Russian influence; that Italy would instruct her minister to urge upon Spain the expediency of fulfilling her duties towards the United States and pacifying Cuba, without specifying measures; and that Austria promised an answer during the week, which answer would probably be unsatisfactory. "Intervention of foreign powers," added Mr. Fish, "was neither asked nor suggested at present, but expression of their views desired to impress on Spain necessity of terminating contest, and to avoid necessity of intervention. This course adopted in the direction of friendship and of peace and to exhaust every effort

and avoid all possible suspicion of selfish, unfriendly, or ulterior purposes. You may so reply if interrogated."

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, tel., Dec. 20, 1875, S. Doc. 213, 54 Cong. 1 sess.

"Referring to my No. 805 of the 5th of November, to my telegrams of November 19th and 27th, and December 6th, and to your telegram received November 30th, and to that of December 2d, I now enclose, confidentially, and for your information, a copy of Mr. Cushing's despatches No. 692, dated November 30; 698 dated December 3; 703, dated December 5th, and 705, dated December 6th, all in reference to the same question, and also of a despatch, No. 1263, from Mr. Hitt, chargé d'affaires at Paris, dated December 10th, reporting his proceedings on reading No. 266, addressed to Mr. Cushing, to the Duke Decazes.

"With his 692, Mr. Cushing reports the delivery of a copy of No. 266 to the minister of state, and the reading of a memorandum by way of explanation.

"As appears by 698, Mr. Layard called upon Mr. Cushing on December 2d (or as is supposed, on December 1st), and expressed his readiness to back him in the matter of Cuba, so soon as a line of action should be agreed on by the two governments.

"Mr. Cushing in his 703 reports in full an interview with the minister of state on December 4th, relating, however, entirely to the particular causes of grievance of the United States, as distinguished from the general question of the condition of Cuba; and in his 705 refers to a telegram received from yourself, and states that Mr. Layard is prepared to cooperate with him now, if there should be any occasion toward keeping the peace, but that his interview with the minister of state of the 4th, as reported in his 703, was deemed so satisfactory that there seemed to be no present occasion for the friendly interposition of Mr. Layard, who concurred in the opinion of the inexpediency of further steps until the arrival of more definite instructions from Lord Derby.

"As considerable misapprehension seems to exist, I refer to the matter in some detail. Mr. Cushing seems to have presented No. 266 to the minister of state, and to have been of the opinion that the Spanish note, as to our particular griefs, under date of November 15th, might, when received, modify the views which it was intended to insert in the President's message, and in some manner affect the general question of the condition of Cuba, treated of in instruction 266.

"Your telegram of December 2d stated that Lord Derby had received a telegram from Mr. Layard, stating that Mr. Cushing had

delivered to the Spanish government the note of the 5th, but had requested no definite action upon it until he might communicate with me, and that some expectation existed that the note of the 15th November, from the Spanish government, might afford reason for modification of the views of the President as expressed in his message.

"As you will remember, I replied to your telegram, under date of December 6th, as soon as the text of the Spanish note was received, stating that, while this communication afforded hope of an adjustment of our particular grievances, it did not suggest an alteration in the message upon the general question.

" It was hoped that information being thus given, to the effect that the President saw no reason to modify the views which had been communicated to the English government, a conclusion would be reached by Lord Derby and instructions sent to Mr. Layard. It is not impossible that such is the case, but the Department has not been advised of any further communication between yourself and Lord Derby since the receipt of your 839, of December 9, received December 22, acknowledging the receipt of my telegram of December 6, nor has the Department ever been informed by you, other than by your telegrams, of what passed between yourself and Lord Derby.

" I had hoped before this to have been fully informed upon the question as to what occurred at the interview, the manner in which the statement and representation made by you were received, with your comments on the whole question, and to have been advised of any subsequent steps by the British government.

" It is proper to state, in this connection, that instruction 266 was brought to the attention of the governments of France, Germany, Russia, Italy, and Austria, although not precisely in the same terms in which it was communicated to the government of Great Britain, and the suggestion was made that should these governments, in view of the statements in instruction 266, which had been communicated to the Spanish government, see fit to urge upon Spain the necessity of abandoning or terminating the contest in Cuba, such course would be satisfactory to this government, and conducive to the interests of all commercial nations.

" Information has been received by telegraph that Germany, Russia, and Italy have instructed their representatives at Madrid, to urge upon the Spanish government the wisdom of restoring peace to Cuba.

" You will also perceive, from Mr. Hitt's despatch, that the Duke Decazes contemplated consulting the government of Great Britain, before deciding on the course which France should adopt. The Department is not advised whether any such conference has been had, nor as to the conclusion which the Duke Decazes may have

reached. An instruction has, however, been addressed to Mr. Hitt, on that subject.

"It is proper also to say, that the note of the 15th of November from the minister of foreign affairs of Spain, in reference to the particular reclamations of the United States, while it holds out hopes of an adjustment of our particular griefs, at the same time makes it necessary to obtain information on several points, and renders considerable delay in reaching any conclusion necessary.

"Under these circumstances, and as certain of the European governments have issued instructions to their representatives on the question, it is hoped that no misapprehension exists on the part of the British government to delay instructions which it may be willing to give, as suggested in my No. 805 to you, supporting the views of this government as to the necessity of ending the contest in Cuba."

Mr. Fish, Sec. of State, to Gen. Schenck, min. to England, No. 833 (confid.), Jan. 11, 1876, MS. Inst. Great Britain, XXIV. 162.

With reference to the foregoing instruction, further developments of the negotiations founded on Mr. Fish's No. 266 to Mr. Cushing may be noted, as follows:

Mr. Orth, the American minister at Vienna, brought the subject to the attention of the Austrian foreign office, and was subsequently advised that Count Andrassy desired a copy of instruction No. 266, to which Mr. Orth had referred. Mr. Fish finally cabled to Mr. Orth that he might give a copy of the instruction to Count Andrassy if it was desired. Mr. Orth communicated a copy to the Count with a formal note of January 24, 1876. Mr. Fish, when he heard of what had been done, instructed Mr. Orth by cable that the permission previously given "did not contemplate a written communication" of the instruction, but merely an informal handing of it to Count Andrassy; and Mr. Orth was directed not to press for a formal answer. Count Andrassy was duly acquainted with the wishes of the United States on this subject, and no answer was given. While negotiations were pending, the substance of Mr. Orth's interviews with the foreign office from time to time appeared in the Vienna press.

In France the Duke Decazes summed up the views of his Government by saying, first, that they were sincerely desirous of assisting the United States and Spain in the matter; and, second, that the situation in Cuba affected French interests, and that France would be willing to cooperate with the United States in bringing it to an end if they thought the opportunity was favorable, but that it would be necessary to wait, especially in view of the embarrassed situation of Spain at home.

After sending his instruction of January 11, 1876, to General Schenck, Mr. Fish had an interview at the Department of State with Mr. Schlozer, the German minister, who stated that he had been instructed to express thanks for the friendly communication to the German government of instruction No. 266, and to state that, while his government appreciated the seriousness of the situation in Cuba, it did not feel disposed at present to take any decided step. Mr. Fish remarked that he had understood from the American chargé d'affaires at Berlin that the German minister at Madrid would be instructed to represent to the Spanish government that in the opinion of Germany the United States was justified in its complaint and in the wish for the early termination of the conflict in Cuba. Mr. Schlozer replied: "Oh, yes; but you know in these matters the governments of Europe like to act in concert." Mr. Fish answered that this was the object in view in communicating with the great powers simultaneously, since it was believed that they would feel the fairness of the position of the United States, and that a simultaneous expression to that effect could not fail to exercise a powerful influence in inducing Spain to appreciate the necessity of ending a war which had lasted more than seven years and which was threatening the destruction of the productive capacity of the island. Mr. Fish further called attention to the fact that the United States "neither sought nor desired any physical force or pressure, but simply the moral influence of concurrence of opinion as to the protraction of the contest." On January 26, 1876, Mr. Davis, American minister at Berlin, reported that he had just had an interview with Mr. Von Bülow concerning Cuba. Mr. Davis inquired what answer had been made to the German representation concerning the duration of the war. Mr. Von Bülow replied that the Spanish government had assured Count Hatzfeldt that the insurrection would be shortly suppressed, and that, as soon as this was done, liberal reforms would be given to Cuba. In these circumstances the German government was indisposed to take any action.

Lord Derby stated that the British government would be willing, in the interest of humanity and friendship, to cooperate in any way that promised to bring about a settlement of troubles in Cuba, but that it was not prepared to put any pressure on the Spanish government or to put forward proposals which he had reason to think that that government would not be inclined to accept. He thought that Spain, for the purpose of saving her dignity, might be willing to accept some interposition, in which case Great Britain would not object to using her good offices. But she could not employ her good offices if Spain stood off and declined any interference. He expressed the belief that Spain would certainly reject any proposal for giving up Cuba, and would never yield that point except to force, but that

she might be willing to agree on a basis of self-government for the islands.

The answer of Italy has been given above, in the instruction to General Schenck.

As the result of conferences with the foreign office, the American minister at Lisbon expressed the belief that Portugal would under no circumstances at the moment venture to urge upon the Spanish government the importance of a speedy termination of the conflict in Cuba.

On December 23, 1875, Mr. Boker, American minister at St. Petersburg, reported that Prince Gortschakoff had informed him that the Emperor had acquiesced in the proposal that diplomatic representations should be made by Russia to the Spanish government, and that instructions had been sent to the Russian minister at Madrid to use his good office and friendly advice with the intention of effecting an equitable adjustment of questions at issue; but Prince Gortschakoff seemed to refer to the use of good offices to avert a conflict between the United States and Spain, rather than to the object which Mr. Fish had in view.

See S. Report No. 885, 55 Cong. 2 sess. 129–179, containing a reprint of S. Ex. Doc. 213, 54 Cong. 1 sess.; Mr. Fish, Sec. of State, to Mr. Davis, min. to Germany, No. 173 (confid.), Jan. 20, 1876, MS. Inst. Germany, XVI. 147.

"Upon reading your No. 956 of the 20th May, enclosing an extract from the *Independencia* of New York, professing to contain a 'programme' of the revolutionists in Cuba, with your comments as to the extremities to which the insurgents have proceeded, I am reminded of your two despatches Nos. 911 and 914, both dated April 19, 1876, informing me of the communication to the minister of state of instruction No. 323 of the 1st of March.

"You will remember that this instruction was addressed to you because the minister of state was pleased to invite a frank statement concerning the precise thing which this government would advise or wish Spain to do, pursuant to which intimation I frankly informed you of the views of this government as to what course might be adopted with a view to the restoration of peace in Cuba.

"On almost every occasion heretofore, when complaints have been made of the damage to this country, and to all countries having relations with Cuba, growing out of the insurrection, or when friendly suggestion has been made, as in this case, substantially the same answer has been returned, namely, that the insurrection was about to be suppressed, and when that had happened, then, but not before, reforms which were admitted to be required, would be inaugurated, and measures necessary to the peace or prosperity of the island

adopted. The insurrectionists on the other hand have been unwilling to rely on these assurances or to lay down their arms. Thus things have proceeded and the insurrection is no nearer a suppression now than years ago, and the needed reforms as distant as some years since.

"It has been averred that certain high authorities in Spain did not at first object to a show of revolution or revolt in Cuba as such a condition of affairs gave ready excuse for increased taxation and new burdens. Of this I say nothing and express no opinion, but it seems to me indisputable that the determination of Spain to do nothing by way of reforms or to aid in any improvement in affairs until the insurrection had been suppressed, has prevented its suppression and virtually prevented the introduction of any better state of affairs in the island.

"With therefore a continuation of the same policy on the part of the authorities of Spain, as is foreshadowed by the minister of state in his communications to you touching my instruction of the 1st of March, and in other quarters, and with the determination of the insurgents, if such can be said to be foreshadowed in this extract from the *Independencia*, or if the same be genuine, with the extreme views of the two parties, neither willing or intending to yield to the other, and with the want of power or ability of either to coerce the other, there seems little hope that anything is soon to be expected in the interest either of good government in Cuba, or which will lead to peace and prosperity in the island."

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 383, June 16, 1876, MS. Inst. Spain, XVII. 550.

See also, as to intervention in Cuba, Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, No. 342, March 22, 1876, MS. Inst. Spain, XVII. 494.

"Another year has passed without bringing to a close the protracted contest between the Spanish government and the insurrection in the island of Cuba. While the United States have sedulously abstained from any intervention in this contest, it is impossible not to feel that it is attended with incidents affecting the rights and interests of American citizens. Apart from the effect of the hostilities upon trade between the United States and Cuba, their progress is inevitably accompanied by complaints, having more or less foundation, of searches, arrests, embargoes, and oppressive taxes upon the property of American residents, and of unprovoked interference with American vessels and commerce. It is due to the government of Spain to say that during the past year it has promptly disavowed and offered reparation for any unauthorized acts of unduly zealous subordinates whenever such acts have been brought to its attention. Nevertheless, such occurrences can not but tend to excite feelings of

annoyance, suspicion, and resentment, which are greatly to be deprecated, between the respective subjects and citizens of two friendly powers."

President Hayes, annual message, Dec. 3, 1877, For. Rel. 1877, xii.

"This government has more than once been called upon of late to take action in fulfillment of its international obligations toward Spain. Agitation in the island of Cuba hostile to the Spanish Crown having been fomented by persons abusing the sacred rights of hospitality which our territory affords, the officers of this Government have been instructed to exercise vigilance to prevent infractions of our neutrality laws at Key West and at other points near the Cuban coast. I am happy to say that in the only instance where these precautionary measures were successfully eluded, the offenders, when found in our territory, were subsequently tried and convicted."

President Arthur, annual message, Dec. 1, 1884, For. Rel. 1884, vii.

The following citations are taken from the list of papers concerning foreign relations attached to the Register of the Department of State (1884):

Neutrality between Spain and Cuba. Resolution requesting the President to issue a neutrality proclamation containing the same provisions as that issued by Spain in 1861 on the occasion of the outbreak of the civil war in United States. January 10, 1876. (S. Mis. Doc. 29, 44 Cong. 1 sess.)

Intervention of foreign powers proposed by the United States to restore order in Cuba; condition of affairs in; correspondence respecting the trial of General Juan Burriel for the massacre of the passengers and crew of the *Virginius*. President's message. January 21, 1876. (H. Ex. Doc. 90, 44 Cong. 1 sess.) As to the *Virginius*, see supra, §§ 309, 311, 315.

Cuban insurrection. Terms and conditions upon which the surrender of the insurgents has been made. President's message. May 14, 1878. (S. Ex. Doc. 79, 45 Cong. 2 sess.)

Certain diplomatic correspondence with Spain in 1876, in cases of citizens of the United States condemned to death in Cuba. President's message. May 3, 1882. (S. Ex. Doc. 165, 47 Cong. 1 sess.)

Cuba and Porto Rico. Discriminating duties on commerce between the United States and. President's message, transmitting report from the Secretary of State. January 15, 1884. (S. Ex. Doc. 58, 48 Cong. 1 sess.) January 30, 1884, part 2, additional papers.

An elaborate exposition of the relations of the United States to Cuba down to 1868 is given in Mr. W. B. Lawrence's Com. sur Droit Int., II. 316 et seq.

"Unreasonable and unjust fines imposed by Spain on the vessels and commerce of the United States have demanded from time to time during the last twenty years earnest remonstrance on the part of our government. In the immediate past exorbitant penalties have been imposed upon our vessels and goods by customs authorities of Cuba and Porto Rico for clerical errors of the most trivial character in the

manifests or bills of lading. In some cases fines amounting to thousands of dollars have been levied upon cargoes or the carrying vessels when the goods in question were entitled to free entry. Fines have been exacted even when the error had been detected and the Spanish authorities notified before the arrival of the goods in port.

"This conduct is in strange contrast with the considerate and liberal treatment extended to Spanish vessels and cargoes in our ports in like cases. No satisfactory settlement of these vexatious questions has yet been reached."

President Cleveland, annual message, Dec. 3, 1894, For. Rel. 1894, xiv.

(3) INSURRECTION OF 1895.

§ 908.

Olney-Dupuy de Lôme correspondence.

"It might well be deemed a dereliction of duty to the government of the United States, as well as a censurable want of candor to that of Spain, if I were longer to defer official expression as well of the anxiety with which the President regards the existing situation in Cuba as of his earnest desire for the prompt and permanent pacification of that island. Any plan giving reasonable assurance of that result and not inconsistent with the just rights and reasonable demands of all concerned would be earnestly promoted by him by all means which the Constitution and laws of this country place at his disposal.

"It is now some nine or ten months since the nature and prospects of the insurrection were first discussed between us. In explanation of its rapid and, up to that time, quite unopposed growth and progress, you called attention to the rainy season which from May or June until November renders regular military operations impracticable. Spain was pouring such numbers of troops into Cuba that your theory and opinion that, when they could be used in an active campaign, the insurrection would be almost instantly suppressed, seemed reasonable and probable. In this particular you believed, and sincerely believed, that the present insurrection would offer a most marked contrast to that which began in 1868, and which, being feebly encountered with comparatively small forces, prolonged its life for upward of ten years.

"It is impossible to deny that the expectations thus entertained by you in the summer and fall of 1895, and shared not merely by all Spaniards but by most disinterested observers as well, have been completely disappointed. The insurgents seem to-day to command a larger part of the island than ever before. Their men under arms, estimated a year ago at from ten to twenty thousand, are now conceded to be at least two or three times as many. Meanwhile, their discipline has been improved and their supply of modern weapons and equipment has been greatly enlarged, while the mere fact that

they have held out to this time has given them confidence in their own eyes and prestige with the world at large. In short, it can hardly be questioned that the insurrection, instead of being quelled, is to-day more formidable than ever, and enters upon the second year of its existence with decidedly improved prospects of successful results.

"Whether a condition of things entitling the insurgents to recognition as belligerents has yet been brought about may, for the purposes of the present communication, be regarded as immaterial. If it has not been, it is because they are still without an established and organized civil government, having an ascertained situs, presiding over a defined territory, controlling the armed forces in the field, and not only fulfilling the functions of a regular government within its own frontiers, but capable internationally of exercising those powers and discharging those obligations which necessarily devolve upon every member of the family of nations. It is immaterial for present purposes that such is the present political status of the insurgents, because their defiance of the authority of Spain remains none the less pronounced and successful, and their displacement of that authority throughout a very large portion of the island is none the less obvious and real.

"When, in 1877, the President of the so-called Cuban Republic was captured, its legislative chamber surprised in the mountains and dispersed, and its presiding officer and other principal functionaries killed, it was asserted in some quarters that the insurrection had received its deathblow and might well be deemed to be extinct. The leading organ of the insurrectionists, however, made this response:

"'The organization of the liberating army is such that a brigade, a regiment, a battalion, a company, or a party of twenty-five men can operate independently against the enemy in any department without requiring any instructions save those of their immediate military officers, because their purpose is but one, and that is known by heart as well by the general as the soldier, by the negro as well as the white man or the Chinese, viz, to make war on the enemy at all times, in all places, and by all means, with the gun, the machete, and the firebrand. In order to do this, which is the duty of every Cuban soldier, the direction of a government or a legislative chamber is not needed; the order of a subaltern officer, serving under the general in chief, is sufficient. Thus it is that the government and chamber have in reality been a superfluous luxury for the revolution.'

"The situation thus vividly described in 1877 is reproduced to-day. Even if it be granted that a condition of insurgency prevails and nothing more, it is on so large a scale and diffused over so extensive a region, and is so favored by the physical features and the climate of the country, that the authority of Spain is subverted and the functions of its government are in abeyance or practically suspended

throughout a great part of the island. Spain still holds the seaports and most, if not all, of the large towns in the interior. Nevertheless, a vast area of the territory of the island is in effect under the control of roving bands of insurgents, which, if driven from one place to-day by an exhibition of superior force, abandon it only to return to-morrow when that force has moved on for their dislodgment in other quarters.

"The consequences of this state of things can not be disguised. Outside of the towns still under Spanish rule, anarchy, lawlessness, and terrorism are rampant. The insurgents realize that the wholesale destruction of crops, factories, and machinery advances their cause in two ways. It cripples the resources of Spain on the one hand. On the other, it drives into their ranks the laborers who are thus thrown out of employment. The result is a systematic war upon the industries of the island and upon all the means by which they are carried on, and whereas the normal annual product of the island is valued at something like eighty or a hundred millions, its value for the present year is estimated by competent authority as not exceeding twenty millions.

"Bad as is this showing for the present year, it must be even worse for the next year and for every succeeding year during which the rebellion continues to live. Some planters have made their crops this year who will not be allowed to make them again. Some have worked their fields and operated their mills this year in the face of a certain loss who have neither the heart nor the means to do so again under the present even more depressing conditions. Not only is it certain that no fresh money is being invested on the island, but it is no secret that capital is fast withdrawing from it, frightened away by the utter hopelessness of the outlook. Why should it not be? What can a prudent man foresee as the outcome of existing conditions except the complete devastation of the island, the entire annihilation of its industries, and the absolute impoverishment of such of its inhabitants as are unwise or unfortunate enough not to seasonably escape from it?

"The last preceding insurrection lasted for ten years and then was not subdued, but only succumbed to the influence of certain promised reforms. Where is found the promise that the present rebellion will have a shorter lease of life, unless the end is sooner reached through the exhaustion of Spain herself? Taught by experience, Spain wisely undertook to make its struggle with the present insurrection short, sharp, and decisive, to stamp it out in its very beginnings by concentrating upon it large and well-organized armies, armies infinitely superior in numbers, in discipline, and in equipment to any the insurgents could oppose to them.

"Those armies were put under the command of its ablest general, as well as its most renowned statesman—of one whose very name was an assurance to the insurgents both of the skillful generalship with which they would be fought and of the reasonable and liberal temper in which just demands for redress of grievances would be received. Yet the efforts of Campos seem to have utterly failed, and his successor, a man who, rightfully or wrongfully, seems to have intensified all the acerbities of the struggle, is now being reenforced with additional troops. It may well be feared, therefore, that if the present is to be of shorter duration than the last insurrection, it will be because the end is to come sooner or later through the inability of Spain to prolong the conflict, and through her abandonment of the island to the heterogeneous combination of elements and of races now in arms against her.

"Such a conclusion of the struggle can not be viewed even by the most devoted friend of Cuba and the most enthusiastic advocate of popular government except with the gravest apprehension. There are only too strong reasons to fear that, once Spain were withdrawn from the island, the sole bond of union between the different factions of the insurgents would disappear; that a war of races would be precipitated, all the more sanguinary for the discipline and experience acquired during the insurrection, and that, even if there were to be temporary peace, it could only be through the establishment of a white and a black republic, which, even if agreeing at the outset upon a division of the island between them, would be enemies from the start, and would never rest until the one had been completely vanquished and subdued by the other.

"The situation thus described is of great interest to the people of the United States. They are interested in any struggle anywhere for freer political institutions, but necessarily and in special measure in a struggle that is raging almost in sight of our shores. They are interested, as a civilized and Christian nation, in the speedy termination of a civil strife characterized by exceptional bitterness and exceptional excesses on the part of both combatants. They are interested in the noninterruption of extensive trade relations which have been and should continue to be of great advantage to both countries. They are interested in the prevention of that wholesale destruction of property on the island which, making no discrimination between enemies and neutrals, is utterly destroying American investments that should be of immense value, and is utterly impoverishing great numbers of American citizens.

"On all these grounds and in all these ways the interest of the United States in the existing situation in Cuba yields in extent only to that of Spain herself, and has led many good and honest persons to insist that intervention to terminate the conflict is the immediate

and imperative duty of the United States. It is not proposed now to consider whether existing conditions would justify such intervention at the present time, or how much longer those conditions should be endured before such intervention would be justified. That the United States can not contemplate with complacency another ten years of Cuban insurrection, with all its injurious and distressing incidents, may certainly be taken for granted.

"The object of the present communication, however, is not to discuss intervention, nor to propose intervention, nor to pave the way for intervention. The purpose is exactly the reverse—to suggest whether a solution of present troubles can not be found which will prevent all thought of intervention by rendering it unnecessary. What the United States desires to do, if the way can be pointed out, is to cooperate with Spain in the immediate pacification of the island on such a plan as, leaving Spain her rights of sovereignty, shall yet secure to the people of the island all such rights and powers of local self-government as they can reasonably ask. To that end the United States offers and will use her good offices at such time and in such manner as may be deemed most advisable. Its mediation, it is believed, should not be rejected in any quarter, since none could misconceive or mistrust its purpose.

"Spain could not, because our respect for her sovereignty and our determination to do nothing to impair it have been maintained for many years at great cost and in spite of many temptations. The insurgents could not, because anything assented to by this government which did not satisfy the reasonable demands and aspirations of Cuba would arouse the indignation of our whole people. It only remains to suggest that, if anything can be done in the direction indicated, it should be done at once and on the initiative of Spain.

"The more the contest is prolonged, the more bitter and more irreconcilable is the antagonism created, while there is danger that concessions may be so delayed as to be chargeable to weakness and fear of the issue of the contest, and thus be infinitely less acceptable and persuasive than if made while the result still hangs in the balance, and they could be properly credited in some degree at least to a sense of right and justice. Thus far Spain has faced the insurrection sword in hand, and has made no sign to show that surrender and submission would be followed by anything but a return to the old order of things. Would it not be wise to modify that policy and to accompany the application of military force with an authentic declaration of the organic changes that are meditated in the administration of the island with a view to remove all just grounds of complaint?

"It is for Spain to consider and determine what those changes would be. But should they be such that the United States could urge their adoption, as substantially removing well-founded grievances,

its influence would be exerted for their acceptance, and it can hardly be doubted, would be most potential for the termination of hostilities and the restoration of peace and order to the island. One result of the course of proceeding outlined, if no other, would be sure to follow, namely, that the rebellion would lose largely, if not altogether, the moral countenance and support it now enjoys from the people of the United States.

"In closing this communication it is hardly necessary to repeat that it is prompted by the friendliest feelings toward Spain and the Spanish people. To attribute to the United States any hostile or hidden purposes would be a grave and most lamentable error. The United States has no designs upon Cuba and no designs against the sovereignty of Spain. Neither is it actuated by any spirit of meddlesomeness nor by any desire to force its will upon another nation. Its geographical proximity and all the considerations above detailed compel it to be interested in the solution of the Cuban problem whether it will or no. Its only anxiety is that that solution should be speedy, and, by being founded on truth and justice, should also be permanent.

"To aid in that solution it offers the suggestions herein contained. They will be totally misapprehended unless the United States be credited with entertaining no other purpose toward Spain than that of lending its assistance to such termination of a fratricidal contest as will leave her honor and dignity unimpaired at the same time that it promotes and conserves the true interests of all parties concerned."

Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Span. min., April 4, 1896, For. Rel. 1897, 540.

"As I had the honor to inform your excellency some time ago, I lost no time in communicating to the minister of state of His Majesty the King of Spain the text of the note that your excellency was pleased to address to me, under date of the 4th of April last, in regard to the events that are taking place in the island of Cuba.

"In his answer, dated May 22 last, the Duke of Tetuan tells me that the importance of the communication here referred to has led the government of His Majesty to examine it with the greatest care and to postpone an answer until such time as its own views on the complicated and delicate Cuban question should be officially made public.

"The minister of state adds that since the extensive and liberal purposes of Spain toward Cuba have been laid before the Cortes by the august lips of His Majesty in the speech from the throne, the previous voluntary decisions of the Spanish government in the matter may serve, as they are now serving, as the basis of a reply to your excellency's note.

"The government of His Majesty appreciates to its full value the noble frankness with which that of the United States has informed it

of the very definite opinion it has formed in regard to the legal impossibility of granting the recognition of belligerency to the Cuban insurgents.

"Indeed, those who are now fighting in Cuba against the integrity of the Spanish fatherland possess no qualifications entitling them to the respect, or even to the consideration, of the other countries. They do not, as your excellency expresses it, possess any civil government, established and organized, with a known seat and administration of defined territory, and they have not succeeded in permanently occupying any town, much less any city, large or small.

"Your excellency declares, in the note to which I am now replying, with great legal acumen and spontaneously, that it is impossible for the Cuban insurgents to perform the functions of a regular government within its own frontiers, and much less to exercise the rights and fulfill the obligations that are incumbent on all the members of the family of nations. Moreover, their systematic campaign of destruction against all the industries on the island, and the means by which they are worked, would, of itself, be sufficient to keep them without the pale of the universally recognized rules of international law.

"His Majesty's government has read with no less gratification the explicit and spontaneous declarations to the effect that the government of the United States seeks no advantage in connection with the Cuban question, its only wish being that the ineluctable and lawful sovereignty of Spain be maintained and even strengthened, through the submission of the rebels, which, as your excellency states in your note, is of paramount necessity to the Spanish government for the maintenance of its authority and its honor.

"While expressing the high gratification with which His Majesty's government took note of the emphatic statements which your excellency was pleased to make in your note of the 4th of April with regard to the sovereignty of Spain and the determination of the United States not to do anything derogatory to it, and acknowledging with pleasure all the weight they carry, the Duke of Tetuan says that nothing else was to be expected of the lofty sense of right cherished by the government of the United States.

"It is unnecessary, as your excellency remarks, and in view of so correct and so friendly an attitude, to discuss the hypothesis of intervention, as it would be utterly inconsistent with the above views.

"The government of His Majesty the King of Spain fully concurs in the opinion that your excellency was pleased to express in regard to the future of the island in the event, which can not and shall not be, of the insurrection terminating in its triumph.

"There can be no greater accuracy of judgment than that displayed by your excellency, and, as you said with great reason, such a termination of the conflict would be looked upon with the most seri-

ous misgivings even by the most enthusiastic advocates of popular government; because, as remarked by your excellency, with the heterogeneous combination of races that exist there the disappearance of Spain would be the disappearance of the only bond of union which can keep them in balance, and an unavoidable struggle among the men of different color, contrary to the spirit of Christian civilization, would supervene.

"The accuracy of your excellency's statement is all the more striking, as owing to the conditions of population in the island no part of the natives can be conceded superiority over the others if the assistance of the Spaniards from Europe is not taken into account.

"The island of Cuba has been exclusively Spanish since its discovery; the great normal development of its resources, whatever it is, whatever its value, and whatever it represents in the community of mankind, it owes in its entirety to the mother country; and even at this day, among the various groups of people that inhabit it, whatever be the standpoint from which the question be examined, the natives of the peninsula are there absolutely necessary for the peace and advancement of the island.

"All these reasons fully and clearly demonstrate that it is not possible to think that the island of Cuba can be benefited except through the agency of Spain, acting under her own impulse, and actuated, as she has long been, by the principles of liberty and justice.

"The Spanish government is aware of the fact that far from having justice done it on all sides on these points, there are many persons, obviously deceived by incessant slanders, who honestly believe that a ferocious despotism prevails in our Antilles, instead of one of the most liberal political systems in the world, being enjoyed there now as well as before the outbreak of the insurrection.

"One need only run over the laws governing the Antilles, laws which ought to be sufficiently known in the United States at this day, to perceive how absolutely groundless such impressions are.

"A collection of the Cuban newspapers published in recent years would suffice to show that few civilized countries then enjoyed to an equal degree freedom of thought and of the press—the foundation of all liberties.

"The government of His Majesty and the people of Spain wish and even long for the speedy pacification of Cuba. In order to secure it, they are ready to exert their best efforts and at the same time to adopt such reforms as may be useful or necessary and compatible, of course, with their inalienable sovereignty, as soon as the submission of the insurgents be an accomplished fact.

"The minister of state, while directing me to bring to the knowledge of your excellency the foregoing views, instructs me to remark

how pleased he was to observe that his opinion on this point also agrees with yours.

"No one is more fully aware of the serious evils suffered by Spaniards and aliens in consequence of the insurrection than the government of His Majesty. It realizes the immense injury inflicted on Spain by the putting forth, with the unanimous cooperation and approbation of her people, of such efforts as were never before made in America by any European country. It knows at the same time that the interests of foreign industry and trade suffer, as well as the Spanish interests, from the insurgent system of devastation; but if the insurrection should triumph, the interests of all would not merely suffer, but would entirely and forever disappear amid the madness of perpetual anarchy.

"It has already been said that, in order to prevent evils of such magnitude, the cabinet of Madrid does not and will not confine itself exclusively to the employment of armed force.

"The speech from the throne, read before the national representatives, formally promised motu proprio, not only that all that was previously granted, voted by the Cortes, and sanctioned by His Majesty on the 15th of March, 1895, would be carried into effect as soon as the opportunity offered, but also by fresh authorization of the Cortes, all the new extensions and amendments of the original reforms, to the end that both islands may in the administrative department possess a personnel of a local character, that the intervention of the mother country in their domestic concerns may be dispensed with, with the single reservation that nothing will be done to impair the rights of sovereignty or the powers of the government to preserve the same.

"This solemn promise, guaranteed by the august word of His Majesty, will be fulfilled by the Spanish government with a true liberality of views.

"The foregoing facts, being better known every day, will make it patent to the fair people of other nations that Spain, far from proposing that her subjects in the West Indies should return to a régime unfit for the times when she enjoys such liberal laws, would never have withheld these same laws from the islands had it not been for the increasing separatist conspiracies which compelled her to look above all to self-defense.

"The government of His Majesty most heartily thanks that of the United States for the kind advice it bestows on Spain; but it wishes to state, and entertains the confidence that your excellency will readily see, that it has been forestalling it for a long time past. It follows, therefore, as a matter of course, that it will comply with it in a practical manner as soon as circumstances make it possible.

"Your excellency will have seen, nevertheless, how the announcement of this concurrence of views has been received.

"The insurgents, elated by the strength which they have acquired through the aid of a certain number of citizens of the United States, have contemptuously repelled, by the medium of the Cubans residing in this Republic, any idea that the government of Washington can intervene in the contest, either with its advice or in any other manner, on the supposition that the declarations of disinterestedness on the part of the government of the United States are false and that it wishes to get possession of the island one of these days. Hence it is evident that no success would attend such possible mediation, which they repel, even admitting that the mother country would condescend to treat with its rebellious subject as one power with another, thus surely jeopardizing its future authority, detracting from its national dignity, and impairing its independence, for which it has at all times shown such great earnestness, as history teaches. In brief, there is no effectual way to pacify Cuba unless it begins with the actual submission of the armed rebels to the mother country.

"Notwithstanding this, the government of the United States could, by the use of proper means, contribute greatly to the pacification of the island of Cuba.

"The government of His Majesty is already very grateful to that of the United States for its intention to prosecute the unlawful expeditions to Cuba of some of its citizens with more vigor than in the past, after making a judicial investigation as to the adequacy of its laws when honestly enforced.

"Still, the high moral sense of the government of Washington will undoubtedly suggest to it other more effectual means of preventing henceforth what is now the case, a struggle which is going on so near its frontiers, and which is proving so injurious to its industry and commerce, a fact justly deplored by your excellency, being prolonged so exclusively by the powerful assistance which the rebellion finds in the territory of this great republic, against the wishes of all those who love order and law.

"The constant violation of international law in its territory is especially manifest on the part of Cuban emigrants, who care nothing for the losses suffered in the meanwhile by the citizens of the United States and of Spain through the prolongation of the war.

"The Spanish government, on its part, has done much and will do more every day in order to achieve such a desirable end, by endeavoring to correct the mistakes of public opinion in the United States and by exposing the plots and calumnies of its rebellious subjects.

"It may well happen that the declarations recently made in the most solemn form by the government of His Majesty concerning its intentions for the future will also contribute in a large measure to

gratify the wish that your excellency clearly expressed in your note, namely—that all the people of the United States, convinced that we are in the right, will completely cease to extend unlawful aid to the insurgents.

"If, with that object in view, further particulars on the Cuban question should be desired, in addition to those it already has, by the government of the United States, which shows itself so hopeful that the justice of Spain may be recognized by all, the government of His Majesty will take the greatest pleasure in supplying that information with the utmost accuracy of detail.

"When the government of the United States shall once be convinced of our being in the right, and when that honest conviction shall in some manner be made public, but little more will be required in order that all those in Cuba who are not merely striving to accomplish the total ruin of the beautiful country in which they were born, being then hopeless of outside help and powerless by themselves, will lay down their arms.

"Until that happy state of things has been attained Spain will, in the just defense not only of her rights but also of her duty and honor, continue the efforts for an early victory which she is now exerting regardless of the greatest sacrifices."

Mr. Dupuy de Lôme, Span. min., to Mr. Olney, Sec. of State, June 4, 1896, For. Rel. 1897, 544.

"The Secretary of the Treasury has brought under my notice an elaborate report of the Supervising Surgeon-General of the Marine-Hospital Service, concerning the continuous danger to the health of the seaports on the Atlantic coast, and particularly those of the Southern States, and in the Gulf of Mexico, by reason of the epidemic existence of yellow fever in the city and harbor of Havana.

"Dr. Wyman, whose responsible position as the officer charged with the conduct of quarantine and health precautions so far as the same fall under the purview of the Federal government, especially qualifies him for intelligent observation of the conditions of infection existing in neighboring foreign ports with which this country maintains extended commerce, has fortified his report on this subject with a table showing the years in which yellow fever has invaded the seaboard cities of the United States, the cities so visited and the source of the infection, from which it will be seen that during a recent period of over thirty years in which time more accurate and specific observations have been recorded than in the early years of the century, a very large proportion of the epidemics which have desolated the coast States of this Union have had their origin in infection directly traceable to Havana, while of those epidemics theretofore generally described as originating in the West Indies since 1668 the

appended remarks show that Havana was likewise in many cases the source of the disease.

"The sanitary condition thus described has necessarily been a source of anxiety and well-grounded alarm to the authorities of the United States and of the several seaboard States calling for sanitary precautions and measures of effective quarantine which bear onerously upon the intercourse between the United States and the chief commercial port of the island of Cuba, through which the bulk of our Antillean commerce passes. From time to time, also, the development and spread of actual epidemics, besides ravaging populous districts and entailing rigorous domestic quarantine, has paralyzed commerce and caused widespread hardships, not only as respects the Cuban trade, but as respects the trade of the United States themselves with other countries.

"The correspondence of this Department with your legation for many years past shows that these restrictions upon the Cuban traffic in the ports of the United States have not infrequently been the occasion of remonstrance on the part of the Spanish representatives here, while on the other hand the sanitary condition of Havana has furnished obvious justification for the course pursued by the Federal and State health officers.

"I am not unaware of the actual situation of the island of Cuba, and I can not assume that the present time is auspicious for inviting consideration of the sanitary condition of the harbor and city of Havana with a view to removing the danger which perennially lurks there and imperils the health of neighboring communities. I feel, however, that it is my duty to lay this report before you and invite the most earnest consideration thereof by your government. Another summer is not far distant, and with the advent of warmer weather renewal of the annual precautions against the introduction of yellow fever will be necessary, with all their concomitant restrictions and burdens upon a mutually beneficial commerce. Sooner or later the problem of attacking the pestilential condition which exists and has existed for more than a century at Havana will demand the attention not only of Spain but of other endangered countries, with a view to devising an effective remedy for the state of things disclosed in Surgeon-General Wyman's report, and the gravity of the situation invites timely attention and action."

Mr. Olney, Sec. of State, to Señor Don Enrique Dupuy de Lôme, Spanish min., No. 76, Feb. 7, 1896, MS. Notes to Spain, XI. 126.

Mr. Onley's report Dec. 7, 1896.

"The situation in the island of Cuba has largely engrossed the attention of the Department of State during the past year. Its efforts to obtain trustworthy information and to insure due protection to citizens of the United States and their property and interests within the theater of disturbance have been ably seconded by the consular representatives in that island.

"As regards the character and scope of the hostile operations which now affect the greater part of Cuba, the reports of our consuls are properly confidential, and while precise as to the several districts touching which reports have been received, the nature and sources of the information obtained are such as to make detailed publication impracticable, so that the Department is not in a position to do more at present than state its general deductions as to the position of the contending parties.

Confined in the outset, as in the ten years' insurrection which began at Yara in October, 1868, to the eastern portion of the island, where the topography and absence of settled centers especially favored the desultory warfare apparently normal to this class of contests, the present insurrection very early took proportions beyond those of its predecessor and therewith assumed an aggressive phase, invading the populous central and western districts. Passing the defensive lines or trochas traversing the island from north to south, formidable bodies of the revolutionary forces early in the year established themselves in the rich sugar-planting districts of Santa Clara, Cienfuegos, and Matanzas, made hostile forays almost in sight of Havana itself, and, advancing westward, effected a lodgment in the fertile tobacco fields of Pinar del Rio, which has so far resisted all efforts of the Spanish forces to overcome.

"No prominent seaport has been attacked by the insurgents or even menaced beyond occasional raids upon the outskirts. A large part of the twenty-two hundred miles of the irregular coast line of Cuba, comprising the comparatively unsettled stretches of its western extremity and the inhospitable mountain shores of its eastern part, is practically in the hands of the revolutionists. The character of these shores, filled to the westward with shallow indentations inaccessible to any but light vessels of small tonnage, and to the eastward with rocky nooks dangerous to approach by night and affording insecure anchorage for larger craft, lends itself peculiarly to the guerrilla warfare of the interior, so that the insurgents, being relieved of the need of maintaining and garrisoning points upon the coast, are effectively able to utilize a considerable part of it as occasion offers to communicate with the outside world and to receive clandestine supplies of men, arms, and ammunition. The situation

in that quarter, as regards the ease of surreptitious access and the difficulty of repressing illicit traffic, finds a not unapt parallel in that of the Cornish and Welsh coasts of England or the Scottish Highlands in the last century, where a few adventurers were able to smuggle supplies and land rebel emissaries or forces, baffling the watch of maritime forces much greater than those maintained by Spain along the diversified shores of Cuba.

"While thus in fact controlling the larger part of the internal area of the whole island of Cuba, from Cape San Antonio to Cape Maisi, and enjoying practically unlimited use of an equally large part of the coast, the revolutionary forces are scattered, being nowhere united for any length of time to form an army capable of attack or siege and fit to take the defensive in a pitched battle. Assembling suddenly at a given point, often in a single night, they make unexpected sallies or carry destruction to the tobacco and cane fields of Cuba, and at the first sign of pursuit or organized assault they disperse only to reassemble in like manner at some other spot.

"So far as our information shows, there is not only no effective local government by the insurgents in the territories they overrun, but there is not even a tangible pretence to establish administration anywhere. Their organization, confined to the shifting exigencies of the military operations of the hour, is nomadic, without definite centers and lacking the most elementary features of municipal government. There nowhere appears the nucleus of statehood. The machinery for exercising the legitimate rights and powers of sovereignty and responding to the obligations which *de facto* sovereignty entails in the face of equal rights of other states is conspicuously lacking. It is not possible to discern a homogeneous political entity, possessing and exercising the functions of administration and capable, if left to itself, of maintaining orderly government in its own territory and sustaining normal relations with the external family of governments.

"To illustrate these conditions, the insurgent chiefs assert the military power to compel peaceable citizens of the United States within their reach to desist from planting or grinding cane, under the decreed penalty of death and of destruction of their crops and mills; but the measure is one of sheer force, without justification under public law. The wrongs so committed against the citizens of a foreign state are without an international forum of redress to which the government of the United States may have recourse as regards its relation to the perpetrators. The acts are those of anarchy, and in default of the responsibilities of *de facto* statehood in the case, there remains only the territorial accountability of the titular sovereign within the limits of its competency to repress the wrongs complained of.

"In opposition to the nomadic control of the interior and the undefended coast by the insurgents, the Spanish authority continues in the capital cities and the seaports. Its garrisons are there established; from them its naval operations are directed and executed. Most of its functions proceed as in time of peace. Its customs and municipal revenues are regularly collected, and with exception of the temporary restraints, alleged to be due to the admitted existence of a state of hostilities, foreign commerce with the island is kept up, although largely diminished by the natural contraction of the Cuban market of supply and demand. As to those parts of the island with which this country and its citizens maintain legitimately normal intercourse, the Spanish power is supreme, although often exercised in a vexatious and arbitrary way, calling for just remonstrance.

"So far, therefore, as the relative position of the Spanish and insurgent forces is comparable with the situation during the Yara insurrection, while the same phases of organized administration in the capital and seaports and effective relations of trade with the outside world on the one hand, and on the other a nomadic association without the insignia of orderly government and strong only to wage harassing warfare in the interior, are now as then apparent, the present insurrection stands in notable contrast with its predecessors both as to force and scale of operations.

"Although statistics of their military strength are attainable with difficulty and are not always trustworthy when obtained, enough is certainly known to show that the revolutionists in the field greatly exceed in numbers any organization heretofore attempted; that with large accessions from the central and western districts of the island a better military discipline is added to increased strength; that instead of mainly drawing as heretofore upon the comparatively primitive population of eastern Cuba, the insurgent armies fairly represent the intelligent aspirations of a large proportion of the people of the whole island; and that they purpose to wage this contest, on these better grounds of vantage, to the end and to make the present struggle a supreme test of the capacity of the Cuban people to win for themselves and their children the heritage of self-government.

"A notable feature of the actual situation is the tactical skill displayed by its leaders. When the disparity of numbers and the comparatively indefensible character of the central and western Vega country are considered, the passage of a considerable force into Pinar del Rio followed by its successful maintenance there for many months must be regarded as a military success of a pronounced character.

"So, too, the Spanish force, in the field, in garrison on the island, or on its way thither from the mother country, is largely beyond any

military display yet called for by a Cuban rising, thus affording an independent measure of the strength of the insurrection.

"From every accessible indication it is clear that the present rebellion is on a far more formidable scale as to numbers, intelligence, and representative features than any of the preceding revolts of this century; that the corresponding effort of Spain for its repression has been enormously augmented; and that, despite the constant influx of fresh armies and material of war from the metropolis, the rebellion, after nearly two years of successful resistance, appears to-day to be in a condition to indefinitely prolong the contest on its present lines.

"The nature of the struggle, however, deserves most earnest consideration. The increased scale on which it is waged brings into bolder relief all the appalling phases which often appear to mark contests for supremacy among the Latin races of the Western Hemisphere. Excesses before confined to a portion of the island become more impressive when wrought throughout its whole extent, as now. The insurgent authority, as has been seen, finds no regular administrative expression; it is asserted only by the sporadic and irresponsible force of arms. The Spanish power, outside of the larger towns and their immediate suburbs, when manifested at all, is equally forceful and arbitrary.

"The only apparent aim on either side is to cripple the adversary by indiscriminate destruction of all that by any chance may benefit him. The populous and wealthy districts of the center and the west, which have escaped harm in former contests, are now ravaged and laid waste by the blind fury of the respective partisans. The principles of civilized warfare, according to the code made sacred by the universal acquiescence of nations, are only too often violated with impunity by irresponsible subordinates, acting at a distance from the central authority and able to shield themselves from just censure or punishment by false or falsified versions of the facts.

"The killing and summary execution of noncombatants is frequently reported, and while the circumstances of the strife are such as to preclude accurate or general information in this regard, enough is known to show that the number of such cases is considerable. In some instances, happily few, American citizens have fallen victims to these savage acts.

"A large part of the correspondence of the State Department with its agents in Cuba has been devoted to these cases of assault upon the rights of our citizens. In no instance has earnest remonstrance and energetic appeal been omitted. But the representatives of the Spanish power often find it easily practicable to postpone explanations and reparation on the ground of alleged ignorance of facts or for other plausible reasons.

"Its effect upon the personal security of our citizens in Cuba is not the only alarming feature of the reign of arbitrary anarchy in that island. Its influence upon the fortunes of those who have invested their capital and enterprise there, on the assumed assurance of respect for law and treaty rights, is no less in point. In the nature of things, and having regard to the normal productions and trade of the island, most of these ventures have been made in the sugar and tobacco growing and stock-raising districts now given over to civil war. Exact statistics of the amount of such investments are not readily attainable, but an approximate statement shows that American interests in actual property in the district of Cienfuegos reach some $12,000,000; in the province of Matanzas some $9,000,000; in Sagua, for estates and crops alone not less than $9,229,000, while in Santiago the investments in mining operations probably exceed $15,000,000. For Pinar del Rio, Santa Clara, and the other interior districts tabulated statements are wanting, and so also with regard to commercial and manufacturing establishments, railway enterprises, and the like.

"A gross estimate of $50,000,000 would be more likely to fall under than over the mark. A large proportion of these investments is now exposed to the exceptional vicissitudes of the war. Estates have been desolated and crops destroyed by the insurgents and Spaniards alike. Upon those not actually ravaged operations have been compulsorily suspended owing to the warnings served by the revolutionists or the withdrawal of protection by the Spanish authorities, often accompanied by a similar prohibition against continuing work thereon or by forbidding communication and residence, thus entailing enforced abandonment of the premises. Provisions and stock have been seized by either force for military use without compensation. Dwellings have been pillaged.

"In short, the cessation of all remunerative production accompanies actual or probable loss of the invested capital. Numerous claims on these several accounts have been filed, but in many instances the sufferers are known to abstain from formal claim or complaint for prudential reasons, lest worse should befall them at the hands of the insurgents and the Spaniards in turn, accordingly as either may gain temporary control of their property. A partial estimate of material claims and injuries of this class already aggregates a trifle under $19,000,000.

"Nor does the loss fall upon capital alone. Large numbers of the agricultural laboring classes are driven from the fields to the nearest towns, partly by the peremptory orders of the local military commanders and partly by the cessation or destruction of their only means of livelihood. They are well-nigh destitute. Among them are many citizens of the United States. Some idea of the extent

of this calamitous condition is given by the reports which reach the Department from a single district. It is officially reported that there are in one provincial city alone some 4,000 necessitous refugees from the surrounding country to whom the municipal authorities can afford little or no relief. Over 300 of these are American citizens, engaged in prosperous farming and stock raising at the beginning of the outbreak, whose employment and resources have been swept away by eighteen months of civil strife, reducing them from affluence to penury and throwing them upon the charity of an exhausted community in a devastated land.

"All these disastrous conditions, with the evils and disorders necessarily following in their train, are interfering with the insular avenues of trade and very gravely impairing the business operations of Cuba. A measure of the general falling off is instructively found in the monthly returns of the customs receipts at the fifteen ports of entry of Cuba, which, from $5,469,255.77 during the first seven months of 1895, sank to $3,728,107.80 in the corresponding period of 1896. This is but one of many accessible examples to show that the industrial value of the island of Cuba is fast decreasing under the prevalent conditions.

"From whatever point of view we regard the matter, it is impossible not to discern that a state of things exists at our doors alike dangerous to good relations, destructive of legitimate commerce, fatal to the internal resources of Cuba, and most vexatious and trying because entailing upon this government excessive burdens in its domestic administration and in its outward relations. This situation can not indefinitely continue without growing still worse, and the time may not be far distant when the United States must seriously consider whether its rights and interests as well as its international duties in view of its peculiar relations to the island do not call for some decided change in the policy hitherto pursued.

"Besides the cases growing out of the acts of the combatants in the interior, complaints have not been infrequent touching the course of the insular government in the centers where the Spanish authorities assert politico-military powers. Numerous instances of interference with the persons, property, vessels, and interests of citizens of the United States have been brought to notice in the past twelvemonth. In every case where the facts sufficed to impute culpability or responsibility to the agents of the Spanish power redress has been promptly and vigorously sought.

"The right of every citizen arrested in Cuba to have the benefit of the ordinary criminal proceedings guaranteed by existing treaties has been energetically insisted upon; the claim of the insular authorities to seize the persons of our citizens without process or charge of crime, and to detain them as suspects upon mere administrative order,

has been met with prompt demand for immediate regular trial or release; arbitrary restrictions upon ordinary commerce, decreed by the military power, and tending to impair existing contracts of our citizens, have called forth impressive remonstrance and promise of redress; the right of our consular representatives to address the local authorities in defence of any assailed interests of Americans, when questioned, has been successfully defended; and unwarrantable acts of interference with our vessels have been at once resisted. The particulars of many of these cases will be found in the collected annual volume entitled 'Foreign Relations of the United States.'

"In April last the *Competitor*, a small schooner of American registry, eluding the vigilance of the Federal authorities, took on board men and supplies presumably intended to aid the Cuban insurrection, and reached the coast of that island near San Cayetano. Being discovered by the Spanish coast guard, a conflict ensued, resulting in the capture of a number of those on board as well as the seizure of the vessel. The prisoners, among them several American citizens, were subjected to a summary military trial, which, although conducted by an admiralty court, alleged to be competent, appeared to have lacked the essential safeguards of procedure stipulated by the existing conventions between the United States and Spain. This government promptly intervened to secure for its implicated citizens all the rights to which they were clearly entitled, including appeal from the pronounced sentence of death. Their cases were subsequently carried to the higher tribunal at Madrid, which has set the conviction aside and remanded the cases for retrial.

"This government has been constrained to enter earnest protest against a recent decree of the governor-general of Cuba, ordering the registration of all aliens in the island, and pronouncing all those not registered within a certain time as debarred from appealing to the provisions of existing law. The treaty rights of American citizens obviously depend on their actual allegiance to their own government, not upon any arbitrary inscription as aliens by the State wherein they may be sojourning; and while this government is well disposed to admit the convenience of the proposed registry as an additional evidence of the right of such citizens in Cuba to the protection of the authorities, and has signified its willingness to facilitate their registration, it can never consent that the omission of a merely local formality can operate to outlaw any persons entitled to its protection as citizens, or to abrogate the right to the orderly recourses of Spanish law solemnly guaranteed to them by treaty."

Report of Mr. Olney, Sec. of State, to the President, Dec. 7, 1896, For. Rel. 1896, lxxx.

President Cleveland's annual message, Dec. 7, 1896.

"The insurrection in Cuba still continues with all its perplexities. It is difficult to perceive that any progress has thus far been made towards the pacification of the island or that the situation of affairs as depicted in my last annual message has in the least improved. If Spain still holds Havana and the seaports and all the considerable towns, the insurgents still roam at will over at least two-thirds of the inland country. If the determination of Spain to put down the insurrection seems but to strengthen with the lapse of time, and is evinced by her unhesitating devotion of largely increased military and naval forces to the task, there is much reason to believe that the insurgents have gained in point of numbers, and character, and resources, and are none the less inflexible in their resolve not to succumb, without practically securing the great objects for which they took up arms. If Spain has not yet reestablished her authority, neither have the insurgents yet made good their title to be regarded as an independent state. Indeed, as the contest has gone on, the pretense that civil government exists on the island, except so far as Spain is able to maintain it, has been practically abandoned. Spain does keep on foot such a government, more or less imperfectly, in the large towns and their immediate suburbs. But, that exception being made, the entire country is either given over to anarchy or is subject to the military occupation of one or the other party. It is reported, indeed, on reliable authority that, at the demand of the commander in chief of the insurgent army, the putative Cuban government has now given up all attempt to exercise its functions, leaving that government confessedly (what there is the best reason for supposing it always to have been in fact) a government merely on paper.

"Were the Spanish armies able to meet their antagonists in the open, or in pitched battle, prompt and decisive results might be looked for, and the immense superiority of the Spanish forces in numbers, discipline, and equipment, could hardly fail to tell greatly to their advantage. But they are called upon to face a foe that shuns general engagements, that can choose and does choose its own ground, that from the nature of the country is visible or invisible at pleasure, and that fights only from ambuscade and when all the advantages of position and numbers are on its side. In a country where all that is indispensable to life in the way of food, clothing, and shelter is so easily obtainable, especially by those born and bred on the soil, it is obvious that there is hardly a limit to the time during which hostilities of this sort may be prolonged. Meanwhile, as in all cases of protracted civil strife, the passions of the combatants grow more and more inflamed and excesses on both sides become more frequent and more deplorable. They are also participated in by bands of marauders, who, now in the name of one party and now in

the name of the other, as may best suit the occasion, harry the country at will and plunder its wretched inhabitants for their own advantage. Such a condition of things would inevitably entail immense destruction of property even if it were the policy of both parties to prevent it as far as practicable. But while such seemed to be the original policy of the Spanish government, it has now apparently abandoned it and is acting upon the same theory as the insurgents, namely, that the exigencies of the contest require the wholesale annihilation of property, that it may not prove of use and advantage to the enemy.

"It is to the same end that in pursuance of general orders, Spanish garrisons are now being withdrawn from plantations and the rural population required to concentrate itself in the towns. The sure result would seem to be that the industrial value of the island is fast diminishing, and that unless there is a speedy and radical change in existing conditions, it will soon disappear altogether. That value consists very largely, of course, in its capacity to produce sugar—a capacity already much reduced by the interruptions to tillage, which have taken place during the last two years. It is reliably asserted that should these interruptions continue during the current year and practically extend, as is now threatened, to the entire sugar-producing territory of the island, so much time and so much money will be required to restore the land to its normal productiveness that it is extremely doubtful if capital can be induced to even make the attempt.

"The spectacle of the utter ruin of an adjoining country, by nature one of the most fertile and charming on the globe, would engage the serious attention of the government and people of the United States in any circumstances. In point of fact, they have a concern with it which is by no means of a wholly sentimental or philanthropic character. It lies so near to us as to be hardly separated from our territory. Our actual pecuniary interest in it is second only to that of the people and government of Spain. It is reasonably estimated that at least from $30,000,000 to $50,000,000 of American capital are invested in plantations and in railroad, mining, and other business enterprises on the island. The volume of trade between the United States and Cuba, which in 1889 amounted to about $64,000,000, rose in 1893 to about $103,000,000, and in 1894, the year before the present insurrection broke out, amounted to nearly $96,000,000. Besides this large pecuniary stake in the fortunes of Cuba, the United States finds itself inextricably involved in the present contest in other ways both vexatious and costly.

"Many Cubans reside in this country and indirectly promote the insurrection through the press, by public meetings, by the purchase and shipment of arms, by the raising of funds, and by other means, which the spirit of our institutions and the tenor of our laws do not

permit to be made the subject of criminal prosecutions. Some of them, though Cubans at heart and in all their feelings and interests, have taken out papers as naturalized citizens of the United States, a proceeding resorted to with a view to possible protection by this government, and not unnaturally regarded with much indignation by the country of their origin. The insurgents are undoubtedly encouraged and supported by the widespread sympathy the people of this country always and instinctively feel for every struggle for better and freer government, and which, in the case of the more adventurous and restless elements of our population, leads in only too many instances to active and personal participation in the contest. The result is that this government is constantly called upon to protect American citizens, to claim damages for injuries to persons and property, now estimated at many millions of dollars, and to ask explanations and apologies for the acts of Spanish officials, whose zeal for the repression of rebellion sometimes blinds them to the immunities belonging to the unoffending citizens of a friendly power. It follows from the same causes that the United States is compelled to actively police a long line of seacoast against unlawful expeditions, the escape of which the utmost vigilance will not always suffice to prevent.

"These inevitable entanglements of the United States with the rebellion in Cuba, the large American property interests affected, and considerations of philanthropy and humanity in general, have led to a vehement demand in various quarters, for some sort of positive intervention on the part of the United States. It was at first proposed that belligerent rights should be accorded to the insurgents—a proposition no longer urged because untimely and in practical operation clearly perilous and injurious to our own interests. It has since been and is now sometimes contended that the independence of the insurgents should be recognized. But imperfect and restricted as the Spanish government of the island may be, no other exists there—unless the will of the military officer in temporary command of a particular district can be dignified as a species of government. It is now also suggested that the United States should buy the island—a suggestion possibly worthy of consideration if there were any evidence of a desire or willingness on the part of Spain to entertain such a proposal. It is urged, finally, that, all other methods failing, the existing internecine strife in Cuba should be terminated by our intervention, even at the cost of a war between the United States and Spain—a war which its advocates confidently prophesy could be neither large in its proportions nor doubtful in its issue.

"The correctness of this forecast need be neither affirmed nor denied. The United States has nevertheless a character to maintain as

a nation, which plainly dictates that right and not might should be the rule of its conduct. Further, though the United States is not a nation to which peace is a necessity, it is in truth the most pacific of powers, and desires nothing so much as to live in amity with all the world. Its own ample and diversified domains satisfy all possible longings for territory, preclude all dreams of conquest, and prevent any casting of covetous eyes upon neighboring regions, however attractive. That our conduct towards Spain and her dominions has constituted no exception to this national disposition is made manifest by the course of our government, not only thus far during the present insurrection, but during the ten years that followed the rising at Yara in 1868. No other great power, it may safely be said, under circumstances of similar perplexity, would have manifested the same restraint and the same patient endurance. It may also be said that this persistent attitude of the United States towards Spain in connection with Cuba unquestionably evinces no slight respect and regard for Spain on the part of the American people. They in truth do not forget her connection with the discovery of the Western Hemisphere, nor do they underestimate the great qualities of the Spanish people, nor fail to fully recognize their splendid patriotism and their chivalrous devotion to the national honor.

"They view with wonder and admiration the cheerful resolution with which vast bodies of men are sent across thousands of miles of ocean, and an enormous debt accumulated, that the costly possession of the Gem of the Antilles may still hold its place in the Spanish Crown. And yet neither the government nor the people of the United States have shut their eyes to the course of events in Cuba, or have failed to realize the existence of conceded grievances, which have led to the present revolt from the authority of Spain—grievances recognized by the Queen Regent and by the Cortes, voiced by the most patriotic and enlightened of Spanish statesmen, without regard to party, and demonstrated by reforms proposed by the executive and approved by the legislative branch of the Spanish government. It is in the assumed temper and disposition of the Spanish government to remedy these grievances, fortified by indications of influential public opinion in Spain, that this government has hoped to discover the most promising and effective means of composing the present strife, with honor and advantage to Spain and with the achievement of all the reasonable objects of the insurrection.

"It would seem that if Spain should offer to Cuba genuine autonomy—a measure of home rule which, while preserving the sovereignty of Spain, would satisfy all rational requirements of her Spanish subjects—there should be no just reason why the pacification of the island might not be effected on that basis. Such a result would appear to be in the true interest of all concerned. It would

at once stop the conflict which is now consuming the resources of the island and making it worthless for whichever party may ultimately prevail. It would keep intact the possessions of Spain without touching her honor, which will be consulted rather than impugned by the adequate redress of admitted grievances. It would put the prosperity of the island and the fortunes of its inhabitants within their own control, without severing the natural and ancient ties which bind them to the mother country, and would yet enable them to test their capacity for self-government under the most favorable conditions. It has been objected on the one side that Spain should not promise autonomy until her insurgent subjects lay down their arms; on the other side, that promised autonomy, however liberal, is insufficient, because without assurance of the promise being fulfilled.

"But the reasonableness of a requirement by Spain, of unconditional surrender on the part of the insurgent Cubans before their autonomy is conceded, is not altogether apparent. It ignores important features of the situation—the stability two years' duration has given to the insurrection; the feasibility of its indefinite prolongation in the nature of things, and as shown by past experience; the utter and imminent ruin of the island, unless the present strife is speedily composed; above all, the rank abuses which all parties in Spain, all branches of her government, and all her leading public men concede to exist and profess a desire to remove. Facing such circumstances, to withhold the proffer of needed reforms until the parties demanding them put themselves at mercy by throwing down their arms has the appearance of neglecting the gravest of perils and inviting suspicion as to the sincerity of any professed willingness to grant reforms. The objection on behalf of the insurgents—that promised reforms can not be relied upon—must of course be considered, though we have no right to assume, and no reason for assuming, that anything Spain undertakes to do for the relief of Cuba will not be done according to both the spirit and the letter of the undertaking.

"Nevertheless, realizing that suspicions and precautions on the part of the weaker of two combatants are always natural and not always unjustifiable—being sincerely desirous in the interest of both as well as on its own account that the Cuban problem should be solved with the least possible delay—it was intimated by this government to the government of Spain some months ago that, if a satisfactory measure of home rule were tendered the Cuban insurgents, and would be accepted by them upon a guaranty of its execution, the United States would endeavor to find a way not objectionable to Spain of furnishing such guaranty. While no definite response to this intimation has yet been received from the Spanish government, it is believed to be not altogether unwelcome, while,

as already suggested, no reason is perceived why it should not be approved by the insurgents. Neither party can fail to see the importance of early action and both must realize that to prolong the present state of things for even a short period will add enormously to the time and labor and expenditure necessary to bring about the industrial recuperation of the island. It is therefore fervently hoped on all grounds that earnest efforts for healing the breach between Spain and the insurgent Cubans, upon the lines above indicated, may be at once inaugurated and pushed to an immediate and successful issue. The friendly offices of the United States, either in the manner above outlined or in any other way consistent with our Constitution and laws, will always be at the disposal of either party.

"Whatever circumstances may arise, our policy and our interests would constrain us to object to the acquisition of the island or an interference with its control by any other power.

"It should be added that it can not be reasonably assumed that the hitherto expectant attitude of the United States will be indefinitely maintained. While we are anxious to accord all due respect to the sovereignty of Spain, we can not view the pending conflict in all its features, and properly apprehend our inevitably close relations to it, and its possible results, without considering that by the course of events we may be drawn into such an unusual and unprecedented condition, as will fix a limit to our patient waiting for Spain to end the contest, either alone and in her own way, or with our friendly cooperation.

"When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its reestablishment has degenerated into a strife which means nothing more than the useless sacrifice of human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge. Deferring the choice of ways and methods until the time for action arrives, we should make them depend upon the precise conditions then existing; and they should not be determined upon without giving careful heed to every consideration involving our honor and interest, or the international duty we owe to Spain. Until we face the contingencies suggested, or the situation is by other incidents imperatively changed, we should continue in the line of conduct heretofore pursued, thus in all circumstances exhibiting our obedi-

ence to the requirements of public law and our regard for the duty enjoined upon us by the position we occupy in the family of nations.

"A contemplation of emergencies that may arise should plainly lead us to avoid their creation, either through a careless disregard of present duty or even an undue stimulation and ill-timed expression of feeling. But I have deemed it not amiss to remind the Congress that a time may arrive when a correct policy and care for our interests, as well as a regard for the interests of other nations and their citizens, joined by considerations of humanity and a desire to see a rich and fertile country, intimately related to us, saved from complete devastation, will constrain our government to such action as will subserve the interests thus involved and at the same time promise to Cuba and its inhabitants an opportunity to enjoy the blessings of peace."

President Cleveland, annual message, Dec. 7, 1896, For. Rel. 1896, xxix.

Protest against reconcentration.

"Referring to the conversation which the Assistant Secretary, Mr. Day, had the honor to have with you on the 8th instant, it now becomes my duty, obeying the direction of the President, to invite through your representation the urgent attention of the government of Spain to the manner of conducting operations in the neighboring island of Cuba.

"By successive orders and proclamations of the captain-general of the island of Cuba, some of which have been promulgated while others are known only by their effects, a policy of devastation and interference with the most elementary rights of human existence has been established in that territory tending to inflict suffering on innocent noncombatants, to destroy the value of legitimate investments, and to extinguish the natural resources of the country in the apparent hope of crippling the insurgents and restoring Spanish rule in the island.

"No incident has so deeply affected the sensibilities of the American people or so painfully impressed their government as the proclamations of General Weyler, ordering the burning or unrooting of dwellings, the destruction of growing crops, the suspension of tillage, the devastation of fields, and the removal of the rural population from their homes to suffer privation and disease in the overcrowded and ill-supplied garrison towns. The latter aspect of this campaign of devastation has especially attracted the attention of this government, inasmuch as several hundreds of American citizens among the thousands of concentrados of the central and eastern provinces of Cuba were ascertained to be destitute of the necessaries of life to a degree demanding immediate relief through the agencies of the United States, to save them from death by sheer starvation and from the ravages of pestilence. From all parts of the productive zones of the island, where the enterprise and capital of Americans

have established mills and farms worked in large part by citizens of the United States, comes the same story of interference with the operations of tillage and manufacture, due to the systematic enforcement of a policy aptly described in General Weyler's bando of May 27 last as 'the concentration of the inhabitants of the rural country and the destruction of resources in all places where the instructions given are not carried into effect.' Meanwhile the burden of contribution remains, arrears of taxation necessarily keep pace with the deprivations of the means of paying taxes, to say nothing of the destruction of the ordinary means of livelihood, and the relief held out by another bando of the same date is illusory, for the resumption of industrial pursuits in limited areas is made conditional upon the payment of all arrears of taxation and the maintenance of a protecting garrison. Such relief can not obviously reach the numerous class of concentrados, the women and children deported from their ruined homes and desolated farms to the garrison towns.

"For the larger industrial ventures, capital may find its remedy, sooner or later, at the bar of international justice, but for the labor dependent upon the slow rehabilitation of capital there appears to be intended only the doom of privation and distress.

"Against these phases of the conflict, against this deliberate infliction of suffering on innocent noncombatants, against such resort to instrumentalities condemned by the voice of humane civilization, against the cruel employment of fire and famine to accomplish by uncertain indirection what the military arm seems powerless to directly accomplish, the President is constrained to protest, in the name of the American people and in the name of common humanity. The inclusion of a thousand or more of our own citizens among the victims of this policy, the wanton destruction of the legitimate investments of Americans to the amount of millions of dollars, and the stoppage of avenues of normal trade—all these give the President the right of specific remonstrance; but in the just fulfillment of his duty he can not limit himself to these formal grounds of complaint. He is bound by the higher obligations of his representative office to protest against the uncivilized and inhumane conduct of the campaign in the island of Cuba. He conceives that he has a right to demand that a war, conducted almost within sight of our shores and grievously affecting American citizens and their interests throughout the length and breadth of the land, shall at least be conducted according to the military codes of civilization.

"It is the President's hope that this earnest representation will be received in the same kindly spirit in which it is intended. The history of the recent thirteen years of warfare in Cuba, divided between two protracted periods of strife, has shown the desire of the United States that the contest be conducted and ended in ways alike honor-

able to both parties and promising a stable settlement. If the friendly attitude of this government and its difficult observance of the dictates of neutrality is to bear fruit, it can only be when supplemented by Spain's own conduct of the war in a manner responsive to the precepts of ordinary humanity and calculated to invite as well the expectant forbearance of this Government as the confidence of the Cuban people in the beneficence of Spanish control."

Mr. Sherman, Sec. of State, to Señor Don Enrique Dupuy de Lôme, Spanish min., No. 269, June 26, 1897, For. Rel. 1897, 507; MS. Notes to Spain, XI. 307.

Registration of property.

August 6, 1897, the consul of the United States at Santiago de Cuba reported that he had received a request from the military governor of the province asking for a list of all American property within that zone. The consul furnished a list containing the names of all Americans registered at the consulate whose houses were or had lately been within the zone in question, but stated that owing to the absence of any register at the consulate the subject was beset with difficulties, and that very few American citizens had left any list of their property at the consulate.[a]

With reference to this correspondence the Department of State instructed the consul-general of the United States as follows: "In the absence of any provision of United States law or treaty requiring the consular registration of American property in Spanish jurisdiction, the furnishing of lists based upon information voluntarily supplied by our citizens to our consuls in Cuba can not be suffered to prejudice in any way the rights of any other American property holders whose names may not so appear. Their rights under treaty and under public law are inherent in their national character and can not be impaired by any arbitrary formality of registration prescribed by local authority. The principle is much the same as in regard to the attempt last year to debar unregistered American citizens from their lawful rights. (See Foreign Relations, 1896, pp. 680–682.) This government is disposed to facilitate any reasonable resort to registration as a convenient means of announcing and making patent the rights of our citizens in case of need, but it can not admit that omission of a formality not required by our treaty or our laws can impair the mutual relation of allegiance and protection between the government of the United States and its citizens in a foreign land."[b]

[a] For. Rel. 1897, 527.

[b] Mr. Cridler, Third Assistant Secretary of State, to Mr. Lee, consul-general at Havana, August 24, 1897, For. Rel. 1897, 529.

A copy of this correspondence was sent to the minister of the United States at Madrid as setting forth the position of the United States on the subject.[a]

President McKinley's annual message, Dec. 6, 1897.

"The most important problem with which this government is now called upon to deal pertaining to its foreign relations concerns its duty toward Spain and the Cuban insurrection. Problems and conditions more or less in common with those now existing have confronted this government at various times in the past. The story of Cuba for many years has been one of unrest; growing discontent; an effort toward a larger enjoyment of liberty and self-control; of organized resistance to the mother country; of depression after distress and warfare and of ineffectual settlement to be followed by renewed revolt. For no enduring period since the enfranchisement of the continental possessions of Spain in the western continent has the condition of Cuba or the policy of Spain toward Cuba not caused concern to the United States.

"The prospect from time to time that the weakness of Spain's hold upon the island and the political vicissitudes and embarrassments of the home government might lead to the transfer of Cuba to a continental power called forth, between 1823 and 1860, various emphatic declarations of the policy of the United States to permit no disturbance of Cuba's connection with Spain unless in the direction of independence or acquisition by us through purchase; nor has there been any change of this declared policy since upon the part of the Government.

"The revolution which began in 1868 lasted for ten years despite the strenuous efforts of the successive peninsular governments to suppress it. Then as now the government of the United States testified its grave concern and offered its aid to put an end to bloodshed in Cuba. The overtures made by General Grant were refused and the war dragged on, entailing great loss of life and treasure and increased injury to American interests besides throwing enhanced burdens of neutrality upon this government. In 1878 peace was brought about by the truce of Zanjon, obtained by negotiations between the Spanish commander, Martinez de Campos, and the insurgent leaders.

"The present insurrection broke out in February, 1895. It is not my purpose at this time to recall its remarkable increase or to characterize its tenacious resistance against the enormous forces massed against it by Spain. The revolt and the efforts to subdue it carried destruction to every quarter of the island, developing wide proportions and defying the efforts of Spain for its suppression. The

[a] Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, August 28, 1897. For. Rel. 1897, 527.

civilized code of war has been disregarded, no less so by the Spaniards than by the Cubans.

"The existing conditions can not but fill this government and the American people with the gravest apprehension. There is no desire on the part of our people to profit by the misfortunes of Spain. We have only the desire to see the Cubans prosperous and contented, enjoying that measure of self-control which is the inalienable right of man, protected in their right to reap the benefit of the exhaustless treasures of their country.

"The offer made by my predecessor in April, 1896, tendering the friendly offices of this government failed. Any mediation on our part was not accepted. In brief the answer read: 'There is no effectual way to pacify Cuba unless it begins with the actual submission of the rebels to the mother country.' Then only could Spain act in the promised direction, of her own motion and after her own plans.

"The cruel policy of concentration was initiated February 16, 1896. The productive districts controlled by the Spanish armies were depopulated. The agricultural inhabitants were herded in and about the garrison towns, their lands laid waste and their dwellings destroyed. This policy the late cabinet of Spain justified as a necessary measure of war and as a means of cutting off supplies from the insurgents. It has utterly failed as a war measure. It was not civilized warfare. It was extermination.

"Against this abuse of the rights of war I have felt constrained on repeated occasions to enter the firm and earnest protest of this government. There was much of public condemnation of the treatment of American citizens by alleged illegal arrests and long imprisonment awaiting trial or pending protracted judicial proceedings. I felt it my first duty to make instant demand for the release or speedy trial of all American citizens under arrest. Before the change of the Spanish cabinet in October last twenty-two prisoners, citizens of the United States, had been given their freedom.

"For the relief of our own citizens suffering because of the conflict the aid of Congress was sought in a special message, and under the appropriation of April 4, 1897, effective aid has been given to American citizens in Cuba, many of them at their own request having been returned to the United States.

"The instructions given to our new minister to Spain before his departure for his post directed him to impress upon that government the sincere wish of the United States to lend its aid toward the ending of the war in Cuba by reaching a peaceful and lasting result, just and honorable alike to Spain and to the Cuban people. These instructions recited the character and duration of the contest, the widespread losses it entails, the burdens and restraints it imposes upon us, with constant disturbance of national interests, and the injury re-

sulting from an indefinite continuance of this state of things. It was stated that at this juncture our government was constrained to seriously inquire if the time was not ripe when Spain of her own volition, moved by her own interests and every sentiment of humanity, should put a stop to this destructive war and make proposals of settlement honorable to herself and just to her Cuban colony. It was urged that as a neighboring nation, with large interests in Cuba, we could be required to wait only a reasonable time for the mother country to establish its authority and restore peace and order within the borders of the island; that we could not contemplate an indefinite period for the accomplishment of this result.

"No solution was proposed to which the slightest idea of humiliation to Spain could attach, and indeed precise proposals were withheld to avoid embarrassment to that government. All that was asked or expected was that some safe way might be speedily provided and permanent peace restored. It so chanced that the consideration of this offer, addressed to the same Spanish administration which had declined the tenders of my predecessor and which for more than two years had poured men and treasure into Cuba in the fruitless effort to suppress the revolt, fell to others. Between the departure of General Woodford, the new envoy, and his arrival in Spain, the statesman who had shaped the policy of his country fell by the hand of an assassin, and although the cabinet of the late premier still held office and received from our envoy the proposals he bore, that cabinet gave place within a few days thereafter to a new administration, under the leadership of Sagasta.

"The reply to our note was received on the 23d day of October. It is in the direction of a better understanding. It appreciates the friendly purposes of this government. It admits that our country is deeply affected by the war in Cuba and that its desires for peace are just. It declares that the present Spanish government is bound by every consideration to a change of policy that should satisfy the United States and pacify Cuba within a reasonable time. To this end Spain has decided to put into effect the political reforms heretofore advocated by the present premier, without halting for any consideration in the path which in its judgment leads to peace. The military operations, it is said, will continue but will be humane and conducted with all regard for private rights, being accompanied by political action leading to the autonomy of Cuba while guarding Spanish sovereignty. This, it is claimed, will result in investing Cuba with a distinct personality; the island to be governed by an executive and by a local council or chamber, reserving to Spain the control of the foreign relations, the army and navy and the judicial administration. To accomplish this the present government proposes to modify existing legislation by decree, leaving the Spanish Cortes,

with the aid of Cuban senators and deputies, to solve the economic problem and properly distribute the existing debt.

"In the absence of a declaration of the measures that this government proposes to take in carrying out its proffer of good offices it suggests that Spain be left free to conduct military operations and grant political reforms, while the United States for its part shall enforce its neutral obligations and cut off the assistance which it is asserted the insurgents receive from this country. The supposition of an indefinite prolongation of the war is denied. It is asserted that the western provinces are already well-nigh reclaimed; that the planting of cane and tobacco therein has been resumed, and that by force of arms and new and ample reforms very early and complete pacification is hoped for.

"The immediate amelioration of existing conditions under the new administration of Cuban affairs is predicted, and therewithal the disturbance and all occasion for any change of attitude on the part of the United States. Discussion of the question of the international duties and responsibilities of the United States as Spain understands them is presented, with an apparent disposition to charge us with failure in this regard. This charge is without any basis in fact. It could not have been made if Spain had been cognizant of the constant efforts this government has made at the cost of millions and by the employment of the administrative machinery of the nation at command to perform its full duty according to the law of nations. That it has successfully prevented the departure of a single military expedition or armed vessel from our shores in violation of our laws would seem to be a sufficient answer. But of this aspect of the Spanish note it is not necessary to speak further now. Firm in the conviction of a wholly performed obligation, due response to this charge has been made in diplomatic course.

"Throughout all these horrors and dangers to our own peace this government has never in any way abrogated its sovereign prerogative of reserving to itself the determination of its policy and course according to its own high sense of right and in consonance with the dearest interests and convictions of our own people should the prolongation of the strife so demand.

"Of the untried measures there remain only: Recognition of the insurgents as belligerents; recognition of the independence of Cuba; neutral intervention to end the war by imposing a rational compromise between the contestants, and intervention in favor of one or the other party. I speak not of forcible annexation, for that can not be thought of. That by our code of morality would be criminal aggression. . . ."[a]

[a] For omitted passage, which relates to the question of the recognition of Cuban belligerency, see supra, § 67, I. 196.

"I regard the recognition of the belligerency of the Cuban insurgents as now unwise and therefore inadmissible. Should that step hereafter be deemed wise as a measure of right and duty the Executive will take it.

"Intervention upon humanitarian grounds has been frequently suggested and has not failed to receive my most anxious and earnest consideration. But should such a step be now taken when it is apparent that a hopeful change has supervened in the policy of Spain toward Cuba? A new government has taken office in the mother country. It is pledged in advance to the declaration that all the effort in the world can not suffice to maintain peace in Cuba by the bayonet; that vague promises of reform after subjugation afford no solution of the insular problem; that with a substitution of commanders must come a change of the past system of warfare for one in harmony with a new policy which shall no longer aim to drive the Cubans to the 'horrible alternative of taking to the thicket or succumbing in misery;' that reforms must be instituted in accordance with the needs and circumstances of the time, and that these reforms, while designed to give full autonomy to the colony and to create a virtual entity and self-controlled administration, shall yet conserve and affirm the sovereignty of Spain by a just distribution of powers and burdens upon a basis of mutual interest untainted by methods of selfish expediency.

"The first acts of the new government lie in these honorable paths. The policy of cruel rapine and extermination that so long shocked the universal sentiment of humanity has been reversed. Under the new military commander a broad clemency is proffered. Measures have already been set on foot to relieve the horrors of starvation. The power of the Spanish armies it is asserted is to be used not to spread ruin and desolation but to protect the resumption of peaceful agricultural pursuits and productive industries. That past methods are futile to force a peace by subjugation is freely admitted, and that ruin without conciliation must inevitably fail to win for Spain the fidelity of a contented dependency.

"Decrees in application of the foreshadowed reforms have already been promulgated. The full text of these decrees has not been received, but as furnished in a telegraphic summary from our minister are: All civil and electoral rights of peninsular Spaniards are, in virtue of existing constitutional authority, forthwith extended to colonial Spaniards. A scheme of autonomy has been proclaimed by decree, to become effective upon ratification by the Cortes. It creates a Cuban parliament which, with the insular executive, can consider and vote upon all subjects affecting local order and interests, possessing unlimited powers save as to matters of state, war and the navy as to which the governor-general acts by his own authority

as the delegate of the central government. This parliament receives the oath of the governor-general to preserve faithfully the liberties and privileges of the colony, and to it the colonial secretaries are responsible. It has the right to propose to the central government, through the governor-general, modifications of the national charter and to invite new projects of law or executive measures in the interest of the colony.

"Besides its local powers it is competent, first, to regulate electoral registration and procedure and prescribe the qualifications of electors and the manner of exercising suffrage; second, to organize courts of justice with native judges from members of the local bar; third, to frame the insular budget both as to expenditures and revenues, without limitation of any kind, and to set apart the revenues to meet the Cuban share of the national budget, which latter will be voted by the national Cortes with the assistance of Cuban senators and deputies; fourth, to initiate or take part in the negotiations of the national government for commercial treaties which may affect Cuban interests; fifth, to accept or reject commercial treaties which the national government may have concluded without the participation of the Cuban government; sixth, to frame the colonial tariff, acting in accord with the peninsular government in scheduling articles of mutual commerce between the mother country and the colonies. Before introducing or voting upon a bill, the Cuban government or the chambers will lay the project before the central government and hear its opinion thereon, all the correspondence in such regard being made public. Finally, all conflicts of jurisdiction arising between the different municipal, provincial and insular assemblies, or between the latter and the insular executive power, and which from their nature may not be referable to the central government for decision, shall be submitted to the courts.

"That the government of Sagasta has entered upon a course from which recession with honor is impossible can hardly be questioned; that in the few weeks it has existed it has made earnest of the sincerity of its professions is undeniable. I shall not impugn its sincerity, nor should impatience be suffered to embarrass it in the task it has undertaken. It is honestly due to Spain and to our friendly relations with Spain that she should be given a reasonable chance to realize her expectations and to prove the asserted efficacy of the new order of things to which she stands irrevocably committed. She has recalled the commander whose brutal orders inflamed the American mind and shocked the civilized world. She has modified the horrible order of concentration and has undertaken to care for the helpless and permit those who desire to resume the cultivation of their fields to do so and assures them of the protection of the Spanish government in their lawful occupations. She has just released the

'Competitor' prisoners heretofore sentenced to death and who have been the subject of repeated diplomatic correspondence during both this and the preceding administration.

"Not a single American citizen is now in arrest or confinement in Cuba of whom this government has any knowledge. The near future will demonstrate whether the indispensable condition of a righteous peace, just alike to the Cubans and to Spain as well as equitable to all our interests so intimately involved in the welfare of Cuba, is likely to be attained. If not, the exigency of further and other action by the United States will remain to be taken. When that time comes that action will be determined in the line of indisputable right and duty. It will be faced, without misgiving or hesitancy in the light of the obligation this government owes to itself, to the people who have confided to it the protection of their interests and honor, and to humanity.

"Sure of the right, keeping free from all offense ourselves, actuated only by upright and patriotic considerations, moved neither by passion nor selfishness, the government will continue its watchful care over the rights and property of American citizens and will abate none of its efforts to bring about by peaceful agencies a peace which shall be honorable and enduring. If it shall hereafter appear to be a duty imposed by our obligations to ourselves, to civilization and humanity to intervene with force, it shall be without fault on our part and only because the necessity for such action will be so clear as to command the support and approval of the civilized world."

President McKinley, annual message, Dec. 6, 1897, For. Rel. 1897, xi.

Instructions to Gen. Woodford.

"Before you go to your post it is proper to state to you the President's views on the relation of your government to the contest which is now being waged in Cuba. The same occasion requires that you should be made acquainted with the course which has been deemed best for the United States to follow under existing conditions.

"During thirteen years of the past twenty-nine years the island of Cuba has been the scene of grave disorder and sanguinary conflict. On two distinct occasions the power and authority of the Spanish Crown have been arrayed against a serious and persistent effort of a large proportion of the population of the island to achieve independence.

"The insurrection which began at Yara in October, 1868, lasted for ten years, and ended not so much because of the physical repression of the revolt by force of arms as by reason of the exhaustion of the combatants and the conclusion of a truce based upon the concession to the Cubans of certain measures of autonomous reform in 1877 and

1878. The peace thus brought about proved unstable, and, after some sixteen years of more or less unsatisfactory continuance, was broken by a renewed manifestation of the deeply rooted aspirations of the native Cuban elements toward more complete enjoyment of self-government. Beginning in February, 1895, in an uprising which, like the previous insurrection of Yara, was local and unorganized, the movement rapidly spread until, on the 27th of that month, the superior authority of the island deemed it necessary to issue a proclamation declaring the rich and populous districts about Matanzas and Santiago de Cuba in a 'state of siege.' Thereafter, notwithstanding the extensive military operations undertaken to crush the revolt, and despite the unprecedented exertions put forth by Spain and the armies and treasure poured into the disturbed territory, the conflict extended over the greater part of the island and invaded the western provinces, which the insurrection of Yara had failed to arouse.

"For more than two years a wholly unexampled struggle has raged in Cuba between the discontented native population and the mother power. Not only has its attendant ruin spread over a larger area than in any previous contest, but its effects have been more widely felt and the cost of life and treasure to Spain has been far greater. The strife continues on a footing of mutual destruction and devastation. Day by day the conviction gathers strength that it is visionary for Spain to hope that Cuba, even if eventually subjugated by sheer exhaustion, can ever bear to her anything like the relation of dependence and profit she once bore. The policy which obviously attempts to make Cuba worthless to the Cubans, should they prevail, must inevitably make the island equally worthless to Spain in the event of reconquest, whether it be regained as a subject possession or endowed with a reasonable measure of self-administration.

"The recuperative processes, always painfully slow in an exhausted community, would necessarily be doubly remote in either of the latter contingencies, for in the light of events of the past twenty-nine years capital and industry would shrink from again engaging in costly enterprises in a field where neither proximate return nor permanent security is to be expected. To fix the truth of this assertion one need only regard the fate of the extraordinary efforts to rehabilitate the fortunes of Cuba that followed the truce of 1878. The capital and intelligence contributed by citizens of the United States and other countries, which at that time poured into Cuba seeking to endow the island with the marvelous resources of modern invention and advanced industrial processes, have now become submerged in the common ruin. The commerce of Cuba has dwindled to such unprofitable proportions that its ability for self-support is questionable even if peace was restored to-day. Its capacity to yield anything like ade-

quate return toward the support of the mother country, even granting the disposition to do so, is a matter of the gravest doubt.

"Weighing all these facts carefully and without prejudice, in the judgment of the President the time has come for this Government to soberly consider and clearly decide the nature and methods of its duty both to its neighbors and itself.

"This government has labored and is still laboring under signal difficulties in its administration of its neutrality laws. It is ceaselessly confronted with questions affecting the inherent and treaty rights of its citizens in Cuba. It beholds the island suffering an almost complete paralysis of many of its most necessary commercial functions by reason of the impediments imposed and the ruinous injuries wrought by this internecine warfare at its very doors; and above all, it is naturally and rightfully apprehensive lest some untoward incident may abruptly supervene to inflame mutual passions beyond control and thus raise issues which, however deplorable, can not be avoided.

"In short, it may not be reasonably asked or expected that a policy of mere inaction can be safely prolonged. There is no longer question that the sentiment of the American people strongly demands that if the attitude of neutrality is to be maintained toward these combatants it must be a genuine neutrality as between combatants, fully recognized as such in fact as well as in name. The problem of recognition of belligerency has been often presented, but never perhaps more explicitly than now. Both Houses of Congress, nearly a year ago, adopted by an almost unanimous vote a concurrent resolution recognizing belligerency in Cuba, and latterly the Senate, by a large majority, has voted a joint resolution of like purport, which is now pending in the House of Representatives.

"At this juncture our government must seriously inquire whether the time has not arrived when Spain, of her own volition, moved by her own interests and by every paramount sentiment of humanity, will put a stop to this destructive war and make proposals of settlement honorable to herself and just to her Cuban colony and to mankind. The United States stands ready to assist her and tender good offices to that end.

"It should by no means be forgotten that besides and beyond the question of recognition of belligerency, with its usual proclamation of neutrality and its concession of equal rights and impartial imposition of identical disabilities in respect to the contending parties within our municipal jurisdiction, there lies the larger ulterior problem of intervention, which the President does not now discuss. It is with no unfriendly intent that this subject has been mentioned, but simply to show that this government does not and can not ignore the possibilities of duty hidden in the future, nor be unprepared to

face an emergency which may at any time be born of the unhappy contest in Cuba. The extraordinary, because direct and not merely theoretical or sentimental, interest of the United States in the Cuban situation can not be ignored, and if forced the issue must be met honestly and fearlessly, in conformity with our national life and character. Not only are our citizens largely concerned in the ownership of property and in the industrial and commercial ventures which have been set on foot in Cuba through our enterprising initiative and sustained by their capital, but the chronic condition of trouble and violent derangement in that island constantly causes disturbance in the social and political condition of our own people. It keeps up a continuous irritation within our own borders, injuriously affects the normal functions of business, and tends to delay the condition of prosperity to which this country is entitled.

"No exception can be taken to the general proposition that a neighboring nation, however deeply disturbed and injured by the existence of a devastating internal conflict at its doors, may be constrained, on grounds of international comity, to disregard its endangered interests and remain a passive spectator of the contest for a reasonable time while the titular authority is repressing the disorder. The essence of this moral obligation lies in the reasonableness of the delay invited by circumstances and by the effort of the territorial authority to assert its claimed rights. The onlooking nation need only wait 'a reasonable time' before alleging and acting upon the rights which it, too, possesses. This proposition is not a legal subtlety, but a broad principle of international comity and law.

"The question arises, then, whether Spain has not already had a reasonable time to restore peace and been unable to do so, even by a concentration of her resources and measures of unparalleled severity which have received very general condemnation. The methods which Spain has adopted to wage the fight give no prospect of immediate peace or of a stable return to the conditions of prosperity which are essential to Cuba in its intercourse with its neighbors. Spain's inability entails upon the United States a degree of injury and suffering which can not longer be ignored. Assuredly Spain can not expect this government to sit idle, letting vast interests suffer, our political elements disturbed, and the country perpetually embroiled, while no progress is being made in the settlement of the Cuban problem. Such a policy of inaction would in reality prove of no benefit to Spain, while certain to do the United States incalculable harm. This government, strong in its sense of right and duty, yet keenly sympathetic with the aspirations of any neighboring community in close touch with our own civilization, is naturally desirous to avoid, in all rational ways, the precipitation of a result which would be painfully abhorrent to the American people.

" For all of the reasons before stated the President feels it his duty to make the strongest possible effort to help bring about a result which shall be in conformity alike with the feelings of our people, the inherent rights of civilized man, and be of advantage both to Cuba and to Spain. Difficult as the task may seem now, it is believed that frankness, earnestness, perseverance, and a fair regard for the rights of others will eventually solve the problem.

" It should be borne in mind from the start that it is far removed from the feelings of the American people and the mind of the President to propose any solution to which the slightest idea of humiliation to Spain could in any way be attached. But no possible intention or occasion to wound the just susceptibilities of the Castilian nation can be discerned in the altogether friendly suggestion that the good offices of the United States may now be lent to the advantage of Spain.

" You are hereby instructed to bring these considerations as promptly as possible, but with due allowance for favorable conditions, to the attention of the government of Her Majesty the Queen Regent, with all the impressiveness which their importance demands, and with all the earnestness which the constantly imperiled national interests of the United States justifies. You will emphasize the self-restraint which this government has hitherto observed until endurance has ceased to be tolerable or even possible for any longer indefinite term. You will lay especial stress on the unselfish friendliness of our desires, and upon the high purpose and sincere wish of the United States to give its aid only in order that a peaceful and enduring result may be reached, just and honorable alike to Spain and to the Cuban people, and only so far as such aid may accomplish the wished-for ends. In so doing, you will not disguise the gravity of the situation, nor conceal the President's conviction that, should his present effort be fruitless, his duty to his countrymen will necessitate an early decision as to the course of action which the time and the transcendent emergency may demand.

"As to the manner in which the assistance of the United States can be effectively rendered in the Cuban situation, the President has no desire to embarrass the government of Spain by formulating precise proposals. All that is asked or expected is that some safe way may be provided for action which the United States may undertake with justice and self-respect, and that the settlement shall be a lasting one, honorable and advantageous to Spain and to Cuba and equitable to the United States.

" For the accomplishment of this end, now and in the future, our government offers its most kindly offices through yourself."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, July 16, 1897, For. Rel. 1898, 558.

Mr. Woodford presented his credentials to the Queen Regent Monday, Sept. 13, 1897. (For. Rel. 1898, 561.)

In an interview with the Duke of Tetuan, minister of foreign affairs, Sept. 18, 1897, Mr. Woodford read the foregoing instruction, omitting only the first paragraph, the first two sentences of the tenth paragraph ("It should—in Cuba"), and the clause "but with due allowance for favorable conditions" in the first sentence of the third paragraph from the end. (For. Rel. 1898, 566.)

The substance of the instruction, including the tender of good offices, was also officially communicated by Mr. Woodford to the Duke of Tetuan in a note of Sept. 23, 1897. (For. Rel. 1898, 568.)

Wednesday, Sept. 8, 1897, Mr. Woodford had "a full and frank conversation" with Sir H. Drummond Wolff, British ambassador at Madrid, concerning the policy of the United States toward Cuba, and authorized him to report the substance of it to his government. (For. Rel. 1898, 562, 565.)

Thursday, Sept. 30, 1897, Mr. Woodford had at his own office a similar conversation with Mr. Schevitch, the Russian ambassador; on Oct. 3, with Herr von Radowitz, the German ambassador, and on Oct. 11 with the Marquis de Reversezux, French ambassador. (For. Rel. 1898, 573, 576.) See Mr. Sherman, Sec. of State, to Mr. Hay, min. to England, Nos. 112 and 115, June 30 and July 2, 1897, MS. Inst. Gr. Br. XXXII. 155, 159.

Change of Spanish ministry, 1897.

Wednesday, Sept. 29, 1897, the Spanish ministry resigned. On the 4th of October a new ministry was formed, with Señor Sagasta as president of the council, Señor Gullon as minister of state, and Señor Moret as minister of the colonies.

"EXCELLENCY: My worthy predecessor, the Duke of Tetuan, had the honor to receive, in regular course, the courteous and studied note which your excellency was pleased to address to him on the 23d of September last; but the government, which has but now obtained the confidence of the Crown, being obliged to devote its initial labors to measures of internal concern which are demanded by every political change, took a genuine and thoughtful interest in having its first acts and its conduct clearly demonstrate that it was adopting with sincerity a new course, and a minute study of the matters in order to acquire an exact knowledge of them all being necessary, has perhaps delayed more than it would have wished the reply to the aforesaid note. Our desire to proceed with loyalty and frankness in our relations with the government which your excellency so worthily represents at this court, and the obligation to respond to the sentiments which your excellency is pleased to express, require that this preliminary explanation be made, to the end of removing any imputation of doubts and vacillations on the part of one who, by reason of having attained to power with a defined programme, considers his honor engaged to its immediate realization without casuistic distinctions or unnecessary delays.

"Gratifying and pleasing have been at all times for the government of His Majesty the expressions of good feeling put forth by that of the United States, and the assurances that it proposes to maintain with that of Spain the peace and friendship which have traditionally united the two nations; but still greater satisfaction is caused to the mind of this government by the marked insistence wherewith your excellency declares in your aforesaid note of the 23d of September that it is the most earnest desire of the President of the United States that this friendship be conserved and increased upon foundations of concord and reciprocal confidence.

"So positive and so reiterated an asseveration not only would extenuate in the present case a warmth of style which fortunately does not exist in the note to which I am replying, but would serve to explain whatever omissions or confusion of ideas might arise from the elevated aim of speedily attaining ends which are deemed to be humanitarian, or from the natural and ardent defense of obligations and interests which are regarded as sacred.

"These circumstances enable us to discern in the note of the 23d of September an earnest desire for the termination of the Cuban insurrection, and they remove from the words in which this laudable wish is expressed whatever minatory character might be attached to them upon the first impression by anyone who did not dwell upon and attach due weight to those words, in view of the cordial and eloquent declarations with which the note begins and ends. These declarations, moreover, allow the Spanish government, persuaded of the good faith and importance thereof, to respond with the same frankness to all the statements of the note without its declarations being restricted by the consciousness and conviction of rights which no one disputes, or by the apprehension lest historical and established facts, or fundamental principles which have always been maintained, and which are likewise still undisputed, might be thereby obscured.

"Starting from these acceptable premises, the present government of His Majesty sees no obstacle to examining the measures most conducive to bringing about the termination of a struggle which, while it is more painful and costly to Spain than to any other state, also concerns and in indirect ways injures the American nation, both by reason of having so close at hand the calamities inseparable from every civil war and because of the losses necessarily caused to its commerce, to its industries, and to the property of its citizens by a contest of this character, if it should be maintained for an indefinite time and with its past characteristics; for, in view of the manifold associations and various ties of modern peoples, it is hardly possible to conceive that lasting disturbance can exist in one of them without affecting the neighboring nations and justifying all of these in cherishing the

desire for peace and proffering friendly councils, but never interference or intrusion.

"The present government of His Majesty is now most advantageously situated for investigating the points referred to and for securing the pacification of Cuba on the proper basis, since its own character, the antecedents of those who compose it, and the public and solemn promises which in the past and of its own sole initiative it has made to the representatives of the country involve, in the colonial policy of Spain and in the manner of conducting the war, a total change of immense scope, which must exercise considerable influence upon the moral and material situation of the Greater Antilla.

"The government of His Majesty, by reason of its firmly rooted convictions, in order to subserve the peninsular interests equally with those of the Antillas, and holding the resolute purpose to draw closer with ties of true affection the indissoluble bonds which unite the mother country with its cherished provinces beyond the seas, is determined to put into immediate practice the political system which the present president of the council of ministers announced to the nation in his manifesto of the 24th of June of this year. The acts accomplished by the present government, notwithstanding the short time which has elapsed since its elevation to power, are a secure guaranty that not for anyone nor for anything will it halt in the path which it has traced, and which, in its best judgment, is that which will bring us to the longed-for peace.

"To military operations, uninterrupted for a single day and as energetic and active as circumstances demand, but ever humanitarian and careful to respect all private rights as far as may be possible, must be joined political action honestly leading to the autonomy of the colony in such a manner that upon the full guaranty of the immutable Spanish sovereignty shall arise the new personality which is to govern itself in all affairs peculiar to itself by means of an executive organization and the insular council or chamber. This programme, which constitutes true self-government, will give to the Cubans their own local government, whereby they shall be at one and the same time the initiators and regulators of their own life, but always forming part of the integral nationality of Spain. In this way the island of Cuba will form a personality with its own peculiar functions and powers (atribuciones) and the mother country, moving in the sphere of action which is exclusively its own, will take charge of those matters—such as foreign relations, the army, the navy, and the administration of justice—which involve national requirements or needs.

"In order to realize this plan, which it advocates as a solemn political engagement voluntarily assumed while its members were in oppo-

sition, the government of His Majesty proposes to modify existing legislation so far as necessary, doing so in the form of decrees to admit of its more speedy application, and leaving for the Cortes of the Kingdom, with the cooperation of the senators and deputies of the Antillas, the solution of the economical problem and a patriotic and fair apportionment of the payment of the debt.

"Thus broadly outlined, Your Excellency, these are the measures, honorable to the Peninsula and just to Cuba, which the government of Spain of its own volition and actuated only by patriotic aims and elevated humanitarian feelings proposes to make use of henceforth in order to put an end to the Cuban insurrection, assembling beneath the Spanish standard all the prominent men of the country, without distinction of origin or conduct, in order to oppose them to those professional agitators by nature and habit, who subsist only by strife and have no other object than rapine, destruction, and disorder. Military severity toward these destructive men will within a brief time prove the more advantageous and effective, since in the task to be performed by it will cooperate, of their own impulse, all those islanders who henceforth, feeling that they are the masters of their destinies, will find it to their own interest and advantage to put an end to ruinous and already unendurable excesses.

"The formula for so auspicious a change will be henceforth peace, with liberty and local self-government, while the mother country will not fail to lend at the proper time the moral and material means in aid of the Antillean provinces, but will cooperate, on the contrary, toward the reestablishment of property, developing the inexhaustible sources of wealth in the island, and devoting itself especially to the promotion of public works and material interests, which, when peace shall have been assured, will rapidly increase, as was the case after the last war.

"Having thus set forth the conciliatory, humane, and liberal purposes of the government of His Majesty, in deference to the legitimate and justifiable interest which the Cuban insurrection awakens on the part of the people and government of the United States, I have now to consider certain of the statements contained in your note of the 23d September last.

"Your excellency is pleased to state therein that the President of the United States feels it his duty to make the strongest possible effort to contribute effectively toward peace, while giving friendly assurance that there is nothing further from his mind than the occasion or intention of wounding the just susceptibilities of Spain, but your excellency does not set forth the means of which the President might avail himself to attain those ends, neither do you recall the fact that on various occasions the government of His Majesty has made special mention of several highly important means. It would

be desirable to make clear a point of such elementary importance, and to state exactly, first of all, the nature of the proffered aid and the field wherein it would act, and then to decide as to its greater or less efficacy, since only by a previous and perfect knowledge thereof is it possible for both parties to reach a complete agreement.

"The Spanish and American governments agreeing in the same desire to secure immediate peace in Cuba, and both being interested therein, although in different degrees, the government of His Majesty being interested as a sovereign and the United States in the character of a friend and neighbor, there will doubtless be found suitable bases for a friendly understanding, whereby Spain shall continue to put forth armed efforts, at the same time decreeing the political concessions which she may deem prudent and adequate, while the United States exert within their borders the energy and vigilance necessary to absolutely prevent the procurement of the resources of which from the beginning the Cuban insurrection has availed itself as from an inexhaustible arsenal.

"On various occasions the government of His Majesty have found themselves obliged to call the attention of the government of the United States to the manner in which the so-called laws of neutrality are fulfilled in the territory of the Union. Despite the express provisions of those laws and the doctrines maintained by the American government in the famous Alabama arbitration with regard to the diligence which should be used to avoid whatsoever aggressive act against a friendly nation, it is certain that filibustering expeditions have set forth and unfortunately continue to set forth from the United States, and that, in the sight of all men, there is operating in New York an insurrectionary junta which publicly boasts of organizing and maintaining armed hostility and constant provocation against the Spanish nation.

"To effect the disappearance of such a state of things, as is demanded by general international friendship, would be, in the belief of the government of His Majesty, the most effectual aid in the attainment of peace that the President of the United States could render. It would be sufficient, to make such aid effectual, that he adopt the procedure followed in similar cases by such of his illustrious predecessors as Van Buren, Tyler, Taylor, Fillmore, and Pierce, in the years 1838, 1841, 1849, 1851, and 1855, and that while condemning, by means of an energetic proclamation, those violating the Federal laws and aiding the insurrection in Cuba he notify all American citizens doing so that they can not henceforth count upon the diplomatic protection of the government of Washington, in however grave a situation their wrongful conduct may place them. By thus abandoning to their fate those who infringe the fundamental statutes of the Union and openly conduct illegal filibustering expedi-

tions, and by energetically and constantly restraining those who convert the Federal territory into a field of action for reprehensible filibustering schemes, by exacting, lastly, of all superior and subordinate officials the strictest fulfillment of their duties in all that relates to the laws of neutrality, the President would do more toward peace than is possible by any other means or procedure whatever.

"If, however, it be alleged that the powers of the Executive are limited on this point, we must recall the doctrine advanced by the United States before the arbitral tribunal of Geneva, according to which 'no nation may, under pretext of inadequate laws, fail in the fulfillment of its duties of sovereignty toward another sovereign nation.' The United States, moreover, possess in their own history the eloquent example they gave to the New World when they deemed it necessary to provide themselves with more energetic laws whereby to furnish new means of preventing the excesses of filibusterism, and in a very short time they brought about the passage by the Congress of such measures as were deemed necessary to that end, as was the case with the act of March 10, 1838, which remained in force for two years.

"It follows, then, from what has been stated that in order to prove by acts the warm desire for peace and friendship by which the friendly government of the United States is actuated it is very important that it should take all necessary measures, with determination and persistency proportionate to the vast means at its disposal, to prevent the territory of the Union from constituting the center in which the plots for the support of the Cuban insurrection are contrived. He who is not disposed to grant the means does not earnestly desire the end in view; and in this case the end, to wit, peace, will be attained by the United States exerting itself energetically to enforce with friendly zeal the letter and spirit of its neutrality laws.

"According to your excellency's note, the President of the United States wishes His Majesty's government either to formulate some proposition that will enable him to render his friendly offers effectual or to give assurance that pacification will speedily be secured by the efforts of Spain.

"Your excellency will find in this note a full reply to both alternatives.

"His Majesty's government, with all respect and with the traditional and sincere friendship which it has professed for the gigantic country of North America ever since the beginnings of its independence, suggests to it that either by the publication of a proclamation more energetic than those of Mr. Cleveland, and by which all persons violating the domestic and international laws prohibiting the encouragement of rebellions in friendly countries shall be declared outlaws, or by the severe application of the regulations at present

in force, or, lastly, by adding to them if they are not adequate, it shall completely cut off the support which the Cuban insurrection is receiving from the United States, and by showing itself the firm and sincere friend of Spain shall annihilate the vain hopes of those who are trusting to possible conflicts between two nations which, from their history and mutual advantage, ought to live and wish to live in close and warm friendship.

"Spain has always had the desire and the capacity to maintain friendly relations with the United States, even in those times of such critical importance to the Union when the United States was compelled to appeal to arms to preserve the Federal bond. It was only after the Northern States had declared the blockade of the coasts of the South, and when England, France, and Holland, preeminently maritime and colonial nations, had decided to recognize the belligerency of the Confederates, that Spain determined to declare a neutrality which was sincerely friendly to the United States, at the same time that she refused to have any intercourse with the rebels, and rejected the proposals which they made her repeatedly, and, finally, at Cadiz, required the surrender of 42 prisoners whom the privateer *Sumter* had on board, and whom she placed at the disposal of the American consul. There is no wonder that, in view of such conduct, Mr. Perry, the United States representative at Madrid, expressed to the then ministers of state, Señors Calderon Collantes and the Marquis de Miraflores, on various occasions, with delicate persistency, as well as in official conferences and communications, the gratitude of his government and the satisfaction which it felt at the noble conduct of Spain.

"His Majesty's government, cherishing the same feelings at present, takes pleasure in notifying the United States government that the pacification of the western provinces of the island has greatly progressed through the valiant efforts of the Spanish arms, and that it is confident of completing it in a short time, thanks to the energetic and unceasing efforts of its troops and the beneficial effect of the new and ample reforms, which are based upon principles of love, of forgiveness of the past, and of pardon to all who seek the protection of the historical banner of their country, and upon the assurance that the island shall henceforth govern itself, and that mutual affection shall draw closer the national tie which unites it to its former discoverer.

"The problem being solved on these bases and in this manner, His Majesty's government has no doubt of its ability to maintain a friendly understanding with the United States government, and it does not hesitate to assert that when the internal system of the island of Cuba has been reorganized upon new principles the insurrectionary germs which have hitherto, unhappily, undermined it will disappear

forever, thereby giving such security offered to domestic and foreign capital seeking advantageous investments in the island as will cause an abundant revival of the former wonderful prosperity to which the incomparable fertility of its soil entitles it.

"It is not necessary to refer to the supposition of a continued prolongation of the struggle, nor to that of a change in the attitude of the United States toward the combatants. The first supposition is refuted by the overwhelming eloquence of facts known to everybody, as even the greatest pessimists must admit that the situation at present is very different from what it was when the hosts of Maceo and Maximo Gomez were overrunning the provinces of Havana and Pinar del Rio. The sugar plantations are preparing to plant cane and to grind that which has been saved from the flames. There is likewise every indication of a magnificent tobacco crop, and as soon as the arrival of the illustrious General Blanco shall have restored tranquillity to the public mind, all men will be convinced that the work which that leader is about to perform is for good men a work of peace, liberty, autonomy, and clemency, and this conviction will tend to the restoration of peace, the path of which will be smoothed by reason and right.

"As to the second supposition, to wit, that of imagining a change of attitude toward the combatants, it would be so ungrounded, so unjust, so unjustifiable, so contrary to the correct procedure of the Washington Cabinet under circumstances when discrimination was much more difficult, that it must be rejected as utterly improbable. Whatever passions may, at a given moment, blind the judgment of a deliberative chamber in countries like the United States, where right and justice always triumph, the executive power will act as a secure safeguard of whose fitness and energy any doubt would be offensive. At a time when the insurgents are losing their principal chiefs without replacing them by others of standing, when discouragement pervades their ranks, and when they are without any imitation of a constituted government 'capable of performing the corresponding international duties,' a characteristic and exact criterion, according to the illustrious General Grant and his successors, to justify the recognition of belligerency, no one should consent to the neglect of voluntary engagements or to the destruction of the uniform legal doctrine followed in such notable cases as those of the Congressionalists of Chile and the Sudists of Brazil.

"In this connection it is timely to remember that the American government had to admit, in its note of April 4, 1896, that is was impossible to recognize the belligerency of the rebels at that time, although the insurrection was in a much more flourishing condition, and that, if Spain were withdrawn from the island of Cuba, the sole bond of union between the many heterogeneous elements in the island would disappear, which proves the necessity of her presence and the

absurdity of the idea that there can be any other organization in the island possessing the attributes of lawful international personality. The insurgents, as has already been said on another occasion by His Majesty's government, have always been and still are without any real civil government, fixed territory, courts of their own, a regular army, coasts, ports, navy, everything that the principal American writers on international law and statesmen require as preliminary to the discussion of a recognition of belligerency. The rebel bands never fight for honor and victory, nor do they even defend themselves; they hide behind the dense thickets of the tropical soil, and sally with impunity when the situation is temporarily in their favor. Under these circumstances it is impossible to admit that there can be a change in the attitude of the United States toward the combatants in Cuba.

"As His Majesty's government has decided, freely and deliberately, to establish autonomy in Cuba, there arises by the force of circumstances the case foreseen by the eminent Mr. Cleveland in his message of December 7, 1896; and, admitting the continuing international accountability (solidarity) of the governments which succeed each other in a country, it can not be doubted that the present most worthy President will agree with his predecessor that no just reason exists for conjecturing that the pacification of the island of Cuba will fail to be effected upon this basis. The government of His Majesty the King of Spain expects with confidence from the rectitude, love of peace, and friendship of the President of the United States that he will aid it in this noble and humane undertaking, and that he will exert himself energetically to prevent the insurrection from receiving from the United States the moral and material aid which gives it its only strength and without which it would have already been subdued or would certainly be subdued very speedily.

"It is, therefore, above all indispensably necessary that the President should decide upon his course toward Spain so far as regards the Cuban problem, and that he should state clearly whether he is ready to put a stop absolutely and forever to those filibustering expeditions which, by violating with the greatest freedom the laws of friendship, injure and degrade the respect which the American government owes to itself in the discharge of its international engagements. There must be no repetition of such lamentable acts as the last expedition of the schooner *Silver Heels*, which left New York in spite of the previous notification of His Majesty's legation at Washington and before the eyes of the Federal authorities, because it is only thus that the peaceful intentions of the United States government will be proved and that the friendly understanding to which I have referred will be possible.

"With the new policy already inaugurated by His Majesty's government every pretext for those popular expressions of sympathy with the insurrection which have been mentioned as a powerful argument in various Presidential messages disappears, as the Cubans will find in autonomy the very solution recommended as the most expedient even by the executive authorities of the United States government. By this policy those advances and improvements in the situation of the Great Antilla which the Washington Cabinet itself, not many months ago, in an official note, declared would be 'most potential' for the termination of hostilities, and for bringing about a change in the tendencies and feelings, not of the North American government, but of the very people of the United States on this subject, are also realized by the voluntary initiative of the mother country. This change of feeling may and ought to appear in more and more friendly acts and conduct which, without any doubt, will be received with deep gratitude by the Spanish people and government. This, in the opinion of the undersigned, is the most adequate way of avoiding the dangers to which your excellency alludes in your note as the result of a possible arousing of mutual passions, and this is likewise the best means of attaining that happy harmony which will certainly enable the Spanish government to restore perfect peace within a short period to the beautiful island of Cuba, for the good of Spain, the United States, and humanity in general.

"Her Majesty's government, now and always faithful to the ties of affection which unite it with the United States, and cherishing, moreover, the firm intention of drawing them closer, in reply to the courteous wishes expressed by your excellency, will be most happy to have your excellency state whatever you may think proper, with entire liberty, and in the form which you may deem most fitting with regard to the alternatives mentioned, or upon any other points, with the assurance that your excellency's views, opinions, or assertions will always be heard with friendly interest, and will be respected so far as may be permitted to a government by primary and permanent duties, the neglect of which the Madrid cabinet can not imagine that so respect-worthy and so friendly a nation as the United States will advise."

Señor Gullon, minister of state, to Mr. Woodford, American min., Oct. 23, 1897, For. Rel. 1898, 582.

For the text of the manifesto of Señor Sagasta of June 24, 1897, referred to in the foregoing note, see For. Rel. 1898, 592–594. It was not an official document, but the manifesto of the Liberal party, which was then out of power. It asserted that the Liberal party had sought to prevent the insurrection by reforms, and that when the insurrection broke out the application of reforms should have been hastened. "Political action should have constantly accompanied military action." The reforms proposed by the government were condemned

as neglecting the economic question and possessing other defects. The conduct of the war was condemned, and it was intimated that there should be a change in the head of the army in Cuba.

Conduct of war; autonomy.

November 13, 1897, Mr. Woodford telegraphed: "Spanish government have instructed General Blanco to conduct war in humane and Christian methods. Concentrado camps are to be broken up. Blanco will communicate substance of each bando to Spanish minister at Washington, who will keep you informed. Decrees granting autonomy will be signed by the Queen between November 23 and 25. Official synopsis of decrees will be furnished on the day after signature, and I will telegraph same to you."

Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, tel., Nov. 13, 1897, For. Rel. 1898, 600.

Nov. 14, Mr. Woodford again telegraphed: "Spanish government has just notified me that bando has been signed by General Blanco reestablishing normal life of country people, with necessary precautions and organizing protective committees for reconcentrados who can not at once obtain general benefits secured to country population. Daily food and medical assistance are also regulated at the charge of the State." (For. Rel. 1898, 602.)

"Within a few days past I have received the text of Señor Gullon's note of October 23, as well as the remarkable and earnest declarations of the principles and purposes of the Liberal party now in power as contained in the manifesto issued by its honored chief, Señor Sagasta, on the 24th of last June, to which Señor Gullon appeals in evidence of the consistent and sincere purpose of reform which animates the new government of Spain. At the same time the most encouraging signs come to me, alike from the Peninsula, from Cuba, and from the honored representative of Spain at this capital, of the singleness and earnestness of purpose wherewith the home Government and its responsible agents in Cuba are laboring to bring about an instant change in the order of things in that island which has so long distressed this government and the generous and sympathetic people of the United States. From the ground of abstract policy and announced programme the declared purposes of the enlightened men to whom the destinies of Spain have been confided are passing to the domain of realization. Therefore, in responding to the Spanish note, it behooves me to regard the questions it involves, not merely in the light of assertion and argument, but in the presence of attendant facts, in order that I may render due justice to the sentiments and course of Spain in this conjuncture.

"The reply of Señor Gullon deals not directly with my instruction to you of the 16th of July last, but with the purport thereof as communicated by you to the late minister of state, the Duke of Tetuan,

at San Sebastian, first in oral conference and later by your note of September 23, in which you textually embodied the material parts of my instruction. That you have well performed your task, that in your conferences with the representatives of the Spanish Crown you have wisely dwelt upon the truly elevated purposes of friendliness toward Spain and the sovereign instincts of humanity that prompted the utterances of this government, is evident from the frank reception accorded to your communications, as shown by the reply now before me. The President, conscious of the responsible mission which a great free people has imposed upon him, and of the moral obligations he has assumed before his countrymen and before the world to follow only the paths of rectitude and justice in directing the relations of our state with its fellows, charges you to reaffirm, if need be, on any fitting occasion, his earnest declaration of desire for peace and good will between the United States and Spain.

"It is gratifying to note that the Spanish government appreciates at its just value the vital interest this government and people have and feel in the prompt cessation of the Cuban struggle which, as his excellency observes, although it be for Spain more painful and costly than for any other state, is also of importance and prejudicial to the American nation alike, because the disasters of such a civil strife are so nearly felt and because of the losses occasioned to our commerce, our industries, and the property of our citizens by an indefinite continuance of a contest of this character. It is to be remembered that the instructions under which you acted were penned while the destinies of Spain and Cuba were controlled by a government, which, during nearly two years and a half had been engaged in the fruitless endeavor to reduce the revolted Cubans to subjection by sheer force of arms, not by the legitimate resorts of war as it is understood in our day, or indeed by the means defined by all publicists since international law sprang into being, but by methods destructive to every rational interest of Spain and Cuba and injurious to every association that links both to the outside world. Its aim appears to be, not the conservation of the fairest dependency of Spain under conditions of contentment and prosperity, but to conquer the peace of the desert and the tomb.

"It behooved me then to rest the case of the United States, not alone upon the sentiments of humanity, but upon the material considerations importing irremediable injury to paramount national interests, should that disastrous state continue, considerations which as history shows have constrained the suffering on-lookers to mediation, and even intervention, when longer forbearance has ceased to be a virtue. Our action rested no less upon moral right than upon the all-controlling sentiment of humanity. Our forbearance was testified by thus approaching anew the same Peninsular government

which had repelled our kindly overtures in the past. Our repeated offer was, indeed, tendered to that government on the eve of its quitting power, and even then it was fervently hoped that it might be heeded in the spirit of sincere friendship which prompted it, and might gain in weight and acceptability by the circumstances that an added year of war in Cuba had demonstrated the futility of the policy theretofore decreed by the Spanish government, and that it was proffered by a new Administration which had taken office in this country under conditions imposing upon the Executive the onerous responsibility of adopting a definite policy toward Spain and toward the Cuban war.

"It is a gratifying augury that the consideration of our fresh proposals should have fallen to a government which by its liberal antecedents, its views and convictions in regard to the conduct of the war formed while in opposition to the late administration, and its uttered pledges of amelioration and reform in the mutual interest of Cuba and of Spain, was so well fitted to understand the true motives of our conduct and the earnestly impartial friendliness that prompted our course. Under such circumstances it was not for a moment apprehended that the just grounds of our representations to Spain would be misconstrued or controverted. The record of the Liberal party and the stand taken by its leaders, with the indorsement of its rank and file, were an assurance that such would not be the case. The event has justified the accuracy and wisdom of our forecast.

"This government, on the other hand, appreciates to the full the embarrassments which must necessarily surround an administration new to office, assuming the complex functions of government at an hour of grave national peril, inheriting from its predecessor the disastrous legacy of an internal conflict, the conditions of which had been acerbated by the harsh and futile conduct of the war hitherto. It understands that the reversal of all that has been done is no sudden growth, to spring up in a single night; that the fair structure of a just and prosperous peace for Cuba is to be raised with thoughtful care and untiring devotion, if Spain is to succeed in the accomplishment of the tremendous task upon which she has entered. It comprehends that the plan, however broadly outlined, must be wrought out in progressive detail; that upon assured foundations, upon the rock of equity and not upon the shifting sands of selfish interest, must be builded, stone by stone, the enduring fabric of regenerated Cuba. It sees this broadly outlined plan in the declarations of the present Spanish note which announces that, in fulfillment of the resolute purpose to draw closer, with ties of true affection, the bonds which unite the motherland with its provinces beyond the seas, it is determined to put into immediate practice the political system sketched by the present president of the council of ministers in his manifesto of June

24; that this involves joining to military operations, uninterrupted, energetic, and active as circumstances may demand, but ever humanitarian and careful to respect all private rights as far as may be possible, political action frankly leading to the autonomy of the colony in such wise that under the guaranty of Spain shall arise the new administrative entity which is to govern itself in all affairs peculiar to itself by means of an insular council and parliament: that such institution of true self-government shall give to the Cubans their own local government, whereby they shall be at one and the same time the initiators and regulators of their own life while remaining within the integral nationality of Spain, and that to realize these ends of peace with liberty and self-government the mother country will not fail to lend, in due season, the moral and material means in aid of the Antillean provinces by cooperating toward the reestablishment of property, the development of the island's inexhaustible sources of wealth, and by specially promoting public works and material interests which shall bring prosperity in the train of restored peace.

"In taking this advanced position, the government of Spain has entered upon a pathway from which no backward step is possible. Its scope and magnitude may not be limited by the necessarily general and comprehensive character of the formula whereby it is announced. The outcome must be complete and lasting if the effort now put forth is to be crowned with full success, and if the love and veneration of an ever-faithful and happy people is to reward the sacrifices and endeavors of Spain. No less is due to Cuba, no less is possible for Spain herself.

"The first acts of the new government of Spain lie in the laudable paths it has laid out for its own guidance. The policy of devastation and extermination that has so long shocked the universal sentiment of humanity has already been signally reversed, and I am informed by the Spanish minister in this capital of the measures proclaimed by the new commander in chief of the Spanish arms in Cuba, whereby immediate relief is to be extended to the unhappy reconcentrados, fresh zones of cultivation are to be opened to them, employment upon the estates permitted, transportation furnished them, and protective boards at once organized for their succor and care.

"I am likewise advised that by a recent decree of the governor-general the resumption of agricultural operations and the harvesting of crops shall be promoted and efficiently protected by all possible means, civil as well as military. I learn that the grinding of cane and the renewal of industrial operations in the interior districts is to be encouraged, especially in respect to those impoverished estates which, through the destruction of crops, the prohibition of labor, the deportation of their tenants, the withdrawal of military protection, and the enforced cessation of their revenues, have incurred

increasing arrears of taxation. I hear, with profound gratification, that the new commander has proffered broad amnesty to participants in the insurrection, and that the scope of this clemency is to be even further enlarged to cover those convicted of political offenses. It is reported by you that within a few days the Madrid government will promulgate a scheme of home rule for Cuba. Being necessarily in ignorance of the details proposed, I await the outcome with encouragement and hope, although, of course, unable to commit this government in advance to the plan itself, the scope and effects of which remain to be learned.

"In these things I cheerfully realize that the new government of Spain has already given, in the first few weeks of its existence, earnest of the sincerity of its professions and evidence of its conviction that past methods are and must needs be futile to force a peace by subjugation without concessions adequate to remedy admitted evils, and that such methods must inevitably fail to win for Spain the fidelity of a contented people. With such convictions unhesitatingly expressed, and with such a herculean task before her so humanely and so auspiciously begun, Spain may reasonably look to the United States to maintain an attitude of benevolent expectancy until the near future shall have shown whether the indispensable condition of a righteous peace, just alike to the Cubans and to Spain, as well as equitable to American interests, so intimately bound up in the welfare of the island, is realizable. It is the sincere hope and desire of the President that such a condition of lasting benefit to all concerned may soon be brought about. He would most gladly share in the belief expressed in the Liberal manifesto of June 24th that the speedy and energetic application of the principles and governmental measures therein advocated will be powerful to stay the course of the evils that have afflicted Spain and to bring her near to the pacification of her colonies.

"Having made these declarations touching the proclaimed policy of the Liberal party toward Cuba and the measures already adopted and to be forthwith devised to render that policy effective, the minister of state takes up that part of your note of September 23 which states that the President feels it his duty to make the strongest possible effort to contribute effectively toward peace, and his excellency remarks that your note makes no suggestion of the means of which the President might avail himself to attain that end, besides noting your silence as to the important measures on several occasions indicated by the Spanish government. Your omission to treat of these points is sufficiently explained in your concluding statements that the President has no desire to embarrass that government by formulating precise proposals as to the manner in which the assistance of the United States can be effectively rendered, and that all that is

asked or expected is that some safe way may be provided for action which the United States may undertake, with justice and self-respect, so that the settlement shall be a lasting one, honorable and advantageous to Cuba and equitable to the United States, to which ends this government offers its most kindly offices. For the realization of this friendly offer you invited an early statement of some proposal under which this tender of good offices may become effective, or, in lieu thereof, satisfactory assurances that peace in Cuba will, by the efforts of Spain, be promptly secured.

"The assurances tendered on behalf of the Liberal government of Spain lie in the line of this latter alternative. His excellency's note is silent as to the manner and form in which the government of the United States might exert good offices. His excellency limits himself to suggesting coincident but separate action by the two governments, each in its domestic sphere, whereby, as he says:

"'Spain shall continue to put forth armed efforts, at the same time decreeing the political concessions which she may deem prudent and adequate, while the United States exerts within its borders the energy and vigilance necessary to absolutely prevent the procurement of the resources of which from the beginning the Cuban insurrection has availed itself as from an inexhaustible arsenal.'

"And thereupon his excellency proceeds to discuss at some length the supposed shortcomings of the United States as to the manner of fulfilling the neutrality laws in the territory of the Union and as to the scope and sufficiency of those laws.

"This labored arraignment could scarcely fail to be received with mingled pain and sorrow by a government which, like ours, inspired by the highest sense of friendly duty, has for the last two years and more endured almost insupportable domestic burdens, poured forth its treasure by millions, and employed its armed resources for the full enforcement of its laws and for the prevention and repression of attempted or actual violation thereof by persons within its jurisdiction. The Spanish reply appears to be unaware or heedless of the magnitude of the task which this government has performed and is still performing with the single purpose of doing its whole duty in the premises. To give a proof of this I need but cite the work of our Navy toward the enforcement of the municipal obligations of neutrality. Since June, 1895, our ships of war have without intermission patrolled the Florida coast. At various times the *Raleigh*, *Cincinnati*, *Amphitrite*, *Maine*, *Montgomery*, *Newark*, *Dolphin*, *Marblehead*, *Vesuvius*, *Wilmington*, *Helena*, *Nashville*, *Annapolis*, and *Detroit* have been employed on this service.

"Starting with one ship having Key West as its headquarters, the number on continuous duty was gradually increased to four, without counting additional service performed as special occasion demanded

at other seaboard points. At the present time a vessel with headquarters at Pensacola patrols the coast from the northwest as far south as Tampa, another with headquarters at Key West patrols the coast from Tampa around to Miami on the east side, and a third with headquarters at Jacksonville patrols the Atlantic coast from Miami to Georgia. The action of these regularly stationed ships is at all times concerted. Their commanders are ordered to communicate directly with one another, with the United States district attorneys in Florida, with the custom-house officials in that State, and with the commanding officers of the several revenue cutters likewise on duty in that quarter. Acting upon the information thus received, they take such immediate action as they may deem advisable or necessary in order to prevent the violation of the neutrality laws.

"In addition to this stated detail on the Florida coasts, vessels belonging to the North Atlantic Station have been sent at different times to the various Atlantic ports north of Georgia at the request of the Spanish minister and the Department of State or upon receipt of information from the Department of Justice or the Treasury Department concerning reported filibustering expeditions. Many hundreds of official letters and telegrams record the orders given to these vessels and the action had by their commanders. It may be asserted, in short, that every vessel of the Navy which could practically be employed in the shallow waters of the Florida coast has been detailed for this work, while for a time two revenue cutters were transferred to the Navy Department to assist, besides the efficient cooperation of the regularly stationed cutters under the orders of the Treasury Department.

"No less degree of activity has marked the operations of the Treasury Department and the Department of Justice. Every means at lawful command have been employed by them in cooperation to enforce the laws of the United States. Alertness in every regard has been peremptorily enjoined upon all officials, high and low, and has been sedulously practiced by them.

"In the light of these undisputable facts, and with this honorable record spread before him, the President is constrained to the conviction that nothing can be more unwarrantable than the imputation of the government of Spain that this government has in any wise failed to faithfully observe and enforce its duties and obligations as a friendly nation. In this relation it may be proper, if not indeed imperative, to inquire what those obligations are.

"It is to be borne in mind that Spain insists that a state of war does not exist between that government and the people of Cuba; that it is engaged in suppressing domestic insurrection that does not give it the right, which it so strenuously denies itself, to insist that a third nation shall award to either party to the struggle the rights

of a belligerent or exact from either party the obligations attaching to a condition of belligerency. It can not be denied that the United States government, whenever there has been brought to its attention the fact or allegation that a suspected military expedition has been set on foot or is about to start from our territories in aid of the insurgents, has promptly used its civil, judicial, and naval forces in prevention and suppression thereof. So far has this extended and so efficient has the United States been in this regard that, acting upon information from the Spanish minister or from the various agencies in the employ of the Spanish legation, vessels have been seized and detained in some instances when investigation showed that they were engaged in a wholly innocent and legitimate traffic. By using its naval and revenue marine in repeated instances to suppress such expeditions, the United States has fulfilled every obligation of a friendly nation. Inasmuch as Spain does not concede, and never has conceded, that a state of war exists in Cuba, the rights and duties of the United States are such as devolve upon a friendly nation toward another in the case of an insurrection which does not arise to the dignity of recognized war.

"As you are aware, these duties have been the subject of not infrequent diplomatic discussion between the two governments, and of adjudications in the courts of the United States, as well during the previous ten years' struggle as in the course of the present conflict. The position of the United States was very fully presented by Mr. Fish in his note of April 18, 1874, to Admiral Polo de Bernabe. (Foreign Relations of the United States, 1875, pp. 1178 et seq.)

"'What one power in such case may not knowingly permit to be done toward another power, without violating its international duties, is defined with sufficient accuracy in the statute of 1818, known as the neutrality law of the United States.

"'It may not consent to the enlistment within its territorial jurisdiction of naval and military forces intended for the service of the insurrection.

"'It may not knowingly permit the fitting out and arming or the increasing or augmenting the force of any ship or vessel within its territorial jurisdiction, with intent that such ship or vessel shall be employed in the service of the insurrection.

"'It may not knowingly permit the setting on foot of military expeditions or enterprises to be carried on from its territory against the power with which the insurrection is contending.'

"Except in the single instance to be hereafter noticed, his excellency the minister of state does not undertake to point out any infraction of these tenets of international obligation so clearly stated by Mr. Fish. Did any further instance exist the attention of this government would have been called to it.

"With equal clearness, Mr. Fish has stated in the same note the things which a friendly government may do and permit under the circumstances set forth.

"'But a friendly government violates no duty of good neighborhood in allowing the free sale of arms and munitions of war to all persons, to insurgents as well as to the regularly constituted authorities, and such arms and munitions, by whichever party purchased, may be carried in its vessels on the high seas without liability to question by any other party. In like manner its vessels may freely carry unarmed passengers, even though known to be insurgents, without thereby rendering the government which permits it liable to a charge of violating its international duties. But if such passengers, on the contrary, should be armed and proceed to the scene of the insurrection as an organized body, which might be capable of levying war, they constitute a hostile expedition which may not be knowingly permitted without a violation of international obligation.'

"Little can be added to this succinct statement of Mr. Fish. It has been repeatedly affirmed by decisions of our courts, notably by the Supreme Court of the United States. In the case of Wiborg *v.* The United States, 163 U. S. Reports, p. 632, Mr. Chief Justice Fuller repeats, with approval, the charge of the trial court, in which it is said (p. 653):

"'It was not a crime or offense against the United States under the neutrality laws of this country for individuals to leave the country with intent to enlist in foreign military service, nor was it an offense against the United States to transport persons out of this country and to land them in foreign countries, when such persons had an intent to enlist in foreign armies; that it was not an offense against the laws of the United States to transport arms, ammunition, and munitions of war from this country to any foreign country, whether they were to be used in war or not, and that it was not an offense against the laws of the United States to transport persons intending to enlist in foreign armies and munitions of war on the same trip. But (he said) that if the persons referred to had combined and organized in this country to go to Cuba and there make war on the government, and intended when they reached Cuba to join the insurgent army and thus enlist in its service, and the arms were taken along for their use, that would constitute a military expedition, and the transporting of such a body from this country for such a purpose would be an offense against the statute.'

"These principles sufficiently define the neutral duties of the United States, which have been faithfully observed at great expense and with much care by this government. If any such military expeditions have been knowingly permitted to depart, that fact is not

called to the attention of this government by the Spanish note. This government is aware of none such.

"The only instance of an alleged culpable expedition mentioned in the note of his excellency the minister of state—if indeed it may be termed a military expedition or enterprise within the prohibition of the statute—is that of the *Silver Heels*, which is described as having 'left New York in spite of the previous notification of His Majesty's legation at Washington and before the eyes of the Federal authorities.' This case was instantly investigated by the superior authority, even before any oral complaint in that regard had reached this Government from the Spanish legation. From the accompanying copies of the statements furnished to the Department of Justice by the United States marshal and his deputy you will perceive that this vessel would undoubtedly have been apprehended but for the officious control of the Spanish agents whose instructions were obeyed in the matter.

"A large part of the reply of his excellency the minister of state is devoted to the discussion of a hypothetical change of attitude toward the combatants involving the recognition of their belligerency. As this government, with the largest attainable knowledge of all facts and circumstances pertinent to the case, has not yet determined upon that course, I do not see that any useful purpose could be subserved by argument upon the stated premises. Neither do I discern the utility of discussing the circumstances under which a case might arise for considering and acting upon the thesis advanced by his excellency on the authority of the argument before the tribunal of Geneva that it is the duty of a nation to amend its laws if inadequate for the fulfillment of its international obligations of neutrality, or to offer any comment thereon further than to observe that the inadequacy of our neutrality laws is not admitted, nor is it proved by Spain in the light of the precedent to which appeal is had, inasmuch as the doctrine of Geneva was only applicable and applied to the case of a public war between recognized belligerents, a case which Spain does not concede to exist in the present instance.

"Whatever just and humane measures may attain to a contented and recuperative peace in Cuba can not but win our admiration, and any progress toward its attainment can not but be benevolently viewed. In this path of kindly expectancy, and inspired now as always by the high purpose of fulfilling every rightful obligation of friendship, the United States proposes to persevere so long as the event shall invite and justify that course. I can not better close this instruction than by repeating and affirming the words with which you concluded your note of September 23, 'that peace in Cuba is necessary to the welfare of the people of the United States, and that

the only desire of my government is for peace and for that sure prosperity which can only come with peace.'"

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, Nov. 20, 1897, For. Rel. 1898, 603–611. At pp. 611–613 are printed the statements of the marshal and his deputy, referred to in the foregoing instruction. Further and confirmatory statements are printed at pp. 614–615.

November 26, 1897, Mr. Woodford cabled that the Queen signed three decrees November 25; that the first two conferred on Spaniards resident in the Antilles all right enjoyed by peninsular Spaniards and extended the electoral law of Spain to Cuba and Porto Rico; and that, being permitted by the Spanish constitution, did not require the ratification of the Cortes; that the third, granting autonomy, would be published November 27, and that it must be ratified by the Cortes. A full synopsis of this decree had been furnished him, and it would also be cabled to the Spanish minister at Washington with permission to show it to the Secretary of State.[a]

Mr. Woodford transmitted the text of all three decrees by mail Nov. 27, 1897.[b]

November 28, he cabled that he was informed by the Spanish cabinet that no American citizen remained imprisoned in Cuba.[c]

"Sunday evening the secretaries [of state and the colonies] suggested that I withhold my formal answer to the Spanish note of October 23 until after the receipt and publication of the President's message to Congress, and this I conceded cheerfully, believing that it is wise to harmonize my conduct with their wishes in all matters that are purely formal and unessential. The Spanish minister of state is greatly gratified with the generous tenor of the President's message, and today authorized me to express this gratification to my Government."

Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, Dec. 7, 1897, For. Rel. 1898, 645.

Dec. 15, 1897, Mr. Woodford cabled: "Have not yet answered Spanish note of Oct. 23. Have waited to study the effect of the President's message and Weyler's arrival and conduct at Madrid. Have you further suggestions or instructions since you have had the opportunity to study the text of the decrees? Now think it wise to serve our answer just before Christmas." (For. Rel. 1898, 646.)

Mr. Day, Acting Sec. of State, replied: "Present our reply forthwith unless adverse reasons exist of which Department has no knowledge. In the latter case advise freely by cable." (For. Rel. 1898, 646.)

The reply, embodying the substance of the instruction of Nov. 20, 1897, was made in a note to Señor Gullon, Dec. 20, 1897. (For. Rel. 1898, 647–654.)

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[a] For. Rel. 1898, 616. [b] For. Rel. 1898, 617–644. [c] For. Rel. 1898, 644.

"*Relief of suffering in Cuba.*

"DEPARTMENT OF STATE,
"*Washington, January 8, 1898.*

"*To the Public:*

"The undersigned, Secretary of State of the United States, had the honor on the 24th of December to make known to all charitably disposed people in this country the appeal of the President for aid, in the form of money or supplies, toward the speedy relief of the distressing destitution and suffering which exists among the people of Cuba.

"The gratifying interest which his countrymen have shown in all parts of our land in that humane appeal has led the President to recognize the need of orderly and concerted effort under well-directed control, if timely assistance is to be given by the public to the sick and needy of Cuba. He has, therefore, appointed, with the cooperation of the American Red Cross, the New York Chamber of Commerce, and one of the leading representatives of the religious community, a Central Cuban Relief Committee, with headquarters in New York City, composed of the following members: Stephen E. Barton, chairman, second vice-president of the American National Red Cross; Charles A. Schieren, treasurer, a member of the New York Chamber of Commerce, and Louis Klopsch, proprietor of the *Christian Herald*.

"It will be the office of the committee so organized not only to receive and forward to the United States consul-general at Habana such money and necessary supplies as may be contributed by the people of the United States, but to invoke, in its own name and through the three great interests it fitly represents, the concurrent effort of local relief boards throughout the United States and to invite the kindly aid of the transportation agencies of the country for the prompt conveyance of contributed supplies to the seaboard and their shipment thence to Cuba.

"The consul-general at Habana is, in turn, assured of the effective cooperation of every available agency in the island of Cuba in order that life may be saved and suffering spared. The Spanish government, welcoming the aid thus tendered, will facilitate the work, and to that end will admit into Cuba, free of duties and charges, all articles otherwise liable to tax when duly consigned to the consul-general.

"By direction of the President, the undersigned appeals to the people in every city and town, to the municipal authorities thereof, to the local boards of trade and transportation, to corporations and others producing the necessities of life, and to all whose hearts are open to the cry of distress and affliction, to second the generous effort now being made, and by well-directed endeavor make its success truly

responsive to the sentiments of charity that have ever characterized the American people.

"JOHN SHERMAN,
"*Secretary of State.*"

For. Rel. 1898, 655.

"In your excellency's kind and well-weighed note dated December 20 last, to which I now have the honor to reply, there are many and very diverse statements, causing great and special gratification to H. M.'s government, remarkable for their clearness and expressiveness. Among them the following deserve special mention: Those recognizing the value and efficacy of the new principles applied to the colonial policy; those admitting the importance and conclusiveness of the information received at Washington from the peninsula and Cuba, tending to prove the sincerity of Spain's desire and exertions for the improvement of conditions and circumstances in that island; and the explicit terms in which your excellency is pleased to say that the prosperity of the cities and the country there is being prompted by the renewal, under the best auspices, of the suspended agricultural and industrial operations. The satisfaction, however, derived from these and other similar statements, giving eloquent expression to the recognition of the irreproachable (correct) procedure of Spain, is, to a great extent, destroyed or diminished by the blame cast upon the predecessors of the present government, and still more so by the fact that the numerous and incredible excesses committed by the Cuban insurgents are confounded in the same category, with the conduct of the regular army, which for nearly three years has been giving proof of its valor and discipline in the defense of indisputable rights and in the obedient fulfillment of orders and plans emanating from other departments.

"Whatever may be the political views of the men constituting the present government of Spain, they can not, without protest, permit the severe condemnation passed upon those who preceded them in power, as they think that the struggles of parties, or even the recriminations which parties may launch at each other in their constantly recurring daily disputes, should not be judged in the same manner from a distance, nor can they consent to a foreign cabinet's making use of them as a basis for its arguments or as a foundation for its views in its diplomatic relations, as they are, on the contrary, domestic matters entirely foreign to the judgment or decision of other nations.

"When the present ministers advocated their own doctrines in opposition to those of their antagonists; when, in the sessions of Parliament, they opposed the colonial policy and the procedure of other parties and recommended to their fellow-citizens as more conducive to their good their own views, principles, and purposes, they never

meant to make, nor can they now admit that they did make, any accusations concerning the good intentions and purposes of their predecessors, who, whatever might be their plans and methods, were certainly actuated by the most zealous patriotism.

"As regards the conduct of our army, the note of August 25, 1897, must have made it evident to the candid judgment of the Washington Cabinet that the Spanish troops have never given occasion for reproaches tarnishing, either in a greater or less degree, the brilliant splendor of their history, and that if any acts, judged from a distance and separately, have given rise to complaints and lamentations on the part of some sensitive and humanitarian spirits, they have proved, when investigated subsequently with proper coolness, to have been the inevitable consequence of war and a comparatively well-restricted object lesson of the calamities and disasters which have always accompanied war in all ages and in all countries, not excepting the United States, as was shown by references of strict historical accuracy in the document to which I have just alluded.

"Another idea which is repugnant to the pleasing and conciliatory views to which I have previously alluded, is the one which slips out in your excellency's note to which I am replying, when you say that Spain can only reasonably expect the United States to maintain its present attitude until it is proved by facts, within a more or less determined period, whether what your excellency calls the indispensable requisites to a peace both just to the mother country and the Great Antilla, and fair to the North American Republic, have been attained. The more deliberate, the more explicit, and the more positive the declarations with which your excellency asserts the disinterestedness and impartiality of your government, the more positive and emphatic your declaration that the United States desires only the reign of peace, and the more expressive and earnest the congratulations with which you admit that the Spanish government has drawn the plans and laid the foundations of a noble structure in Cuba, so much the less justifiable and so much the less intelligible is the hint to which I have referred.

"The Spanish government assuredly did not admit that reasons of proximity or damages caused by war to neighboring countries might give such countries a right to limit to a longer or shorter period the duration of a struggle disastrous to all, but much more so to the nations in whose midst it breaks out or is maintained, as your excellency voluntarily admits. My note of October 23, referring to this point in general terms, proved perfectly clear that, in view of the varied and close relations between modern nations, a disturbance arising in any of them may justify the adjoining nations in expressing their anxiety for peace and in offering friendly suggestions, but never and under no circumstances foreign intrusion or interference.

Such interference would lead to an intervention which any nation possessing any self-respect would have to repel by force, even if it were necessary to exhaust, in the defense of the integrity of its territory and of its independence, all, absolutely all, the resources at its disposal.

"Spain would act upon these honorable principles—the only ones consistent with the national dignity—just as the United States nobly acted upon them when, in 1861, it feared that an attempt would be made to exert an influence by foreign intervention in the domestic struggle which it was then carrying on. The instructions to that effect sent by Mr. Seward, the Secretary of State, to Mr. Dayton, the minister in Paris, on the 22d April, 1861, will serve as a guide, and will constitute a notable example for all countries which, like Spain, value their honor above all else, even to (the execution of) the declared purpose to 'struggle with the whole world' rather than yield to pressure from without. (Presidents' Messages and Documents, 1861–62, page 200.) When I say that the government of Spain appropriates, on this occasion, Mr. Seward's lofty views, it will be sufficiently clear how deeply rooted in (the minds of) the ministry of which I form a part is the conviction that the United States, where such words have been written, will not fix a period for the termination of the present Cuban insurrection.

"If such a limitation of the legitimate and immutable national sovereignty could not be permitted at any time, it must be expected less than ever when a fortunate concurrence of circumstances has enabled the present cabinet of Madrid, while voluntarily fulfilling its engagements and carrying out, when in power, the colonial policy which it advocated when in opposition, to execute the wishes of the loyal inhabitants of Cuba, and to comply with those suggestions which the United States government has offered repeatedly and officially as the expression of its desire or as its advice as a friend. Under these circumstances, and when the genuineness and excellence of the radical reforms granted to Cuba, which reforms have constituted, as it were, a new and most equitable body of law, the maximum of powers and initiatives to which a free colony, the mistress of its own fate, can aspire, are candidly recognized; when, in the face of innumerable difficulties, these radical reforms have been carried into effect, and when an autonomous government of its own is to-day performing its functions in the Great Antilla; when the advantages of this immense change begin to make themselves felt, it is certainly not the time for the United States government to substitute for its former offers of its good offices hints of a change of conduct in the event of more or less remote contingencies, and to base this notification of its change not only upon the contingency of a material success, a success as

independent of right as of the conduct of the party advocating the right, but upon its own estimate of the success itself, an estimate made in accordance with the opinion of any one who, at a given time, may wish to decide upon it without any other guide (rules) than his own will, and without any more impartiality than is imposed upon him by his observations or surroundings.

"[At a time] when the expressive congratulations of the Washington Cabinet have been earned by our innovations; when the civil struggle in the island of Cuba is adapting itself to the most modern and humane conditions and character consistent with an active state or war, as your excellency fully and nobly admits; when, in short, even [all] the obligations of a moral order that the most jealous prejudice can require have been fulfilled by Spain with the most scrupulous fidelity and of her own accord, there remains no reason or pretext for now discussing the duration of that struggle, which is of an exclusively domestic nature, nor for making the conduct of friendly nations dependent upon such duration, even if the progress made in overcoming the insurrection were not so evident, and if the hopes of a speedy pacification were not so well founded.

"The remarkable consideration with which H. M.'s government constantly entertains the views and doctrines of the United States government does not suffice to induce it to accept, now or at any future period, the theory which Y. E. is pleased to propound with regard to international duties in the case of intestine rebellions, in repetition of the views expressed years ago by the illustrious Secretary of State, Mr. Fish. The Spanish government can not consent to attach so little weight to international friendship as to render that relation between nations almost entirely destitute of mutual obligations, the duties which it imposes being regarded, in every case, as very inferior to those which are derived from neutrality.

"This government is of opinion, on the contrary, basing its views upon considerations of eternal ethics, that a true friend, both in the private order of private relations and in the public order of international relations, has more conventionalities to observe and more duties to fulfill than a neutral or indifferent person; and that the friendship which is founded upon international law obliges all states, to use the words of the famous South American publicist, Calvo, not only to prevent their own subjects from causing injury to a friendly country, but to exert themselves to prevent any plots, machinations, or combinations of any kind tending to disturb the security of those states with which they maintain relations of peace, friendship, and good harmony from being planned in their territory. 'International law does not merely oblige states to prevent their subjects from doing anything to the detriment of the dignity or interests of friendly nations or governments; it imposes upon them, in addition,

the strict duty of opposing, within their own territory, all plots, machinations, or combinations of a character to disturb the security of countries with which they maintain relations of peace, friendship, and good harmony.' (§ 1298, Vol. III. p. 156.) This is the meaning of international friendship as defined by Montesquieu, when he said that nations ought to do each other as much good as possible in peace and as little harm as possible in war. (Spirit of Laws, Vol. I. p. 3.) And it is the meaning given by Fiore in the following words: 'Every state should refrain from ordering or authorizing, in its own territory, acts of any kind tending, directly or indirectly, to injure other states, even when it is not obliged to do so by laws or treaties.' (Chapter II. § 598.)

"It is upon this view of international friendship that the Spanish government bases its opinions with regard to the extension of the obligations arising or derived from such friendship in the intercourse of civilized nations, and hence the request which it has addressed to the Washington Cabinet on numerous occasions, to prevent, with a firm hand, the departure of filibustering expeditions against Cuba, and to dissolve or prosecute the junta which is sitting publicly in New York, and which is the active and permanent center of attacks upon the Spanish nation, and which, from the territory of the Union, is organizing and maintaining hostilities against a country which is living in perfect peace with the United States.

"H. M.'s government could not, nor should it, analyze the language of the law of 1818, as it regards it as a law of a domestic or municipal character, the scope of which it appertains to the Federal government alone to determine. All that it permitted itself to do, in the name of the friendship declared by the treaty of 1795, and which has been confirmed by practical demonstration through many years and many tests, was to suggest the means of rendering real and effectual those obligations which are derived from true friendship, such as the Spanish government understands it, either by the publication of a proclamation of the same nature and as emphatic as those which illustrious predecessors of the illustrious President, Mr. McKinley, thought themselves called upon to publish under similar circumstances, or by the severe application of the regulations in force, or by their amendment or enlargement, as occurred in the act of March 10, 1838.

"Nor could H. M.'s government refer to the duties of neutrality, as it maintains with the same vigor as ever its well-founded assertion that there is no reason, nor even a semblance of reason, to justify a recognition of belligerency in the Cuban insurrection. All its remarks have been directed to the duties imposed by neighborhood and international friendship, and when it has mentioned the decision of the Geneva arbitration, it did so merely as a comparison; for, if dili-

gence must be used in the discharge of the duties of neutrality, as was decided there, no less diligence should be required in the discharge of the duties of friendship; and if defects in the laws can not be offered as an excuse in the case of the former, it would be unreasonable to admit them in the case of the latter.

"The undersigned and the government of which he forms part take sincere pleasure in recognizing the fact, as they do with genuine gratitude, that the watchfulness exercised during the last few months along the extended coasts of America has been more effectual than formerly in preventing the departure of filibustering expeditions. He is also pleased to find a reason for gratitude to the Federal government in the skillful organization which it has given to its naval forces, in order to prevent illegal aid being sent to the Cuban rebels from the coast of Florida. Both facts prove the power and the means at the disposal of the North American government for the fulfillment, with due energy and promptness, of the obligations of international friendship.

"We can not, however, notice with indifference, that there continues to be acting in New York an organization composed chiefly of naturalized North Americans who, notwithstanding, do not wish to imbibe (imbibe the spirit of) their recently acquired nationality nor the atmosphere of honor and friendship in which their Government breathes; who violate the laws of their new country and abuse the liberty granted them there by conspiring against the country in which they were born, thereby creating a state of hostility which disturbs the intimate and cordial relations which have so long been maintained between Spain and the United States. The principles upon which eternal law reposes, as much or more than law itself, demand the prompt suppression (disappearance) of that public center of conspiracy, from which every oversight is watched and every legal subterfuge is made use of to violate the so-called neutrality laws of the Republic of North America, for friendly nations have seldom or never been seen to tolerate in their midst organizations whose chief object, or, rather, whose only mission consists in plotting against the integrity of the territory of another friendly nation.

"The Spanish people and government, relying upon their rights, and with the firm resolution to maintain their legitimate and traditional sovereignty in the island of Cuba at every hazard, without sparing their exertions or limiting their perseverance, hope that the United States will not only continue to observe the kindly expectancy to which your excellency refers, but that she will also cooperate by the means already mentioned and other similar ones within her own borders in the work of peace, justice, and autonomy which Spain is now carrying out with so much self-denial and perseverance, and that the United States will thus prove by more and more open and effec-

tual acts the friendship which actuates her relations (to Spain), by which course she will completely discourage the seditious and restless elements which are still sustaining the rebellion in the Great Antilla, and which are only awaiting the result of a possible collision between our two respective countries, which are called by self-interest and affection to be on good terms and to assist each other in the noble enterprises of peace, and not to wound and destroy each other in the cruel struggles of war.

"The island of Cuba, as Mr. Olney freely admitted in an official note, has its life and its future bound to those of its mother country, Spain, and the act of conspiring against the perpetual union of the Pearl of the Antilles and the historical discoverer of the American continent not only reveals destructive purposes, but also involves a hopeless attempt. Cuba free, autonomous, ruled by a government of her own and by the laws which she makes for herself, subject to the immutable sovereignty of Spain, and forming an integral part of Spain, presents the only solution of pending problems that is just to the colony and the mother country, the denouement longed for by the great majority of their respective inhabitants and the most equitable for other States. It is only in this formula of colonial self-government and Spanish sovereignty that peace, which is so necessary to the Peninsula and to Cuba and so advantageous to the United States, can be found. The government of the Union knows this and can contribute powerfully to the attainment of the end in view by acting in accordance with what I have had the honor to say to your excellency. It will certainly do this, because justice is revered in the United States, and because the North American Republic, in conformity with its traditional principles of respect for the wish of countries to organize themselves as may best suit them, must finally admit, by acts and by declarations, that the Cuban people have a perfect right not to be disturbed by any one, and not to have any power, near or distant, oppose their honorable and peaceful wishes, by lending aid to a turbulent minority who subordinate the interests of the immense majority of their countrymen to their own selfish purposes.

"So long as the Spanish Antilles did not enjoy the right to govern themselves autonomically it might have been thought, though wrong, that this minority represented the general views of the masses, and in the case of such a hypothetical error there would be some excuse, if not justification, for a certain amount of tolerance; but now, when the state of affairs has been cleared up, and when it has been made evident by the introduction of autonomy that the most estimable inhabitants of the island desire peace under this system, which is as liberal as they could wish, this moral and physical compulsion, exerted by revolutionary organizations which are laboring freely in

the United States for an absurd, unattainable separation, contrary to right and to the interests of all, ought to cease entirely and without loss of time. Its continuation would be a violation of the liberty which is the very essence of the social and political system of North America.

"It is impossible to see in the noble work of peace which has been nobly and generously undertaken in Cuba, as your excellency very truly remarks, a sudden creation which can arise in a single night; it must be regarded as a lasting and noble structure, which, to use your excellency's eloquent words, would be founded upon the rock of justice, not upon the moving sands of self-interest, and which, for its more rapid development, requires the cooperation of friends and the most scrupulous respect of foreigners."

Señor Gullon, min. of state, to Mr. Woodford, min. to Spain, Feb. 1, 1898, For. Rel. 1898, 658.

Dupuy de Lôme incident.

"You will have acquired through the recent telegraphic correspondence on the subject a general knowledge of the circumstances which have brought about the retirement of Señor Dupuy de Lôme from the Spanish mission at this capital. For your fuller information it is appropriate to give you a more circumstantial account of the incident.

"The morning papers of the 9th instant printed what purported to be a translation into the English language of a surreptitiously obtained letter addressed by Señor Dupuy de Lôme to Señor José Canalejas, which, although in the nature of a personal communication, contained expressions offensively disparaging to the person and office of the President, and indicative of insincerity on the part of the minister himself in regard to matters then under international consideration.

"The disclosure so made was, should it be substantiated, of such a nature as obviously to put an instant end to the utility of Señor Dupuy de Lôme as a medium of the candid and sincere intercourse which should ever prevail among nations, as well as to gravely offend the Executive and the people of the United States, and it became necessary at once to inquire as to the authenticity of the published communication with a view to taking such action as a sense of self-respect and frankness prescribes in the intercourse of friendly states.

"Some hours later there reached the Department copies of a New York newspaper containing a photolithographic facsimile of the letter in question, and an hour or two thereafter there was placed in my hands for the first time the original of the letter so reproduced. The genuineness of the paper appearing to be established by comparison with specimens of the minister's writing found in the Department, no room remained for longer entertaining, as I was at first disposed to

do, a doubt as to the reality of the serious charge laid at the envoy's door; and I directed that the matter should be at once brought, with all permissible considerateness, to the attention of Señor Dupuy de Lôme himself. This was done by the Assistant Secretary of State, Mr. Day, in personal conference.

"The minister admitted having written a letter of the described character. Having retained no copy of it, he was at first disposed to question the accuracy of the words ascribed to him by the published version; but on being shown the original he confirmed its genuineness, and, without in terms retracting the offensive utterances it contained, contended that the English translation had unfavorably intensified certain phases which he claimed were permissible under the seal of private and colloquial correspondence. He also frankly stated that he recognized the impossibility of his continuing to hold official relations with this Government after the unfortunate disclosures, and informed Mr. Day that he had on the evening of the 8th and again on the morning of the 9th telegraphed to his government, asking to be relieved of his mission.

"Immediately after seeing Señor de Lôme, a telegraphic instruction was sent to you directing you to inform the government of His Majesty that the publication in question had ended the Spanish minister's usefulness, and that the President expected his immediate recall.

"For your information I inclose herewith an accurate copy made in the Department from the original letter of Señor Dupuy de Lôme, with a careful translation also prepared in the Department, together with the facsimile printed in the *New York Journal* of the 9th instant. Copy of the translation which appeared in the press, and which is infelicitous in some particulars and inaccurate in others, is also appended.

"On the 10th instant I received your telegram informing me that prior to your presentation of the instruction sent you in regard to Señor Dupuy de Lôme's recall, the cabinet had accepted the minister's resignation, putting the affairs of the legation in charge of the secretary, and that your full report would follow. Thereupon I telegraphed you to report by cable.

"Later, thinking it probable that the Spanish government might not be in possession of the text of the letter written by Señor Dupuy de Lôme to Señor Canalejas and might therefore not be in a position to gauge the magnitude of the minister's offense, or to rightly estimate the insincerity which appeared to characterize his personal utterances respecting the object of the proposed negotiations for reciprocity with the island of Cuba, I directed that the Spanish text of the more notably objectionable passages should be telegraphed to you, which was done on the 12th instant.

"Your telegraphic report of the interview had with the minister of state, which was received here on the night of the 12th instant, confirmed my conjecture that his excellency could not have had the full text of Señor Dupuy de Lôme's letter before him, otherwise it is scarcely conceivable that he would have confined himself to regretting the minister's 'indiscretion,' when, in point of fact, the language used by him disclosed much weightier reason for regarding the minister's usefulness as utterly destroyed, not only on account of the disparaging words in which he had spoken of the President, but more gravely still by reason of the want of candor which appeared to underlie the proposition for a reciprocity arrangement with the autonomous government of Cuba, which he shortly afterwards brought forward and advocated with much profession of earnestness. I think you will also discern a similar underthought in the passage in which Señor Dupuy de Lôme speaks of the institution of an autonomous government having the intended effect of relieving the Spanish government in the eyes of the American people of a part of the responsibility for the occurrences in that island, and throwing it instead upon the Cubans themselves. But as this point will doubtless attract the attention of the Spanish cabinet, it seems unnecessary to pursue it further in this instruction.

"All the facts being fully known, and the offense of the late minister being disclosed in all its enormity, I felt sure that the government of His Majesty could not feel less concern than we ourselves feel in dispelling the painful and detrimental impressions touching the inwardness of the transactions recently had and even now pending between the two governments which a perusal of the letter suggests. This assurance proved to be well grounded. You having, as reported in your telegram of the 14th instant, written a note to his excellency the minister of state, communicating to him the Spanish text of the passages of Señor Dupuy de Lôme's letter, his excellency replied on the 15th in a note of which you telegraphed me the entire text. I was happy to find therein not only that frank expression of regret which I had from the outset confidently expected, and which it seems his excellency had made to you orally on the occasion of your first interview, but further and more complete announcement of the disauthorization of the minister's act, which was intended to be conveyed by the manner and form in which his retirement from the post of honor and trust he had so long filled was accomplished. Having communicated his excellency's final note to the President and ascertained his gratification thereat, I telegraphed to you on the 18th instant expressing the satisfaction of this government at the satisfactory termination of the incident.

"As for the letter itself, I have had much pleasure in recognizing the personal claim of Señor Canalejas to its possession, even though

it may never have reached his hands; and it was accordingly delivered, on the 14th instant, against receipt, to Mr. Calderon Carlisle, who presented himself as the agent of Señor Canalejas for that purpose."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, Feb. 23, 1898, For. Rel. 1898, 1018.

[Translation of letter written by Señor Don Enrique Dupuy de Lôme to Señor Don José Canalejas. Undated, but from internal evidence probably written about the middle of December, 1897.]

LEGATION OF SPAIN, *Washington.*

"His Excellency Don José CANALEJAS.

"MY DISTINGUISHED AND DEAR FRIEND: You have no reason to ask my excuses for not having written to me. I ought also to have written to you, but I have put off doing so because overwhelmed with work and nous sommes quittes.

"The situation here remains the same. Everything depends on the political and military outcome in Cuba. The prologue of all this, in this second stage (phase) of the war, will end the day when the colonial cabinet shall be appointed and we shall be relieved in the eyes of this country of a part of the responsibility for what is happening in Cuba, while the Cubans, whom these people think so immaculate, will have to assume it.

"Until then, nothing can be clearly seen, and I regard it as a waste of time and progress, by a wrong road, to be sending emissaries to the rebel camp, or to negotiate with the autonomists who have as yet no legal standing, or to try to ascertain the intentions and plans of this government. The [Cuban] refugees will keep on returning one by one, and as they do so will make their way into the sheepfold, while the leaders in the field will gradually come back. Neither the one nor the other class had the courage to leave in a body and they will not be brave enough to return in a body.

"The message has been a disillusionment to the insurgents, who expected something different; but I regard it as bad (for us).

"Besides the ingrained and inevitable bluntness (groseria) with which is repeated all that the press and public opinion in Spain have said about Weyler, it once more shows what McKinley is, weak and a bidder for the admiration of the crowd, besides being a would-be politician (politicastro) who tries to leave a door open behind himself while keeping on good terms with the jingoes of his party.

"Nevertheless, whether the practical results of it [the message] are to be injurious and adverse depends only upon ourselves.

"I am entirely of your opinions; without a military end of the matter nothing will be accomplished in Cuba, and without a military and political settlement there will always be the danger of encouragement being given to the insurgents by a part of the public opinion if not by the government.

"I do not think sufficient attention has been paid to the part England is playing.

"Nearly all the newspaper rabble that swarms in your hotels are Englishmen, and while writing for the *Journal* they are also correspondents of the most influential journals and reviews of London. It has been so ever since this thing began. As I look at it, England's only

object is that the Americans should amuse themselves with us and leave her alone, and if there should be a war, that would the better stave off the conflict which she dreads but which will never come about.

"It would be very advantageous to take up, even if only for effect, the question of commercial relations, and to have a man of some prominence sent hither in order that I may make use of him here to carry on a propaganda among the Senators and others in opposition to the junta and to try to win over the refugees.

"So Amblard is coming. I think he devotes himself too much to petty politics, and we have got to do something very big or we shall fail.

"Adela returns your greeting, and we all trust that next year you may be a messenger of peace and take it as a Christmas gift to poor Spain.

"Ever your attached friend and servant,

"ENRIQUE DUPUY DE LÔME."

Feb. 11, 1898, Señor du Bosc, of the Spanish legation, informed the Department of State that, his government having accepted Señor Dupuy de Lôme's "renunciation" of the office of minister, he had been designated as chargé d'affaires ad interim. Feb. 12 the Department of State replied, recognizing him in that capacity. (For. Rel. 1898, 1010, 1011.)

"The notably objectionable passages of the Spanish minister's letter read as follows:

"First. 'El mensage ha desengañado á los insurrectos que esperaban otra y ha paralizado la accion del congreso; pero yo lo considero malo. Ademas de la natural é inevitable prosería con que se repite cuanto ha dicho de Weyler la prensa y la opinion en España, demuestra una vez mas le que es McKinley, débil y populachero y además un politicastro que quiere dejarse una puerta abierta y quedar bien con los jingoes de su partido.'

"Second. 'Seria muy importante que se ocuparan, aunque no fuera mas que para efecto, de las relaciones comerciales y que se enviase aquí un hombre de importancia para que yo le usara aquí para hacer propaganda entre los Senadores y otros en oposicion á la Junta y para ir guardar (ganando) emigrados.'

"The last word but one, 'guardar,' is almost illegible.

"If, as is probable, the ministry has not possessed the text of the letter, you should acquaint the minister of state with the foregoing extracts, pointing out the insulting character of the first and the insincerity which underlies the second." (Mr. Day, Acting Sec. of State, to Mr. Woodford, min. to Spain, tel., Feb. 12, 1898, For. Rel. 1898, 1010.)

"On the afternoon of last Thursday, the 10th day of February, and after the adjournment of His Majesty's council of ministers, I had the honor to call upon your excellency and to read to you a copy of a telegram which I had received that morning from my government, and which related to a letter written by the Spanish minister at Washington. I then stated that I would communicate to my government at once by telegraph such answer as your excellency might make, and I left with you a copy of such telegram and statement. I understood your excellency to reply that the Spanish government sincerely regretted the indiscretion of the Spanish minister at Wash-

ington, and that his resignation had been asked and accepted by cable before our then interview.

"I telegraphed to my government at once that the resignation had been asked and accepted by cable before our then interview.

"It is possible that I misunderstood your excellency in what was said about the minister's resignation having been asked by your government.

"It is now the fourth day since I had the honor of calling upon your excellency, and I have not yet had the satisfaction of receiving any formal indication that His Majesty's government regrets and disavows the language and sentiments which were employed and expressed in such letter addressed by the Spanish minister at Washington to a distinguished Spanish citizen.

"It is my hope and pleasure to believe that the Spanish government can not have received the text of the letter written by Señor Dupuy de Lôme to Señor Canalejas, in regard to which I called upon your excellency last Thursday, and it therefore becomes my duty to acquaint your excellency with the following extracts from such letter, which are notably objectionable to my government:

"First. 'El mensaje ha desenganado á los insurrectos que esperaban otra cosa y ha paralizado la acción del Congreso, pero yo lo considero malo ademas de la natural é inevitable grosería con que se repite cuanto ha dicho de Weyler la prensa y la opinión en España demuestra una vez más lo que es McKinley debil y populachero y ademas un politicastro que quiere dejarse una puerta abierta y quedar bien con los jingoes de su partido.'

"Second. 'Seria muy importante que se ocuparan aunque no fuera más que para efecto de las relaciones comerciales y que se enviase aquí un hombre de importancia para que yo le usara aquí para hacer propaganda entre los esnadores y otros en oposición á la junta y para ir——— emigrantes.'

"The last word before 'emigrantes,' and which I have indicated by a dash, is almost illegible.

"I beg to point out to your excellency the insulting character of the first passage and the insincerity which underlies the suggestions of the second." (Mr. Woodford, min. to Spain, to Señor Gullon, min. of state, Feb. 14, 1898, For. Rel. 1898, 1012.)

"There is, in fact, as your excellency yourself suspects, an error or misunderstanding, little surprising, in truth, in the references to our brief conversation of Thursday, the 10th instant, to which your excellency alludes in the note which I had the honor to receive yesterday.

"After your excellency read to me the telegram transmitted by your government, and an exact copy of which you were kind enough to leave with me, when you asked me to indicate to you the opinions and intentions of the cabinet of Madrid concerning the facts mentioned in the same dispatch I replied solely that the Spanish government, like that of Washington, and like your excellency, with entire sincerity lamented the incident which was the cause of our interview; but that, while considering it and measuring its real significance, Señor Dupuy de Lôme had already solved it by presenting the resignation of his charge, which the council of ministers had just accepted.

"To this clear declaration I understood that I should limit my reply, because, in fact, the Spanish ministry, in accepting the resignation

of a functionary whose services they had been utilizing and valuing up to that time, left it perfectly well established that they did not share, and rather, on the contrary, disauthorized, the criticisms tending to offend or censure the chief of a friendly state, although such criticisms had been written within the field of personal friendship, and had reached publicity by artful and criminal means.

"This meaning which was involved and could not help being embodied in a resolution of the council of ministers adopted before I had the pleasure of receiving your excellency when the government of Spain only in a general way, by vague telegraphic reports, learned the sentiments alluded to, is naturally the real meaning which the Spanish ministry, with equal or greater reason, gives to the decision referred to, after reading the words which your excellency copies in Spanish in the first of the two paragraphs which your courteous note transmits to me.

"As regards the second paragraph which the same communication of your excellency almost literally reproduces, the government of which I form a part is profoundly surprised that a private letter, dated, as it appears, on a day relatively distant, and the opinions of which can not properly be formed now, subsequent to recent agreements, can be invoked now merely on account of the significance of the signature as a germ of suspicion and doubts as opposed to the unanswerable testimony of simultaneous and subsequent facts.

"The present Spanish government, before and after the date indicated, with respect to the new colonial regimen and the projected treaty of commerce gave such evident proofs of its real designs and of its innermost convictions that it does not now consider compatible with its prestige to lay stress upon or to demonstrate anew the truth and sincerity of its purposes and the unstained good faith of its intentions.

"Publicly and solemnly it contracted, before the metropolis and its colonies, the responsibility of the political and tariff changes which it has inaugurated in both Antilles, and the natural ends of which in the domestic and international spheres it pursues with that perseverance and that firmness to which from the beginning, it adjusted and which in the future must inspire its entire conduct." (Señor Gullon, min. of state, to Mr. Woodford, min. to Spain, Feb. 15, 1898, For. Rel. 1898, 1015. This note was received by Mr. Woodford Feb. 16.)

"Polo de Bernabé will be appointed minister to Washington. He is the son of Admiral Polo, formerly minister. Is now chief of commercial bureau in Spanish state department. Speaks English and is familiar with commercial affairs. Was secretary of legation at Washington when his father was minister." (Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, tel., Feb. 17, 1898, For. Rel. 1898, 1014.)

"Note of minister of state received by you 16th instant satisfactorily closes the incident raised by publication of Spanish minister's private letter; indeed it would have been sooner closed had Department possessed the expressions of regret and disauthorization recited by the minister. You will assure minister of state of the gratification here felt at his frank statements, which this government had from the outset confidently expected. Add that the new minister's antecedents and the recollection of his previous service as secretary here insure him a cordial personal welcome." (Mr. Day, Acting Sec. of

State, to Mr. Woodford, min. to Spain, tel., Feb. 18, 1898, For. Rel. 1898, 1016.)

"My personal understanding of my interview with the Spanish minister of foreign affairs, in the afternoon of Thursday, February 10, is that he then confined himself to regretting the minister's indiscretion, while his excellency's understanding is that he then indicated or made the frank expression of regret, which was substantially enlarged in his formal note of disauthorization, dated February 15. As the minister speaks little English and I little Spanish, the possible misunderstanding may have occurred easily." (Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, March 8, 1898, For. Rel. 1898, 1021.)

See, also, Mr. Woodford to the President, Feb. 26, 1898, For. Rel. 1898, 664; and a "personal and confidential" letter of Mr. Day to Mr. Woodford, March 3, 1898, For. Rel. 1898, 680.

"As to De Lôme, I agree with you that that incident is, fortunately, closed. The publication of the letter created a good deal of feeling among Americans, and but for the fact that it was a private letter, surreptitiously if not criminally obtained, it might have raised considerable difficulty in dealing with it diplomatically. As soon as we learned of its authenticity the first cable was sent to you suggesting the recall of the minister. De Lôme had been advised the day before, and cabled his resignation before the letter was brought to the Department. Your prompt and efficient method of dealing with the matter after its serious import was known, and your firm, dignified action in the interview with the minister, no doubt led to the satisfactory termination of the incident. Everybody that I see seems well pleased with it, and no one wished trouble about a matter of this kind. If a rupture between the countries must come, it should not be upon any such personal and comparatively unimportant matter. We sent you day before yesterday full instruction covering the Cuban situation, as you will see it is bad enough.

"The De Lôme incident, the destruction of the *Maine*, have added much to the popular feeling upon this subject, although the better sentiment seems to be to await the report of the facts, and to follow the action of the President after the naval board has made its report. Whatever that report may be, it by no means relieves the situation of its difficulties. The policy of starvation, the failure of Spain to take effective measures to suppress the insurrection, the loss of our commerce, the great expense of patrolling our coast—these things, intensified by the insulting and insincere character of the De Lôme letter, all combine to create a condition that is very grave, and which will require the highest wisdom and greatest prudence on both sides to avoid a crisis."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, "personal and confidential," March 3, 1898, For. Rel. 1898, 680.

Destruction of the "Maine."

January 25, 1898, the U. U. S. *Maine* arrived at Havana on a friendly visit. Some Spanish naval vessels and a German training ship were in the harbor, and another vessel of the German navy arrived during the day.[a] At 9.40 p. m. of February 15, the *Maine* was blown up and destroyed, with two of her officers and two hundred and sixty-four of the crew.[b] Expressions of condolence were made by many foreign governments, officials, and individuals, including the Queen Regent and the government of Spain and various officials in Spain and in Cuba.[c]

The United States and Spain each appointed a naval commission to investigate and report upon the disaster.

"The following is a summary of the report made March 21 by the United States Board of Inquiry in case of the *Maine:*

"The *Maine* arrived at Habana January 25. Notices of her intended arrival had been given by the United States consul-general to the authorities on the preceding evening, and she was conducted by the regular government pilot to buoy No. 4, in from 5½ to 6 fathoms of water. Discipline on ship excellent, and all her orders and regulations strictly carried out. Ammunition properly stored and cared for. Magazines and shell rooms always locked, after being opened, and after destruction of ship the keys were found in proper place in captain's cabin. Temperatures of magazine and shell rooms daily taken and reported. Only magazine showing undue heat was after 10-inch magazine, which did not explode. Torpedo warheads were stored in after part of ship under wardroom, and did not explode. Dry gun-cotton primers and detonators were stored in cabin aft, and remote from explosion. Waste carefully looked after under special orders of commanding officer; and varnishes, driers, alcohol, and like combustibles, were stored on or above main deck. Medical stores were aft under wardroom. No dangerous stores below in any other storerooms. The coal bunkers inspected daily. Of those adjacent to forward magazine four were empty, while one was full of coal. This coal before it was received was carefully inspected, and the bunker was inspected by engineer officer on duty on day of explosion. No case of spontaneous combustion of coal had ever occurred on the *Maine*, and fire alarms in bunkers were in working order. Two after boilers in use at time of disaster, but for auxiliary purposes only, at comparatively low temperature and under watch, and could not have caused explosion. Four forward boilers found by divers in fair condition. *Maine* destroyed at 9.40, evening of February 15. Everything had been reported secure at 8 o'clock p. m., and all on

[a] For. Rel. 1898, 1024–1027.

[b] For. Rel. 1898, 1029.

[c] For. Rel. 1898, 1029–1032, 1045, 1046–1078.

board was quiet. There were two distinct explosions, with brief interval. The first, with report like that of a gun, lifted ship very perceptibly. Second was more open, prolonged, and of great volume, and caused by partial explosion of two or more of forward magazines. Evidence obtained by divers as to condition of wreck more or less incomplete, but it appears after part of ship sank practically intact. As to forward part, testimony established following facts:

"Portion of port side protective deck, which extends approximately from frames 30 to 41, was blown up aft and over to port. The main deck from approximately frames 30 to 41 was blown up aft and slightly over to starboard, folding the forward part of the middle superstructure over and on top of the after part. This was in opinion of the board caused by partial explosion of two or more of forward magazines. But at frame 17 the outer shell, from a point 11½ feet from middle line of ship and 6 feet above normal keel, was forced up and remained above water, about 34 feet above normal position. The outside bottom plating is bent inward, and a portion about 15 feet broad and 32 feet long is doubled back upon itself. The vertical keel is broken in two at frame 18, and the flat keel is bent into an angle similar to that formed by the plating. This plate is now about 6 feet below surface of water and 30 above its normal position. This effect could, in court's opinion, have been produced only by explosion of a mine under bottom of ship. In conclusion, court finds that loss of *Maine* was not due to any fault or negligence of any of officers or crew, but to explosion of a submarine mine, which caused partial explosion of two or more forward magazines. No evidence, however, obtained fixing responsibilty on any person or persons.

"Upon the facts as thus disclosed a grave responsibility appears to rest upon the Spanish government. The *Maine*, on a peaceful errand, and with the knowledge and consent of that Government, entered the harbor of Habana, relying upon the security and protection of a friendly port. Confessedly she still remained, as to what took place on board, under the jurisdiction of her own government, yet the control of the harbor remained in the Spanish government, which, as the sovereign of the place, was bound to render protection to persons and property there, and especially to the public ship and the sailors of a friendly power.

"The government of the United States has not failed to receive with due appreciation the expressions of sympathy by the government of the Queen Regent with the United States in the loss of its ship and sailors. This fact can only increase its regret that the circumstances of the case, as disclosed by the report of the board of inquiry, are such as to require of the Spanish government such action as is due where the sovereign rights of one friendly nation have been assailed within the jurisdiction of another. The President does not

permit himself to doubt that the sense of justice of the Spanish nation will dictate a course of action suggested by the friendly relations of the two governments.

" You will communicate the contents of this instruction to the minister of state and give him a paraphrase if desired."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, tel., March 26, 1898, For. Rel. 1898, 1036.

The foregoing summary was communicated to the Spanish government March 28, 1898, and on the same day the full report of the court of inquiry was transmitted to Congress. (For. Rel. 1898, 1042, 1043; S. Doc. 207, 55 Cong. 2 sess.) March 28 Señor Polo de Bernabé, Spanish minister at Washington, communicated to the Department of State the following extract from the report of the Spanish commission of inquiry:

" The report contains the depositions of eyewitnesses and experts, and, by reproducing, by means of these depositions, the act of explosion, at each moment of its duration, in its external appearances, proves the absence of all the incidents which always necessarily accompany the explosion of a torpedo.

" It is known, through these same depositions of witnesses very near the *Maine*, that there was only a single explosion; that no column of water was thrown up; that there was no movement of the water; that there was no dash of the water against the sides of the nearest vessel; that there was no shaking of the shore, and that no dead fish were seen subsequently. The deposition of the chief pilot of the port shows that there was a great abundance of fish in the bay after the explosion, and the same thing is asserted by the assistant engineer of the harbor works, who says that he has always found dead fish after many explosions (blastings) made for the works in the bay.

" The divers, when examining the hull of the *Maine*, could not see its bottom, as it was buried in the mud, but they examined the sides, and the rents in them outwards are an infallible sign that the explosion was internal.

" When the bottom of the bay around the vessel was examined not a single sign of the action of a torpedo was found, and, moreover, the district attorney (fiscal) finds no precedents of the blowing up of the magazines of a vessel by torpedoes in any case.

" The report states that the peculiar nature of the procedure followed and the thorough observance of the principle of the extraterritoriality of the *Maine* have prevented the making such investigations in the interior of the vessel as would furnish the means of deciding, at least hypothetically, the internal cause of the disaster; and this inability was increased by the unfortunate refusal which prevented the establishment of the necessary and appropriate cooperation between the Spanish commission on the one side, and the commander and crew of the *Maine*, the American officials commissioned to investigate the causes of the event, and those subsequently charged with the recovery (salvamento) on the other side.

" Lastly, the report affirms that the internal and external examination of the *Maine*, when it can be accomplished, and provided the labors for the total or partial recovery of the wreck do not cause any change in it, and the examination of the spot in the bay where the vessel is

sunk, will prove that, as has been said, the explosion was produced by an internal cause." (For. Rel. 1898, 1044.)

The full report of the Spanish commission was communicated to the Department of State April 2, 1898. (S. Rept. 885, 55 Cong. 2 sess.; For. Rel. 1898, 1045.)

A decree dissolving the Cortes was signed Feb. 26, 1898. The new Cortes was to meet April 25.[a]

Situation in Cuba.

"The President's message to Congress at the opening of the present session very fully set forth the information possessed by this government touching the situation in Cuba, both as to its actual condition and its future prospects, and presented as much in detail as was possible under the circumstances the views and policy of this government in regard thereto.

"Since that time I have refrained from writing you instructions on the subject, partly because the benevolently expectant attitude of the government of the United States with regard to the happenings in Cuba continued unaltered and partly because the changing lights thrown upon the situation from week to week made definite appreciation and comment impracticable.

"Two months have now elapsed since the installation at Habana of the autonomist government of Cuba. More than two months have now passed since the substitution of Marshal Blanco for General Weyler and the adoption of a modified rule of conduct in the prosecution of hostilities against the Cuban insurgents. During this time the Department has sought to keep itself well informed of the actual situation and its immediate probabilities through our various agencies in Cuba. So far as my opportunities of observation and knowledge go, I am as yet unable to discern the favorable advances which were gladly anticipated from the changed order of things.

"I review the present situation briefly for your confidential information, solely to aid you in appreciating any statements which may be made to you and in shaping your own discreet course.

"First, as to the condition of the war in Cuba. The testimony which reaches me is concurrent as to the absence of any substantial success of the Spanish arms. No change has supervened in the conduct of hostilities on either side save that fewer regrettable excesses on the part of the Spanish troops are now reported. Indeed, their operations have not appeared during the past three months to have been as energetic as before. Few encounters are reported. Whether this be due to the reduced numbers of the Spanish forces through the sickness and casualties incident to all wars and to the return to the Peninsula of troops who have served their time, or to the decreased productiveness of the island itself, due to the destruction of the nor-

[a] For. Rel. 1898, 665

mal source of supply and attended by enhanced difficulty of keeping up an effective commissariat, is a matter of conjecture. Both these general causes may perhaps affect the situation. It is reported that many of the troops have been widely scattered throughout the plantations ostensibly for the purpose of their protection, but being in fact billeted upon the interior estates in much larger numbers than heretofore and drawing their subsistence from the already impoverished resources of the interior country. Meanwhile the insurgent forces continue to control a large part of the eastern region while making demonstrations and forays in the westward parts without substantial check. The recent expedition of General Blanco to the central district appears to have been barren of military results. On the whole, inaction rather than activity has marked the last three months' conduct of the war.

"In the second place, the autonomist government of Cuba appears to have been extended from Habana to several of the principal cities and districts of the island with every disposition to place departmental and municipal authority in the hands of native Cubans or of Spanish residents known to be favorable to the scheme of autonomy. There can be no ground to doubt the entire good faith of the Spanish government in thus installing and extending within limited areas the decreed system of autonomy. While its operation is thus restricted to narrow fields and is still in a period of transition, it may be premature to judge how far it effectively supplies a remedy for the evils under which the Cuban administration has admittedly labored for many years past. Besides being thus circumscribed in its operations, the financial problem appears to confront the autonomist government with considerable urgency, and indeed no other condition would well be expected in view of the wholesale destruction of the resources of the island within and of the diminution of its external commerce.

"Thirdly, as for the effect of the offer of autonomy upon the insurgents in the field, it must be confessed that no hopeful result has so far followed. Beyond a few isolated submissions of insurgent chiefs and their following no disposition appears on the part of the leaders of the rebellion to accept autonomy as a solution. On the other hand, the hostility of the Spanish element in Cuba to this or any form of autonomy is apparent, so that the insurgurated reform stands between the two adverse fires of hostile opposition in the field and insidious malevolence in the very centers of government. That the latter form of opposition would be reduced and eventually overcome in proportion as autonomy proves a success may well be admitted; that autonomy is of itself, and unaided by military success, capable of winning over the insurgent element remains a doubtful proposition.

"Fourthly, the condition of the island in its financial and productive aspects has not changed for the better. It is rather, if anything, worse. The endeavors of the representatives of the peninsular authority and the domestic autonomist government to relieve the destitution and distress which prevail have been abortive. The policy of concentrating the rural population in and around the garrisoned towns, while leaving their fields and homes to decay and destruction, has worked its inevitable result. Day by day the condition of the reconcentrados becomes more pitiable, while day by day the power to relieve them, however good may be the disposition to do so, decreases with the exhaustion of the resources of the island itself. From Matanzas, Sagua, Santiago, and other principal centers of reconcentration the same appalling tale of misery, suffering, and death reaches me. The authorities are confessedly powerless to relieve the situation. Even the excessive diminution of the number of these unfortunates by death, estimated by conservative Spanish authorities to amount to about 50 per cent of their number since the policy of the depopulation of the interior was inaugurated does not make it easier to relieve the survivors, for the exhaustion of means to do so more than keeps pace with their diminished numbers. Our consuls report that even the Spanish army itself suffers from this paralysis of means and supplies, and if it be admittedly impracticable to keep up the commissariat and pay the soldiers of Spain, it is not rational to suppose that the condition of the unfortunate reconcentrados can be materially relieved, especially if reliance is placed on the private charity of the already straightened islanders.

"The decrees permitting the sufferers to return to their plantations and resume their agricultural labors have been barren of result. Their fields are waste. The few estates which, under the guard of troops, have endeavored to resume operations do not afford lodgment for a tithe of the destitute. These are mostly women and children, or old men incapable of field work. Even could they return to their homes they could not till the soil and plant and raise crops, nor support themselves until the harvest should mature. That form of relief has proved wholly inadequate.

"The distressing situation of the reconcentrados has appealed very strongly to the generous heart of the American people, and under the initiative of the President every effort has been made to organize and apply systematic relief through private donations here and distribution by the available channels in Cuba. However generously our countrymen have responded to this appeal, their efforts can relieve but a very small portion of the suffering, and that only within the narrow limits of the larger towns and their immediate surroundings. The work of relief is being earnestly pressed, but it is painfully insufficient to meet the situation.

"In obedience to resolutions of the Senate and House, selections of the consular correspondence regarding the present situation in Cuba have been made, but I can not at present say when they will be submitted. It is sufficient for my present purpose to inform you that the reports of the consul-general and the several consuls in Cuba substantiate the pitiable tale of suffering and death, of impoverishment and destruction of resources, and of substantial lack of change in the military situation which the press has published to the world. The only redeeming feature of the situation is the advance made in the district of Cienfuegos, where less destitution exists than in other departments, and where, under heavy guard, many of the mills have resumed operations.

"I append for your further information copy of a careful and valuable report made to the Secretary of the Navy by Commander G. A. Converse, commanding the U. S. S. *Montgomery*, which recently visited the port of Matanzas, in which is recited the situation in that province.

"This instruction, as I said before, is written for your confidential information and it is not expected that you will communicate any of its statements to the Spanish authorities, but you will bear these facts in mind in your intercourse with them."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, "confidential," March 1, 1898, For. Rel. 1898, 666.

Objections to Consul-General Lee.

March 1, 1898, Mr. Woodford cabled a report of an interview with Señor Moret, minister of the colonies, containing, in a summary of the latter's remarks, the following: "The last, but not the least, cause of danger is the behavior of Consul Lee. Spain can not consider him a reliable man, and is entitled to say that his reports are misleading and untrustworthy. Consul Lee freely admits he is corresponding with the insurgents and openly avows that he is deadly against autonomy. The insular government distrusts him as well, and is much inclined to solicit his recall."[a]

Mr. Day, Acting Secretary of State, replied: "The President will not consider any proposal to withdraw General Lee. Even a suggestion of his recall at this time would be most unfortunate from every point of view. Our information and belief is that throughout this crisis General Lee has borne himself with great ability, prudence, and fairness."[b]

March 4 Mr. Woodford cabled: "There will be no suggestion of recall of consul-general of the United States at Habana. The minister [of the colonies] fully appreciates the situation."[b]

[a] For. Rel. 1898, 675–676. [b] For. Rel. 1898, 676.

General Woodford's negotiations.

In a personal letter to the President, dated March 17, 1898, and numbered 43, Mr. Woodford, reviewing what had taken place since he went to Madrid, and the failure of efforts to reestablish order in Cuba, stated that he had reluctantly reached the conclusion that the only certainty of peace lay in the American ownership and occupation of the island. He therefore requested permission to treat for its acquisition, should the opportunity ever be presented.[a]

In another letter, written the next day and numbered 44, he wrote that the peace party had triumphed in the Spanish cabinet, and narrated an unofficial interview which he had just had with Señor Moret. In this interview he expressed, purely in his personal capacity, the opinion that the only power that could compel peace in Cuba was the United States, and outlined a possible plan for the ultimate transfer of the island. He reported that, at the close of the conversation, Señor Moret said, substantially: "I do not commit myself to details. The right way can be found if we will both do our best, and I will work with you for peace, and I am sure we shall get together as to details. This must be confidential between us, for we are not talking as officials."[b]

In yet another letter, dated March 19 and numbered 46, Mr. Woodford referred to a telegram which he had sent to the President during the day. It is given below. Before sending it he exhibited it to Señor Moret, who stated that he could not approve it officially, as he had not the necessary authority, but that he would personally work with him to secure the results indicated in it. Señor Moret also stated that the Queen had not been cognizant of any suggestion that she wished to discuss any possible cession of Cuba, either to the insurgents or to the United States; that she desired to hand over his patrimony unimpaired to her son when he should reach his majority, and that she would rather abdicate the regency than be the instrument of parting with any of Spain's colonies. Mr. Woodford thought, however, that Señor Moret regarded the parting with Cuba as inevitable, and that he would probably find an honorable way to do it.[c]

"My No. 45. Unless report on the steamer *Maine* requires immediate action, I suggest that nothing be decided or done until after the receipt of my personal letters 43, 44, and 46, which my second secretary of legation will carry from Gibraltar Monday, March 21. I also suggest that you authorize me to tell the Queen informally, or any minister indicated by her, that you wish final agreement before

[a] For. Rel. 1898, 685–688. [b] For. Rel. 1898, 688–692. [c] For. Rel. 1898, 693.

April 15. If you will acquaint me fully with general settlement desired I believe Spanish government will offer without compulsion and upon its own motion such terms of settlement as may be satisfactory to both nations. Large liberty as to details should be conceded to Spain, but your friendship is recognized and appreciated, and I now believe it will be a pleasure to Spanish government to propose what will probably be satisfactory to you."

Mr. Woodford, min. to Spain, to President, tel., March 19, 1898, For. Rel. 1898, 692.

"President is at loss to know just what your telegram 19th covers, whether loss of *Maine* or whole situation. Confidential reports shows naval board will make unanimous report that *Maine* was blown up by submarine mine. This report must go to Congress soon. Feeling in the United States very acute. People have borne themselves with great forbearance and self-restraint last month. President has no doubt Congress will act wisely and immediate crisis may be avoided, particularly if there be certainty of prompt restoration of peace in Cuba.

"*Maine* loss may be peacefully settled if full reparation is promptly made, such as the most civilized nation would offer. But there remains general conditions in Cuba which can not be longer endured, and which will demand action on our part, unless Spain restores honorable peace which will stop starvation of people and give them opportunity to take care of themselves, and restore commerce now wholly lost. April 15 is none too early date for accomplishment of these purposes. Relations will be much influenced by attitude of Spanish government in *Maine* matter, but general conditions must not be lost sight of. It is proper that you should know that, unless events otherwise indicate, the President, having exhausted diplomatic agencies to secure peace in Cuba, will lay the whole question before Congress.

"Keep President fully advised, as action of next few days may control situation."

Mr. Day, Act. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 20, 1898, For. Rel. 1898, 692.

"My No. 47. Dispatch signed Day received to-day, Monday, 10 o'clock a. m. I had no intimation as to the character of report on the *Maine* when I telegraphed my No. 45, but reserved your full liberty of action if such report should require it. Nothing confidential between Spanish government and myself as to steamer *Maine*. That subject never discussed between us. All other suggestions in my No. 45 should be absolutely secret. Will keep you fully advised every day."

Mr. Woodford, min. to Spain, to the President, tel., March 21, 1898, For. Rel. 1898, 695.

"My No. 49. This morning (Tuesday) I saw the minister of the colonies at his house. Asked him whether I should talk officially or personally. He replied, personally. I commenced by saying: 'I have sent a telegram, which I read to you March 19, and have received reply. I ought to now say to you that the report on the *Maine* is in the hands of the President. I am not to-day authorized to disclose its character or conclusions, but I am authorized to say to you that beyond and above the destruction of the *Maine*, unless some satisfactory agreement is reached within a very few days, which will assure immediate and honorable peace in Cuba, the President must at once submit the whole question of the relations between the United States and Spain, including the matter of the *Maine*, to the decision of Congress. I will telegraph immediately to the President any suggestion that Spain may make, and I hope to receive within a very few days some definite proposition that shall mean immediate peace.'

"After brief and courteous conversation, he asked me if I was authorized to say officially to the Spanish minister of foreign affairs what I had just said unofficially to him. I replied that I was so authorized, and, at his request and on his assurance that he believed it would be in the interest of early peace, I sent official note to Spanish minister for foreign affairs asking interview at his house on Wednesday afternoon, March 23, with minister of colonies present as interpreter, and will then repeat officially what I said unofficially this morning, and will receive any suggestions that may be made and telegraph the same to you, without committing you or our government in any manner.

"Should I be asked to suggest what might be acceptable to you, please instruct me by telegraph as to my answer."

Mr. Woodford, min. to Spain, to the President, tel., March 22, 1898, For. Rel. 1898, 696.

March 23, 1898, Mr. Day replied: "The President approves your statement to the minister for the colonies, as given in your No. 49. He will await your telegram after your interview with the minister for foreign affairs." (For. Rel. 1898, 696.)

"No. 51. Had interview with the minister for foreign affairs this afternoon, Wednesday, in the presence of minister for the colonies. Made official statement in exact terms used at personal interview with the minister of the colonies, reported in my No. 49.

"Spanish minister for foreign affairs asked delay until beginning of the rainy season and asserted his belief that insular government will secure arrangement with insurgents before then. I told him,

kindly but firmly, that I did not believe such delay to be possible and that my government wished immediate and honorable peace. I repeated that unless satisfactory agreement is reached within a very few days you must submit the whole question to Congress.

"Spanish Cabinet met immediately afterwards. I do not yet know their decision. Minister for the colonies will come to my residence to-morrow morning, Thursday. I will then telegraph fully."

Mr. Woodford, min. to Spain, to the President, tel., March 23, 1898, For. Rel. 1898, 696.

"No. 53. The minister for the colonies called this afternoon (Thursday) at my residence. The interview was purely personal and in no sense official and binds only the future action of the minister himself. He proposed that the Spanish government, in answer to the statement made by the American minister March 23, instant, shall officially suggest that the question of an early and honorable peace in Cuba be submitted to the Cuban congress, as soon as assembled, which will be at Habana on May 4, and that the Spanish Government will give such Cuban congress all necessary authority to negotiate and conclude such peace.

"I asked him what about military operations in Cuba between now and May 4. He replied an immediate armistice or truce to be enforced by the Spanish government upon its army provided the United States can secure the acceptance and enforcement of like immediate truce by the insurgents.

"I then asked, Supposing the insular government and congress can not arrange terms for permanent peace with the insurgent government before the 15th of next September, which will be the end of the rainy season? He replied that he would personally advise his minister that the government of Spain and the United States should, in such event, jointly compel both parties in Cuba to accept such settlement as the two governments should then jointly advise, such terms to be arranged between the two governments of Spain and the United States before the 15th of next September. He told me that the minister for foreign affairs would probably communicate some such proposition to me officially to-morrow (Friday) in answer to my official statement of yesterday (Wednesday).

"I replied that I could give him no assurance or intimation as to whether such proposition would be acceptable to you, but that I would telegraph this report of our personal interview at once to you; and, at his request, I give him copy so that he may know that I telegraph just what was said between us.

"Should I receive official communication from minister for foreign affairs, I will telegraph same immediately to State Department.

Should I get no such communication, to-morrow (Friday) I will also telegraph."

Mr. Woodford, min. to Spain, to the President, tel., March 24, 1898, For. Rel. 1898, 697. See Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, March 25, 1898, For. Rel. 1898, 698–701.

"My No. 56. Official interview this afternoon (Friday) with minister for foreign affairs. He assures me positively that Spain will do all the highest honor and justice require in the matter of the *Maine*.

"As to the larger matter of peace in Cuba he sends me this (Friday) evening the following official memorandum, which I telegraph verbatim, as follows:

"'As to the last part of the document handed to the minister of state by his excellency the United States minister—that is to say, as to a suggestion or proposal which might be made by Spain in order to secure an immediate and honorable peace—Her Majesty's government are at present, more than ever, of opinion that the suggestions and means repeatedly mentioned to the United States would in a very short time bring about the peace so eagerly desired by all. If, however, the United States government in making known in different terms and under fresh aspect this requirement of an honorable and immediate peace has in mind conditions for the making or consolidation of peace, which are or may be directly or indirectly connected with the political system already established in Cuba, Her Majesty's ministers consider it their duty to remind in all sincerity the said government that nothing can be done in this direction without the natural participation of the insular parliament, which is to meet on the already near date of May fourth proximo, and will give its special attention either spontaneously or on the motion of the representative of the central government to the measures most appropriate for rapidly bringing about a lasting peace in the island.'

"Spanish memorandum ends here.

"It is so vague that it involves uncertainty. I asked Spanish minister for foreign affairs whether his government would grant and enforce immediate armistice if insurgents will do the same. He can not answer until he consults his cabinet. Personally he opposes armistice. After getting the official memorandum to-night, I called upon minister for colonies at his house. He insists that memorandum means that the question of an early and honorable peace shall be submitted by Spanish government to Cuban congress on May 4, and that Spanish government will give such Cuban congress all necessary authority to negotiate and conclude peace, provided such authority shall not diminish or interfere with the constitutional power vested by the Cuban constitution in the central government. He says that if

we asked for immediate armistice, he believes Spanish government will grant and enforce armistice on sole condition that insurgent government does same. If you approve these suggestions and believe they will lead to immediate peace, I ask authority to put these two direct questions to Spanish minister for foreign affairs: First. Does your memorandum mean exactly what the minister for colonies says, employing his precise words? Second. Will you decree and enforce immediate armistice until the end of the rainy season if insurgent government will do the same? I believe that if immediate peace can be secured now, lasting until September 15, hostilities will not be resumed." . . .

Mr. Woodford, min. to Spain, to the President, tel., March 25, 1898, For. Rel. 1898, 703.

"The President's desire is for peace. He can not look upon the suffering and starvation in Cuba save with horror. The concentration of men, women, and children in the fortified towns and permitting them to starve is unbearable to a Christian nation geographically so close as ours to Cuba. All this has shocked and inflamed the American mind, as it has the civilized world, where its extent and character are known. It was represented to him in November that the Blanco government would at once release the suffering and so modify the Weyler order as to permit those who were able to return to their homes and till the fields from which they had been driven. There has been no relief to the starving except such as the American people have supplied. The reconcentration order has not been practically superseded. There is no hope of peace through Spanish arms. The Spanish government seems unable to conquer the insurgents. More than half of the island is under control of the insurgents; for more than three years our people have been patient and forbearing; we have patrolled our coast with zeal and at great expense, and have successfully prevented the landing of any armed force on the island. The war has disturbed the peace and tranquillity of our people. We do not want the island. The President has evidenced in every way his desire to preserve and continue friendly relations with Spain. He has kept every international obligation with fidelity. He wants an honorable peace. He has repeatedly urged the government of Spain to secure such a peace. She still has the opportunity to do it, and the President appeals to her from every consideration of justice and humanity to do it. Will she? Peace is the desired end.

"For your own guidance, the President suggests that if Spain will revoke the reconcentration order and maintain the people until they can support themselves and offer to the Cubans full self-govern-

ment, with reasonable indemnity, the President will gladly assist in its consummation. If Spain should invite the United States to mediate for peace and the insurgents would make like request, the President might undertake such office of friendship.

Mr. Day, Act. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 26, 1898—12.10 a. m., For. Rel. 1898, 704.

"My personal No. 58. This morning I got memorandum from Spanish minister for foreign affairs. I telegraph verbatim all that refers to steamer *Maine*. The balance of memorandum is exactly what I telegraphed in my personal No. 56.

"'At the time the cabinet was informed of the conference which had taken place on the afternoon of Wednesday, March 23, at the residence of the minister of state, between the latter, the minister for the colonies, and the United States minister, it was in possession of news somewhat altering the bearings of the questions briefly treated in the course of that interview.

"'It now appears that the captain of the U. S. cruiser *Maine* has asked leave to destroy with dynamite the wreck of his ship, thus annihilating the only proofs which, in case of doubt or disagreement, could be again examined in order to determine, if necessary, the cause and nature of a catastrophe in the midst of which Spanish sailors and officials displayed the greatest abnegation and oblivion of all personal risks and a generous wish to circumscribe or diminish the dreadful calamity which befell the crew of the American vessel.

"'Even without seeing in the request of the captain of the *Maine* any other meaning than that personally expressed in the petition signed by him, the Spanish government considers as utterly unjustifiable and inadmissible the resolution which submits to a political assembly the report drawn up by the official American board of inquiry on the causes and circumstances of the blowing up or explosion of the *Maine*. As yet nothing is known of the report of the Spanish commission. After having invited in vain the United States naval officers to take part in its labors and go through the necessary investigations conjointly with its members, it has finished and drawn up its conclusions with a complete knowledge of the scene of a disaster so deplorable and painful for all Spaniards. One of the principal, if not the principal, basis of judgment is therefore wanting for every individual or body of men who may wish to weigh the facts with perfect impartiality. Under these circumstances, to place before a popular deliberating assembly, without correction, explanation, or counterproof of any kind, a report which, issued by the fellow-citizens of the members of that body, must necessarily meet with approval, inspired rather by sentiment than by reason, is not only to resolve beforehand a possible future discussion, but appar-

ently reveals an intention of allowing national enthusiasm, commiseration, or other like natural and comprehensible feelings, so frequently found in all numerous and patriotic assemblies, to form an *a priori* judgment not founded on proof and to reject, before even knowing its terms, any affirmation which may give rise to doubt or seem distasteful.

"'The most elementary sense of justice makes it in these cases a duty previously to examine and discuss in an atmosphere of absolute calmness two different inquiries tending to one common end. Only in the supposition of an irreconcilable discrepancy or complete opposition between one and the other would it be proper to submit them as equity demands to evidence less prone to prejudice and, if necessary, to fresh investigations and different judges.'

"Spanish memorandum ends here.

"Minister for the colonies will be at my residence to-night. Will telegraph you probably to-morrow, Sunday."

Mr. Woodford, min. to Spain, to President McKinley, tel., March 26, 1898. For. Rel. 1898, 710.

"Believe the *Maine* report will be held in Congress for a short time without action. A feeling of deliberation prevails in both Houses of Congress. See if the following can be done:

"First. Armistice until October 1, negotiations meantime looking to peace between Spain and insurgents through friendly offices of the President of the United States.

"Second. Immediate revocation of reconcentration order so as to permit people to return to their farms and the needy to be relieved with provisions and supplies from United States, cooperating with authorities so as to afford full relief.

"Add if possible:

"Third. If terms of peace not satisfactorily settled by October 1, the President of the United States to be final arbiter between Spain and the insurgents.

"If Spain agrees as above, President will use friendly offices to get insurgents to accept the plan. Prompt action desirable."

Mr. Day, Act. Sec. of State, to Mr. Woodford, min. to Spain, tel., Sunday, March 27, 1898—3 p. m., For. Rel. 1898, 721–722.

"Telegraphic instructions, signed 'Day,' dated March 25, received Saturday evening, March 26. Do the words 'full self-government' mean actual recognition of independence, or is nominal Spanish sovereignty over Cuba still permissible?

"Instruct me fully as to what the words 'with reasonable indemnity' mean and imply.

"Under Spanish constitution, ministry can not recognize independence of Cuba or part with nominal sovereignty over Cuba. Cortes alone can do this and Cortes will not meet until April 25. If I can secure immediate and effective armistice or truce between Spanish troops and insurgents, to take effect on or before April 15, will this be satisfactory?

"It is possible that I may induce Spanish ministry to submit the question of an early and honorable peace to the Cuban congress, which will meet at Havana on May 4, and that Spanish Government will give such Cuban congress all necessary authority to negotiate and conclude peace, provided such authority shall not diminish or interfere with the constitutional power vested by the Cuban constitution in the central government. If I can secure these two things with absolute and immediate revocation of concentration order, may I negotiate? I believe that an immediate armistice means present and permanent peace. Also I believe that negotiations once open between insurgents and the Cuban government some arrangement will be reached during the summer which the Spanish home government will approve, and that Cuba will become practically independent or pass from Spanish control. President of council of ministers wishes personal interview as to armistice, but I will not see him until after I get your reply to this telegram."

Mr. Woodford, min. to Spain, to Mr. Day, Assist. Sec. of State, tel., March 27, 1898, For. Rel. 1898, 713. March 28 Mr. Woodford cabled: "Present government will have large working majority in new Cortes. Conservative minority will be led by Silvela and Pidal. Romero Robledo has but six members; Carlists only four or five; the Republicans about ten." (For. Rel. 729.)

"Your cable 27th received. Full self-government with indemnity would mean Cuban independence. As to other matters, see Sunday's telegram. Very important to have definite agreement for determining peace after armistice, if negotiations pending same fail to reach satisfactory conclusions."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 28, 1898, For. Rel. 1898, 713, 722.

"The President's message, with *Maine* report, read in both Houses; referred without debate to Committees Foreign Affairs. The House adjourned."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., Monday, March 28, 1898—3 p. m., For. Rel. 1898, 722.

"Important to have prompt answer on armistice matter."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., Monday, March 28, 1898—10 p. m., For. Rel. 1898, 713, 722.

"No. 60. Have had conference this afternoon, Tuesday, with the president of the council, the minister for foreign affairs, and minister for colonies. Conference adjourned until Thursday afternoon, March 31. I have sincere belief that arrangement will then be reached, honorable to Spain and satisfactory to the United States, and just to Cuba. I beg you to withhold all action until you receive my report of such conference, which I will send Thursday night, March 31."

Mr. Woodford, min. to Spain, to President McKinley, tel., March 29, 1898, For. Rel. 1898, 718.

See, also, Mr. Woodford to Mr. Day, March 30, 1898, For. Rel. 1898, 721–724, giving an account of the conference referred to in the foregoing telegram. In this conference Mr. Woodford presented the first and second "suggestions" contained in Mr. Day's telegram of March 27, supra. In the course of conversation Mr. Woodford said "that the sober sense of the American people insisted upon immediate cessation of hostilities; that the recent speech of Senator Proctor, who is one of the most conservative and reliable of our public men, had so convinced American public sentiment that longer prosecution of the war must now be prevented." (For. Rel. 1898, 720.)

"Your No. 60 just received. It is of the utmost importance that the conference be not postponed beyond next Thursday and definite results then reached. Feeling here is intense."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 29, 1898—Tuesday, 9 p. m., For. Rel. 1898, 718, 722.

March 30, Mr. Woodford cabled in reply: "There will be no delay beyond Thursday, March 31. If definite results are not then reached, I shall close negotiations." (For. Rel. 1898, 721.)

"Your No. 60 is encouraging, but vague as to details. The United States can not assist in enforcement of any system of autonomy."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 30, 1898—Wednesday, 10 a. m., For. Rel. 1898, 718, 724.

"You should know and fully appreciate that there is profound feeling in Congress, and the gravest apprehension on the part of most conservative members that a resolution for intervention may pass both branches in spite of any effort which can be made. Only assurance from the President that if he fails in peaceful negotiations he will submit all the facts to Congress at a very early day will prevent immediate action on the part of Congress. The President assumes that whatever may be reached in your negotiations to-morrow will be tentative only, to be submitted as the proposal of Spain. We hope your negotiations will lead to a peace acceptable to the country."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., March 30, 1898—Wednesday, 4 p. m., For. Rel. 1898, 721, 726.

Mr. Woodford, March 31, replied: "Received your dispatch dated Wednesday, 4 p. m., this morning. If Spanish Government accept our demands this afternoon without reservation or modification, I shall close negotiations on our terms. If there be the least modification, I will receive Spanish suggestions tentatively and report by cable tonight for decision by the President. I will neither embarrass the President nor diminish the just demands of our Government." (For. Rel. 1898, 726.)

"Adjourned conference held this afternoon, Thursday. All present. President of the council handed me Spanish propositions in writing, which I translated in their presence. The minister for the colonies examined and approved my translation, which begins here.

"CATASTROPHE OF THE MAINE.—Spain is ready to submit to an arbitration the differences which can arise in this matter.

"RECONCENTRADOS.—General Blanco, following the instructions of the Government, has revoked in the western provinces the bando relating to the reconcentrados, and, although this measure will not be able to reach its complete developments until the military operations terminate, the Government places at the disposal of the governor-general of Cuba a credit of 3,000,000 of pesetas, to the end that the country people may return at once and with success to their labors.

"The same Government will accept, nevertheless, whatever assistance to feed and succor the necessitous may be sent from the United States, in the form and conditions agreed upon between the sub-Secretary of State, Mr. Day, and the Spanish minister in Washington.

"PACIFICATION OF CUBA.—The Spanish Government, more interested than that of the United States in giving to the Grand Antille an honorable and stable peace, proposes to confide its preparations to the insular parliament, without whose intervention it will not be able to arrive at the final result, it being understood that the powers reserved by the constitution to the central Government are not lessened and diminished.

"TRUCE.—As the Cuban chambers will not meet until the 4th of May, the Spanish Government will not, on its part, find it inconvenient to accept at once a suspension of hostilities asked for by the insurgents from the general in chief, to whom it will belong in this case to determine the duration and the conditions of the suspension.

"Spanish propositions end here. I told them I would telegraph their propositions to Washington verbatim, but that I did not believe the proposition relating to suspension of hostilities would be acceptable, and that the insurgents would not ask for it.

"We parted without any appointment for further conference. I said that I would communicate the reply of my Government to the Spanish minister of foreign affairs.

"Thursday night, 10 o'clock."

Mr. Woodford, min. to Spain, to Mr. Day, Assist. Sec. of State, tel., March 31, 1898, For. Rel. 1898, 726.

March 31, 1898, Mr. Woodford cabled to President McKinley:

"My No. 62. Have just telegraphed to the Department of State my official report of the adjourned conference held this afternoon, Thursday. It has turned, as I feared, on a question of punctilio. Spanish pride will not permit the ministry to propose and offer an armistice, which they really desire, because they know that armistice now means certain peace next autumn. I am told confidentially that the offer of armistice by the Spanish government would cause revolution here. Leading generals have been sounded within the last week, and the ministry have gone as far as they dare go to-day. I believe the ministry are ready to go as far and as fast as they can and still save the dynasty here in Spain. They know that Cuba is lost. Public opinion in Spain has moved steadily toward peace. No Spanish ministry would have dared to do one month ago what this ministry has proposed to-day." (For. Rel. 1898, 727.)

April 1, 1898, Mr. Woodford sent to Mr. Day, Assistant Secretary of State, a telegram stating that the exact language of the statement which he read at the conference of Tuesday, March 29, was as follows:

"The President instructs me to have direct and frank conversation with you about present condition of affairs in Cuba and present relations between Spain and the United States. The President thinks that it is better not to discuss the respective views held by each nation. This might only provoke or incite argument and might delay and possibly prevent immediate decision. The President instructs me to say that we do not want Cuba. He also instructs me to say with equal clearness that we do wish immediate peace in Cuba. He suggests an immediate armistice lasting until October 1, negotiations in the meantime being had looking to peace between Spain and the insurgents through the friendly offices of the President of the United States. He wishes the immediate revocation of the reconcentration order so as to permit the people to return to their farms and the needy to be relieved with provisions and supplies from the United States. The United States cooperating with the Spanish authorities so as to afford full relief." (For. Rel. 1898, 729–730.)

In a telegram to Mr. Day, April 2, 1898, Mr. Woodford said: "After most careful reflection I can not consider these Spanish propositions [made at the conference of Thursday, March 31, supra] as satisfactory to the United States or just to Cuba. In view of my assurances, as given in my personal telegram No. 60 to the President, it becomes my duty to make this official statement." (For. Rel. 1898, 730, 731.)

April 1, 1898, Señor Polo de Bernabé, Spanish minister at Washington, communicated to the Department of State a telegram from Señor José María Gálvez, "President of the Home-Rule government of Cuba," protesting against intervention by the United States. (For. Rel. 1898, 728.)

"The minister for foreign affairs has just called and tells me confidentially that, according to news received by him, the Pope, at the suggestion of the President of the United States, proposes to offer to

Spain his mediation in order that the Spanish government grant an immediate armistice to Cuba, which will facilitate and prepare an early and honorable peace.

"According to Señor Gullon's opinion, the Spanish government will accede to the desires of the Holy Father, which are not political but humane. But he understands that the Spanish government, going as far as it goes, asks that the United States will show their friendship for Spain by withdrawing our war ships from the vicinity of Cuba and from Key West as soon as the armistice has been proclaimed. That the Spanish government will continue this armistice so long as there are any reasonable hopes that permanent peace can be secured in Cuba. He asks your immediate answer as to withdrawal of war ships at once after proclamation of armistice. I still believe that when armistice is once proclaimed hostilities will never be resumed and that permanent peace will be secured. If, under existing conditions at Washington, you can still do this, I hope that you will.

"The Spanish minister for foreign affairs assures me that Spain will go as far and as fast as she can. The Austrian ambassador has heard me read this dispatch to this point and says that he will guarantee that Spain will do this.

"If conditions at Washington still enable you to give me the necessary time I am sure that before next October I will get peace in Cuba with justice to Cuba and protection to our great American interests.

"I know that the Queen and her present ministry sincerely desire peace and that the Spanish people desire peace, and if you can still give me time and reasonable liberty of action I will get for you the peace you desire so much and for which you have labored so hard.

"I think there may be mistake in the telegram from Rome to the Queen, and that the words 'at the suggestion of the President' may mean with the knowledge or with the approval of the President."

Mr. Woodford, min. to Spain, to President McKinley, tel., April 3, 1898, For. Rel. 1898, 732.

"The President has made no suggestions to Spain except through you. He made no suggestions other than those which you were instructed to make for an armistice to be offered by Spain to negotiate a permanent peace between Spain and insurgents, and which Spain has already rejected. An armistice involves an agreement between Spain and insurgents which must be voluntary on the part of each, and if accepted by them would make for peace. The disposition of our fleet must be left to us. An armistice, to be effective, must be immediately proffered and accepted by insurgents. Would the peace you are so confident of securing mean the independence of Cuba? The President can not hold his message longer than Tuesday."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 3, 1898—Monday, 2 a. m., For. Rel. 1898, 732–733.

Mr. Woodford, April 5, 1898—Tuesday, 1 a. m.—replied: "The Spanish government admit that the President of the United States has never asked or suggested the mediation of the Pope and they regret this misunderstanding.

"The minister for the colonies informs me officially that the Cuban government has issued proclamation to the Cuban people looking to immediate peace. You will get full text from the Spanish minister at Washington.

"In answer to your inquiry as to whether the peace I am so confident of securing means the independence of Cuba, I reply that I believe that if armistice, without any conditions, had been decreed by Spanish Government, lasting until next October, the negotiations between now and then would have resulted in either an autonomy which the insurgents would have accepted, or in the recognition by Spain of the independence of Cuba, or in the cession of the island to the United States. I believe that immediate armistice would have been followed by permanent peace, but without immediate and unconditional armistice lasting until next October I have no hope of successful adjustment." (For. Rel. 1898, 736.)

"Congress may very possibly take decisive action middle or end of this week. You should notify the United States consul-general in Spain and cooperate with him in notifying the United States consular officers in Spain who are American citizens to arrange to leave their offices in charge of friendly power, and, if they desire, quietly prepare for departure from Spain upon notice, either special or public, of a rupture of relations.

"If rupture comes you had better proceed to Paris and await further instructions."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, tel., April 4, 1898, For. Rel. 1898, 733.

April 5, Mr. Sherman cabled again: "In case of necessity intrust the legation to the British embassy." (For. Rel. 1898, 734.)

On the same day Mr. Woodford replied: "Arrangements have been made to place American interests and property in care of British embassy and under protection of the British flag, if I am compelled to leave Madrid." (For. Rel. 1898, 740.)

See, also, Mr. Woodford to Mr. Sherman, April 5, 1898, and April 6, 1898, For. Rel. 1898, 739, 741.

"The envoy extraordinary and plenipotentiary of Spain has the honor to communicate to the honorable Secretary of State of the United States the following telegram which he has just received from his excellency the governor-general of the island of Cuba:

"'The insular government has resolved upon the publication in an extraordinary gazeta of a manifesto to the country setting forth the excellencies of autonomy, declaring that the colonial constitution is capable of reform in a full sense, and making a patriotic appeal to

the insurrectionists to conclude a peace, after previous understanding and agreement. One of the paragraphs reads thus: "The provisional government ardently desires, and the facts bear testimony thereof, that all Cubans, without any exception whatever, shall join in the realization of the noble and fruitful work of rearing peace and concord upon bases of unshakable firmness. The provisional government, following its own inspiration and being also the faithful interpreter of the earnest desires of the government of the mother country, addresses itself to those Cubans who, in the arena of force, are striving to attain that which in its full reality and worth and without the perils or hazards of independence has already been attained—the triumph of right and justice with far-stretching horizons for the future and broad paths for the orderly and growing development of all the living forces of this community.

"'" Let the clash of arms cease; let us stretch forth our hands to each other; let us fraternally embrace within the beloved Cuban fatherland, regenerated by sacrifice and liberty; let us restore our hearthstones, and gather around them with love; let us work in unity to the end that from the ruins of the past may arise great, strong, and prosperous the Cuban people; let us, the sons of Cuba, enter upon a frank and loyal understanding in order to deliberate with calmness and decide with skillful provision concerning the means which shall conduce by common accord to attain peace without shame for any and with honor for all; let hostilities be suspended, in order that the voice of patriotism may be heard among us, brothers, equally interested in the lot of Cuba. The provisional government hastens to take the initiative toward the attainment of the high ends which it thus sets forth, offering most solemnly all manner of guaranties, and relying ever upon the approbation of the Government of the mother country.'"

"In transmitting to the Hon. John Sherman the foregoing telegram, which demonstrates the noble sentiments of concord and peace that animate alike the government of His Majesty and the autonomic government of the island of Cuba, Don Luis Polo de Bernabé avails himself of this opportunity to repeat to him the assurances of his highest consideration."

Señor Polo de Bernabé, Spanish min., to Mr. Sherman, Sec. of State, April 3, 1898, For. Rel. 1898, 731.

"The Secretary of State presents his compliments to the minister of Spain, and has the honor to acknowledge the receipt of the minister's note of the 3d instant, in which he communicates a copy of a telegram received by the governor-general of the island of Cuba, stating that the insular government has resolved upon the publication in an extraordinary gazette of a manifesto to the country, setting forth the excellencies of autonomy, declaring that the colonial constitution is capable of reform in a full sense, and making appeal to the insur-

rectionists to conclude a peace after a previous understanding and agreement." (Mr. Sherman, Sec. of State, to Señor Polo de Bernabé, Span. min., April 5, 1898, For. Rel. 1898, 737.)

"I have received this afternoon General Blanco's order, that I herewith inclose, suppressing reconcentration. I see that this measure comprises the whole island, and the mistake was in the wording of the telegram. The preamble spoke of the four western provinces as nearly pacified, but article first clearly says that concentration is at an end in all the island. . . .

"By General Woodford you know undoubtedly the good disposition of H. M.'s Government to do all that is compatible with its honor and dignity in these most difficult and trying circumstances." (Señor Polo de Bernabé, Span. min., to Mr. Day, Assist. Sec. of State, April 5, 1898, For Rel. 1898, 737.)

"We have received to-day from the Spanish minister a copy of the manifesto of the autonomy government. It is not armistice. It proves to be an appeal by the autonomy government of Cuba urging the insurgents to lay down their arms and to join with the autonomy party in building up the new scheme of home rule. It is simply an invitation to the insurgents to submit, in which event the autonomy government, likewise suspending hostilities, is prepared to consider what expansion if any of the decreed home-rule scheme is needed or practicable. It need scarcely be pointed out that this is a very different thing from an offered armistice. The President's message will go in Wednesday afternoon."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 4, 1898—Monday, 11 p. m., For. Rel. 1898, 733.

Question of armistice; action of the powers.

"Should the Queen proclaim the following before 12 o'clock noon of Wednesday, April 6, will you sustain the Queen, and can you prevent hostile action by Congress?

"'At the request of the Holy Father, in this Passion Week and in the name of Christ, I proclaim immediate and unconditional suspension of hostilities in the island of Cuba.

"'This suspension is to become immediately effective so soon as accepted by the insurgents in that island, and is to continue for the space of six months, to the 5th day of October, eighteen ninety-eight.

"'I do this to give time for passions to cease, and in the sincere hope and belief that during this suspension permanent and honorable peace may be obtained between the insular government of Cuba and those of my subjects in that island who are now in rebellion against the authority of Spain.

"'I pray the blessing of Heaven upon this truce of God, which I now declare in His name and with the sanction of the Holy Father of all Christendom.

"'April 5, 1898.'

"Please read this in the light of all my previous telegrams and letters. I believe that this means peace, which the sober judgment of our people will approve long before next November, and which must be approved at the bar of final history.

"I permit the papal nuncio to read this telegram, upon my own responsibility and without committing you in any manner. I dare not reject this last chance for peace. I will show your reply to the Queen in person, and I believe that you will approve this last conscientious effort for peace."

Mr. Woodford, min. to Spain, to President McKinley, tel., April 5, 1898—Tuesday, 3 p. m., For. Rel. 1898, 734.

In a formal dispatch of April 6, 1898, For. Rel. 1898, 741, 742, Mr. Woodford said: "I permitted the Austrian ambassador to take a copy of the foregoing [telegraphic] dispatch to Her Majesty the Queen Regent and to show the same copy to the papal nuncio."

"The President highly appreciates the Queen's desire for peace. He can not assume to influence the action of the American Congress beyond a discharge of his constitutional duty in transmitting the whole matter to them with such recommendation as he deems necessary and expedient.

"The repose and welfare of the American people require restoration of peace and stable government in Cuba. If armistice is offered by the government of Spain the President will communicate that fact to Congress.

"The President's message will go to Congress to-morrow. It will recount the conditions in Cuba; the injurious effect upon our people; the character and condition of the conflict, and the apparent hopelessness of the strife. He will not advise the recognition of the independence of the insurgents, but will recommend measures looking to the cessation of hostilities, the restoration of peace and stability of government in the island in the interests of humanity, and for the safety and tranquillity of our own country."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 5, 1898—Tuesday, midnight—For. Rel. 1898, 735.

In a formal dispatch of April 6, 1898, addressed to Mr. Day, Mr. Woodford said:

"This morning (April 6) I permit the Austrian ambassador to take a copy of your foregoing dispatch to Her Majesty the Queen Regent. I did not go to her in person, as a ministerial crisis is imminent today, growing out of the proposed issuance by the Queen, at the request of the Pope, of a proclamation of armistice. Just as I did not interfere in the ministerial crisis of last October, when the Conservatives went out of power, so I do not interfere to-day, when the present Liberal ministry may resign and possibly be followed by a ministry who will take office on the programme of immediate armistice, to be followed by early negotiations in Cuba looking to immediate, effective, and permanent peace.

"I also send to-day to the Papal nuncio copies of my dispatch of yesterday to the President, as given above, and copy of my translation of your reply thereto. I have added to these copies the statement that they are furnished to his excellency the Papal nuncio at Madrid for his personal and confidential information and are not to be made public.

"I will continue to keep the Department fully advised of what may be done here." (For. Rel. 1898, 741, 742.)

"We have accepted the offer of the British ambassador that United States legation at Madrid be intrusted in case of necessity to British embassy there. Express thanks for courtesies. We hope British consuls may be authorized to extend like courtesy should any American consuls in Spanish territory request them to take charge of consular archives. The situation is grave. Spain has not in fact offered armistice or admitted any offices of the United States toward ending the war except to intimate that the President may influence insurgents to lay down arms and negotiate for peace under home rule. Spanish propositions obviously dilatory and intrinsically unacceptable. The President can no longer defer laying matter before Congress Wednesday, to-morrow, afternoon."

Mr. Sherman, Sec. of State, to Mr. Hay, amb. to England, tel., April 5, 1898, For. Rel. 1898, 967.

On the same day a request was conveyed to the British ambassador in Washington "that, in case of trouble between Spain and the United States, the British consul-general at Habana may take charge of the American property and papers belonging to the American consulate there, which will be turned over by General Lee to him." (Mr. Day, Act. Sec. of State, to Sir Julian Pauncefote, British amb., April 5, 1898, For. Rel. 1898, 966.)

The British consul-general at Havana was authorized "to take charge of the United States consulate when asked to do so, after obtaining consent from the Spanish authorities," and was instructed to convey a similar authorization to the British consul at Santiago de Cuba and other British consular officers in Cuba. (Sir Julian Pauncefote, British amb., to Mr. Sherman, Sec. of State, April 7, 1898, For. Rel. 1898, 966.)

The request that a similar courtesy be extended by the British consuls in Spain was also acceded to. (Mr. Hay, amb. to England, to Mr. Sherman, Sec. of State, April 6, 1898, For. Rel. 1898, 967.)

Joint note of the powers.

"WASHINGTON, *April 6, 1898.*

"The undersigned representatives of Germany, Austria-Hungary, France, Great Britain, Italy, and Russia, duly authorized in that behalf, address, in the name of their respective governments, a pressing appeal to the feelings of humanity and moderation of the President and of the American people in their existing differences with Spain. They earnestly hope that further negotiations will lead to an

agreement which, while securing the maintenance of peace, will afford all necessary guaranties for the reestablishment of order in Cuba.

"The powers do not doubt that the humanitarian and purely disinterested character of this representation will be fully recognized and appreciated by the American nation.

"JULIAN PAUNCEFOTE,
"*For Great Britain.*
"HOLLEBEN,
"*For Germany.*
"JULES CAMBON,
"*For France.*
"VON HENGELMÜLLER,
"*For Austria-Hungary.*
"DE WOLLANT,
"*For Russia.*
"G. C. VINCI,
"*For Italy.*"

The President's reply.

"The government of the United States recognizes the good will which has prompted the friendly communication of the representatives of Germany, Austria-Hungary, France, Great Britain, Italy, and Russia, as set forth in the address of your excellencies, and shares the hope therein expressed that the outcome of the situation in Cuba may be the maintenance of peace between the United States and Spain by affording the necessary guaranties for the reestablishment of order in the island, so terminating the chronic condition of disturbance there, which so deeply injures the interests and menaces the tranquillity of the American nation by the character and consequences of the struggle thus kept up at our doors, besides shocking its sentiment of humanity.

"The government of the United States appreciates the humanitarian and disinterested character of the communication now made on behalf of the powers named, and for its part is confident that equal appreciation will be shown for its own earnest and unselfish endeavors to fulfill a duty to humanity by ending a situation the indefinite prolongation of which has become insufferable."

For. Rel. 1898, 740-741. The appeal of the powers was presented by the signers to the President at the White House, and his reply was then and there made.

April 6, 1898, Mr. Woodford wrote to the minister of state, saying that he had hoped to be officially informed before noon of that day that the Spanish government had proclaimed a definite suspension of hostilities in Cuba, and that the President had "this afternoon" transmitted his message to Congress.

Later in the day Mr. Woodford received from Mr. Day, Assistant Secretary of State, the following telegram: "The President's message will not be sent to Congress until next Monday, to give consul-general at Havana the time he urgently asks to insure safe departure of Americans."

Next day Mr. Woodford withdrew his note of the 6th of April to the minister of state, and informed him that the President's message would not be sent to Congress till Monday, April 11.

For. Rel. 1898, 743–744.

"Spanish minister for foreign affairs has just sent for me. The representatives of the European powers called upon him this morning and advised acquiescence in Pope's request for an armistice. Armistice has been granted. Spanish minister in Washington instructed to notify our Department of State and yourself. Authority has been cabled to General Blanco to proclaim armistice. I send verbatim memorandum just handed me by Spanish minister for foreign affairs, as follows:

"'In view of the earnest and repeated request of His Holiness, supported resolutely by declarations and friendly counsels of the representatives of the six great European powers, who formulated them this morning in a collective visit to the minister of state, as corollary of the efforts of their governments in Washington, the Spanish government has resolved to inform the Holy Father that on this date it directs the general-in-chief of the army in Cuba to grant immediately a suspension of hostilities for such length of time as he may think prudent to prepare and facilitate the peace earnestly desired by all.'

"I hope that this dispatch may reach you before the President's message goes to Congress."

Mr. Woodford, min. to Spain, to Mr. Day, Assist. Sec. of State, tel., April 9, 1898, For. Rel. 1898, 746.

"My personal No. 66. In view of action of Spanish government, as cabled Saturday, April 9, I hope that you can obtain full authority from Congress to do whatever you shall deem necessary to secure immediate and permanent peace in Cuba by negotiations, including the full power to employ the Army and Navy, according to your own judgment, to aid and enforce your action. If this be secured I believe you will get final settlement before August 1 on one of the following bases: Either such autonomy as the insurgents may agree to accept, or recognition by Spain of the independence of the island, or cession of the island to the United States.

"I hope that nothing will now be done to humiliate Spain, as I am satisfied that the present government is going, and is loyally

ready to go, as fast and as far as it can. With your power of action sufficiently free you will win the fight on your own lines. I do not expect immediate reply, but will be glad to have an early acknowledgment of receipt."

Mr. Woodford, min. to Spain, to President McKinley, tel., April 10, 1898, For. Rel. 1898, 747.

"The minister plenipotentiary of Spain has the honor to state to the honorable Secretary of State of the United States of America that Her Majesty the Queen Regent, acceding to the reiterated desires of His Holiness, and inspired by the sentiments of concord and peace which animate her, has given appropriate instructions to the general in chief of the army of Cuba, to the end that he shall concede an immediate suspension of hostilities for such time as he shall deem prudential, in order to prepare and facilitate people in that island.

"General Blanco has to-day published the corresponding bando, and reserves to himself to determine in another bando the duration and other details of its execution, with the sole aim that so transcendental a measure shall lead within the shortest possible time to the desired pacification of the Great Antilla.

"In deciding upon the duration thereof, the general in chief, inspired by the highest sentiments, far from raising difficulties or obstructions, is prepared to grant every possible facility.

"The government of Her Majesty, by this most important step, has set the crown to her extraordinary efforts to obtain the pacification of Cuba through the instrumentalities of reason and of right.

"The autonomic constitution, which gives to the inhabitants of the island of Cuba a political system at least as liberal as that which exists in the Dominion of Canada, will within a short time enter upon the stage of complete development, when, after the elections have been held, the insular parliament will meet at Habana on the 4th of May next; and the franchise and liberties granted to the Cubans are such that no motive or pretext is left for claiming any fuller measure thereof.

"Nevertheless as the island of Cuba is represented in the Cortes of the Kingdom, a privilege which is not enjoyed by any other foreign autonomic colony, the Cuban senators and deputies in the Cortes may there present their aspirations if they desire more.

"No one knowing the liberal spirit of the majority in the recently elected Spanish Cortes and the patriotic attitude of the principal parties in opposition can doubt that the Cubans will obtain whatever changes they may justly desire, within the bounds of reason and of the national sovereignty, as is solemnly offered in the preamble of the royal decree of November 5, 1897, at which time the Government of

Her Majesty declared that it would not withdraw or permit the withdrawal of any colonial liberties, guaranties, and privileges.

"The abrogation of the decree of reconcentration and the assistance of every kind which the government of Her Majesty has granted and permitted to be extended to the reconcentrados have at last terminated a lamentable condition of things, which was the unavoidable consequence of the sanguinary strife provoked by a small minority of the sons of Cuba, and who have been mainly led and sustained by foreign influences.

"No impartial mind, having full knowledge of the facts, which have never on any occasion been perverted, as those relating to the Cuban question have been and are now perverted, can justly impute to Spain remissness in endeavoring to reach the means of pacification of the island nor illiberality in granting privileges, liberties, and franchises for the welfare and happiness of its inhabitants. The government of Her Majesty doubts not that this will be recognized by the United States government, even as it must recognize the manifest injustice with which a portion of the public opinion of this country claims to discover responsibilities on the part of Spain for the horrible catastrophe which took place on the calamitous night of the 15th of February last. Her Majesty the Queen Regent, her responsible government, the governor-general of Cuba, the insular government, and all the higher authorities of Habana displayed from the first moment the profound sorrow and the sentiments of horror which that measureless misfortune caused to them, as well as the sympathy which on that melancholy occasion linked them to the American government and people.

"Proof of this is found in the visits of Her Majesty's chargé d'affaires to the illustrious President of the United States, the visits made by the highest officers of the Spanish State to Mr. Woodford, the assistance unsparingly given to the victims, the funeral obsequies which were provided for them by the municipal council of Habana, and the notes addressed to the Department of State by this legation under date of February 16 and 17 and the 2d instant, bearing the respective numbers 12, 13, 14, and 23.

"The officers and crews of Her Majesty's war vessels lying near the *Maine*, heedless of the evident peril that menaced them, as is testified by the officers of that American ironclad, immediately lowered their boats, saving a large number of the wrecked ship's men, who alone owe their lives to the instant and efficient aid of the Spanish sailors.

"It is singular that these well-known facts and impressive declarations seem to have been forgotten by public opinion, which instead lends credence to the most absurd and offensive conjectures.

"The government of Her Majesty would very greatly esteem the sense of justice and the courtesy of the United States government were an official statement to set the facts in their true light, for it would seem that they are ignored and the failure to appreciate them is potentially contributing to keep up an abnormal excitement in the minds of the people that imperils, causelessly and most irrationally, the friendly relations of the two countries.

"As for the question of fact which springs from the diversity of views between the reports of the Spanish and American boards, the government of Her Majesty, although not yet possessed of the official text of the two reports, has hastened to declare itself ready to submit to the judgment of impartial and disinterested experts, accepting in advance the decision of the arbitrators named by the two parties, which is obvious proof of the frankness and good faith which marks the course of Spain on this as on all occasions.

"The minister of Spain trusts that these statements, inspired by the earnest desire for peace and concord which animates the government of Her Majesty, will be appreciated at their just worth by the government of the United States."

Señor Polo de Bernabé, Spanish min., to Mr. Sherman, Sec. of State, April 10, 1898, For. Rel. 1898, 747.

See, also, Señor Polo to Mr. Day, April 11, 1898, enclosing a copy of General Blanco's proclamation, dated April 7, 1898, declaring a suspension of hostilities in Cuba. (For. Rel. 1898, 750.)

"The Spanish minister to-day informed me that authority had been given General Blanco to proclaim suspension of hostilities, and thereupon invited, on General's behalf, indication of nature and scope of such proclamation. Spanish minister had been answered that the President must decline to make further suggestions than those heretofore made known through you and through Spanish minister here, but that in sending in his message to-morrow the President will acquaint Congress with this latest communication of the Spanish government and add any further information which Minister Polo may be in a position to furnish in regard to the nature and terms of General Blanco's action under the authorization so given him. The above is sent for your information. Your personal, No. 66, just received and fully noted."

Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 10, 1898, Sunday, 6.30 p. m., For. Rel. 1898, 749.

(4) RESOLUTION OF INTERVENTION.

§ 909.

President McKinley's special message, April 11, 1898.

"Obedient to that precept of the Constitution which commands the President to give from time to time to the Congress information of the state of the Union and to recommend to their consideration such measures as he shall judge necessary and expedient, it becomes my duty now to address your body with regard to the grave crisis that has arisen in the relations of the United States to Spain by reason of the warfare that for more than three years has raged in the neighboring island of Cuba.

"I do so because of the intimate connection of the Cuban question with the state of our own Union and the grave relation the course which it is now incumbent upon the nation to adopt must needs bear to the traditional policy of our government if it is to accord with the precepts laid down by the founders of the Republic and religiously observed by succeeding Administrations to the present day.

"The present revolution is but the successor of other similar insurrections which have occurred in Cuba against the dominion of Spain, extending over a period of nearly half a century, each of which, during its progress, has subjected the United States to great effort and expense in enforcing its neutrality laws, caused enormous losses to American trade and commerce, caused irritation, annoyance, and disturbance among our citizens, and, by the exercise of cruel, barbarous, and uncivilized practices of warfare, shocked the sensibilities and offended the humane sympathies of our people.

"Since the present revolution began, in February, 1895, this country has seen the fertile domain at our threshold ravaged by fire and sword in the course of a struggle unequaled in the history of the island and rarely paralleled as to the numbers of the combatants and the bitterness of the contest by any revolution of modern times where a dependent people striving to be free have been opposed by the power of the sovereign state.

"Our people have beheld a once prosperous community reduced to comparative want, its lucrative commerce virtually paralyzed, its exceptional productiveness diminished, its fields laid waste, its mills in ruins, and its people perishing by tens of thousands from hunger and destitution. We have found ourselves constrained, in the observance of that strict neutrality which our laws enjoin, and which the law of nations commands, to police our own waters and watch our own seaports in prevention of any unlawful act in aid of the Cubans.

"Our trade has suffered; the capital invested by our citizens in Cuba has been largely lost, and the temper and forbearance of our people have been so sorely tried as to beget a perilous unrest among our own citizens which has inevitably found its expression from time to time in the national legislature, so that issues wholly external to our own body politic engross attention and stand in the way of that close devotion to domestic advancement that becomes a self-contained commonwealth whose primal maxim has been the avoidance of all foreign entanglements. All this must needs awaken, and has, indeed, aroused the utmost concern on the part of this government, as well during my predecessor's term as in my own.

"In April, 1896, the evils from which our country suffered through the Cuban war became so onerous that my predecessor made an effort to bring about a peace through the mediation of this Government in any way that might tend to an honorable adjustment of the contest between Spain and her revolted colony, on the basis of some effective scheme of self-government for Cuba under the flag and sovereignty of Spain. It failed through the refusal of the Spanish government then in power to consider any form of mediation or, indeed, any plan of settlement which did not begin with the actual submission of the insurgents to the mother country, and then only on such terms as Spain herself might see fit to grant. The war continued unabated. The resistance of the insurgents was in no wise diminished.

"The efforts of Spain were increased, both by the dispatch of fresh levies to Cuba and by the addition to the horrors of the strife of a new and inhuman phase happily unprecedented in the modern history of civilized Christian peoples. The policy of devastation and concentration, inaugurated by the captain-general's bando of October 21, 1896, in the Province of Pinar del Rio was thence extended to embrace all of the island to which the power of the Spanish arms was able to reach by occupation or by military operations. The peasantry, including all dwelling in the open agricultural interior, were driven into the garrison towns or isolated places held by the troops.

"The raising and movement of provisions of all kinds were interdicted. The fields were laid waste, dwellings unroofed and fired, mills destroyed, and, in short, everything that could desolate the land and render it unfit for human habitation or support was commanded by one or the other of the contending parties and executed by all the powers at their disposal.

"By the time the present administration took office a year ago, reconcentration—so called—had been made effective over the better part of the four central and western provinces, Santa Clara, Matanzas, Habana, and Pinar del Rio.

"The agricultural population to the estimated number of 300,000 or more was herded within the towns and their immediate vicinage,

deprived of the means of support, rendered destitute of shelter, left poorly clad, and exposed to the most unsanitary conditions. As the scarcity of food increased with the devastation of the depopulated areas of production, destitution and want became misery and starvation. Month by month the death rate increased in an alarming ratio. By March, 1897, according to conservative estimates from official Spanish sources, the mortality among the reconcentrados, from starvation and the diseases thereto incident, exceeded 50 per centum of their total number.

"No practical relief was accorded to the destitute. The overburdened towns, already suffering from the general dearth, could give no aid. So called 'zones of cultivation' established within the immediate areas of effective military control about the cities and fortified camps proved illusory as a remedy for the suffering. The unfortunates, being for the most part women and children, with aged and helpless men, enfeebled by disease and hunger, could not have tilled the soil without tools, seed, or shelter for their own support or for the supply of the cities. Reconcentration, adopted avowedly as a war measure in order to cut off the resources of the insurgents, worked its predestined result. As I said in my message of last December, it was not civilized warfare; it was extermination. The only peace it could beget was that of the wilderness and the grave.

"Meanwhile the military situation in the island had undergone a noticeable change. The extraordinary activity that characterized the second year of the war, when the insurgents invaded even the thitherto unharmed fields of Pinar del Rio and carried havoc and destruction up to the walls of the city of Habana itself, had relapsed into a dogged struggle in the central and eastern provinces. The Spanish arms regained a measure of control in Pinar del Rio and parts of Habana, but, under the existing conditions of the rural country, without immediate improvement of their productive situation. Even thus partially restricted, the revolutionists held their own, and their conquest and submission, put forward by Spain as the essential and sole basis of peace, seemed as far distant as at the outset.

"In this state of affairs my administration found itself confronted with the grave problem of its duty. My message of last December reviewed the situation and narrated the steps taken with a view to relieving the acuteness and opening the way to some form of honorable settlement. The assassination of the prime minister, Canovas, led to a change of government in Spain. The former administration, pledged to subjugation without concession, gave place to that of a more liberal party, committed long in advance to a policy of reform involving the wider principle of home rule for Cuba and Puerto Rico.

"The overtures of this government, made through its new envoy, General Woodford, and looking to an immediate and effective amelio-

ration of the condition of the island, although not accepted to the extent of admitted mediation in any shape, were met by assurances that home rule, in an advanced phase, would be forthwith offered to Cuba, without waiting for the war to end, and that more humane methods should thenceforth prevail in the conduct of hostilities. Coincidentally with these declarations, the new government of Spain continued and completed the policy already begun by its predecessor, of testifying friendly regard for this nation by releasing American citizens held under one charge or another connected with the insurrection, so that, by the end of November, not a single person entitled in any way to our national protection remained in a Spanish prison.

"While these negotiations were in progress the increasing destitution of the unfortunate reconcentrados and the alarming mortality among them claimed earnest attention. The success which had attended the limited measure of relief extended to the suffering American citizens among them by the judicious expenditure through the consular agencies of the money appropriated expressly for their succor by the joint resolution approved May 24, 1897, prompted the humane extension of a similar scheme of aid to the great body of sufferers. A suggestion to this end was acquiesced in by the Spanish authorities. On the 24th of December last, I caused to be issued an appeal to the American people, inviting contributions in money or in kind for the succor of the starving sufferers in Cuba, following this on the 8th of January by a similar public announcement of the formation of a central Cuban relief committee, with headquarters in New York City, composed of three members representing the American National Red Cross and the religious and business elements of the community.

"The efforts of that committee have been untiring and have accomplished much. Arrangements for free transportation to Cuba have greatly aided the charitable work. The president of the American Red Cross and representatives of other contributory organizations have generously visited Cuba and cooperated with the consul-general and the local authorities to make effective distribution of the relief collected through the efforts of the central committee. Nearly $200,000 in money and supplies has already reached the sufferers and more is forthcoming. The supplies are admitted duty free, and transportation to the interior has been arranged so that the relief, at first necessarily confined to Havana and the larger cities, is now extended through most if not all of the towns where suffering exists.

"Thousands of lives have already been saved. The necessity for a change in the condition of the reconcentrados is recognized by the Spanish government. Within a few days past the orders of General Weyler have been revoked; the reconcentrados, it is said, are to be permitted to return to their homes and aided to resume the self-sup-

porting pursuits of peace. Public works have been ordered to give them employment, and a sum of $600,000 has been appropriated for their relief.

"The war in Cuba is of such a nature that short of subjugation or extermination a final military victory for either side seems impracticable. The alternative lies in the physical exhaustion of the one or the other party, or perhaps of both—a condition which in effect ended the ten years' war by the truce of Zanjon. The prospect of such a protraction and conclusion of the present strife is a contingency hardly to be contemplated with equanimity by the civilized world, and least of all by the United States, affected and injured as we are, deeply and intimately, by its very existence.

"Realizing this, it appeared to be my duty, in a spirit of true friendliness, no less to Spain than to the Cubans, who have so much to lose by the prolongation of the struggle, to seek to bring about an immediate termination of the war. To this end I submitted, on the 27th ultimo, as a result of much representation and correspondence, through the United States minister at Madrid, propositions to the Spanish government looking to an armistice until October 1 for the negotiation of peace with the good offices of the President.

"In addition, I asked the immediate revocation of the order of reconcentration, so as to permit the people to return to their farms and the needy to be relieved with provisions and supplies from the United States, cooperating with the Spanish authorities, so as to afford full relief.

"The reply of the Spanish cabinet was received on the night of the 31st ultimo. It offered, as the means to bring about peace in Cuba, to confide the preparation thereof to the insular parliament, inasmuch as the concurrence of that body would be necessary to reach a final result, it being, however, understood that the powers reserved by the constitution of the central government are not lessened or diminished. As the Cuban parliament does not meet until the 4th of May next, the Spanish Government would not object, for its part, to accept at once a suspension of hostilities if asked for by the insurgents from the general in chief, to whom it would pertain, in such case, to determine the duration and conditions of the armistice.

"The propositions submitted by General Woodford and the reply of the Spanish government were both in the form of brief memoranda, the texts of which are before me, and are substantially in the language above given. The function of the Cuban parliament in the matter of 'preparing' peace and the manner of its doing so are not expressed in the Spanish memorandum; but from General Woodford's explanatory reports of preliminary discussions preceding the final conference it is understood that the Spanish government stands ready to give the insular congress full powers to settle the terms of

peace with the insurgents—whether by direct negotiation or indirectly by means of legislation does not appear.

"With this last overture in the direction of immediate peace, and its disappointing reception by Spain, the Executive is brought to the end of his effort.

"In my annual message of December last I said:

"'Of the untried measures there remain only: Recognition of the insurgents as belligerents; recognition of the independence of Cuba; neutral intervention to end the war by imposing a rational compromise between the contestants, and intervention in favor of one or the other party. I speak not of forcible annexation, for that can not be thought of. That, by our code of morality, would be criminal aggression.'

"Thereupon I reviewed these alternatives, in the light of President Grant's measured words, uttered in 1875, when after seven years of sanguinary, destructive, and cruel hostilities in Cuba he reached the conclusion that the recognition of the independence of Cuba was impracticable and indefensible, and that the recognition of belligerence was not warranted by the facts according to the tests of public law. I commented especially upon the latter aspect of the question, pointing out the inconveniences and positive dangers of a recognition of belligerence which, while adding to the already onerous burdens of neutrality within our own jurisdiction, could not in any way extend our influence or effective offices in the territory of hostilities.

"Nothing has since occurred to change my view in this regard; and I recognize as fully now as then that the issuance of a proclamation of neutrality, by which process the so-called recognition of belligerents is published, could, of itself and unattended by other action, accomplish nothing toward the one end for which we labor—the instant pacification of Cuba and the cessation of the misery that afflicts the island.

"Turning to the question of recognizing at this time the independence of the present insurgent government in Cuba, we find safe precedents in our history from an early day. They are well summed up in President Jackson's message to Congress, December 21, 1836, on the subject of the recognition of the independence of Texas. He said:

"'In all the contests that have arisen out of the revolution of France, out of the disputes relating to the Crowns of Portugal and Spain, out of the separation of the American possessions of both from the European governments, and out of the numerous and constantly occurring struggles for dominion in Spanish America, so wisely consistent with our just principles has been the action of our Government, that we have, under the most critical circumstances, avoided all censure, and encountered no other evil than that produced by a transient

estrangement of good will in those against whom we have been by force of evidence compelled to decide.

"'It has thus made known to the world that the uniform policy and practice of the United States is to avoid all interference in disputes which merely relate to the internal government of other nations, and eventually to recognize the authority of the prevailing party without reference to our particular interests and views or to the merits of the original controversy.

"'. . . But on this, as on every other trying occasion, safety is to be found in a rigid adherence to principle.

"'In the contest between Spain and the revolted colonies we stood aloof, and waited not only until the ability of the new states to protect themselves was fully established, but until the danger of their being again subjugated had entirely passed away. Then, and not until then, were they recognized.

"'Such was our course in regard to Mexico herself. . . . It is true that with regard to Texas the civil authority of Mexico has been expelled, its invading army defeated, the chief of the Republic himself captured, and all present power to control the newly organized government of Texas annihilated within its confines; but, on the other hand, there is, in appearance, at least, an immense disparity of physical force on the side of Texas. The Mexican Republic, under another executive, is rallying its forces under a new leader and menacing a fresh invasion to recover its lost dominion.

"'Upon the issue of this threatened invasion the independence of Texas may be considered as suspended; and were there nothing peculiar in the relative situation of the United States and Texas, our acknowledgment of its independence at such a crisis could scarcely be regarded as consistent with that prudent reserve with which we have hitherto held ourselves bound to treat all similar questions.'

"Thereupon Andrew Jackson proceeded to consider the risk that there might be imputed to the United States motives of selfish interest in view of the former claim on our part to the territory of Texas, and of the avowed purpose of the Texans in seeking recognition of independence as an incident to the incorporation of Texas into the Union, concluding thus:

"'Prudence, therefore, seems to dictate that we should still stand aloof and maintain our present attitude, if not until Mexico itself or one of the great foreign powers shall recognize the independence of the new government, at least until the lapse of time or the course of events shall have proved beyond cavil or dispute the ability of the people of that country to maintain their separate sovereignty and to uphold the government constituted by them. Neither of the contending parties can justly complain of this course. By pursuing it we are but carrying out the long-established policy of our Govern-

ment, a policy which has secured to us respect and influence abroad and inspired confidence at home.'

"These are the words of the resolute and patriotic Jackson. They are evidence that the United States, in addition to the test imposed by public law as the condition of the recognition of independence by a neutral state (to wit, that the revolted state shall 'constitute in fact a body politic, having a government in substance as well as in name, possessed of the elements of stability,' and forming de facto, 'if left to itself, a state among the nations, reasonably capable of discharging the duties of a state'), has imposed for its own governance in dealing with cases like these the further condition that recognition of independent statehood is not due to a revolted dependency until the danger of its being again subjugated by the parent state has entirely passed away.

"This extreme test was, in fact, applied in the case of Texas. The Congress to whom President Jackson referred the question as one 'probably leading to war,' and therefore a proper subject for 'a previous understanding with that body by whom war can alone be declared and by whom all the provisions for sustaining its perils must be furnished,' left the matter of the recognition of Texas to the discretion of the Executive, providing merely for the sending of a diplomatic agent when the President should be satisfied that the Republic of Texas had become 'an independent state.' It was so recognized by President Van Buren, who commissioned a chargé d'affaires March 7, 1837, after Mexico had abandoned an attempt to reconquer the Texan territory, and when there was at the time no bona fide contest going on between the insurgent province and its former sovereign.

"I said in my message of December last, 'It is to be seriously considered whether the Cuban insurrection possesses beyond dispute the attributes of statehood which alone can demand the recognition of belligerency in its favor.' The same requirement must certainly be no less seriously considered when the graver issue of recognizing independence is in question, for no less positive test can be applied to the greater act than to the lesser; while, on the other hand, the influences and consequences of the struggle upon the internal policy of the recognizing state, which form important factors when the recognition of belligerency is concerned, are secondary, if not rightly eliminable, factors when the real question is whether the community claiming recognition is or is not independent beyond peradventure.

"Nor from the standpoint of expediency do I think it would be wise or prudent for this government to recognize at the present time the independence of the so-called Cuban republic. Such recognition is not necessary in order to enable the United States to intervene and pacify the island. To commit 'this country now to the

recognition of any particular government in Cuba might subject us to embarrassing conditions of international obligation toward the organization so recognized. In case of intervention our conduct would be subject to the approval or disapproval of such government. We would be required to submit to its direction and to assume to it the mere relation of a friendly ally.

"When it shall appear hereafter that there is within the island a government capable of performing the duties and discharging the functions of a separate nation, and having, as a matter of fact, the proper forms and attributes of nationality, such government can be promptly and readily recognized and the relations and interests of the United States with such nation adjusted.

"There remain the alternative forms of intervention to end the war, either as an impartial neutral by imposing a rational compromise between the contestants, or as the active ally of the one party or the other.

"As to the first, it is not to be forgotten that during the last few months the relation of the United States has virtually been one of friendly intervention in many ways, each not of itself conclusive, but all tending to the exertion of a potential influence toward an ultimate pacific result, just and honorable to all interests concerned. The spirit of all our acts hitherto has been an earnest, unselfish desire for peace and prosperity in Cuba, untarnished by differences between us and Spain, and unstained by the blood of American citizens.

"The forcible intervention of the United States as a neutral to stop the war, according to the large dictates of humanity and following many historical precedents where neighboring states have interfered to check the hopeless sacrifices of life by internecine conflicts beyond their borders, is justifiable on rational grounds. It involves, however, hostile constraint upon both the parties to the contest as well to enforce a truce as to guide the eventual settlement.

"The grounds for such intervention may be briefly summarized as follows:

"First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and is therefore none of our business. It is specially our duty, for it is right at our door.

"Second. We owe it to our citizens in Cuba to afford them that protection and indemnity for life and property which no government there can or will afford, and to that end to terminate the conditions that deprive them of legal protection.

"Third. The right to intervene may be justified by the very serious injury to the commerce, trade, and business of our people, and by the wanton destruction of property and devastation of the island.

"Fourth, and which is of the utmost importance. The present condition of affairs in Cuba is a constant menace to our peace, and entails upon this government an enormous expense. With such a conflict waged for years in an island so near us and with which our people have such trade and business relations; when the lives and liberty of our citizens are in constant danger and their property destroyed and themselves ruined; where our trading vessels are liable to seizure and are seized at our very door by war ships of a foreign nation, the expeditions of filibustering that we are powerless to prevent altogether, and the irritating questions and entanglements thus arising—all these and others that I need not mention, with the resulting strained relations, are a constant menace to our peace, and compel us to keep on a semiwar footing with a nation with which we are at peace.

"These elements of danger and disorder already pointed out have been strikingly illustrated by a tragic event which has deeply and justly moved the American people. I have already transmitted to Congress the report of the naval court of inquiry on the destruction of the battle ship *Maine* in the harbor of Havana during the night of the 15th of February. The destruction of that noble vessel has filled the national heart with inexpressible horror. Two hundred and fifty-eight brave sailors and marines and two officers of our Navy, reposing in the fancied security of a friendly harbor, have been hurled to death, grief and want brought to their homes and sorrow to the nation.

"The naval court of inquiry, which, it is needless to say, commands the unqualified confidence of the government, was unanimous in its conclusion that the destruction of the *Maine* was caused by an exterior explosion, that of a submarine mine. It did not assume to place the responsibility. That remains to be fixed.

"In any event the destruction of the *Maine*, by whatever exterior cause, is a patent and impressive proof of a state of things in Cuba that is intolerable. That condition is thus shown to be such that the Spanish government can not assure safety and security to a vessel of the American Navy in the harbor of Havana on a mission of peace, and rightfully there.

"Further referring in this connection to recent diplomatic correspondence, a dispatch from our minister to Spain, of the 26th ultimo, contained the statement that the Spanish minister for foreign affairs assured him positively that Spain will do all that the highest honor and justice require in the matter of the *Maine*. The reply above referred to of the 31st ultimo also contained an expression of the readi-

ness of Spain to submit to an arbitration all the differences which can arise in this matter, which is subsequently explained by the note of the Spanish minister at Washington of the 10th instant, as follows:

"'As to the question of fact which springs from the diversity of views between the reports of the American and Spanish boards, Spain proposes that the facts be ascertained by an impartial investigation by experts, whose decision Spain accepts in advance.'

"To this I have made no reply.

"President Grant, in 1875, after discussing the phases of the contest as it then appeared, and its hopeless and apparent indefinite prolongation, said:

"'In such event, I am of opinion that other nations will be compelled to assume the responsibility which devolves upon them, and to seriously consider the only remaining measures possible—mediation and intervention. Owing, perhaps, to the large expanse of water separating the island from the Peninsula, . . . the contending parties appear to have within themselves no depository of common confidence, to suggest wisdom when passion and excitement have their sway, and to assume the part of peacemaker.

"'In this view in the earlier days of the contest the good offices of the United States as a mediator were tendered in good faith, without any selfish purpose, in the interest of humanity and in sincere friendship for both parties, but were at the time declined by Spain, with the declaration, nevertheless, that at a future time they would be indispensable. No intimation has been received that in the opinion of Spain that time has been reached. And yet the strife continues with all its dread horrors and all its injuries to the interests of the United States and of other nations.

"'Each party seems quite capable of working great injury and damage to the other, as well as to all the relations and interests dependent on the existence of peace in the island; but they seem incapable of reaching any adjustment, and both have thus far failed of achieving any success whereby one party shall possess and control the island to the exclusion of the other. Under these circumstances, the agency of others, either by mediation or by intervention, seems to be the only alternative which must sooner or later be invoked for the termination of the strife.'

"In the last annual message of my immediate predecessor during the pending struggle, it was said:

"'When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its reestablishment has degenerated into a strife which means nothing more than the useless sacrifice of

human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge.'

"In my annual message to Congress, December last, speaking to this question, I said:

"'The near future will demonstrate whether the indispensable condition of a righteous peace, just alike to the Cubans and to Spain, as well as equitable to all our interests so intimately involved in the welfare of Cuba, is likely to be attained. If not, the exigency of further and other action by the United States will remain to be taken. When that time comes that action will be determined in the line of indisputable right and duty. It will be faced, without misgiving or hesitancy, in the light of the obligation this government owes to itself, to the people who have confided to it the protection of their interests and honor, and to humanity.

"'Sure of the right, keeping free from all offense ourselves, actuated only by upright and patriotic considerations, moved neither by passion nor selfishness, the government will continue its watchful care over the rights and property of American citizens and will abate none of its efforts to bring about by peaceful agencies a peace which shall be honorable and enduring. If it shall hereafter appear to be a duty imposed by our obligations to ourselves, to civilization and humanity to intervene with force, it shall be without fault on our part and only because the necessity for such action will be so clear as to command the support and approval of the civilized world.'

"The long trial has proved that the object for which Spain has waged the war can not be attained. The fire of insurrection may flame or may smolder with varying seasons, but it has not been and it is plain that it can not be extinguished by present methods. The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba. In the name of humanity, in the name of civilization, in behalf of endangered American interests which give us the the right and the duty to speak and to act, the war in Cuba must stop.

"In view of these facts and of these considerations, I ask the Congress to authorize and empower the President to take measures to secure a full and final termination of hostilities between the Government of Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquillity and the security of its citizens as well as our own, and to use the military and naval forces of the United States as may be necessary for these purposes.

"And in the interest of humanity and to aid in preserving the lives of the starving people of the island I recommend that the distribution of food and supplies be continued, and that an appropriation be made out of the public Treasury to supplement the charity of our citizens.

"The issue is now with the Congress. It is a solemn responsibility. I have exhausted every effort to relieve the intolerable condition of affairs which is at our doors. Prepared to execute every obligation imposed upon me by the Constitution and the law, I await your action.

"Yesterday, and since the preparation of the foregoing message, official information was received by me that the latest decree of the Queen Regent of Spain directs General Blanco, in order to prepare and facilitate peace, to proclaim a suspension of hostilities, the duration and details of which have not yet been communicated to me.

"This fact with every other pertinent consideration will, I am sure, have your just and careful attention in the solemn deliberations upon which you are about to enter. If this measure attains a successful result, then our aspirations as a Christian, peace-loving people will be realized. If it fails, it will be only another justification for our contemplated action."

President McKinley to the Congress of the United States, special message, Monday, April 11, 1898, H. Doc. 405, 55 Cong. 2 sess.; For. Rel. 1898, 750.

"House of Representatives, 324 to 19, passed yesterday afternoon resolution authorizing and directing the President to intervene at once to stop the war in Cuba, with the purpose of securing peace and order there and establishing, by the free action of the people thereof, a stable and independent government of their own, and empowering him to use the land and naval forces to execute that purpose.

"Senate Committee on Foreign Affairs reported yesterday resolution declaring that the people of the island of Cuba are and of right ought to be free and independent, demanding that Spain relinquish authority and government in Cuba and withdraw land and naval forces therefrom, and empowering the President to use Army and Navy and militia to carry resolution into effect. It will probably be decisively voted to-day.

"Ultimate resolution in conference can not now be forecast, but will doubtless direct intervention by force if need be to secure free Cuba. The situation is most critical." (Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, tel., April 14, 1898, For. Rel. 1898, 761, H. Doc. 428, 55 Cong. 2 sess.)

The report of the Senate Committee on Foreign Relations referred to in the preceding telegram was submitted by Mr. Davis. It discussed, first, the case of the *Maine*, expressing the opinion that her destruction "was compassed either by the official act of the Spanish authorities or was made possible by a negligence on their part so willing and so gross as to be equivalent in culpability to positive criminal action." It declared, however, that if that calamity had never happened the

questions between the United States and Spain "would press for immediate solution," and that, under all the existing conditions, including the destruction of the *Maine*, the United States ought at once to recognize the independence of the people of Cuba, and also to intervene to the end "that such independence shall become a settled political fact at the earliest possible moment, by the establishment by the free action of the people of Cuba, when such action can be had, of a government independent in fact and form." The right of intervention was argued on grounds of the special relations of the United States to Cuba, Spain's mode of conducting the war, the interests of humanity, injuries to American citizens and property, and loss of commerce. In conclusion the report presented a resolution (1) declaring the independence of the people of Cuba, (2) demanding Spain's withdrawal from the island, and (3) empowering the President to use the Army and Navy to effect these objects. Messrs. Turpie, Mills, Daniel, and Foraker, while concurring in the report, recommended "the immediate recognition of the Republic of Cuba, as organized in that island, as a free, independent, and sovereign power among the nations of the world." Mr. Mills also presented a separate report, emphasizing the exceptional relations between the United States and Cuba. (S. Rep. 885, 55 Cong. 2 sess., Parts 1 and 2.)

"The Senate, Saturday evening, by 67 votes to 21, passed a resolution amending all the House resolution after the enacting clause. It declares as follows:

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled:*

"'First. That the people of the island of Cuba are and of right ought to be free and independent, and that the government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island.

"'Second. That it is the duty of the United States to demand, and the government of the United States does hereby demand, that the government of Spain at once relinquish its authority and government in the island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters.

"'Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States and to call into the actual service of the United States the militia of the several States to such an extent as may be necessary to carry these resolutions into effect.

"'Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island, except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people.'

"The House has taken a recess until 10 Monday morning, when vote will be taken on concurring in the Senate amendments. If the House nonconcurs conference follows. Ultimate form of resolution can not yet be foreseen." (Mr. Day, Act. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 17, 1898—Sunday, 1 a. m., For. Rel. 1898, 761; H. Doc. 428, 55 Cong. 2 sess.)

"At 3 this morning, after prolonged conference, the Senate and the House of Representatives adopted the joint resolution, the text of which

was telegraphed to you Saturday night, omitting from the first section the words, 'And that the government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island.' Vote in Senate, 42 to 35; in House, 310 against 6.

"An instruction will be telegraphed you later, immediately on the President signing the joint resolution. In the meantime you will prepare for withdrawal from Spain and notify consuls to be ready for the signal to leave. If any consul is in danger he may quietly leave at his discretion." (Mr. Day, Assist. Sec. of State, to Mr. Woodford, min. to Spain, tel., April 19, 1898, For. Rel. 1898, 762; H. Doc. 428, 55 Cong. 2 sess.)

"I transmit herewith copies of each of the following documents:

"1. House Doc. No. 405, Fifty-fifth Congress, second session, being the message of the President to Congress on the relations of the United States to Spain by reason of the warfare in the island of Cuba;

"2. Senate Doc. No. 230, same Congress and session, containing the reports of the United States consular officers respecting the condtion of the reconcentrados in Cuba, the state of war in that island, and the prospects of the projected autonomy; and

"3. Senate Report No. 885, same Congress and session, being the report of the Committee on Foreign Relations of the Senate relative to affairs in Cuba.

"These documents fully present the facts touching the situation in Cuba and show the reasons for the present attitude of this government toward the question." (Mr. Sherman, Sec. of State, to all U. S. legations abroad, circular, April 18, 1898, For. Rel. 1898, 1170.)

Joint resolution, April 20, 1898.

"You have been furnished with the text of a joint resolution voted by the Congress of the United States on the 19th instant (approved to-day) in relation to the pacification of the island of Cuba. In obedience to that act, the President directs you to immediately communicate to the government of Spain said resolution, with the formal demand that the government of the United States that the government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters. In taking this step the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people under such free and independent government as they may establish.

"If by the hour of noon on Saturday next, the 23d day of April, instant, there be not communicated to this government by that of Spain a full and satisfactory response to this demand and resolution whereby the ends of peace in Cuba shall be assured, the President will proceed without further notice to use the power and authority en-

joined and conferred upon him by the said joint resolution to such extent as may be necessary to carry the same into effect."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, tel., April 20, 1898. For. Rel. 1898, 762; H. Doc. 428, 55 Cong. 2 sess.

"[Public Resolution—No. 21.]

"JOINT RESOLUTION for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect.

"Whereas the abhorrent conditions which have existed for more than three years in the Island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with two hundred and sixty-five of its officers and crew, while on a friendly visit in the harbor of Havana, and can not longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

"Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Governmen of Spain at once relinquish its authority and government in the Island of Cuba, and withdraw its land and naval forces from Cuba and Cuban waters.

"Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said Island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people.

"Approved, April 20, 1898." (30 Stat. 738.)

This is the full text of the resolution; but only the resolution proper, exclusive of the preamble, had been telegraphed to Mr. Woodford, as appears not only by the foregoing telegram, but also by the copy sent to the Spanish minister in Washington of the demand which Mr. Woodford had been instructed to present. (For. Rel. 1898, 764–765; H. Doc. 428, 55 Cong. 2 sess. 5.)

On the morning of April 20 a copy was communicated by Mr. Sherman, as Secretary of State, to Señor Polo de Bernabé, Spanish minister at Washington, of the instructions sent to Mr. Woodford in pursuance of the joint resolution.

Señor Polo immediately replied that the resolution was of such a nature that his continuance in Washington became impossible. He asked for his passports, and stated that the protection of Spanish interests would be intrusted to the French ambassador and the Austro-Hungarian minister.

His passports were sent to him; and he was at the same time informed that arrangements had been made for a guard to attend him during his presence in the territory of the United States.

Mr. Sherman, Sec. of State, to Señor Polo de Bernabé, Span. min., April 20, 1898; Señor Polo de Bernabé, Span. min., to Mr. Sherman, Sec. of State, April 20, 1898; Mr. Sherman, Sec. of State, to Señor Polo de Bernabé, Span. min., April 20, 1898: For. Rel. 1898, 764–765; H. Doc. 428, 55 Cong. 2 sess.

Copy of passport handed to Minister Polo de Bernabé.

No. —.] UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Know ye that the bearer hereof, Señor Don Luis Polo de Bernabé, envoy extraordinary and minister plenipotentiary of Spain to the United States, is about to travel abroad, accompanied by his family and suite.

These are therefore to request all officers of the United States, or of any State thereof, whom it may concern, to permit them to pass freely, without let or molestation, and to extend to them friendly aid and protection in case of need.

In testimony whereof I, John Sherman, Secretary of State of the United States of America, have hereunto set my hand and caused the seal of the Department of State to be affixed, at Washington, this 20th day of April, A. D. 1898, and of the independence of the United States of America the one hundred and twenty-second.

[SEAL.] JOHN SHERMAN.

"Señor Polo de Bernabé, Spanish minister to the United States, upon being informed shortly before noon to-day of the action of this government taken in pursuance of the resolutions of Congress of April 19, 1898, has asked for his passports. In compliance with his request passports for himself, his family, and suite have been handed him, with assurances of safety while within the territory of the United States.

"Unless previously handed your passports, you will be expected to remain near the Court of Spain till Saturday noon of this week, and unless by that day and hour some communication is received from the government of Spain which you deem will be satisfactory to this government you are to ask for your passports and safe conduct."

Mr. Sherman, Sec. of State, to Mr. Woodford, min. to Spain, tel., April 20, 1898, For. Rel. 1898, 766; H. Doc. 428, 55 Cong. 2 sess.

"Early this (Saturday) morning, immediately after the receipt of your open telegram and before I had communicated same to Spanish government, Spanish minister for foreign affairs notified me that diplomatic relations are broken between the two countries and that all official communication between their respective representatives have ceased. I accordingly asked for safe passport. Turn legation over to British embassy and leave for Paris this afternoon. Have notified consuls."

Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, tel., April 21, 1898, For. Rel. 1898, 766; H. Doc. 428, 55 Cong. 2 sess.

"Following is text of official note received this morning at 7.30 o'clock from Spanish minister of state.

"'In compliance with a painful duty, I have the honor to inform your excellency that, the President having approved a resolution of both Chambers of the United States which, in denying the legitimate sovereignty of Spain and in threatening armed intervention in Cuba, is equivalent to an evident declaration of war, the government of His Majesty has ordered its minister in Washington to withdraw without loss of time from the North American territory with all the personnel of the legation. By this act the diplomatic relations which previously existed between the two countries are broken off, all official communication between their respective representatives ceasing, and I hasten to communicate this to your excellency in order that on your part you may make such dispositions as seem suitable.

"'I beg your excellency to kindly acknowledge the receipt of this note, and I avail myself, etc.'"

Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, tel., April 21, 1898, For. Rel. 1898, 767; H. Doc. 428, 55 Cong. 2 sess.

"Following is text of my reply to official note received this morning at 7.30 o'clock from Spanish minister of state:

"'I have the honor to acknowledge the receipt this morning of your note of this date informing me that the Spanish minister at Washington has been ordered to withdraw with all his legation and without loss of time from North American territory. You also inform me that by this act diplomatic relations between the two countries are broken off; that all official communication between their respective representatives ceases. I have accordingly this day telegraphed the American consul-general at Barcelona to instruct all the consular representatives of the United States in Spain to turn their respective consulates over to the British consuls and to leave Spain at once. I have myself turned this legation over to Her Britannic Majesty's embassy at Madrid. That embassy will from this time have the care of all American interests in Spain. I now

request passports and safe conduct to the French frontier for myself and the personnel of this legation. I intend leaving this afternoon at 4 o'clock for Paris. I avail myself, etc.' "

Mr. Woodford, min. to Spain, to Mr. Sherman, Sec. of State, tel., April 21, 1898, For. Rel. 1898, 767; H. Doc. 428, 55 Cong. 2 sess.

Blockade of Cuban ports.

The correspondence relating to the execution of the joint resolution of Congress was laid before both Houses with a special message.

" The position of Spain being thus made known and the demands of the United States being denied with a complete rupture of intercourse by the act of Spain, I have been constrained, in exercise of the power and authority conferred upon me by the joint resolution aforesaid, to proclaim under date of April 22, 1898, a blockade of certain ports of the north coast of Cuba, lying between Cardenas and Bahia Honda, and of the port of Cienfuegos on the south coast of Cuba; and further, in exercise of my constitutional powers and using the authority conferred upon me by the act of Congress approved April 22, 1898, to issue my proclamation, dated April 23, 1898, calling forth volunteers in order to carry into effect the said resolution of April 20, 1898. Copies of these proclamations are hereto appended.

" In view of the measures so taken, and with a view to the adoption of such other measures as may be necessary to enable me to carry out the expressed will of the Congress of the United States in the premises, I now recommend to your honorable body the adoption of a joint resolution declaring that a state of war exists between the United States of America and the Kingdom of Spain, and I urge speedy action thereon, to the end that the definition of the international status of the United States as a belligerent power may be made known, and the assertion of all its rights and the maintenance of all its duties in the conduct of a public war may be assured."

President McKinley to the Senate and House of Representatives, special message, April 25, 1898, H. Doc. 428, 55 Cong. 2 sess.; For. Rel. 1898, 771.

See, in relation to Cuba, the following documents:

Govin, Charles. Correspondence concerning his death. S. Doc. 39, 54 Cong. 2 sess.; For. Rel. 1896, 705–710.

Claims of citizens of the United States against Spain, Jan. 1897. S. Doc. 79, 54 Cong. 2 sess.; For. Rel. 1896, 710.

Competitor case. S. Doc. 79, 54 Cong. 2 sess.; S. Doc. 146, 54 Cong. 2 sess.; S. Rep. 377, 55 Cong. 1 sess.

Citizens of the United States arrested in Cuba, Feb. 24, 1895, to Jan. 25, 1897. S. Doc. 84, 54 Cong. 2 sess.; For. Rel. 1897, 522–525. Seventy-four persons, citizens of the United States, or claiming to be such, were arrested.

Betancourt, Gaspar A. Arrest and detention. S. Doc. 119, 54 Cong. 2 sess.

American citizens in prison in Cuba, March 1, 1897. S. Doc. 172, 54 Cong. 2 sess.

Lopez, Segundo N. Killing of. S. Doc. 120, 54 Cong. 2 sess.; For. Rel. 1896, 846.

Richelieu, Gustave, and Bolten, August. Arrest and imprisonment in Cuba. S. Doc. 47, 55 Cong. 1 sess.; S. Rep. 371, 55 Cong. 1 sess.

Aguirre, Geo. Washington. Arrest in Cuba. S. Ex. "A," 55 Cong., special sess.

Condition of affairs in Cuba. Testimony taken by the Senate Committee on Foreign Relations, under a resolution of May 16, 1896.

War and peace.

"In my last annual message very full consideration was given to the question of the duty of the government of the United States toward Spain and the Cuban insurrection as being by far the most important problem with which we were then called upon to deal. The considerations then advanced, and the exposition of the views therein expressed, disclosed my sense of the extreme gravity of the situation. Setting aside, as logically unfounded or practically inadmissible, the recognition of the Cuban insurgents as belligerents, the recognition of the independence of Cuba, neutral intervention to end the war by imposing a rational compromise between the contestants, intervention in favor of one or the other party, and forcible annexation of the island, I concluded it was honestly due to our friendly relations with Spain that she should be given a reasonable chance to realize her expectations of reform to which she had become irrevocably committed. Within a few weeks previously she had announced comprehensive plans which it was confidently asserted would be efficacious to remedy the evils so deeply affecting our own country, so injurious to the true interests of the mother country as well as to those of Cuba, and so repugnant to the universal sentiment of humanity.

"The ensuing month brought little sign of real progress toward the pacification of Cuba. The autonomous administrations set up in the capital and some of the principal cities appeared not to gain the favor of the inhabitants nor to be able to extend their influence to the large extent of territory held by the insurgents, while the military arm, obviously unable to cope with the still active rebellion, continued many of the most objectionable and offensive policies of the government that had preceded it. No tangible relief was afforded the vast numbers of unhappy reconcentrados despite the reiterated professions made in that regard and the amount appropriated by Spain to that end. The proffered expedient of zones of cultivation proved illusory; indeed no less practical nor more delusive promises of succor could well have been tendered to the exhausted and destitute people, stripped of all that made life and home dear and herded in a strange region among unsympathetic strangers hardly less necessitous than themselves.

"By the end of December the mortality among them had frightfully increased. Conservative estimates from Spanish sources placed the deaths among these distressed people at over forty per cent from the time General Weyler's decree of reconcentration was enforced. With the acquiescence of the Spanish authorities a scheme was adopted for relief by charitable contributions raised in this country and distributed, under the direction of the consul-general and the several consuls, by noble and earnest individual effort through the organized agencies of the American Red Cross. Thousands of lives were thus saved, but many thousands more were inaccessible to such forms of aid.

"The war continued on the old footing without comprehensive plan, developing only the same spasmodic encounters, barren of strategic result, that had marked the course of the earlier ten years' rebellion as well as the present insurrection from its start. No alternative save physical exhaustion of either combatant, and therewithal the practical ruin of the island, lay in sight, but how far distant no one could venture to conjecture.

"At this juncture, on the 15th of February last, occurred the destruction of the battle ship *Maine* while rightfully lying in the harbor of Havana on a mission of international courtesy and good will—a catastrophe the suspicious nature and horror of which stirred the nation's heart profoundly. It is a striking evidence of the poise and sturdy good sense distinguishing our national character that this shocking blow, falling upon a generous people, already deeply touched by preceding events in Cuba, did not move them to an instant, desperate resolve to tolerate no longer the existence of a condition of danger and disorder at our doors that made possible such a deed, by whomsoever wrought. Yet the instinct of justice prevailed and the nation anxiously awaited the result of the searching investigation at once set on foot. The finding of the naval board of inquiry established that the origin of the explosion was external by a submarine mine, and only halted, through lack of positive testimony, to fix the responsibility of its authorship.

"All these things carried conviction to the most thoughtful, even before the finding of the naval court, that a crisis in our relations with Spain and toward Cuba was at hand. So strong was this belief that it needed but a brief executive suggestion to the Congress to receive immediate answer to the duty of making instant provision for the possible and perhaps speedily probable emergency of war, and the remarkable, almost unique, spectacle was presented of a unanimous vote of both Houses, on the 9th of March, appropriating fifty million dollars 'for the national defense and for each and every purpose connected therewith, to be expended at the discretion of the President.' That this act of prevision came none too soon was disclosed when the

application of the fund was undertaken. Our coasts were practically undefended. Our Navy needed large provision for increased ammunition and supplies, and even numbers to cope with any sudden attack from the navy of Spain, which comprised modern vessels of the highest type of continental perfection. Our Army also required enlargement of men and munitions. The details of the hurried preparation for the dreaded contingency is told in the reports of the Secretaries of War and of the Navy, and need not be repeated here. It is sufficient to say that the outbreak of war, when it did come, found our nation not unprepared to meet the conflict.

"Nor was the apprehension of coming strife confined to our own country. It was felt by the continental powers, which, on April 6th, through their ambassadors and envoys, addressed to the Executive an expression of hope that humanity and moderation might mark the course of this government and people, and that further negotiations would lead to an agreement which, while securing the maintenance of peace, would afford all necessary guarantees for the reestablishment of order in Cuba. In responding to that representation, I said I shared the hope the envoys had expressed that peace might be preserved in a manner to terminate the chronic condition of disturbance in Cuba so injurious and menacing to our interests and tranquillity, as well as shocking to our sentiments of humanity; and, while appreciating the humanitarian and disinterested character of the communication they had made on behalf of the powers, I stated the confidence of this government, for its part, that equal appreciation would be shown for its own earnest and unselfish endeavors to fulfill a duty to humanity by ending a situation the indefinite prolongation of which had become insufferable.

"Still animated by the hope of a peaceful solution and obeying the dictates of duty, no effort was relaxed to bring about a speedy ending of the Cuban struggle. Negotiations to this object continued activity with the government of Spain, looking to the immediate conclusion of a six months' armistice in Cuba, with a view to effect the recognition of her people's right to independence. Besides this, the instant revocation of the order of reconcentration was asked, so that the sufferers, returning to their homes and aided by united American and Spanish effort, might be put in a way to support themselves, and, by orderly resumption of the well-nigh destroyed productive energies of the island, contribute to the restoration of its tranquillity and well-being. Negotiations continued for some little time at Madrid, resulting in offers by the Spanish government which could not but be regarded as inadequate. It was proposed to confide the preparation of peace to the insular parliament, yet to be convened under the autonomous decrees of November, 1897, but without impairment in anywise of the constitutional powers

of the Madrid government, which, to that end, would grant an armistice, if solicited by the insurgents, for such time as the general-in-chief might see fit to fix. How and with what scope of discretionary powers the insular parliament was expected to set about the 'preparation' of peace did not appear. If it were to be by negotiation with the insurgents, the issue seemed to rest on the one side with a body chosen by a fraction of the electors in the districts under Spanish control, and on the other with the insurgent population holding the interior country, unrepresented in the so-called parliament, and defiant at the suggestion of suing for peace.

"Grieved and disappointed at this barren outcome of my sincere endeavors to reach a practicable solution, I felt it my duty to remit the whole question to the Congress. In the message of April 11, 1898, I announced that with this last overture in the direction of immediate peace in Cuba, and its disappointing reception by Spain, the effort of the Executive was brought to an end. I again reviewed the alternative courses of action which had been proposed, concluding that the only one consonant with international policy and compatible with our firm-set historical traditions was intervention as a neutral to stop the war and check the hopeless sacrifice of life, even though that resort involved 'hostile constraint upon both the parties to the contest, as well to enforce a truce as to guide the eventual settlement.' The grounds justifying that step were, the interests of humanity; the duty to protect the life and property of our citizens in Cuba; the right to check injury to our commerce and people through the devastation of the island, and, most important, the need of removing at once and forever the constant menace and the burdens entailed upon our government by the uncertainties and perils of the situation caused by the unendurable disturbance in Cuba. I said:

"'The long trial has proved that the object for which Spain has waged the war can not be attained. The fire of insurrection may flame or may smolder with varying seasons, but it has not been, and it is plain that it can not be, extinguished by present methods. The only hope of relief and repose from a condition which can no longer be endured is the enforced pacification of Cuba. In the name of humanity, in the name of civilization, in behalf of endangered American interests which give us the right and the duty to speak and to act, the war in Cuba must stop.'

"In view of all this, the Congress was asked to authorize and empower the President to take measures to secure a full and final termination of hostilities between Spain and the people of Cuba and to secure in the island the establishment of a stable government, capable of maintaining order and observing its international obligations, insuring peace and tranquillity, and the security of its citizens as well as our own, and for the accomplishment of those ends to use

the military and naval forces of the United States as might be necessary; with added authority to continue generous relief to the starving people of Cuba.

"The response of the Congress, after nine days of earnest deliberation, during which the almost unanimous sentiment of your body was developed on every point save as to the expediency of coupling the proposed action with a formal recognition of the Republic of Cuba as the true and lawful government of that island—a proposition which failed of adoption—the Congress, after conference, on the 19th of April, by a vote of 42 to 35 in the Senate and 311 to 6 in the House of Representatives, passed the memorable joint resolution declaring—

"'First. That the people of the island of Cuba are, and of right ought to be, free and independent.

"'Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

"'Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

"'Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination when that is accomplished to leave the government and control of the island to its people.'

"This resolution was approved by the Executive on the next day, April 20th. A copy was at once communicated to the Spanish minister at this capital, who forthwith announced that his continuance in Washington had thereby become impossible, and asked for his passports, which were given him. He thereupon withdrew from Washington, leaving the protection of Spanish interests in the United States to the French ambassador and the Austro-Hungarian minister. Simultaneously with its communication to the Spanish minister here, General Woodford, the American minister at Madrid, was telegraphed confirmation of the text of the joint resolution and directed to communicate it to the Government of Spain with the formal demand that it at once relinquish its authority and government in the island of Cuba and withdraw its forces therefrom, coupling this demand with announcement of the intentions of this Government as to the future of the island, in conformity with the

fourth clause of the resolution, and giving Spain until noon of April 23d to reply.

"That demand, although, as above shown, officially made known to the Spanish envoy here, was not delivered at Madrid. After the instruction reached General Woodford on the morning of April 21st, but before he could present it, the Spanish minister of state notified him that upon the President's approval of the joint resolution the Madrid government, regarding the act as 'equivalent to an evident declaration of war,' had ordered its minister in Washington to withdraw, thereby breaking off diplomatic relations between the two countries and ceasing all official communication between their respective representatives. General Woodford thereupon demanded his passports and quitted Madrid the same day.

"Spain having thus denied the demand of the United States and initiated that complete form of rupture of relations which attends a state of war, the Executive powers authorized by the resolution were at once used by me to meet the enlarged contingency of actual war between sovereign states. On April 22d I proclaimed a blockade of the north coast of Cuba, including ports on said coast between Cardenas and Bahia Honda and the port of Cienfuegos on the south coast of Cuba; and on the 23d I called for volunteers to execute the purpose of the resolution. By my message of April 25th the Congress was informed of the situation, and I recommended formal declaration of the existence of a state of war between the United States and Spain. The Congress accordingly voted on the same day the act approved April 25, 1898, declaring the existence of such war from and including the 21st day of April, and reenacted the provision of the resolution of April 20th, directing the President to use all the armed forces of the nation to carry that act into effect. Due notification of the existence of war as aforesaid was given April 25th by telegraph to all the governments with which the United States maintain relations, in order that their neutrality might be assured during the war. The various governments responded with proclamations of neutrality, each after its own methods. It is not among the least gratifying incidents of the struggle that the obligations of neutrality were impartially discharged by all, often under delicate and difficult circumstances.

"In further fulfillment of international duty I issued, April 26, 1898, a proclamation announcing the treatment proposed to be accorded to vessels and their cargoes as to blockade, contraband, the exercise of the right of search, and the immunity of neutral flags and neutral goods under enemy's flag. A similar proclamation was made by the Spanish government. In the conduct of hostilities the rules of the Declaration of Paris, including abstention from resort to

privateering, have accordingly been observed by both belligerents, although neither was a party to that declaration."

President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, xlix.

"As soon as we are in possession of Cuba and have pacified the island it will be necessary to give aid and direction to its people to form a government for themselves. This should be undertaken at the earliest moment consistent with safety and assured success. It is important that our relations with this people shall be of the most friendly character and our commercial relations close and reciprocal. It should be our duty to assist in every proper way to build up the waste places of the island, encourage the industry of the people, and assist them to form a government which shall be free and independent, thus realizing the best aspirations of the Cuban people.

"Spanish rule must be replaced by a just, benevolent, and humane government, created by the people of Cuba, capable of performing all international obligations and which shall encourage thrift, industry, and prosperity, and promote peace and good will among all of the inhabitants, whatever may have been their relations in the past. Neither revenge nor passion should have a place in the new government. Until there is complete tranquillity in the island and a stable government inaugurated military occupation will be continued."

President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, lxvi.
The treaty of peace was concluded at Paris Dec. 10, 1898, an armistice having previously been entered into on August 12, 1898.

"During the past year we have reduced our force in Cuba and Porto Rico. In Cuba we now have 334 officers and 10,796 enlisted men; in Porto Rico, 87 officers and 2,855 enlisted men and a battalion of 400 men composed of native Porto Ricans; while stationed throughout the United States are 910 officers and 17,317 men, and in Hawaii 12 officers and 453 enlisted men."

President McKinley, annual message, Dec. 5, 1899, For Rel. 1899, xxxviii.

(5) THE REPUBLIC OF CUBA.

§ 910.

Cuban independence.

Under the authority of the United States, as temporary occupant of Cuba, a general election was held in the island on the third Saturday in September, 1900, to elect delegates to a constitutional convention, which was to meet at Havana on the first Monday of November. The election was held on September 15, and the convention assembled on the 5th of November.

President McKinley, annual message, Dec. 3, 1900, For. Rel. 1900, xli.

"That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled, 'For the recognition of the independence of the people of Cuba, demanding that the government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect,' the President is hereby authorized to 'leave the government and control of the island of Cuba to its people' so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

"I. That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

"II. That said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking-fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government shall be inadequate.

"III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

"IV. That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

"V. That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

"VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

"VII. That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

"VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States."

Act March 2, 1901, 31 Stat. 895, 897–898. The foregoing provisions, drawn by Senator Platt, of Connecticut, were offered by him and were adopted as an amendment to the bill, which became the act of Congress of March 2, 1901, making appropriations for the support of the United States Army. They were incorporated into an ordinance appended to the Cuban constitution. They were also embodied in a permanent treaty between the United States and the Republic of Cuba, signed at Havana, May 22, 1903, the ratifications of which were exchanged at Washington July 1, 1904. By a treaty concluded July 2, 1903, Cuba leased to the United States certain areas of land and water at Guantanamo and Bahia Honda for naval or coaling stations. This treaty stipulates (Art. IV.) that violators of Cuban law taking refuge in such areas, and violators of United States law in such areas taking refuge in Cuban territory, shall be reciprocally delivered up.

For a review of the joint resolution of April 20, 1898, see an article by Carman F. Randolph in the *Columbia Law Review*, June, 1901.

"In Cuba such progress has been made toward putting the independent government of the island upon a firm footing that before the present session of the Congress closes this will be an accomplished fact. Cuba will then start as her own mistress; and to the beautiful Queen of the Antilles, as she unfolds this new page of her destiny, we extend our heartiest greetings and good wishes. Elsewhere I have discussed the question of reciprocity. In the case of Cuba, however, there are weighty reasons of morality and of national interest why the policy should be held to have a peculiar application, and I most earnestly ask your attention to the wisdom, indeed to the vital need, of providing for a substantial reduction in the tariff duties on Cuban imports into the United States. Cuba has in her constitution affirmed what we desired, that she should stand, in international matters, in closer and more friendly relations with us than with any other power; and we are bound by every consideration of honor and expediency to pass commercial measures in the interest of her material well-being."

President Roosevelt, annual message, Dec. 3, 1901, For. Rel. 1901, xxxi.

The second international conference of American states, held at the City of Mexico in 1901–2, adopted a resolution directing the

president of the conference to convey to the future President of the Republic of Cuba its "earnest well wishes for the happy discharge of his high office as well as its good wishes for the prosperity of the future Republic of Cuba." The resolution was offered by Mr. Charles M. Pepper, on behalf of the delegation of the United States. It was officially transmitted by the president of the conference to General Wood, the military governor of Cuba, to be delivered to the President of the Republic of Cuba whenever that government should have been inaugurated.

Int. Conf. of Am. States, S. Doc. 330, 57 Cong. 1 sess. 21, 175.

Mr. Tomas Estrada Palma was inaugurated as President of the Republic of Cuba on May 20, 1902.

S. Doc. 363, 57 Cong. 1 sess. For congratulations of the United States Senate to the Republic of Cuba, May 21, 1902, see S. Doc. 376, 57 Cong. 1 sess.

The message of President Roosevelt of March 27, 1902, recommending that provision be made for diplomatic and consular representation of the United States in Cuba, is printed in S. Doc. 270, 57 Cong. 1 sess.

As to the incidents attending the withdrawal of United States troops from Cuba, see For. Rel. 1904, 238.

As to sanitary conditions in Cuba, see For. Rel. 1904, 247 et seq.

As to criminal procedure in Cuba, see For. Rel. 1904, 254.

4. Good offices.

§ 911.

The good offices of governments and their agents are constantly employed for the purpose of composing international differences. The exercise of good offices is a friendly and unofficial proceeding, and does not partake of the nature of intervention. Good offices are also frequently used by diplomatic agents in giving unofficial aid to their fellow-citizens in matters that lie outside the scope of formal intervention, as well as in assisting the citizens or subjects of third powers who may lack diplomatic representation of their own in the particular country.

For examples of good offices, see General Index to Dip. Cor. and For. Rels., p. 368.

As to the attempt to use good offices in Chile in 1891, see For. Rel. 1891, 111, 112, 120, 122, 123–130, 131, 132, 135, 140, 146.

"The President has seen with satisfaction, that the ministers of the United States in Europe, while they have avoided an useless commitment of their nation on the subject of the Marquis de la Fayette, have nevertheless shewn themselves attentive to his situation. The interest which the President himself, and our citizens in general, take in the welfare of this gentleman, is great and sincere, and will

entirely justify all prudent efforts to serve him. I am therefore to desire, that you will avail yourself of every opportunity of sounding the way towards his liberation, of finding out whether those in whose power he is are very tenacious of him, of insinuating through such channels as you shall think suitable, the attentions of the government and people of the United States to this object, and the interest they take in it, and of procuring his liberation by informal solicitations, if possible. But if formal ones be necessary, and the moment should arrive when you shall find that they will be effectual, you are authorized to signify, through such channel as you shall find suitable, that our government and nation, faithful in their attachments to this gentleman for the services he has rendered them, feel a lively interest in his welfare, and will view his liberation as a mark of consideration and friendship for the United States, and as a new motive for esteem and a reciprocation of kind offices towards the power to whom they shall be indebted for this act.

"A like letter being written to Mr. Pinckney, you will of course take care, that however you may act through different channels, there be still a sufficient degree of concert in your proceedings."

Mr. Jefferson, Sec. of State, to Mr. Morris, min. to France, March 15, 1793, Memoirs, Correspondence, &c., of Jefferson, by Randolph, III. 214.

"The President has perused with great interest your communication of the 25th ultimo, and the accompanying memorial signed by yourself and a number of other American citizens of high character, who have recently visited the city of Naples. The letter and memorial invite the attention of the Executive to the excessive rigor of punishment, which it is understood to be the practice there to inflict upon alleged political offenders, and suggest whether, without contravening their settled policy of noninterference with the affairs of other nations, the United States might not without impropriety, either alone, or in conjunction with some of the leading powers of Europe, appeal to the government in such a manner as would awaken its clemency and tend to ameliorate the condition of this class of sufferers.

"The President does justice to the sentiments of the memorial, which he cordially approves, and he appreciates the benevolence by which the memorialists are animated. Far from being insensible to tyranny wherever or by whomsoever exercised, he sincerely sympathizes with the oppressed of all countries. The uniform policy of this government has been not to interfere in the domestic affairs of other nations. This policy was wisely established by President Washington, who carried it so far as to refuse to interfere officially for the release of La Fayette, his friend and companion in arms, who

was incarcerated for many years in the prison at Olmertz. That was a case much stronger than this, as La Fayette had fought our battles for freedom, had been naturalized in some of the States, and was imprisoned by a power to whom he owed no allegiance. It is hardly possible to conceive of a case appealing more strongly to our sympathies than this; the struggle between affection and duty must have been great; but Washington doubtless pursued the true policy and set an example which has never been departed from by his successors. Though impelled by the strongest sympathy for the oppressed, the President does not feel justified in departing from this salutary rule."

Mr. Crittenden, Act. Sec. of State, to Mr. Jno. V. L. Pruyn, Oct. 8, 1851, 39 MS. Dom. Let. 277.

"A minister is not only at liberty, but he is morally bound, to render all the good offices he can to other powers and their subjects consistently with the discharge of those principal responsibilities I have described. But it belongs to the state where the minister resides to decide in every case in what manner and in what degree such good offices shall be rendered, and, indeed, whether they shall be tolerated at all."

Mr. Seward, Sec. of State, to Mr. Corwin, Apr. 18, 1863, MS. Inst. Mex. XVII. 440.

"On the 21st of June last, by direction of the President of the United States, I communicated to President Juarez of Mexico, by telegraph, the proposition of His Imperial Majesty of Austria, that he would reinstate the Prince Maximilian in all his rights of possession as Archduke of Austria, as soon as the prince should be set at liberty and should renounce forever all his projects in Mexico. At an earlier date, namely, on the 15th, I had in like manner used the telegraph to make known to President Juarez the request of Her Majesty the Queen of England and of the Emperor of the French for the good offices of this government in behalf of the Prince Maximilian."

Mr. Seward, Sec. of State, to Count Wydenbruck, July 1, 1867, MS. Notes to Austrian Leg. VII. 240.

See, also, same to same, tel., July 3, 1867, id. 241.

In relation to the capture and execution of Maximilian, see Dip. Cor. 1867, II. 408–420, 431, 434.

Also, Maximilian in Mexico, by Sara Yorke Stevenson, 288–306.

"The long deferred peace conference between Spain and the allied South American republics has been inaugurated in Washington under the auspices of the United States. Pursuant to the recom-

mendation contained in the resolution of the House of Representatives, of the 17th of December, 1866, the executive department of the government offered its friendly offices for the promotion of peace and harmony between Spain and the allied republics. Hesitations and obstacles occurred to the acceptance of this offer. Ultimately, however, a conference was arranged, and was opened in this city on the 29th of October last, at which I authorized the Secretary of State to preside. It was attended by the ministers of Spain, Peru, Chili, and Ecuador. In consequence of the absence of a representative from Bolivia the conference was adjourned until the attendance of a plenipotentiary from that republic could be secured, or other measures could be adopted toward compassing its objects.

"The allied and other republics of Spanish origin, on this continent, may see in this fact a new proof of our sincere interest in their welfare; of our desire to see them blessed with good governments, capable of maintaining order and preserving their respective territorial integrity; and of our sincere wish to extend our own commercial and social relations with them. The time is not probably far distant when, in the natural course of events, the European political connection with this continent will cease. Our policy should be shaped, in view of this probability, so as to ally the commercial interest of the Spanish-American States more closely to our own, and thus give the United States all the prœminence and all the advantage which Mr. Monroe, Mr. Adams, and Mr. Clay contemplated when they proposed to join in the congress of Panama."

President Grant, annual message, Dec. 5, 1870, For. Rel. 1870, 5.

Good offices, being in the nature of unofficial personal recommendation, are in this respect distinguishable from official intervention.

Mr. Fish, Sec. of State, to Mr. Curtin, min. to Russia, No. 60, Oct. 5, 1870, MS. Inst. Russia XV. 213.

On June 15, 1881, Señor Ubico, Guatemalan minister at Washington, addressed a note to Mr. Blaine, who was then Secretary of State, complaining of alleged encroachments of Mexico on Guatemalan territory and declaring that, all peaceful means of conciliation appearing to be exhausted, Guatemala could but appeal to the United States "as the natural protector of the integrity of the Central American territory."

On the following day Mr. Blaine addressed an instruction to Mr. Morgan, American minister at Mexico, calling attention to the statements of the Guatemalan minister, and saying that, while the United States was not "a self-constituted arbitrator of the destinies" of either Guatemala or Mexico, it was, as "the impartial friend of both, ready to tender frank and earnest counsel touching anything

which may menace the peace and prosperity of its neighbors. It is, above all," continued Mr. Blaine, "anxious to do any and everything which will tend to make stronger the natural union of the republics of the continent, in the face of the tendencies of other and distant forms of government to influence the internal affairs of Spanish America. It is especially anxious, in pursuance of this great policy, to see the Central American republics more securely united than they have been in the past in protection of their common interests, which interests are, in their outward relations, identical in principle with those of Mexico and the United States." Mr. Blaine added that the President, without prejudice to the merits of the controversy, deemed it his duty, as the unbiased counselor of both Mexico and Guatemala, "to set before the government of Mexico his conviction of the danger to the principles which Mexico has so signally and successfully defended in the past, which would ensue should disrespect be shown to the boundaries which separate her from her weaker neighbors, or should the authority of force be resorted to in establishment of rights over territory which they claim, without the conceded justification of her just title thereto, and especially would the President regard as an unfriendly act toward the cherished plan of upbuilding strong republican governments in Spanish America, if Mexico, whose power and generosity should be alike signal in such a case, shall seek or permit any misunderstanding with Guatemala, when the path toward a pacific avoidance of trouble is at once so easy and so imperative an international duty." Mr. Morgan was directed to seek an interview with Señor Mariscal, Mexican minister of foreign affairs, and to acquaint him with the purport of these instructions, and even to read them to him if he should so desire.

On June 21, 1881, Mr. Blaine addressed a further instruction to Mr. Morgan, on the strength of information received from the American minister at Guatemala City, which was said to indicate that Mexico intended not merely to obtain possession of the disputed territory, but to precipitate hostilities with Guatemala with the ultimate view of extending her borders by actual conquest. Mr. Blaine said that he could not believe it possible that these designs could seriously enter into the policy of the Mexican government. Of late years, said Mr. Blaine, the American movement toward fixity of boundaries and abstention from territorial enlargement had been so marked and so necessary a part of the continental policy of the American republics that any departure therefrom became "necessarily a menace to the interests of all." The "now established policy" of the United States to refrain from territorial acquisition gave that government the right, declared Mr. Blaine, to use its friendly offices in discouragement of any movement on the part of neighboring states which might "tend

to disturb the balance of power between them," and rendered it morally obligatory on the United States, as the strong but disinterested friend of all its sister states, to exert its influence " for the preservation of the national life and integrity of any one of them against aggression, whether this may come from abroad or from another American republic." The "peaceful maintenance of the *status quo* of the American commonwealths" was, said Mr. Blaine, "of the very essence of their policy of harmonious alliance for self-preservation, and is of even more importance to Mexico than to the United States." It was the desire and intention of the United States, by moral influence and the interposition of good offices," " to hold up the republics of Central America in their old strength and to do all that may be done toward insuring the tranquillity of their relations among themselves and their collective security as an association of allied interests, possessing in their common relationship to the outer world all of the elements of national existence." In this "enlarged policy," said Mr. Blaine, the United States confidently asked the cooperation of Mexico, while any contrary movement on her part directly leading to the absorption in whole or in part of her weaker neighbors would be deemed "an act unfriendly to the best interests of America." Mr. Morgan was instructed to bring these views to the attention of Mr. Mariscal, and to intimate that the good feeling between Mexico and the United States would be fortified by a frank avowal that the Mexican policy towards the neighboring states was not one of conquest or aggrandizement, but of conciliation, peace, and friendship.

Mr. Morgan had an interview with Mr. Mariscal on July 9, 1881, and acquainted the latter with the purport of his instructions. Mr. Mariscal insisted that it was Mexico that had cause to complain against Guatemala and not Guatemala against Mexico. Further interviews were held, with the result that Mr. Morgan, in a dispatch of September 22, 1881, suggested that unless the United States was prepared to announce to Mexico that it would, if necessary, actively preserve the peace, it would be the part of wisdom to let the matter remain where it was. " Negotiations on the subject," said Mr. Morgan, "will not benefit Guatemala, and you may depend upon it that what we have already done in this direction has not tended to the increasing of the cordial relations which I know it is so much your desire to cultivate with this nation."

In an instruction to Mr. Morgan of November 28, 1881, Mr. Blaine declared that to leave the matter where it was was simply impossible, since it would not remain there. The United States had sought to compose the differences between the two countries, which differences would become more aggravated if they were not ended. Information, said Mr. Blaine, has been received that Mexican troops had been ordered to the disputed boundary line. The United States did

not pretend to direct the policy of Mexico, and the Mexican government was of course free to decline the counsel of the United States, no matter how friendly. But it was necessary that the United States should know distinctly what the Mexican government had decided. It was useless, and apparently would be irritating, declared Mr. Blaine, "to keep before the government of Mexico the offer of friendly intervention, while, on the other hand, it would not be just to Guatemala to hold that government in suspense as to whether there was a possibility of the acceptance of the amicable mediation which we have offered." Mr. Morgan was therefore to seek an interview with Mr. Mariscal and urge upon him the peaceful solution of existing differences, and, if he should find it to be practicable, to suggest a limited arbitration. Should the Mexican government decline this "friendly intervention," Mr. Morgan was to state that he accepted this decision as one undoubtedly within the right of Mexico to make; but he was to express the regret of the United States if it should be found that the powerful Republic of Mexico was unwilling to join in maintaining and establishing the principle of friendly arbitration of international differences on the continent of America. Mexico and the United States, acting in cordial harmony, could, said Mr. Blaine, induce all the other independent governments of North and South America to aid in fixing this policy of peace for all the future disputes between the nations of the Western Hemisphere. In concluding the instruction, Mr. Blaine adverted to an intimation made by Mr. Mariscal that President Barrios, of Guatemala, was endeavoring to obtain the influence of the United States towards furthering his ambition of forming a consolidation of the Central American republics. With reference to this intimation, Mr. Blaine declared that the union of the Central American states appealed to the sympathy and judgment of the United States; that this was no new policy, but one which the United States had for many years urged upon those republics. If, said Mr. Blaine, an inference was to be drawn from Mr. Mariscal's language that the prospect of a Central American union was not agreeable to the policy of Mexico, and that the friendly attitude of the United States towards such union rendered unwelcome the "friendly intervention" which had been offered, this fact would only deepen the regret at Mexico's decision, and compelled him (Mr. Blaine) "to declare that the government of the United States will consider a hostile demonstration against Guatemala for the avowed purpose, or with the certain result of weakening her power in such an effort, as an act not in consonance with the position and character of Mexico, not in harmony with the friendly relations existing between us, and injurious to the best interests of all the republics of this continent." The United States, added Mr. Blaine, "will continue its policy of peace

even if it can not have the great aid which the cooperation of Mexico would assure; and it will hope, at no distant day, to see such concord and cooperation between all the nations of America as will render war impossible." Mr. Morgan was directed to leave a copy of this instruction with Mr. Mariscal.

Señor Ubico, Guatemalan min. to Mr. Blaine, Sec. of State, June 15, 1881, For. Rel. 1881, 598; Mr. Blaine, Sec. of State, to Mr. Morgan, min. to Mexico, No. 138, June 16, 1881, For. Rel. 1881, 766; same to same, No. 142, June 21, 1881, id. 768; Mr. Morgan to Mr. Blaine, No. 232, July 12, 1881, id. 773; same to same, No. 273, Sept. 22, 1881, id. 806, 809; Mr. Blaine to Mr. Morgan, No. 198, Nov. 28, 1881, id. 814.

See, also, a pamphlet entitled, "Difficulties between Mexico and Guatemala. Proposed mediation of the United States. Some official documents. New York, 1882."

While the United States would not look with favor on any "schemes of aggrandizement" by which "the individuality of any of the states of Central America would disappear in civil turmoil or conquest," yet it would view with approbation "such an intimacy of union between the states of Central America as would not only secure their domestic interests but render them outwardly strong against the rest of the world." (Mr. Evarts, Sec. of State, to Mr. Logan, min. to Cent. Am., No. 53, contld., March 4, 1880, MS. Inst. Cent. Am. XVIII. 73.)

It appeared upon investigation that the particular point that prevented a friendly arrangement between Guatemala and Mexico was the calling into question by the former of Mexico's title to the State of Chiapas, including the territory of Soconusco. On December 31, 1881, Mr. Morgan, under further instructions of the Department of State, made a formal tender to the Mexican government of the "good offices" of the President of the United States and of his services as arbitrator. Mr. Mariscal, on March 20, 1882, replied that the Mexican government found it impossible to discuss or submit to arbitration the question of her rights to this portion of her territory, but would agree to arbitration if the Guatemalan government would expressly exclude Chiapas and Soconusco. On this basis the preliminaries of a treaty of settlement were signed at New York on August 12, 1882.

Mr. Frelinghuysen, Sec. of State, to Mr. Montúfar, Guatemalan min., June 5, 1882, For. Rel. 1882, 326; Mr. Montúfar to Mr. Frelinghuysen, June 15, 1882, id. 328; Mr. Frelinghuysen to Mr. Montúfar, June 27, 1882, id. 330; Mr. Montúfar to Mr. Frelinghuysen, July 21, 1882, id 330; Mr. Frelinghuysen to Mr. Montúfar, July 24, 1882, id. 331; Mr. Romero, Mex. min., to Mr. Frelinghuysen, Aug. 11, 1882, id. 437; Mr. Cruz, Guatemalan min., to Mr. Frelinghuysen, Oct. 14, 1882, id. 332.

"ART. XXII. The United States will aid by their good offices, if desired, in securing the union of the five Central American republics under one representative government, and the reorganization of the

said republics in one nationality being accomplished, the Central American republics shall have the same rights and bear the same obligations as Nicaragua has and bears by virtue of this treaty."

Frelinghuysen-Zavala Treaty, Dec. 1, 1884, between the United States and Nicaragua, unratified; Sen. Doc. 291, 55 Cong. 2 sess. 10.

The treaty was signed by Frederick T. Frelinghuysen, Sec. of State, and General Joaquin Zavala, ex-President of Nicaragua.

The consular agent of the United States at Johannesburg was directed to render to John Hays Hammond and other American citizens arrested by the Boers on charges of rebellion in connection with the Jameson raid "all possible aid and protection." Simultaneously, the American ambassador in London was instructed to apply to the foreign office, with a view to obtain the good offices of the British representatives in South Africa. In compliance with this request the British high commissioner was instructed to see that the persons in question received all proper protection and assistance.

Mr. Olney, Sec. of State, to Mr. Catchings, M. C., Jan. 25, 1896, 207 MS. Dom. Let. 349.

"By way of friendly good offices, you will inform British minister for foreign affairs that I am to-day in receipt of a telegram from the United States consul at Pretoria reporting that the government of the two African republics request the President's intervention with a view to cessation of hostilities, and that a similar request is made to the representatives of European powers. In communicating this request I am directed by the President to express his earnest hope that a way to bring about peace may be found and to say that he would be glad to aid in any friendly manner to promote so happy a result."

Mr. Hay, Sec. of State, to Mr. White, chargé, tel., March 10, 1900, MS. Inst. Gr. Br. XXXIII. 364.

The British government replied that it could not accept the "intervention" of any power in the contest. It is obvious that the Boer request was not happily phrased, the use of the word "intervention" affording a ready ground of declination.

See, as to this incident, S. Doc. 222, 56 Cong. 1 sess.

II. *NONPOLITICAL INTERVENTION.*

1. Protection of Citizens.

§ 912.

The most usual, indeed it may be said that the ordinary, ground of intervention is that of the protection of the citizens of a country against wrong or injustice in another land. Such wrong or injustice

may result either from the positive action of a government or from the omission to extend such protection as is due under the circumstances. Formal intervention is extended by a government in such cases only in behalf of its own citizens, and in respect of acts which occurred while they held the relation of citizens. The wrong done to a government in the person of its citizen is not transferred to another government by his naturalization as a citizen of the latter.

"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 seas 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. . . . All rights secured to our citizens by treaties with foreign nations, are dependent upon citizenship of the United States and not citizenship of a State."

Miller, J., Slaughter-House Cases, 16 Wall. 36, 79, 80.

"If his property was captured by the United States, under circumstances which entitled him to require its restoration, the law of nations gave him the right to prosecute his claim through his own government for the loss he sustained. That right was not taken from him by the abandoned and captured property act. It was open to him from the first moment of the capture. All he had to do was to induce his government to assume the responsibility of making his claim, and then the matter would be 'prosecuted as one nation proceeds against another, not by suit in the courts as matter of right, but by diplomatic representations, or, if need be, by war.' In such cases 'it rests with the sovereign against whom the demand is made to determine for himself what he will do with it. He may pay or reject it; he may submit to arbitration, open his own courts to suit, or consent to be tried in the courts of another nation. All depends upon himself.' *United States* v. *Dickelman*, 92 U. S. 520."

Young *v.* United States (1877), 97 U. S. 39, 67.

"When a diplomatic representative is satisfied that an applicant for protection has a right to his intervention, he should interest himself in his behalf, examining carefully into his grievances. If he finds that the complaints are well founded, he should interpose firmly, but with courtesy and moderation, with the authorities in his behalf and report the case to the Department of State for its further action, if any be required."

Printed Instructions to Diplomatic Officers of the United States (1897), § 170.

"It is the wish of the President that you should make use of your official interposition upon those occasions only when, after a careful examination of the complaint, you shall be satisfied that wrong has been done in contravention either of the treaty or of public law. By carefully restricting your applications for redress to cases of this disposition, by abstaining from interference in all doubtful cases, the probability of your obtaining prompt and ample justice will be much increased. You will also inculcate upon your countrymen the necessity of a proper respect from the established laws, decrees, and usages, the stipulation of Brazil in the treaty to protect citizens of the United States, being subject to that condition. Naval officers can not expect to be exempted from the operation of this rule, and they should conform to all the Brazilian fiscal and sanitary regulations. In regard to diplomatic agents, the twenty-seventh article of the treaty declares that those of the United States in Brazil can claim such immunities only as that Empire may choose to extend to the representatives of other powers."

Mr. Forsyth, Sec. of State, to Mr. Hunter, chargé d'affaires to Brazil, No. 13, April 18, 1835, MS. Inst. Brazil, XV. 19.

"The proposition that those who resort to foreign countries are bound to submit to their laws as expounded by the judicial tribunals is not disputed. The exception to this rule, however, is that when palpable injustice, that is to say, such as would be obvious 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. This right is not weakened because the judicial may be independent of the executive or both of the legislative power. Complaint is made to the executive by the foreign government because that is the only proper medium and organ of communication, and not because it may be supposed to be within the competency of that department to redress the grievance. Undoubtedly the interest and duty of every nation admonish extreme caution in applications of this sort which should never be made unless there is a well-grounded persuasion that, even after the complaint shall have been inquired into by the aggressor, the case will be found to lie within the limits above marked out. Governments should be especially slow to interfere in cases arising from imputed breaches of municipal law only.

"It is conceived that the case of the *Morris* is embraced by these principles. The vessel and that part of the cargo which was American property were acquitted by the court of admiralty at Puerto Cabello. Under all the circumstances, the establishment of the

special court of appeal for the trial of the case, can not but be viewed as a most unwarrantable act. The article of the Colombian constitution which is quoted in justification of it does not touch the case in a single point. That article was intended solely to confer upon the President extraordinary powers in the event of internal revolt or foreign invasion during the recess of Congress. The *Morris* was a vessel of the United States, with a cargo principally belonging to our citizens. She was bound to Gibraltar and, when within sight of her destination, was captured by a Colombian privateer upon the pretext that she had on board a few articles the property of subjects of His Catholic Majesty. It requires no argument to expose the absurdity of attempting to apply the article of the Colombian constitution in question to such a case as this."

Mr. Forsyth, Sec. of State, to Mr. Semple, chargé d'affaires to New Granada, No. 7, Feb. 12, 1839, MS. Inst. Colombia, XV. 58.

"I have received the letter of the 27th, signed by you as chairman of a meeting of gentlemen at New York on the evening of the 6th instant, accompanied by a 'statement' and 'resolutions' adopted by that meeting, relative to the protection of citizens of the United States abroad in their rights of conscience, public worship, and sepulture. In reply I have to inform you that this subject has hitherto received and shall continue to receive all proper attention from the Government. The rights adverted to have been secured in whole or in part by the 11th article of our treaty with Colombia of 1824; by the 13th of our treaties with Central America and Brazil of 1825 and 1828, respectively; by the 15th of our treaty with Mexico of 1831; by the 11th of our treaty with Chile of 1832; by the 14th of our treaty with Venezuela of 1836; by the 10th of our treaty with the Peru-Bolivian Confederation of the same year, and by the 14th of our treaty with Ecuador of 1839. Within a year or two past, also, pursuant to an appropriation by Congress, a lot of land for a cemetery has been purchased and prepared near the City of Mexico to which the remains of those who were killed in battle or who died in that quarter during the late war, have been transferred and where in future all citizens of the United States who may die in the vicinity may be buried."

Mr. Marcy, Sec. of State, to Mr. Wood, Jan. 31, 1854, 42 MS. Dom. Let. 181.

The British minister at Washington having communicated to the Department of State a copy of an instruction sent by Lord Clarendon to the diplomatic agents of Great Britain in certain Central and South American states, expressing the dissent of the British government from the position said to have been taken by some of those

states to the effect that the interposition of such agents for the protection of British subjects was not a proper attribute of the diplomatic character, the Department of State said that, in advance of the direct announcement of such a principle to the United States, no definitive opinion could safely be formed as to the course which it might be advisable to pursue, but added: "We shall always, however, maintain our right to remonstrate with or claim indemnification from any foreign government through our diplomatic representative accredited to that government on account of any acts of violence which may have been inflicted by officers of that government on the persons and property of citizens of the United States. In cases of contract, however, . . . it is not the practice of this government to authorize its diplomatic representatives officially to interfere."

Mr. Marcy, Sec. of State, to Mr. Crampton, British min., Oct. 12, 1855, MS. Notes to Great Britain, VII, 501.

November 15, 1875, Mr. Fish sent to the diplomatic officers of the United States a circular, enclosing a copy of his instruction No. 265 of November 5, 1875, to Mr. Cushing, in relation to the latter's report that General Burriel had been promoted. Mr. Fish declared that this promotion, without any effective steps having been taken to carry out the stipulation in the protocol of November 29, 1873, to the effect that Spain would investigate the conduct of those of her authorities who had infringed Spanish law or treaty obligations and "arraign them before competent courts and inflict punishment on those who may have offended," gave rise to renewed serious consideration touching the relations between the United States and Spain. With this stipulation entirely unperformed, General Burriel, said Mr. Fish, had by publications in the press justified his acts and claimed that they were justified by decree of Captain-General Dulce. The Spanish government had defended his right to make the publications in question, pointing out that he had ceased to hold official position in Cuba, and had expressed its willingness to discuss the question of his prosecution as being bound up with the main question of the *Virginius*. It was subsequently reported that the case of General Burriel was before a council of war, but Mr. Fish declared that it was doubtful whether this was the fact, and that it might be assumed that nothing was done by the council, if any such ever assembled. Nevertheless the United States had learned with surprise that General Burriel had been suddenly promoted and taken into active service. The want of military officers had been urged as an excuse for this act, but, even if it was necessary to employ General Burriel, it was not necessary to promote him, and the statement of the Spanish government that it was its intention, not-

withstanding his promotion, to perform the promises of the protocol was entirely unsatisfactory. Mr. Cushing was instructed definitely to ascertain whether the Spanish government did or did not take it upon itself to say whether the acts of General Burriel were in accordance with Spanish law and treaty obligations, and also what were its intentions as to the execution of the engagement made in the protocol.

Mr. Fish, Sec. of State, to American ministers, circular, Nov. 15, 1875, MS. Circulars, II. 98, 99.

"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."

Mr. Evarts, Sec. of State, to Mr. Goodloe, Mar. 14, 1879, MS. Inst. Belgium, II. 177.

This is simply the language of Phillimore, Int. Law (3d edition), II. 4.

Where a person sought to make a claim against the British government for alleged illegal arrest and imprisonment by the authorities at Belize, growing out of the enforcement against him of a writ of *ne exeat*, the Department of State observed that the Belize law with regard to the enforcement of the writ in question was, as quoted, substantially the same as that of several of the States of the United States, and that there appeared to be no good claim for indemnity from the British government. Whether the claimant had any ground for the action for malicious prosecution against the person who caused his arrest was, said the Department of State, a question to be determined by law and not by diplomatic intervention, and that he would have to show that he was not under proceedings for the recovery of a debt and not about to leave the country, in order to make out a cause of action for false imprisonment.

Mr. Frelinghuysen, Sec. of State, to Messrs. Hagans and Broadwell, Dec. 11, 1884, 153 MS. Dom. Let. 404.

"It cannot be admitted that in every case the rights of a foreigner in that country [Peru] may be measured by the extent of the protection to person and property which a citizen might obtain. In times of civil conflict . . . it not infrequently happens that citizens of a country are compelled to endure injuries which would afford ample basis for international intervention, if they were inflicted on a foreigner."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 85, Aug. 24, 1886, MS. Inst. Peru, XVII. 231.

This statement was made by Mr. Bayard in reply to the contention of the Peruvian government that a foreigner was not entitled in Peru to greater rights than a citizen, and that, as in the case of a citizen, an appeal would have to be made to the courts for redress before application could have been made to the government, the same course must be pursued in the case under consideration, which was that of the killing of Owen Young, a citizen of the United States, in Peru, in 1884, by a Peruvian soldier.

Discrimination against an American citizen on the ground of alienage, by which he is excluded from redress in courts of justice for injuries inflicted on him, is a ground for diplomatic interposition.

Mr. Porter, Act. Sec. of State, to Mr. Phelps, min. to Peru, No. 131, June 4, 1885, MS. Inst. Peru, XVII. 154.

October 25, 1887, the legislature of Peru directed the executive to take immediate possession of the Trujillo and Salaverry Railroad and Salaverry Mole, then in the possession and administration of Mr. E. C. Dubois, an American citizen, and of certain other railroads and certain steamer in the possession and administration of Mr. J. L. Thorndike, also an American citizen. Against this measure the American legation at Lima, in pursuance of instructions, protested, declaring that the United States could not regard but with grave concern a confiscation of the property rights of American citizens in Peru by the government of that country, and would be compelled, in case of such confiscation, to claim compensation for any damages to citizens of the United States thereby inflicted.

Mr. Bayard, Sec. of State, to Mr. Neill, chargé at Lima, No. 171, Dec. 17, 1887, MS. Inst. Peru, XVII. 306.

The Department of State subsequently received information that, in spite of the protests made by the United States, Great Britain, and Germany, against the action of Peru in taking the railway from the contractors, that government was adopting vigorous measures to carry out the orders of the legislature, and that a commission of government officers was leaving Lima for the purpose of taking possession of the Trujillo railroad. It was stated that, in 1884, the government of General Iglesias actually took forcible possession of the Trujillo railroad, which was then in the possession of other persons, but that, through the energetic interposition of the American legation at Lima, acting under instructions, a settlement was reached. The contract between Mr. Dubois and the government was entered into on February 14, 1885. The Iglesias government, about the same time, also proposed to take forcible possession of the Oroya railroad, then under lease to Messrs. Meiggs and Cilley, citizens of the United States, but the seizure was in like manner prevented, and a lease of the

road was subsequently made to M. P. Grace, which lease was approved by contracts made between the Peruvian government and Grace on February 26, 1885. In 1886 the Cacares government passed a law annulling the acts of the two previous administrations of Pierolá and Iglesias. Against this act all the foreign diplomatic representatives at Lima formally protested, so far as it might affect the rights of the citizens of their respective countries. It was in the enforcement of this act, however, that the act of 1887 above referred to was passed. With reference to these allegations, the American legation at Lima was instructed as follows:

"You are instructed to lay these facts before the Peruvian government and ask from them a prompt explanation; and if the statements above given are substantiated, you are instructed in such case to inform that government that the government of the United States will not permit, without interposition on its part, the spoliation by Peru of the property of American citizens invested in that country by the invitation of its own authorities and in the just and fair development of the trade between Peru and the United States. The case of Mr. Dubois, you will remember, does not stand by itself. American citizens, occupying the position which he occupies, and subjected, if this particular spoliation is consummated without redress, to the same risks, own in Peru, it is stated, large and valuable sugar estates fully equipped with all necessary buildings and machinery, large mining properties and warehouses stored with American and European articles of commerce, together with the great railroad interest above noted. These investments have been made under concessions from the government of Peru which no subsequent revolutions in that state can invalidate, and which can only be cancelled by judicial action sustainable on the principles of international law applicable to such cases. Not only, however, has there been no such judicial action but such action can not, I am advised, be obtained, there being no tribunal in Peru invested with the functions of determining as to the validity of legislative acts. And even were there such a tribunal, its decrees, validating in defiance of international law such confiscations, could not bind the citizens of foreign states thereby despoiled. The function of vindicating the rights so impaired belongs in such cases to the sovereign of the parties despoiled. It becomes, therefore, the function of the government of the United States, acting on the basis of the facts stated, to intervene to protect under such circumstances the persons and property of its citizens in Peru. It will be your duty to protest in the most serious terms against the enforcement of the edicts of spoliation of which the memoralists complain.

"This is not, it will be understood, the assertion of any new principle in international law. The seizure or spoliation of property at

the mere will of the sovereign and without due legal process, has always been regarded as in itself a denial of justice and as affording the basis for international interposition.

"I can not believe that the enlightened government of Peru, in time of peace, when the development of Peru itself so greatly depends on its maintaining good faith with citizens of the United States whom it invited to pour their wealth and industry on its shores, will disregard the protest now made, in view of the consequences with which such disregard may be attended. For it is the determination of the government of the United States to protect to the utmost the persons and property of citizens of the United States abroad, so far as such protection is in accordance with the principles of international law, and in accordance with such principles, if such protection fails, to obtain redress for the spoliation thereby inflicted.

"In explanation of the position that the present government of Peru is bound by the concessions to and contracts of its predecessors with the memorialists, I conclude by calling your attention to my No. 97, of September 23, 1886, where the law in this relation is fully laid down.

"You are instructed to read this communication to the minister of foreign affairs and to leave a copy with him should he desire it."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 179, Jan. 19, 1888, MS. Inst. Peru, XVII. 313.

The legation at Lima subsequently transmitted (No. 335, of January 4, 1888, and No. 339, of January 14, 1888) to the Department of State copies of certain notes from the Peruvian minister of foreign relations, explaining and seeking to justify the action of his government in refusing to heed the protest addressed to it by the United States. The facts appeared to be very complicated, and some of the statements made by the Peruvian government were in conflict with statements made in the memorials submitted to the Department. Among the positions taken, however, by the Peruvian government one was that a concession of January 12, 1877, made to Mr. Meiggs, and afterwards transferred to Mr. Thorndike, for the operation of the Mollendo-Arequipa lines was gratuitous. The Department of State declared that it could not admit this contention, or the contention that, if the concession "were originally gratuitous and for an indefinite time, the Peruvian government could, in view of the large investment of money made by Mr. Thorndike and his predecessors, arbitrarily revoke the concession." The Department of State also declared: "This government, finally, can not admit the right of that of Peru to prejudge by legislative action or arbitrary executive decree any case like the present, in which Peru is herself an interested party. . . . I have therefore to renew my instructions

to you of the 19th ultimo, and to direct you 'to protest, in the most serious terms, against the enforcement of the edict of spoliation of which the memorialists complain.' It is, I repeat, the determination of the government of the United States to protect to the utmost the persons and property of its citizens abroad, so far as such protection is in accordance with the principles of international law; and in accordance with such principles, if such protection fails, to obtain redress for the spoliation thereby inflicted."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 188, Feb. 15, 1888, MS. Inst. Peru, XVII. 323.

See, also, Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 201, April 30, 1888, MS. Inst. Peru, XVII. 335.

"I write now to inform you of the decision of the President to assent to the proposition of the Peruvian government, as made by their newly arrived minister, Mr. Zegarra, to transfer to this capital the discussion of the questions pending connected with the property rights of American citizens resident in Peru in certain railways in that country. . . . Authority to interfere by force of arms to resist the execution of the laws of Peru within the jurisdiction of that country, could only be issued under the authority of Congress, and that any interpretation of instructions to you from this Department inconsistent with this view was incorrect and without warrant. The presence of naval vessels of the United States in Peruvian waters was and is considered advisable as precautionary, but authority to employ them in forcible operations against the government and people of Peru, except in cases of exigent self-defence, and protection of the persons of their citizens, must be found in the enactments of the Congress of the United States."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 213, July 9, 1888, MS. Inst. Peru, XVII. 345.

"I have the honor to acknowledge the receipt of your note of the 29th of January last, in which you propose the addition of certain articles to the treaty of peace, friendship, navigation and commerce between the United States and Ecuador of June 13, 1839. You state that the proposed articles are the same as certain stipulations which were embodied in the treaty between Ecuador and Spain of May 26, 1888, and will require only the substitution of the names of other contracting parties—namely, the United States and Ecuador—to render them proper for signature and ratification.

"The proposed articles are five in number. Some of their provisions, such as that in article 1, which adopts arbitration as a mode of adjusting controversies, are favorably regarded by this Government. Other provisions, however, are thought to be open to grave

objection. The scope of article 2 is not precisely understood. It provides that in case a Spaniard in Ecuador, or an Ecuadorian in Spain, shall take part in internal questions, or in the civil contests of either of the two states, he shall be treated, tried, and, if there is reason therefor, condemned in the same manner and by the same courts as are native citizens under like circumstances, and shall not be able to appeal to diplomatic intervention for the conversion of a personal matter into an international question, except in case of denial of justice, manifest violation of law in the proceedings, or of notorious injustice, that is to say, whenever there is manifest violation of the laws of the country in which the crime, the offense, or the misdemeanor was committed. This article seems to be designed to place a restriction upon the right of diplomatic intervention, and on this ground involves questions of a most delicate and important character.

"Diplomatic intervention is in its nature an international proceeding. It is an appeal by nation to nation for the performance of the obligations of the one to the other, growing out of mutual rights and duties. It seems to result from the character of the act that each independent state must be the judge of the question whether it will make such an appeal. Whether, if the appeal be made, its justice can be established, is another matter, and must be determined according to the facts subsequently developed. It is true that the article in question does not say that the government shall not make the appeal, but that the citizen shall not be permitted to make it. This is understood to mean that he shall not be permitted to ask his Government to intervene, except under the circumstances stated. If this be the purport of the article, the effect is to restrict the right of appeal of the government by disabling its citizens from applying to it and furnishing it with the grounds of action. This is even more objectionable than the attempt to place a direct restriction upon the government. But article 3 goes still further in the direction of limiting diplomatic intervention. It provides that the contracting parties shall not be held responsible to each other for injuries, vexations, or exactions suffered by the citizens of one of the two nations in the territory of the other at the hands of insurgents in time of insurrection or civil war, or at the hands of savage tribes over which the government does not exercise control, unless there shall have been a lack of vigilance, or unless there shall have been culpability on the part of the authorities of the country, or their agents 'according to a declaration of the courts of the same.'

"The effect of this provision is to make each government the judge of its own alleged culpability. Of the injuries suffered by reason of the acts or omissions of the authorities of the country, the only

standard of estimation afforded is the judgment of its own tribunals. The possible results of such a stipulation may be illustrated by referring to a law adopted by the Ecuadorian Congress in 1888. By the first article of that law it is declared that 'the nation is not responsible for losses and damages caused by the enemy, either in a civil or international war, or by mobs, riots, or mutinies; or for those which may be caused by the government in its military operations, or in the measures it may adopt for the restoration of public order. Neither natives nor foreigners shall have any right of indemnity in such cases.' The government of the United States, in common with other foreign governments, has protested against these and other provisions of the statute in question as being in contravention of the principles of international law, but it has not as yet been informed that the tribunals of Ecuador would not hold themselves bound to apply, as an obligatory domestic enactment, this unusual decree, in any matter of national liability which they might be called upon to decide. But if, as I am compelled to hold, the law is internationally invalid, the judgments of the courts of Ecuador cannot give it international force. This example I cite for the purpose of illustration.

"The general principle which I maintain is that the judgments of the courts of a country can not be accepted as finally determining its international duties and liabilities. Once admit that they are to be so accepted, each nation is left to fix the standard of its conduct and the measure of its obligations.

"Without proceeding to the consideration of the remaining articles I regret to find myself precluded by the objections above stated from entertaining the proposition, as now presented, for the conclusion of a convention supplementary to the treaty of June 13, 1839."

Mr. Blaine, Sec. of State, to Mr. Caamaño, March 19, 1890, MS. Notes to Ecuador, I. 130.

See supra, § 1, I. 6.

With reference to a telegram from the American minister at Caracas indicating a probable attack by pillagers on the property of the New York & Bermudez Company, an American corporation, at Bermudez Lake, an asphalt deposit, in Venezuela, the Department of State expressed the opinion that the minister's request for the assistance of a naval vessel should be granted, and that the gunboat should also protect all existing rights and maintain the status quo pending an investigation and decision as to an attempt which was alleged then to be in contemplation to deprive the company of its property by executive action.

Mr. Hay, Sec. of State, to Sec. of Navy, Dec. 28, 1900, 250 MS. Dom. Let. 8, enclosing a telegram from the American minister at Caracas of Dec. 26, 1900.

2. DENIAL OF JUSTICE.

§ 913.

"A foreigner, before he applies for extraordinary interposition, should use his best endeavors to obtain the justice he claims from the ordinary tribunals of the country."

Mr. Jefferson, Sec. of State, to the British minister, April 18, 1793, 5 MS. Dom. Let. 88.

A nation ought not to interfere in the causes of its citizens brought before foreign tribunals, except in a case of refusal of justice or of palpable injustice.

Bradford, At. Gen., 1794, 1 Op. 53.

When a suitor applies to a foreign tribunal for justice, he must submit to the rule by which that tribunal is governed. (Ibid.)

"Since your letter of the 10th of February last was received, all the papers which had been previously transmitted by you to the Department have been carefully examined and considered. Although your case is one which is calculated to excite a deep sympathy, and although the individuals by whom your person and property were so cruelly assailed deserved the severest punishment, yet no circumstances are perceived in your narrative of the outrage which would render it a proper subject of complaint by the government of the United States to that of Spain. It does not appear that the injury which you suffered was instigated, or sanctioned, by the public authorities of Cuba, and it is therefore to be considered as an offence committed by private individuals in opposition to the laws of the island, which, it is taken for granted, afford adequate redress for such gross violations of the order and peace of society. It was from those laws then, through the proper tribunals, that reparation should have been sought for the injury inflicted upon your person and property, and it was only after a participation by those tribunals in the wrong committed by a palpable denial of justice, that the government of the United States could have been properly called upon to interpose its influence. Although a government is bound to protect its citizens, and see that their injuries are redressed, where justice is plainly refused them by a foreign nation, yet this obligation always presupposes a resort, in the first instance, to the ordinary means of defence, or reparation, which are afforded by the laws of the country in which their rights are infringed, to which laws they have voluntarily subjected themselves, by entering within the sphere of their operation, and by which they must consent to abide. It would be an unreasonable and oppressive burden upon the intercourse between nations, that they should be compelled to investigate

and determine, in the first instance, every personal offence, committed by the citizens of the one against those of the other. An attempt is made to implicate the captain-general of the island in the case which you have presented, but there is no satisfactory proof that he had any knowledge of what was going on in time to prevent the injury that was done. On the contrary, it is stated by Mr. Horvillis, one of the consignees of the vessel you commanded, who applied to the captain-general for assistance, that he had scarcely presented his statement of the grounds which led him to apprehend a serious disturbance, when a messenger arrived with information of the tumult which was feared having already taken place, and that, upon proceeding immediately to the wharf with one of the aids of the captain-general, he found that the mob was dispersed, and that you had been removed to the hospital. The vicinity of the residence of the captain-general, which appears to be the circumstance principally relied upon to prove that he was not ignorant of the violence that was about to be committed, is not sufficient to sustain that conclusion. Even if the assemblage of disorderly persons upon the wharf were within his view, although it might have given rise very naturally to an apprehension that some breach of the peace would be committed, it is not to be presumed that he knew, or even suspected, that an attack was about to be made upon you or your vessel, without which, however negligent he might have been as a guardian of the peace of the city, he could not be considered as affording his countenance to an assault which you regard as a national insult.

"Your subsequent detention by the authorities of the island is easily explained by the circumstance of two men having been shot in the affray, one of them by your own hand. In our own country such an occurrence would have produced a similar detention, until the affair could have been judicially investigated. The injury which Mr. Morris may have suffered by the refusal to permit his vessel to leave the port, for some days after the disturbance, and from the necessity imposed upon his agents of shipping new officers and crew is not taken into consideration, on the present occasion, as no complaint has been made by him to the Department on the subject. The opinions which have been expressed relate only to your own case, and it is hoped that the full explanation which has been given of the views of the Department will satisfy you that, under existing circumstances, it would not be expendient or proper for the government to interfere. The report of the Secretary of State, made to the Senate in the year 1823, upon the reference to which you allude in your letter of Jan. 4, 1831, was adverse to your claim, and three several decisions have been pronounced by Congress on the subject, all of which were unfavorable. It might have been sufficient for the Department, in reply to your recent letter, barely to refer you to those proceedings, but with a view

of affording you all the satisfaction possible, a careful examination of your case has been made, and the grounds upon which the former determinations are approved, have been particularly stated to you in the present communication."

Mr. McLane, Sec. of State, to Mr. Shain, May 28, 1834, 26 MS. Dom. Let. 263.

"It appears that your claim was adjudicated by a court of unquestioned authority; that the usual forms of proceeding were observed; that in consequence of your dissatisfaction with the decision, repeated and earnest application was made by Mr. Brent in your behalf to the government of Portugal; that the petition which he submitted in your name was received with all the respect and attention which were to be expected from the friendly relations subsisting between the two countries; that the judgment of which you complained was referred to the high court of the Dezintargo de Paco, and was by that tribunal pronounced to be just; and finally that this decision was approved and solemnly confirmed by the King himself. In addition to all this, it appears that you had a right of appeal in the regular course of legal proceedings from the sentence complained of, and that this right still exists, unless it has been lost through your own neglect. Under these circumstances, jealous as this government is known to be of the rights and interests of its citizens, there is no view which it has taken of your case that would seem to justify its further interference in the matter."

Mr. Forsyth, Sec. of State, to Mr. Welsh, March 14, 1835, 27 MS. Dom. Let. 261.

See Mr. Forsyth, Sec. of State, to Mr. Miller, Aug. 28, 1838, 30 MS. Dom. Let. 11.

March 12, 1841, Mr. Fox, British minister at Washington, demanded of the United States "formally, in the name of the British government, the immediate release" of Alexander McLeod, a British subject who had been arrested in the State of New York and indicted in a local tribunal for the crime of murder, alleged to have been committed at the cutting out of the steamer *Caroline* in the port of Schlosser, in that State. McLeod's release was demanded on the ground that the transaction on account of which he was arrested was an act of public force by the British authorities, in respect of which no individual concerned in it could, according to the just principles of the law of nations, be held personally answerable in the ordinary courts of law as for a private offense. Owing to the fact that the case was pending in a State court, it was beyond the power of the President of the United States directly to interfere in it. The Attorney-General was, however, directed to attend the trial and to com-

municate to the State court authentic evidence of the demand of the British government. In a letter to the Attorney-General, in which these instructions were given, Mr. Webster said: "If this indictment were pending in one of the courts of the United States, I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a *nolle prosequi* to be entered."

Webster's Works, VI. 265.

The Reverend Jonas King, a citizen of the United States, complained of the action of the Greek government, on account (1) of the appropriation of his land to public purposes, and (2) his trial and sentence of banishment for alleged offenses against the established religion of the state. It was alleged that the trial of Dr. King, of which his sentence was the result, was unfairly and illegally conducted. On the ground that, while missionaries were entitled to all the protection which the law of nations allowed the government to extend to American citizens in foreign countries, yet it would be a source of endless embarrassment to attempt to reverse the decisions of regular tribunals as to questions connected with doctrinal belief, Mr. Everett, as Secretary of State, decided that it would be inexpedient to require any pecuniary indemnity for Mr. King on account of his trial. But, with reference to his sentence of banishment and the taking of his property, Mr. Everett said:

"There is a single point only in which, at first view, Dr. King's claim upon his own government to interfere in his behalf may seem premature, and that is his omission to seek redress by bringing an action against the Greek government, as authorized by the code of civil procedure. The rule of public law is settled, that a private citizen in a foreign country is not entitled to the forcible interference of his government to procure him redress of wrongs till justice has been denied him by the local tribunals. This consideration would perhaps prevent the President, at this time, from interfering, had not the conduct of the courts of Greece, in the trial of Dr. King, sufficiently shown that he could not expect justice at their hands. The rule of public law to which I have referred takes for granted that the tribunals are entitled to confidence, and the President can place no confidence in those of Greece in any case where Dr. King is concerned. Besides, the government of Greece has never placed its refusal to indemnify Dr. King on the ground that his claim had not been duly adjudicated by the tribunals, but has positively disclaimed all responsibility, and attempted to turn him over to the municipality of the city of Athens, by which, in turn, he is thrown back upon the general government. Such being the state of things, the President feels it his duty to interfere to procure redress to Dr. King.

"You will therefore, if still in Austria, immediately on the receipt of this letter, repair to Spezzia, which is the rendezvous of the United States squadron in the Mediterranean. Commodore Stringham will be instructed to convey you to Athens, where you will forthwith put yourself in communication with the proper department of the Greek government. You will state, in general terms, the opinion entertained by the President of Dr. King's trial and condemnation as above intimated, and his expectation that a formal remission of the sentence of banishment should be granted by the proper department; and you will state in a general way the reasons why the President forbears in any other respect to make a national question of the treatment of Dr. King on this occasion. You will then represent the affair of Dr. King's land in the light in which it is placed in your report.

"State strongly and briefly the results of your inquiry, taking care, as far as possible, not to be drawn into a lengthened discussion for the purposes of delay. Avoid the tone or language of menace, but let the government of Greece perceive that the President is quite in earnest. In the meantime, you will be pleased, in any way you may deem expedient on the spot, by taking the opinion of intelligent and impartial foreigners, by recent sales of land in the vicinity, by a private arbitration of disinterested persons, or by any other sources of information, to ascertain what amount of loss Dr. King has really suffered; by which is meant not speculative and consequential losses, but such as would probably be adjudged by candid and practical men.

"Having in this way ascertained, as far as practicable, what sum of money would be a reasonable compensation to Dr. King, propose at once to the Greek government to allow it, and urge upon it the expediency of at once putting an end to this long delayed and vexatious affair. If the Greek government is discreet, they will immediately close with this offer, and you will use all your address to induce them to do so. If they decline, you will then make them this proposition, viz: to refer the whole question to the arbitration of a friendly power. . . .

"Should this proposal also be refused, in other words, should the government of Greece persist in denying justice in any form to Dr. King, you will immediately report the facts to this department and return to your post. It will be for the government of the United States to adopt such a course as may be deemed expedient under the circumstances of the case. Considering the great disparity of the parties, you will, in all your conferences with the Greek minister, avoid the language of menace, and be especially careful to leave your government entirely uncommitted as to ulterior measures."

Mr. Everett, Sec. of State, to Mr. Marsh, min. to Turkey, No. 24, Feb. 5, 1853, S. Ex. Doc. 9, 33 Cong. 2 sess. 5, 8, 9. See, as to the case of Dr. King, Baird's Modern Greece, 355–367.

Mr. Marsh repaired to Athens and presented the demands which he was directed to make. The Greek government evaded the one with reference to the sentence of banishment, on the allegation that Mr. Marsh had demanded that the government "revoke" the sentence of a judicial tribunal. It appears, however, that the Greek government permitted the sentence of banishment against Mr. King to remain unexecuted. (S. Ex. Doc. 9, 33 Cong. 2 sess. 186.)

"The efforts of Mr. Marsh to have the sentence of banishment . . . revoked were unavailing during his stay in Greece, but it is presumed that his arguments upon the subject were appreciated, for Mr. King himself, with a letter to the Department of the 3rd of March, 1854, communicates a copy of another decree of the government, revoking the sentence of banishment against him." (Mr. Marcy, Sec. of State, to Mr. Roger A. Pryor, special agent, July 18, 1855, MS. Inst. Turkey, I. 388.)

It appears that the Greek government offered to pay an indemnity for the land, but there was a discussion as to the amount that should be paid. (S. Ex. Doc. 9, 33 Cong. 2 sess. 166–172.)

In July, 1855, the Hon. Roger A. Pryor was sent, as a special agent of the United States, to Greece, in order to effect, if possible, a settlement of the question of indemnity. (Mr. Marcy, Sec. of State, to Mr. Pryor, July 18, 1855, MS. Inst. Turkey, I. 388.)

In this mission Mr. Pryor was successful. He settled the claim, to Dr. King's satisfaction, for $25,000. (Mr. Pryor, special agent, to Sec. of State, Oct. 1/20, 1855, MS.) The President in his annual message of 1855 said: "A question, also, which has been pending for several years between the United States and the Kingdom of Greece, growing out of the sequestration by public authorities of that country of property belonging to the present American consul at Athens, and which had been the subject of very earnest discussion heretofore, has recently been settled to the satisfaction of the party interested and of both governments." (President Pierce, annual message, Dec. 31, 1855.)

Irregularities in the prosecution of a citizen of the United States in Chile, not amounting to a denial of justice or an undue discrimination against him as an alien, will not be ground for the interference of the government of the United States.

Mr. Marcy, Sec. of State, to Mr. Starkweather, Aug. 24, 1855, MS. Inst. Chile, XV. 124.

"The Constitution of the United States limits and defines the powers of the several branches of the government, and it is not within the province of the executive to interfere by its action with cases pending in the courts. Such matters are within the cognizance and under the control of the judicial branch of the government, subject to the rules established by law for the administration of justice."

Mr. Fish, Sec. of State, to Mr. Polo de Bernabé, Span. min., May 31, 1873, MS. Notes to Spain, IX. 178.

When there is a denial of justice in Canada in a particular case of wrong inflicted in Canada on citizens of the United States, the case is one for diplomatic intervention.

Mr. Fish, Sec. of State, to Sir E. Thornton, Sept. 4, 1873, MS. Notes to Gr. Brit. XVI. 192.

"It may, in general, be true that when foreigners take up their abode in a country they must expect to share the fortune of the other inhabitants, and can not expect a preference over them. While, however, a government may construe according to its pleasure its obligation to protect its own citizens from injury, foreign governments have a right, and it is their duty, to judge whether their citizens have received the protection due to them pursuant to public law and treaties. It may be the abstract right of a government to exclude foreigners entirely from its territories. This right, however, has rarely been exercised in modern times. Whenever it is waived, this step imparts to the government to whom the foreigners may owe their allegiance the right of seeing that the duty of the other government toward them is fulfilled. An acknowledgment of this right is not, under the circumstances, as Mr. Lafragua seems to suppose, tantamount to making unjust and invidious discriminations in favor of foreigners and against citizens. It can not be acknowledged, as Mr. Lafragua maintains, that diplomatic interference in such cases necessarily annihilates or trenches upon the peculiar functions of the judiciary of a country. In cases of a denial of justice the right of intervention through the diplomatic channel is allowed, and justice may as much be denied when, as in this case, it would be absurd to attempt to seek it by judicial process, as if it were denied after having been so sought."

Mr. Fish, Sec. of State, to Mr. Foster, Dec. 16, 1873, MS. Inst. Mex. XIX, 48.

By a joint resolution of Congress, approved June 15, 1878, the President was requested to cause an investigation to be made of the case of Edward O'M. Condon, imprisoned in Ireland, and, if deemed expedient, to take such action as might secure the prisoner an opportunity for exoneration or a speedy, fair, and impartial trial. A special agent was sent abroad to investigate the case, and pending this investigation the American minister in London was directed to take no further official action, but was authorized informally to say to the British secretary for foreign affairs that, if the result of the investigation should tend to exonerate the prisoner from the crime of which he had been convicted, or should develop facts in his favor not known or presented at his former trial, the exculpatory proof would be laid before Her Majesty's government, in the confident

hope that a new trial, with adequate means of defense, would be accorded as an act of justice and equity. The minister was subsequently instructed that, if the investigation should satisfactorily show that there was no failure of justice in the conviction, and that there were no new facts to establish the prisoner's innocence, he might use his good offices in a renewed appeal to clemency; and that it was "particularly advisable" that nothing should be done which might give the British government "even colorable grounds for regarding" the investigation "as in any sense an interference in the domestic judicial administration of another state, the sole object being to discover, if possible, whether any presumption of innocence exists in favor of the prisoner, which, if he were a British subject, and the evidence in his behalf came through the usual channels of British law, might reasonably operate to secure him the relief contemplated."

Mr. Evarts, Sec. of State, to Mr. Welsh, min. to England, No. 100, July 1, 1878. For. Rel. 1878, 278; same to same, No. 116, July 24, 1878. id. 280.

"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 natural 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 subject; *it is enough that he has denied justice.*'

"If the government of a foreign country refuses to execute its own laws as interpreted by its own courts, and to give effect to the decisions of its own courts, in respect of a foreigner, it denies justice.

"If the tribunals of a foreign state 'are *unable* or unwilling to entertain and adjudicate upon the grievances of a foreigner, the ground for interference is fairly laid.' (Phill., Int. Law, pp. 4, 5.)

"In his recent work on the 'Law of Nations,' Sir Travers Twiss, who holds a distinguished position as a writer on public law, says:

"'International justice may be denied in several ways: (1) By the refusal of a nation either to entertain the complaint at all, or to allow the right to be established before its tribunals; (2) or by studied delays and impediments, for which no good reason can be given, and which are in effect equivalent to a refusal; or (3) by an evidently unjust and partial decision.' (Law of Nations, by Sir Travers Twiss, part 1, p. 36.)"

Mr. Bayard, Sec. of State, to Mr. McLane, min. to France, No. 134, June 23, 1886, MS. Inst. France, XXI, 330.

While the settlement of claims of citizens of the United States against the goverment of Peru by impartial international tribunals "is deemed most expedient and desirable, this government could not entertain a proposition to submit such claims on the basis defined by the minister for foreign affairs—that is to say, on the basis of the exclusion from such submission of all claims upon which judgment may have been pronounced by Peruvian tribunals. Such judgments are not recognized by international law as internationally binding, and can not be so regarded by this government. This question has been discussed at length by the Department in several recent instructions to you, and it is not deemed necessary now to do more than to reaffirm the position therein taken.

"This government is also unable to admit the broad contention of the government of Peru that the diplomatic intervention of a government in behalf of its citizens is inadmissible where the laws of the country against which the claim is made afford a remedy until that remedy has been attempted and the courts of the nation have retarded or refused justice. This proposition is acceptable only with the qualification that, at the time of the injury complained of, there were duly established courts to which resort was open and practically available."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 104, Nov. 1, 1886, MS. Inst. Peru, XVII. 252.

A law of Salvador, promulgated September 27, 1886, contained Chapter IV.) the following provisions:

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.

With reference to these provisions the United States took the following position:

"I regret that the Department is unable to accept the principle of any of these articles without important qualifications. . . . 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."

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., Nov. 29, 1886, For. Rel. 1887, 78, 81; see, also, same to same, Feb. 16, 1887, id. 99–100.

For the full text of the law, see For. Rel. 1887, 69.

The law became the subject of representations to the government of Salvador by members of the diplomatic body in that country.

In reply to representations which Mr. Hall, the minister of the United States, had, in conformity with his instructions, submitted, Señor Delgado, March 28, 1887, said:

"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 . . . may be pleased to resolve whatever may be expedient." (For. Rel. 1887, 114–115.)

In transmitting this communication to his government Mr. Hall said: "In the meantime I learn that the Government has taken no steps to carry out the law." (For. Rel. 1887, 111.)

A law of Costa Rica, promulgated Dec. 20, 1886, in relation to citizenship and the status of foreigners, provided:

They [foreigners] can appeal to diplomatic intervention only 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 determined by international law.

Concerning this provision, the United States said:

"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 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."

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., Feb. 16, 1887, For. Rel. 1887, 99.

At the same time, Mr. Hall was instructed that he was not to express his assent to any amendment of or substitute for the legislation in question, or to do any act from which it might afterwards be argued that the United States had become a party to, and was bound by, the municipal laws of another country. (Id. 100.)

In 1890 the government of Ecuador proposed to that of the United States the incorporation into their treaty relations of a stipulation precluding "recourse to diplomatic remedies and claims before exhausting all other means of redress, through the courts of justice, or proper authoritites, including appeals against judges and courts." The United States replied that, if the proposal was not intended "to exclude the employment of good offices, or the making of proper representations, short of formal diplomatic claims, about cases still pending and not determined," it seemed to cover "the generally accepted principle that a denial of justice, which constitutes the true ground of formal diplomatic demands, does not exist until the remedies afforded by the laws of the country have been tried and found wanting;" but that difficulty was felt in introducing into "our conventional relations with a single state stipulations which, although not novel in design, are yet so in form, and which might for that reason be open to misconstruction."

Mr. Blaine, Sec. of State, to Mr. Caamaño, May 19, 1890, MS. Notes to Ecuador, 1, 140.

Where the courts of a country are open for the redress of claims to property, diplomatic intervention in such matters does not lie.

Mr. Foster, Sec. of State, to Mr. Mulcahy, Feb. 21, 1893, 190 MS. Dom. Let. 406.

"Where complete reciprocal international equality is recognized, as it is fully recognized between the United States and Mexico, a necessary consequence thereof is that each country must as a rule admit the competency and the disposition of the courts of the other country to do complete justice to all litigants properly subject to their jurisdiction, regardless of nationality.

"This presumption in favor of the competency and the integrity of the courts is very strong and is not to be lightly ignored upon the

application of disappointed litigants, seeking for diplomatic intervention. It is not meant to say that a palpable denial of justice to citizens of one country in the courts of the other, may not in extreme cases be made the subject of international demands. But the circumstances which may sanction diplomatic intervention as a matter of right in such cases, must be very cogent in order to overcome the presumption above referred to. This Department, moreover, entertains the opinion that something of an unusual character must have occurred to warrant even the use of the good offices or mere unofficial requests of our diplomatic representatives with foreign governments in behalf of American citizens, litigants in their courts. The bare fact of an adverse decision will not warrant it, and in all cases judicial remedies must be exhausted by appeal or otherwise, before executive interference is asked. The difficulties which would exist in the way of any executive action in this country, for the correction of alleged delinquencies in the conduct of the judicial tribunals should always be borne in mind."

Mr. Gresham, Sec. of State, to Mr. Ryan, min. to Mexico, April 26, 1893, MS. Inst. Mexico, XXIII. 359.

This instruction related to the complaint of a citizen of the United States that he had been deprived of certain property by a sentence of the Mexican courts, in consequence of their having refused to have certain documents in the English language translated into Spanish, with the result that they were not understood and were not considered in the rendition of the judgment. With reference to this allegation the Department of State said: "If this be the case, it seems to be proper that you should use your good offices with the Mexican government to see that a proper investigation be made of this question, with a view of ascertaining whether injustice may not have been done, . . . and of having it remedied, if it has been done. In using your good offices in behalf of Mrs. Greer with the Mexican government, you should be particular to state that you do so only in view of the peculiar circumstances of the case, consisting, according to her husband's statement, in her having been misled by the court itself as to the necessity of filing translations of the Texas deeds; and in the further fact that she appears to have taken her case to the highest court without avail." (Ibid.)

With reference to a claim against the government of Peru for breach of contract, the Department of State said: "That the government of Peru furnishes to foreigners through her own courts the means of establishing claims asserted against her . . . is demonstrated by the fact that in one case you have actually recovered a judgment in a suit against that government. It has been the practice of this Department (based, it is believed, upon well settled principles of international law) to decline to press diplomatically a claim against a foreign government when that government through its tribunals affords a means of redress. It will not do to say in advance

that you can not obtain justice in the Peruvian courts. Their methods of precedure may be different from ours; the law's delay may be more tedious; their whole system of jurisprudence may appear to us to be inadequate as compared with our own system. But, so long as we recognize Peru as an international equal, we must accord to her the same rights which we ourselves would demand under similar circumstances."

Mr. Gresham, Sec. of State, to Mr. Hevner, June 10, 1893, 192 MS. Dom. Let. 296.

See, also, Mr. Gresham, Sec. of State, to Mr. Grace, Sept. 14, 1893, 193 MS. Dom. Let. 423.

"I have to acknowledge the receipt of your letter of the 22d instant, in which you ask, in behalf of a number of friends and citizens of the United States, who are interested in a grant of valuable properties made by the government of Honduras, what protection will be afforded them by this Department, if, after they have gone to that country and expended large sums of money, a revolution or insurrection should take place, resulting in the overthrow of the existing government, or in other words, as you require, 'will these American citizens be protected by the United States government in this grant which they have received from the government, there, in case there is a change of administration in that country?'

"The Department can only say in response to your inquiry that it has no reason to suppose that the interests of your clients in Honduras would be affected by a change in the administration of the country; nor can it anticipate the perils to which they might be exposed in case of insurrection or revolution. It is therefore unable to give any specific assurances in relation to those matters. This Department will at all times endeavor to secure to our citizens in foreign lands the rights to which they may be entitled under international law and our treaties with other powers. The general ground of diplomatic intervention, however, in behalf of private persons is a denial of justice, and the question whether there has been, or is likely to be, such denial is one that can be determined only on the circumstances of each particular case as it may arise."

Mr. Gresham, Sec. of State, to Mr. Sheehan, Aug. 25, 1894, 198 MS. Dom. Let. 391.

See, to the same effect, Mr. Gresham, Sec. of State, to Mr. Crawford, Sept. 4, 1893, 193 MS. Dom. Let. 319.

"This government can properly intervene where an American citizen has been actually denied justice in the courts of a foreign country. The mere anticipation that an injustice may be done in judicial proceedings clearly does not afford ground for intervention."

Mr. Olney, Sec. of State, to Mr. Hamlin, July 16, 1896, 211 MS. Dom. Let. 372.

3. Criminal Proceedings.

(1) Jurisdiction and procedure.

§ 914.

"In regard to the jurisdiction of the courts of independent nations over American citizens resident within their limits, it became necessary for me, on the 1st of February 1848 to address a note to Mr. Osma the minister from Peru, which also received the sanction of the President and Cabinet. From it I make the following extract. 'Citizens of the United States whilst residing in Peru are subject to its laws and the treaties existing between the parties, and are amenable to its courts of justice for any crimes or offences which they may commit. It is the province of the judiciary to construe and administer the laws, and if this be done promptly and impartially towards American citizens and with a just regard to their rights they have no cause of complaint. In such cases they have no right to appeal for redress to the diplomatic representative of their country, nor ought he to regard their complaints. It is only where justice has been denied or unreasonably delayed by the courts of justice of foreign countries—where these are used as instruments to oppress American citizens or to deprive them of their just rights—that they are warranted in appealing to their government to interpose.' All these are ancient and well established principles of public law; and the quotations are made merely to show that they have received the formal sanction of this government."

Mr. Buchanan, Sec. of State, to Mr. Ten Eyck, comr. to Hawaii, Aug. 28, 1848, MS. Inst. Hawaii, II. 1.

See, to the same effect, Mr. Buchanan, Sec. of State, to Mr. Larrabee, March 9, 1846, 35 MS. Dom. Let. 426.

"I duly received your letter of 7th Nov. last, enclosing copies of your entire correspondence with the authorities of Cuba, in relation to the imprisonment and incommunication of Wm. H. Bush, stated by you to be 'unchanged.' The course pursued by you and zeal manifested in behalf of this unfortunate individual are highly approved.

"That the authorities of Cuba possess the right to arrest and bring to trial any individual charged with crime, committed within their jurisdiction, cannot be denied. Independently of the principles of public law by which it is sustained, it is distinctly recognized in the stipulations of our treaty with Spain of 1795. The 7th article provides that 'in cases of seizure, or offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law

only, and according to the regular course of proceeding usual in such cases.' So far, therefore, as the 'arrest' and imprisonment of Bush are concerned, if conducted according to usage in such cases, no just cause of complaint would seem to exist. Very differently, however, is the case in regard to the 'incommunication.' The same (7th) article of the treaty, after a general provision securing to the citizens and subjects of both parties the right to employ such advocates, solicitors, agents, &c., as they may judge proper in their affairs, expressly declares that 'such agents shall have free access, to be present at the proceedings in such causes, and at the taking of *all examinations and evidence* which may be exhibited in the said trials.' With these rights secured to American citizens within the jurisdiction of Spain, the 'incommunication' of Bush appears to be directly in conflict and to constitute cause of serious complaint. The history of the treaty affords the evidence that they were deliberately inserted therein as safeguards to protect our citizens from oppression abroad. In communicating the treaty to his government, Mr. Pinckney, the American negotiator, specially points to this article and significantly to the object it had in view. 'The first part,' says he, 'is taken from the 16th of Prussia.' 'The latter I added, because I considered it a good stipulation in all situations, but particularly so in Spain.' That it applies clearly to the case of Bush, I entertain no doubt; nor of the obligation of this government promptly to insist that no portion of the rights and privileges it confers be longer withheld from him. In this spirit, and to that end, you are authorized to address yourself to the captain-general, in the expression of a full conviction, on the part of your government that the 'incommunication' of Bush will be promptly so far modified as to extend to him all the protection, privilege, and favor secured to him by the existing treaty between the United States and Spain. Such other countenance and support in his difficulties as may be proper, you will doubtless with pleasure afford him.

"You will take care, so far as may be in your power, that he shall not be treated with injustice, harshness, or cruelty. I shall expect to hear from you without delay, because should the captain-general insist upon withholding from American citizens the rights to which they are clearly entitled under the treaty, it will become necessary to make a strong appeal to the authorities at Madrid against this violation of national faith."

Mr. Buchanan, Sec. of State, to Mr. Campbell, consul at Havana, Dec. 11, 1848, 10 MS. Desp. to Consuls, 497.

The refusal of a Chilean 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 Chilean government, be considered by the

United States as "a gross outrage to an American citizen, for which it will assuredly hold Chile responsible."

Mr. Conrad, Acting Sec. of State, to Mr. Peyton, chargé to Chile, Oct. 12, 1852, MS. Inst. Chile, XV. 93.

"The system of proceeding in criminal cases in the Austrian government, has, undoubtedly, as is the case in most other absolute countries, many harsh features and is deficient in many safeguards which our laws provide for the security of the accused; but it is not within the competence of one independent power to reform the jurisdiction of others, nor has it the right to regard as an injury the application of the judicial system and established modes of proceedings in foreign countries to its citizens when fairly brought under their operation. All we can ask of Austria, and this we can demand as a right, is that, in her proceedings against American citizens prosecuted for offences committed within her jurisdiction, she should give them the full and fair benefit of her system, such as it is, and deal with them as she does with her own subjects or those of other foreign powers. She can not be asked to modify her mode of proceedings to suit our views, or to extend to our citizens all the advantages which her subjects would have under our better and more humane system of criminal jurisprudence."

Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 6, 1855, MS. Inst. Austria, I. 105.

In the course of this instruction, Mr. Marcy said: "That feature in the criminal law of Austria which interdicts to the accused under arrest intercourse and free communication with his friends is certainly revolting to our notions of justice and humane treatment, but it is not peculiar to that government. Several other countries in Europe have the same provision in their system of criminal law. . . . I am not attempting to justify the Austrian criminal code, . . .; but condemnable as it may be, we have not the right to alter or suspend it, nor can we convert the fair application of it to one of our citizens when brought within its jurisdiction into an international offence."

"It would be very desirable if instructions were given to military or other officers making arrests for any cause of parties claiming to be citizens of the United States, requiring such officers to cause the nearest consular officer of the United States to be promptly notified of the arrest and of the claim of the party to American citizenship."

Mr. Fish, Sec. of State, to Mr. Sickles, min. to Spain, No. 97, Oct. 27, 1870, MS. Inst. Spain, XVI. 157.

"In his note of the 6th April to Mr. West, Lord Granville quotes with approval the following extract from a note of the 14th October, 1861, from Mr. Seward to Lord Lyons: 'In every case subjects of Her Majesty residing in the United States and under their protec-

tion are treated, during the present troubles, in the same manner and with no greater or less rigor than American citizens.'

"And he deduces from this the principle that "no distinction can be made in favor of aliens,' or, as stated to yourself in a note of the 28th June last, that Her Majesty's government would not admit 'any claim to exemption on behalf of any person, whether alien or citizen, from the operation of the laws which equally affect all persons residing in the domain and under the protection of the Crown.'

"Mr. Seward's statement was rather an allegation of a fact than the enunciation of a principle. But if it can be taken to be the statement of a principle as broad as Lord Granville now lays down, the President can not but look upon it as an extreme position taken in the heat of conflict, to which the government of neither Great Britain nor the United States can give adhesion in time of quiet and reflection. It is certain that Her Majesty's government did not accept it as a rule of action during the civil war, and as certain that Mr. Seward did not adhere to it, but permitted exceptional inquiries, as in Carroll's case and McHugh's case and the cases of the military commission in Fort Lafayette, to be made throughout the war. Lord Lyons was constantly and diligently asking the causes of arrest and imprisonment of British subjects, and Mr. Seward was as constantly answering his inquiries, notwithstanding the fact of the suspension of the *habeas corpus*.

"It is not the interest of either government to be drawn into an extreme position in this delicate matter. The President concedes that he has no right to expect to transfer into foreign countries the forms of law which under American institutions are so great a security to the citizen. He concedes to every sovereign power the right to prescribe its own code of crimes and its own mode of trying offenders, and if it shall choose to adopt a system which gives the citizen fewer guarantees against injustice than prevail in the United States he feels that he can not complain if it is applied to citizens of the United States who are found where it prevails.

"But if, when thus applied, it works actual injustice; if it takes possession of an American citizen, and deprives him of his liberty without any allegation of offense; if it leaves him incarcerated without hope of trial or chance of release, it then becomes the duty of the President to inquire why this was done. Her Majesty's government pursued that course during the civil war. They will see that a self-respecting government must do the same now. And the President can have no doubt that when you, under these instructions, courteously, but firmly, ask to be informed why McEnery is deprived of his liberty, and why he is afforded no opportunity of defense, Her Majesty's government, instead of referring you to the

municipal law of Great Britain, which authorizes such treatment of British subjects, will at once give you with frankness and fullness the information you ask for."

Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, min. to England, April 25, 1882, For. Rel. 1882, 230–233.

Undue and needless delay in the trial of a citizen abroad is a ground for international intervention.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, Mar. 5, 1884, MS. Inst. Mex. XXI. 26.

"Appealing to principles acknowledged in common in England and in the United States, it is, in addition, maintained that in countries subject to the English common law, where there is the opportunity given of a prompt trial by a jury of the vicinage, damages inflicted on foreigners on the soil of such countries must be redressed through the instrumentality of courts of justice, and are not the subject of diplomatic intervention by the sovereign of the injured party. . . . There must have been many cases in which British subjects supposed that they had suffered loss through the negligence or the malice of subordinate officers of the different States and Territories composing this Union, but no record can be found, at least on the files of this Department, of cases in which, when redress could be had by appeal to local courts of justice, an attempt has been made to substitute for such redress a demand upon the government of the United States for pecuniary compensation. The same may be said of the many cases in which citizens of the United States may have suffered, or claim to have suffered, injury in Great Britain from the conduct of British officials. When such injury was inflicted upon the high seas, or in foreign uncivilized lands, and especially if inflicted by the armed military or naval power directly emanating from the sovereign executive, then it was properly regarded as the subject of diplomatic intervention; but a careful search in the records of this Department discloses no diplomatic appeal for pecuniary compensation for injuries claimed to have been inflicted on American citizens when on the soil of Great Britain.

"As showing the strictness with which this distinction is maintained may be mentioned the case of Mr. Henry George, a citizen of the United States, distinguished as a man of letters, and as a lecturer, who traveled in Ireland in 1882. Mr. George, as was afterwards fully shown and conceded, was in no way concerned in any seditious or other illegal proceedings against the peace of Great Britain, and there was no evidence produced, either at the time or since, which suggested the faintest *prima facie* case to justify arrest. He was, however, arrested at Loughrea on August 8, 1882, without

warrant, by governmental subordinates, his baggage searched, his letters and papers ransacked, and his person treated with indignity. He was discharged, on the ground that there was no case against him, and proceeded on his journey, occupied in part in visiting the antiquities and other interesting features of the country. Two days afterwards at Athenry, a few miles distant from Loughrea, when about entering on the train for Galway he was again arrested, his baggage again searched, his papers again inspected, while he was kept until midnight a close prisoner by the same magistrate who had examined and discharged him at Loughrea. He was again discharged for the same reason that no case existed against him, although this should have been as fully known by the magistrate at the time of the second imprisonment as at the time of the first discharge.

"The question of the amount of pecuniary compensation to which Mr. George would have been entitled in a court of justice is not now material. So far as concerns the principle, it makes no matter whether the injury inflicted on him touched his life, or merely his liberty and the sanctity of his property for a few hours. And, so far as concerns this principle, it is worthy of notice, in this relation, how clearly the question of liability is defined by Mr. Frelinghuysen in his instruction to Mr. Lowell of October 3, 1882:

"'While citizens of the United States traveling or resident abroad are subject to the reasonable laws of the country in which they may be sojourning, it is, nevertheless, their right to be spared such indignity and mortification as the conduct of the officers at Loughrea and Athenry seems to have visited upon Mr. George. . . . As you have already addressed a note to Lord Granville on this subject, a reply will probably soon be received by you. It is trusted that the tenor of that reply may prove satisfactory to this government, *and also relieve Mr. George from any reproach the arrests are calculated unjustly to cast upon him.*'

"It will be observed that there is here no claim whatever for pecuniary compensation to Mr. George. That claim, it is tacitly assumed, is to be remitted to British courts of justice. The request is for explanation to the government of the United States and exoneration of Mr. George from 'reproach.' Yet the arrest of Mr. George, and that of other 'suspects' under the recent crimes act, was not, it must be remembered, in the course of the English common law. There was apparently no responsible prosecutor, there was no hearing in which witnesses could be met face to face, and consequently, under the cover of a legislative enactment for the time being, the sufferer was denied all opportunity to establish the possible malice of the allegation which led to his arrest, or to identify the secret accuser who could therefore with impunity wound his sensibilities and subject him to serious distress and suffering. Had there been a commit-

ment, it would not have been in view of a speedy jury trial. Under these circumstances, the case would not have fallen under the rule announced above, that where a foreigner claiming to be injured has redress by an appeal to the courts in the processes of the English common law, a diplomatic demand for indemnity will not be granted by the government of the country in which the injury is claimed to have been received, yet, even in the case of Mr. George and other citizens of the United States put recently without probable cause under summary arrest in Ireland, we hear of no demand made by the government of the United States for pecuniary compensation.

"The reason why, in countries subject to the English common law, the question of compensation to foreigners for injuries received on the soil of such countries is exclusively committed to the courts of justice in the place of the injury, is to be found in two conditions:

"The first is, that, as has been already noticed, the party injured has the advantage by that law, of a prompt trial by an impartial jury drawn from the vicinage, under the supervision of judges whose integrity, whether it be in England or in the United States, has, viewing them as a body, never been impeached, and who are subject to established and impartial rules of law. The second condition is, that, by the English common law, foreigners, when appealing to courts of justice, have equal rights with subjects. It is not so in other systems of jurisprudence; and it is natural, therefore, that under such other systems of jurisprudence the appeal of a foreigner for compensation should lie, not to the courts which impose upon him unjust discriminations, but through his own sovereign to the sovereign of the country in which the injury has been received. But in countries subject to the English common law, every facility which is given to a subject when approaching a court of justice is given to a foreigner making such approach."

Mr. Bayard, Sec. of State, to Mr. West, British min., June 1, 1885. For. Rel. 1885, 450, 453–454.

"In our diplomatic correspondence with Great Britain we have taken the ground that there should be no diplomatic intervention in cases (whether in tort or contract) in which there could be a resort to competent local courts." (Mr. Bayard, Sec. of State, to Mr. Phelps, min. to England, No. 90, Aug. 20, 1885, MS. Inst. Gr. Br. XXVII. 554.)

"Under the laws of Great Britain, a remedy exists for those who have been subjected to unlawful arrest; and citizens of the United States as well as subjects of Great Britain are entitled . . . to avail themselves of that remedy in the regular ordinary courts of justice. The same rule exists and is enforced in the United States with reference to the subjects of Great Britain.

"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. For

the present, therefore, Mr. Davis, who has never resorted to the courts of Great Britain, must be remitted, so far as recovery of pecuniary indemnification from the authors of the trespass is concerned, to the usual remedies to which persons in his situation are by the laws of Great Britain entitled.

"If, however, he does not see fit to press his claim for pecuniary damages in the judicial tribunals of Great Britain against the parties who may have been guilty of trespassing upon his rights, it may be proper to consider the question of asking that government for an explanation, and, if warranted, an expression of regret." (Mr. Bayard, Sec. of State, to Mr. Gebhard, Sept. 9, 1885, 157 MS. Dom. Let. 88.)

"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 enquiries which are sanctioned by international law.

"There is no proof presented in Capt. Caleb's case establishing either of these conditions. It is true that it is alleged that there was a failure of justice and, were this Department sitting as a court of error, it is not improbable that there are points in the proceedings complained of in the Mexican adjudication before us which might call for reversal. But this Department is not a tribunal for the revision of foreign courts of justice, and it has been uniformly held by us that mistakes of law, or even of facts, by such tribunals are not ground for our interposition unless they are in conflict, as above stated, either with treaty obligations to citizens of the United States or settled principles of international law in respect to the administration of justice. It appears from Consul Beach's report that the proceedings in the civil suit against Capt. Caleb were in correct form, but that in the criminal trial the depositions of witnesses who did not appear in court were accepted as evidence—thus denying to the defendant the opportunity to cross-examine such witnesses. But even granting that such an error in the proceedings in the criminal trial existed, Capt. Caleb can hardly be heard in an application for redress, since, apparently not without the cognizance of the authorities, he escaped from detention soon after sentence was finally pronounced against him in the Supreme Court, and he himself expressly acknowledges that during his detention he was treated with the utmost consideration."

Mr. Bayard, Sec. of State, to Mr. Morrow, M. C., Feb. 17, 1886, 159 MS. Dom. Let. 99.

See, to the same effect, Mr. Bayard, Sec. of State, to Mr. Caleb, Feb. 18, 1886, 159 MS. Dom. Let. 109.

Mr. Bayard also stated that upon the papers before the Department the charges made by the Mexican Government against the claimant were well founded.

See, as to this case, For. Rel. 1884, 344, 358, 363, 365, 371, 372.

July 19, 1886, the American minister to Mexico was 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."

Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, tel., July 19, 1886, For. Rel. 1886, 700.

For the grounds on which this demand was based, see Mr. Bayard to Mr. Jackson, No. 221, July 20, 1886, For. Rel. 1886, 700, 701; S. Ex. Doc. 224, 49 Cong. 1 sess.

Mr. Bayard's No. 221 is given supra, § 201, where other documents and a full history of the case may be found.

With reference to the allegation that two persons had been kept in prison in Mexico for eleven months without information of the evidence against them, and that they had been approached since their imprisonment by Mexican officials with offers from which it was to be inferred that the object of the prosecution was to obtain possession of an estate of which one of the prisoners was executor, the Department of State said:

"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 proceeding 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 face to face on trial, and of producing witnesses on their behalf in defense. It will be proper also to state that the trial will be watched by this government with interest and close attention, so that the Department will be informed if there is any action taken on such trial at variance with the rules of justice acknowledged in common by Mexico and ourselves."

Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, No. 226, July 26, 1886, MS. Inst. Mexico, XXI. 535.

While it is undoubtedly a general principle "that a denial of justice can not be asserted until judicial remedies . . . have been exhausted," it is "also true that injustice may be inflicted by delays in the administration of the law, as well as by wrong determinations. This proposition is as true as the first, and is not inconsistent with it." A delay of more than a year and a half consumed in a secret investigation "can not be regarded as reasonable for the trial of an ordinary criminal charge, and to impose such a delay in order to obtain evi-

dence of guilt is in reality to make the prisoner's apparent innocence the ground of his imprisonment."

Mr. Blaine, Sec. of State, to Mr. Ryan, min. to Mexico, June 28, 1890, MS. Inst. Mexico, XXII. 580.

"Nothing short of convincing evidence" that an American citizen "is the victim of intentional discrimination, partiality, or other injustice on the part of the court in which the prosecution is pending, could justify diplomatic intervention in his behalf."

Mr. Gresham, Sec. of State, to Mr. Morse, May 31, 1893, 192 MS. Dom. Let. 184.

As to the joint investigation of the case of Dr. Ruiz, an American citizen, killed while in jail in Cuba, see Mr. Sherman, Sec. of State, to Señor Dupuy de Lôme, Spanish min., No. 246, April 24, 1897, MS. Notes to Spain, XI. 285.

"Your claim for damages on account of your detention in Peru is not a proper subject of diplomatic intervention. Your detention there seems to have been in pursuance of a regular judicial sentence after trial at which testimony was heard. Even admitting that the sentence was wholly wrong and that your detention was altogether unjust, yet the judgment of the appellate court reversed that sentence and removed all restraint on your liberty. The government of Peru itself has therefore corrected the injustice of the lower court in the manner in which alone all governments, as a rule, correct injustice of their inferior tribunals."

Mr. Gresham, Sec. of State, to Mr. Heyner, June 10, 1893, 192 MS. Dom. Let. 206.

Of the same purport is Mr. Uhl, Act. Sec. of State, to Mr. Grip, min. of Sweden and Norway, No. 3, March 8, 1895, MS. Notes to Sweden and Norway, VII. 574.

(2) REQUESTS FOR INFORMATION.

§ 915.

"If . . . Mr. Speer should be a duly naturalized citizen of the United States; if in returning to the Austrian dominions he should not have incurred any penalty or have violated any obligation originating prior to his naturalization, this government will expect to be informed of the nature of the charge, of the form of proceedings, and to be furnished with a copy of the testimony against him, if this was reduced to writing."

Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, Nov. 6, 1854, MS. Inst. Austria, I. 103.

"Although it may be unusual for complaints in ordinary cases of alleged offences against the laws of one country by the citizens or

subjects of another to be made international questions, if there is good ground for apprehension that there may have been a denial of justice through corruption on the part of the magistrates or a wilful and oppressive perversion of the ordinary forms, the government of the aggrieved party has, it is conceived, a clear right to demand and expect all such information on the subject as may serve to satisfy its reasonable doubts."

Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, Nov. 6, 1854, MS. Inst. Austria, I. 103.

Martin Speer, alias Martin Speerschneider, referred to above, was charged by the Austrian authorities with having returned to the dominions of that country, as an agent of Hungarian refugees, in order to stir up revolt and aid them in their revolutionary projects. The chargé d'affaires of the United States at Vienna strongly asserted Speer's innocence of the charge. The Department of State, however, on a review of the circumstances held that there appeared to be, even apart from the allegations of the Austrian government, "considerable ground for suspicion," and declined to demand the prisoner's release. (Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 6, 1855, MS. Inst. Austria, I. 105.)

Speer was subsequently pardoned and released by the Austrian authorities as an act of clemency, in response to a request to that effect made by the United States legation at Vienna. The Department of State subsequently declined to make in his behalf a claim for indemnity, holding that although he had been "treated with great severity," the disclosures threw "strong suspicions upon his conduct," and that the Austrian government, after having released him as an act of clemency, would naturally expect that the claim of right was not to be revived. (Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 8, 1856, MS. Inst. Austria, I. 117.)

"If any nation has good reason to believe that justice has been denied to one of its citizens by another, and that the forms of law have been used and perverted to inflict wrong and injury upon him, it may reasonably expect that explanation when demanded will be given. The reluctance shown by Austria to give explanation in Speer's case when it was first asked, very naturally cast some suspicion upon the motives which had led to his prosecution. She has, however, at length yielded to our demand, though not to the extent desired. On the ground of comity we might reasonably expect from her a more full account of the proceedings against Speer, but whether we could claim more as a right, and treat the refusal to grant it as an international affront, is very questionable. There is, undoubtedly, a limit beyond which such an enquiry could not be pushed and might be rightfully resisted. It can not be expected that any government would go so far as to yield to a pretension of a foreign power to revise and review the proceedings of its courts, under the claim of an international right to correct errors therein, either in respect to the

application of principles of law, or the appreciation of facts as evidence in cases where the citizens of such foreign power have been convicted. It certainly could not be expected that such a claim would be allowed before the party making it had first presented a clear case prima facie of wilful denial of justice or a deliberate perversion of judicial forms for the purpose of oppression."

Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 6, 1855, MS. Inst. Austria, I. 105.

Mr. Marcy in a previous instruction had stated that the United States would "expect to be informed of the nature of the charge, of the form of proceedings, and to be furnished with a copy of the testimony against him [Speer], if this was reduced to writing." (Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, Nov. 6, 1854, MS. Inst. Austria, I. 103.) The Austrian government declined to furnish a full copy of the proceedings, but an extract from them was communicated by Count Buol to the American legation. It was with reference to this situation that the instruction of April 6, 1855, supra, was written. In a final instruction on the subject, Mr. Marcy said: "In your note of the 18th of February to Baron Werner you repeat your demand for an authenticated copy of all evidence, documentary and parol, invoked to justify the arrest and secure the conviction of Speer, and you say that after the date of that demand you would not return to the subject without positive instructions to that effect, and the Department deems it necessary only to add that it fully approves of this determination." (Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 8, 1856, MS. Inst. Austria, I. 117.)

"I do not think the United States can complain of Austria for having committed a national wrong by neglecting or refusing to notify our consuls or diplomatic agents of the arrest and prosecution of a person who claims to be or has a passport showing that he is an American citizen. It is certainly not the practice in our country to give such notices, though information applied for would not be withheld."

Mr. Marcy, Sec. of State, to Mr. Jackson, chargé at Vienna, April 6, 1855, MS. Inst. Austria, I. 105.

The interposition of one government in legal proceedings within the jurisdiction of another being always a matter of delicacy, it should not be conducted in such a way as to involve a marked assumption of a denial of justice or as to suggest a lack of consideration for the constituted authority, such as would be indicated by a request to the minister of foreign affairs for "copies of all the papers" and for "such other details" as might be "within his knowledge and procurement," in a case pending before the courts, in order that an opinion might be formed as to the propriety or regularity of their proceedings.

Mr. Blaine, Sec. of State, to Mr. Ryan, min. to Mexico, Feb. 16, 1891, MS. Inst. Mexico, XXIII. 38.

"The Department is perfectly aware that the proceedings of first instance, under the general code of the countries deriving their procedure from the Roman law, are analogous in their nature to the inquest of a grand jury under the common law of Saxon nations, and that precise information in respect to and formulation of the charges against the prisoner are not communicable in the preliminary stages. But this does not preclude a respectful inquiry from a consul as to the general nature of the offense charged or as to the status of a pending case."

Mr. Sherman, Sec. of State, to Mr. Sepulveda, U. S. chargé d'affaires ad interim at Mexico, May 5, 1897, For. Rel. 1897, 396.

4. Debts and Contracts.

§ 916.

"It has become a common habit of governments, especially in England, to make a distinction between complaints of persons who have lost money through default of a foreign state in paying the interest or capital of loans made to it and the complaints of persons who have suffered in other ways. In the latter case, if the complaint is thought to be well founded, it is regarded as a pure question of expediency on the facts of the particular case or of the importance of the occurrence, whether the state shall interfere, and if it does interfere, whether it shall confine itself to diplomatic representations, or whether, upon refusal or neglect to give redress, it shall adopt measures of constraint falling short of war, or even resort to war itself. In the former case, on the other hand, governments are in the habit of refusing to take any steps in favour of the sufferers, partly because of the onerousness of the responsibility which a state would assume if it engaged as a general rule to recover money so lost, partly because loans to states are frequently, if not generally, made with very sufficient knowledge of the risks attendant on them, and partly because of the difficulty which a state may really have, whether from its own misconduct or otherwise, in meeting its obligations at the time when it makes default. Fundamentally however there is no difference in principle between wrongs inflicted by breach of a monetary agreement and other wrongs for which the state, as itself the wrongdoer, is immediately responsible. The difference which is made in practice is in no sense obligatory; and it is open to governments to consider each case by itself and to act as seems well to them on its merits."

Hall, Int. Law, 5th ed. 280–281.

"The foreign debt of Spain, according to MacGregor and McCulloch, amounted in January, 1842, to £65,000,000 sterling. The former

author observes that "the expenditure of Spain exceeds her income without paying a real towards the interest of the foreign debt;' and the latter asserts with justice that 'a large amount of this debt is due to the English; and the interest on it has not been paid for a lengthened period.'

"Lord George Bentinck, in a debate on the subject of the Spanish debt, in the House of Commons, on the 7th July, 1847, with the best means of obtaining information, stated with confidence the amount of the debt due by Spain to British subjects, on which no interest was paid, to be £46,000,000 sterling—say, $230,000,000. In his speech Lord Bentinck attempted to prove both the right and the duty of Great Britain to go to war with Spain for the recovery of this debt, if the object could not otherwise be accomplished; and he significantly referred to the revenues of the islands of Cuba and Porto Rico as furnishing ample means not only for the payment of the interest, but for the liquidation of the principal. Lord Palmerston, in reply, admitted the right of the British Government to wage war against Spain for the recovery of this debt, but denied its expediency under the then existing circumstances.

"He concluded his remarks, however, by stating: 'But this is a question of expediency, and not a question of power; therefore, let no foreign country who has done wrong to British subjects deceive itself by a false impression either that the British nation or the British parliament will forever remain patient under the wrong; or that, if called upon to enforce the rights of the people of England, the government of England will not have ample power and means at its command to obtain justice for them.'

"Lord George Bentinck was so well satisfied with the speech of Lord Palmerston that he withdrew his motion for an address to Her Majesty to take such steps as she might deem advisable 'to secure for the British holders of unpaid Spanish bonds redress from the government of Spain,' observing: 'After the tone taken by my noble friend I am sure there will be nothing left to be wished for by the Spanish bondholders. In the language of my noble friend, coupled with the course he has adopted upon former occasions as regards the payment of British subjects by Portugal and the South American States, the British holders of Spanish bonds have full security that he will in other cases exercise the same energy, when the proper time arrives to have it exercised, in the case of other subjects of the Crown. Such an intimation has been given in the tone and language of my noble friend to the Spanish nation, and I doubt not they will set themselves to work with very little loss of time themselves to do justice to the foreign creditors of Spain.'"

Mr. Buchanan, Sec. of State, to Mr. Saunders, min. to Spain, June 17, 1848, MS. Inst. Spain, XIV. 256.

The foregoing extract forms part of a passage in which Mr. Buchanan discussed, as one of the reasons why the United States should endeavor to purchase Cuba, the possibility of Great Britain's seeking to obtain possession of the island.

"The opinions of the President, concerning the rights and duties of the United States connected with the protection of our citizens and their property abroad, are distinctly set forth in that letter [of July 25, 1858, to General Lamar], and have since undergone no change, as the government of Nicaragua has been informed. In laying down the principles we maintain, it is said: '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.'

"In addition to this general declaration, applicable in all countries, there were some peculiar principles asserted, arising out of the condition of Nicaragua and of the transit route from ocean to ocean across its territory. The right of the United States to take care that the public contracts made with our citizens for the construction and use of that route of intercommunication are faithfully observed was explained and maintained, and so far as the legal power of the Executive extends will be enforced, if necessary."

Mr. Cass, Sec. of State, to Mr. Body, Mar. 3, 1860, 52 MS. Dom. Let. 11.
For Mr. Cass's instruction to Mr. Lamar of July 25, 1858, above referred to, see correspondence in relation to the Proposed Interoceanic Canal (1885), 281.

"It is quite true, for example, that under ordinary circumstances when citizens of the United States go to a foreign country they go with an implied understanding that they are to obey its laws, and submit themselves, in good faith, to its established tribunals. When they do business with its citizens, or make private contracts there, it is not to be expected that either their own or the foreign government is to be made a party to this business or these contracts, or will undertake to determine any disputes to which they may give rise. The case, however, is very much changed when no impartial tribunals can be said to exist in a foreign country, or when they have been arbitrarily controlled by the government to the injury of our citizens. So, also, the case is widely different when the foreign government becomes itself a party to important contracts, and then not only fails to fulfill them, but capriciously annuls them, to the great loss of those who have invested their time and labor and capital from a reliance upon its own good faith and justice."

Mr. Cass, Sec. of State, to Mr. Dimitry, May 3, 1860, MS. Inst. Am. States XVI. 125.

"I have to acknowledge the receipt of your letter of the 19th instant, with which you enclose a copy of a contract between the Chinese minister at Washington, acting on behalf of his government, and your clients, the American-China Development Company, and in which you request this Department to give notice to the United States legation and consulates in China that the representatives of the American-China Development Company, charged with carrying out the provisions of the contract, 'shall have recognition and protection in the performance of their duties,' and that the charge of the revenues and property assigned to the loan under the contract 'will be noted by this government, which will uphold the contract as a binding engagement upon the Imperial Chinese government.' You state that the English investors will have 'the usual recognition' from the British Foreign Office, substantially in this form, and ask this Department to give you a letter 'in substantially the same general form as that to be written by the British Foreign Office.' You further state that you are authorized by the English investors in your enterprise to say that the British Foreign Office is prepared to discuss the form and phraseology of the letter desired by you, if this Department wishes to take the matter up in that manner.

"In reply I have to say that the Department is unable to give you such a letter as you request. While the government of the United States is always ready to enforce the just rights of its citizens abroad, it has always declined to become the guarantors of their contracts with foreign governments. As a rule, it has declined, where such a contract was alleged to have been violated by the foreign government, to interfere beyond the exercise of good offices. This being so, still less can it assume beforehand to guarantee the execution of the contract.

"As to the statement that such a letter as you desire from this government may be obtained from the British Foreign Office, I have only to say that, assuming your supposition to be correct, the British Crown, which exercises the executive power in that country, possesses both the war-making power and the treaty-making power, and is therefore authorized, in matters involving relations with foreign countries, to give guarantees and to enter into engagements which the Executive of the United States would not alone be competent to assume.

"The government of the United States, in giving to its citizens assurances of protection, is unable to go further than to say that if their rights should be violated, it would act upon the case when presented, in such manner as might at the time appear to be lawful and proper."

Mr. Day, Sec. of State, to Messrs. Cary & Whitridge, August 24, 1898, 231 MS. Dom. Let. 88.

The United States cannot interfere with the right of a foreign government to prescribe the terms of the concessions which it may make to American citizens to carry on business within its territory, in the absence of a treaty regulating the matter; and where a concession has been accepted in which a certain privilege is denied, the United States cannot demand the annulment of the provision. The most that it could with propriety ask would be that, on grounds of comity, American citizens should be allowed to engage in and carry on business on the same terms or on terms equally favorable with those granted to the citizens of other foreign countries.

Mr. Hay, Sec. of State, to Mr. Powell, min. to Hayti, No. 330, April 1, 1899. MS. Inst. Hayti, IV. 135.

See, further, in relation to this subject, supra, § 647.

"Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaires, supported by powerful influences, make loud appeal to the United States government in similar cases for similar action. They complain that in the actual posture of affairs their valuable properties are practically confiscated, that American enterprise is paralyzed, and that unless they are fully protected, even by the enforcement of their merely contractual rights, it means the abandonment to the subjects of other governments of the interests of American trade and commerce through the sacrifice of their investments. . . . Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy."

President Roosevelt, message to the Senate, Feb. 15, 1905, Confid. Exec. V, 58 Cong. 3 sess. 2–3. (Injunction of secrecy removed Feb. 16, 1905.)

See, as to contract claims, infra, §§ 995–997.

5. Joint Action; Concerted Action.

§ 917.

"Diplomatic agreements, between agents of foreign powers, hastily gotten up in a foreign country, under the pressure of revolutionary dangers, may be entirely erroneous in their objects, as they must be

incomplete in form, and unreliable for want of adequate authority. Moreover, they unavoidably tend to produce international jealousies and conflicts. You will, therefore, carefully abstain from entering into any such negotiations, except in extreme cases, to be immediately reported to this Department."

Mr. Seward, Sec. of State, to Mr. Pruyn, min. to Venezuela, No. 14, Aug. 22, 1868, Dip. Cor. 1868, II. 964.

This instruction related to the action of Mr. Pruyn in entering, in common with the diplomatic representatives of Great Britain, Italy, and Spain, at Caracas, into a correspondence with the French minister, in which he was requested, in a qualified manner, to detain a French ship of war, then lying at La Guayra. The French minister declined to comply with the request.

See Mr. Pruyn to Mr. Seward, No. 35, Oct. 1, 1868, and Mr. Seward to Mr. Pruyn, No. 26, Nov. 9, 1868, Dip. Cor. 1868, II. 974, 983.

"It is of course neither possible nor desirable to avoid a free interchange of opinion between the representative of the United States and the representatives of other powers upon questions of common concern arising in foreign capitals. Such free communication is not only approved, but is especially commended. At the same time care should be taken to avoid, as far as possible, formal conventions in which propositions are considered, with an understanding or agreement that a decision by a majority of representatives shall commit or bind the representative of the United States. A consent on your part to give such an effect to a decree of a council of representatives would be virtually a proceeding derogating from the authority of the President, and if approved by him would have the seeming but unreal operation to bind the United States by his own individual act, in derogation of the Constitution, which requires that no engagement shall be made with foreign powers other than by treaty solemnly celebrated by the President and duly ratified by the Senate."

Mr. Seward, Sec. of State, to Mr. Hovey, min. to Peru, No. 42, Feb. 25, 1867, Dip. Cor. 1867, II. 763.

This instruction related to the proceedings of the diplomatic corps at Lima, on the subject of asylum. See supra, § 303.

Complaint having been made of the imposition of excessive fines on vessels by the customs authorities of Cuba, the minister of the United States at Madrid was instructed to use his best endeavors to secure a modification of the existing regulations, and to endeavor to secure similar and, as far as possible, identical action on the part of the British, German, and Swedish and Norwegian governments, whose commerce was likewise affected. He was therefore to confer with the ministers of those governments at Madrid, in the hope that they might be instructed each to frame a note to the Spanish government, such notes to be simultaneous, if not identical. He was, how-

ever, himself to address a note to the Spanish government should the rest decline to act.

Mr. Fish, Sec. of State, to Gen. Sickles, min. to Spain, March 21, 1873, For. Rel. II. 932.

See, as to the concerted action taken, For. Rel. 1873, II. 989–999, 1036–1044.

"In consequence of the continued exaction in Cuba, of oppressive fines against American vessels, General Sickles, has been instructed to address a note to the Spanish government for the purpose of securing such a change in existing tariff laws of Cuba, as shall make the goods themselves which may be imported into Cuba in American vessels, subject to any fines that may be exacted under the laws, rather than the vessels which import them. The reasons which have induced these instructions will sufficiently appear in the note of instructions to General Sickles and the memorandum which accompanies it, copies of both of which are enclosed.

"You are instructed to use your best endeavors to secure from the British government such instructions to its minister at Madrid as may enable him to make a simultaneous, if not identical application to the Spanish government in support of the desired change, and you may deliver a copy of the instructions to General Sickles and of the enclosed memorandum to the minister for foreign affairs.

"The interests of all the maritime powers whose mercantile marine is in the habit of trading with the Cuban ports is identical; and the modifications which are asked for, are so reasonable and so just, that it does not appear to be necessary for the Department to add anything further in support of them."

Mr. Fish, Sec. of State, to Gen. Schenck, min. to England, March 22, 1873, MS. Inst. Great Brit. XXIII. 307.

"In 1879 our presentation of the matter [of the deposit of ship's papers with the local authorities] anew to the Colombian government was supported by the British government. I send you herewith, for your information, copy of a note received by Mr. Evarts from Sir E. Thornton on the subject. You will find, also, in the volume of Foreign Relations 1879 (page 283) certain correspondence exchanged between Mr. Dichman [the American minister] and the British minister resident at Caracas. It is not to be forgotten moreover that, in the arrangement of 1876 with the Colombian Government relative to the non-enforcement of the obnoxious law of 1875, the German representative took a prominent part.

"Without yielding the initiative which we have taken in this matter [of the custody of ship's papers in Venezuelan ports], it will be well for you to keep your British and German colleagues advised

of all that may transpire, so that, under whatever instructions they may receive from their respective governments, they may have an opportunity of benefiting by our course in pressing a reform which is no less necessary for the interests of their governments than for our own."

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, Nov. 29, 1882, MS. Inst. Venez. III. 268, enclosing copy of a note of Sir E. Thornton to Mr. Evarts of Jan. 28, 1879.

The representations of the United States to Venezuela in 1883 were supported by Great Britain. (For. Rel. 1883, 897, 904, 919, 921, 931.)

"The Secretary stated to the British minister, Sir Julian Pauncefote, that the complaints received from our legation in Constantinople had been very frequent of late concerning the persecution and bad treatment of missionaries by the local Turkish authorities. These had become so frequent and were of such an aggravated character that the government of the United States felt that some energetic action should be taken towards their repression. A new minister was about to go to Constantinople who would receive special instructions on this subject. It occurred to the Secretary that it might be well to have the cooperation of, or concert of action by, the British ambassador at Constantinople in these matters, if similar complaints had reached the British government which would justify it.

"The Secretary further stated that, unless the Turkish government did not take some energetic measures towards the correction of these evils, it might be necessary to send one or more naval vessels into Turkish waters with a view of impressing upon that government the interest which was taken in this question by the United States. Such a step would be taken by the United States only as a last resort. He felt that, through concert of action on the part of the diplomatic representatives of the two governments at Constantinople, satisfactory assurances might be secured from the Turkish government.

"Sir Julian expressed his approval of the suggestion of concurrent action by the ministers, and stated that he would communicate confidentially and fully to Lord Rosebery upon the subject. He suggested that it might be well to have our legation in London make some informal representation, as well as to advise our new minister to Turkey to put himself in communication with the British ambassador there.

"The Secretary responded that the suggestions of Sir Julian would be carried out by him."

Memorandum of conference between the Secretary of State of the United States and the British minister at Washington, Nov. 17, 1892, MS. Notes to Great Britain, XXII. 151.

In 1899, when the long-pending controversy in regard to Venezuela's requiring ship's papers to be deposited with the customs

officials, instead of with the consuls, had again become acute, the minister of the United States at Caracas was instructed to "insist on ship's papers being delivered to the United States consul, in accordance with practice of modern nations," and to "invite coincident action by other ministers."

Mr. Hay, Sec. of State, to Mr. Loomis, min. to Venezuela, tel., Nov. 18, 1899, For. Rel. 1899, 791.

This question had previously been the subject of international cooperation, as appears by the following passage: "As the matter is one which appears to concern British and other foreign interests in Venezuela no less than our own, Mr. Baker [United States minister at Caracas] has been instructed to acquaint his diplomatic colleagues with whatever may transpire in this relation, in order that they may, if desired, profit by, or, if need be, aid such representations as he may make." (Mr. Frelinghuysen, Sec. of State, to Mr. West, Brit. min., Nov. 28, 1883, For. Rel. 1883, 481.)

6. Attempts to Limit Intervention.

(1) by contract.

§ 918.

A stipulation in a contract to be bound by the laws of the country where the money lent is to be employed does not operate where justice is denied in such country, though to make out a claim in such a case such denial of justice must be definitely shown.

Mr. F. W. Seward, Acting Sec. of State, to Mr. Logan, No. 4, Apr. 15, 1879, MS. Inst. Cent. Am. XVIII. 21.

"It is presumed . . . you are aware that it is a rule of this Department to abstain from officially interfering in matters of contract between citizens of the United States and foreign governments. That interposition is limited to the personal good offices of the agents of this government in behalf of persons who may consider themselves aggrieved. Any interference even to this extent, however, must imply that there should have been no renunciation on the part of the claimant of the privilege of appeal to his own government. When that renunciation has been made a part of a contract itself, as you represent, there would be no ground for interference by this government in behalf of any citizen, whatever may have been his antecedents."

Mr. Fish, Sec. of State, to Mr. Butler, consul at Alexandria, Egypt, Oct. 5, 1871, MS. Inst. Barbary Powers, XV. 62.

This was written in reply to an inquiry whether the protection of the consulate would be due to citizens of the United States in the service of the Khedive of Egypt who, although they were graduates of the Military Academy at West Point or the Naval Academy at Annapolis, "were in the service of the insurgents during the late civil war" in

the United States. So far as the bare question of protection was concerned, Mr. Fish expressed the opinion that no discrimination against the class of persons referred to could be made.

"By the terms of railroad grants in Mexico it is believed that officers and employes of the roads, within Mexican territory, are declared amenable to the laws as *Mexicans* and are inhibited from pleading rights of alien protection and usage, *even if matriculated*. Their taking such service in Mexico is there deemed to be a contract, a condition of which is the surrender by them of the right to claim the protection of their own government. I am not prepared to admit that such a waiver annuls the relation of the citizen to his own government, and I certainly can not think that it extinguishes the obligation of this government to protect its citizens in Mexico in the event of a denial of justice. Giving the contract its fullest scope, it can certainly mean no more than that the persons so bound are admitted to be entitled to *justice* in Mexico in lieu of the broader claim to international justice, and, in case of a denial of justice, the obligation of this government to protect them remains unimpaired."

Mr. Bayard, Sec. of State, to Mr. Morgan, min. to Mexico, May 26, 1885, MS. Inst. Mexico, XXI. 297.

Quoted and affirmed in Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 188, Feb. 15, 1888, MS. Inst. Peru, XVII. 323.

In the 8th article of the contract between the Intercontinental Telephone Company, a New Jersey corporation, and the Venezuelan government, it was provided that "any doubts or disputes that may arise by reason of this contract shall be decided by the courts of the Republic in conformity with its laws." With reference to this clause, the Department of State said: "This Department does not concede that this clause constitutes the Venezuelan courts the final arbiters of questions arising under the contract between the corporators and the government of Venezuela, because, in the event of a denial of justice by such courts, this Department may under the rules of international law properly intervene."

Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 118, June 23, 1887, MS. Inst. Venezuela, III. 571.

"This government can not admit that its citizens can, merely by making contracts with foreign powers, or by other methods not amounting to an act of expatriation or a deliberate abandonment of American citizenship, destroy their dependence upon it or its obligations to protect them in case of a denial of justice."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 188, Feb. 15, 1888, MS. Inst. Peru, XVII. 323, quoting and reaffirming Mr. Bayard, Sec. of State, to Mr. Morgan, May 26, 1885, supra.

"It may further be urged that the petitioner is bound by the restrictions embodied in and imposed by the terms of the President's approval of the contract of March 12, 1881. These conditions require that the enterprise shall always be national; that all persons interested in the road as stockholders, employés, or otherwise, shall be regarded as Guatemalans in regard to it; that they can never maintain the rights of foreigners in respect to the titles and transactions relating to this enterprise; and that no foreign diplomatic agent can ever intervene.

"Provisions similar to this contained in the laws of certain Spanish-American governments, or in contracts between those governments and citizens of the United States, have in recent years been several times set up by those governments as a bar to the intervention of this government for the protection of the rights of its citizens. But the United States has uniformly refused to regard such provisions as annulling the relations existing between itself and its citizens or as extinguishing its obligation to exert its good offices in their behalf in the event of the invasion of their rights.

"As instances of the Department's action in such matters may be mentioned its intervention in May, 1885, in behalf of certain Americans employed on Mexican railroads (see Wharton's Digest, II. 337) and its instructions of February 15, 1888, to Mr. Buck, United States minister to Peru, with reference to the case of Mr. John L. Thorndike, in which it took the position that 'this government can not admit that its citizens can, merely by making contracts with foreign powers, or by other methods not amounting to an act of expatriation or a deliberate abandonment of American citizenship, destroy their dependence upon it or its obligation to protect them in case of a denial of justice.'"

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., March 27, 1888, MS. Inst. Cent. Am. XIX. 106, For. Rel. 1888, I. 134–137, touching the claim of the Champerico and Northern Transportation Company, a California corporation, against Guatemala growing out of an alleged violation by that Government of its contract with the company.

"It may be said that the petitioner under the contract ought to have submitted these questions to an arbitration. But the terms of article 25 can hardly be regarded as applying to a case like the present, which does not arise from any dispute as to the meaning of the contract or as to its application to a particular state of facts, but is based upon a clear repudiation and disregard by the Guatemalan government of some of the essential features of the agreement. It seems plain that these questions are not such as can be disposed of by arbitration."

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Central America, March 27, 1888, For. Rel. 1888, I. 134, 137.

This instruction related to the claim of a California corporation against the government of Guatemala, growing out of the alleged violation by that government of a contract with the company. The contract provided for the issuance by the government of a certain amount of bonds which were to be receivable at the custom-houses, and prohibited the government from granting a concession for the construction of a competing line of railway within a certain distance for a certain term. It was alleged that the government has suspended the reception of the bonds at the custom-houses and had also granted a concession for a competing line of railway within the specified distance.

A new law of the Turkish government for the regulation of printing offices in the Ottoman Empire, contained, in the second paragraph of article 5, the following provision:

Nevertheless, a foreigner shall not be permitted to set up a printing office, except he shall furnish a declaration, legalized by the embassy or legation of his country, whereby he shall never be able to take advantage, in his profession as a printer, of the privileges and immunities belonging to foreigners; that is to say, that he shall accept, the case arising, such proceedings in regard to himself and his printing offices as are followed in regard to Ottoman subjects.

With reference to this provision, the Department of State said:

"This proposition is not new. The legislation of various countries of Spanish America, such as Mexico, Venezuela, and Peru, has sought to establish that a foreigner, while continuing to be a subject or citizen of the country of his allegiance, may by his own act waive or forego the right to invoke the diplomatic protection of that government in case of alleged injury. This position whenever taken up has been consistently opposed by the United States. When the Mexican law assumed to prescribe that the omission of a foreigner to register as an alien deprived him *ipso facto* of the right to invoke the treaties and conventions existing between his country and Mexico, and of the right to seek the protection of his own government, this Department announced that such a law 'can not disturb or affect the relationship existing at all times between this government and one of 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 law or usage of nations.' (Foreign Relations, 1885, p. 576.) When the railway laws of Mexico and the laws of contracts of several other American States prescribe that renunciation of all claim to protection as a foreigner under international law or treaties is to be a condition precedent to taking service or entering into contract with the foreign government, and in so far as such service or contract is concerned this government has promptly maintained that the condition is necessarily void, and that it is not competent to a citizen to divest himself of any part of his inherent

right to protection or to impair the duty of his government to protect him. He may conclude his rights in such regard by ceasing to be a citizen, for that is the accepted doctrine of expatriation, but he may not remain a citizen and withdraw himself or be withdrawn under the operations of the municipal law of another country from the rights and duties of citizenship.

"The above-quoted provision of the Turkish printing law of January 10, 1888, appears to be even more objectionable and contrary to the unassailable principle for which we contend than any of the Spanish-American legislation to which I refer, for it assumes to invest the individual renunciation of his personal rights with the sanction of his legation, and to make the foreign government, through its international representative, in some sense a consenting party to the supposed renunciation. Holding, as we do, that the individual act is necessarily invalid *per se*, this government could certainly not intervene in any way to invest such an act with a show of validity."

Mr. Bayard, Sec. of State, to Mr. Straus, min. to Turkey, No. 115, June 28, 1888, For. Rel. 1888, II. 1599.

December 14, 1883, the Portuguese government granted to Edward McMurdo, a citizen of the United States, a concession for the construction of a railway from Lourença Marques to the Transvaal frontier. The concession provided for the private arbitration of all differences arising thereunder. In 1889, the Portuguese government, on grounds which need not here be stated, annulled the concession and took possession of the railway, which had then been completed, with the aid of an English company. The governments of the United States and Great Britain intervened, and the Portuguese government offered arbitration with the concessionaire under the terms of the concession. This offer was declined, the United States declaring that it was "not within the power of one of the parties to an agreement first to annul it, and then to hold the other party to the observance of the conditions as if it were a subsisting engagement." The case was eventually submitted to international arbitration.

See Mr. Blaine, Sec. of State, to Mr. Loring, min. to Portugal, Nov. 30, 1889, 2 Moore's Int. Arbitrations, 1870.

"Articles 9 to 12, inclusive [of the constitution of Venezuela of 1893], relate to the rights of foreigners in Venezuela and the responsibility of the government to them. Articles 9 and 10 are the two declarations with respect to claims and diplomatic intervention approved by the International American Conference by a vote of 15 to 1, the United States voting negatively, and Hayti abstaining from voting (Minutes of the Conference, pp. 807–811). Mr. Trescot, a delegate of the United States, in his minority report against these

declarations, says that he can not interpret them 'in any other sense than the entire and absolute denial of the right to diplomatic reclamation between independent governments in vindication or protection of the rights of its citizens residing in foreign countries.' (Minutes of the Conference, p. 826.) If the necessity, therefore, should arise, I suppose that the government of the United States would no more admit now than it would in 1888 that 'its diplomatic intervention could be forestalled by an internal legislative limitation of liability,' or that such domestic legislation, and not the principles of international law, can determine the responsibility of governments to one another (Foreign Relations, 1888, p. 491). But the most remarkable provision is that of article 11, that 'the government of Venezuela will not make any kind of treaties with other nations unless they recognize the principles established in the two foregoing articles.' This article, strictly interpreted, would, to say the least, restrict the treaty relations of Venezuela with other countries within very narrow limits.

"On the 7th instant I had an interview with the minister of foreign affairs relative to the extradition negotiations. As pertinent thereto, but without reference to the merits of the foregoing article generally, I adverted to it, saying to him that I supposed Venezuela would not refuse to make with the United States a treaty to which the principles formulated in articles 9 and 10 could have no applicability, but are wholly irrelevant, as, for example, the extradition treaty which we were negotiating, or a postal treaty. He assented to that view and said he thought it applicable rather to a general treaty, especially one giving foreigners the right to reside and do business in Venezuela.

"Article 141, requiring an arbitration clause in international treaties, follows substantially article 109 of the former constitution, but is now applicable to treaties generally, while before treaties of 'commerce and amity' were specified.

"Article 148 is a copy of article 116 of the former constitution.

"Article 149, requiring a clause to be inserted in public contracts that any dispute with reference to the same should be decided by the tribunals of Venezuela, conformably to the laws of the Republic, and that such contracts shall in no case afford a ground for an international reclamation, is new to this constitution, although it has been the usual practice for some time to insert such a clause in contracts."

Mr. Partridge, min. to Venezuela, to Mr. Gresham, Sec. of State, July 12, 1893, For. Rel. 1893, 731.

The text of the articles above referred to, as translated by Mr. Partridge, is as follows:

"ART. 9. Foreigners are entitled to enjoy all the civil rights enjoyed by natives; and they shall be accorded all the benefits of said rights in all that is essential as well as in the form or procedure and the legal remedies incident thereto, absolutely in like manner as said natives.

"ART. 10. A nation has not, nor recognizes in favor of foreigners, any other obligations or responsibilities than those which in favor of the natives are established in like cases by the constitution and the laws.

"ART. 11. The government of Venezuela will not celebrate with other nations any kind of treaties unless they recognize the principles established in the two foregoing articles.

"ART. 12. The law will determine the rights and duties of foreigners not domiciled.

"ART. 141. In international treaties there shall be inserted the clause that "all differences between the contracting parties shall be decided, without appeal to war, by the arbitration of a friendly power or powers."

"ART. 148. The national executive will negotiate with the governments of America upon treaties of alliance or confederation.

"ART. 149. No contract of public interest celebrated by the national government or by that of the States can be transferred, in whole or in part, to a foreign government. In every contract of public interest there shall be inserted the clause that 'doubts and controversies that may arise regarding its meaning and execution shall be decided by the Venezuelan tribunals and according to the laws of the Republic, and in no case can such contracts be a cause for international claims.'"

"The one hundred and forty-ninth article, requiring the insertion in every contract of public interest of a clause providing that controversies thereunder shall be decided by the Venezuelan tribunals and according to the laws of the republic, and that in no case can such contract be a cause for international claims, is a gratifying guarantee that, by the organic statute, aliens may assert their contractual rights by suit against the state or federal government. The inherent right of an alien to recur to the diplomatic protection of his government in the event of a denial of justice could not be regarded as impaired were the resort thus offered to him withheld or rendered nugatory."

Mr. Adee, Acting Sec. of State, to Mr. Partridge, min. to Venezuela, July 26, 1893, For. Rel. 1893, 734.

"As regards the effect of the provision in a contract that 'the grantee refuses in all events the diplomatic recourse,' the Department prefers not to express a definite opinion in advance of the presentation of a case requiring it. Probably, however, it means only this: That the party claiming under the contract agrees to invoke for the protection of his rights only the authorities, judicial or other, of the country where the contract is made. Until he has done this, and, unless having done this, justice is plainly denied him, he can not invoke the diplomatic intervention of his own country for redress. But if his application to the authorities of the country where the contract is made results in a palpable denial of justice, or in a plainly

unjust discrimination against the applicant as an American citizen, the clause above quoted would hardly be construed to prevent an appeal for diplomatic intervention if such intervention would otherwise be allowable under the rules of international law."

Mr. Gresham, Sec. of State, to Mr. Crawford, Sept. 4, 1893, 193 MS. Dom. Let. 319.

The position of the German government with reference to the non-intervention clause in Venezuelan contracts was thus reported by the American minister at Caracas: "I have had another talk with the German minister on the subject. He said: 'I have under instructions notified the Venezuelan government that my government will no longer consider itself bound by the clause in most contracts between foreigners and the Venezuelan government which states that all disputes, growing out of the contract, must be settled in the courts of this country. Our position is that the German government is not a party to these contracts and is not bound by them. In other words, we reserve the right to intervene diplomatically for the protection of our citizens whenever it shall be deemed best to do so, no matter what the terms of the contract, in this particular respect, are. It would not at all do to leave our citizens and their interests to the mercy of the courts of the country. The Venezuelan government has objected with very much force to this attitude on our part, but our position has been maintained.' It is apparently not at this time the purpose of the German government to interfere diplomatically in all contractual claims, but rather to contend for its right to do so."

Mr. Loomis, min. to Venezuela, to Mr. Hay, Sec. of State, No. 456 (confid.), June 5, 1900, MS. Desp. from Venezuela, in reply to an inquiry contained in Mr. Hay, Sec. of State, to Mr. Loomis, No. 335, May 11, 1900, MS. Inst. Venezuela, V. 1.

The mixed commission under the treaty between the United States and Venezuela under the convention of December 5, 1885, having dismissed a claim on the ground that the claimant, who had a concession from Venezuela, had failed to comply with the stipulation of the concession that all doubts and controversies arising thereunder should be determined by the courts of Venezuela in the usual course of judicial proceedings, the Department of State said: "The grounds on which the decision of dismissal is based interpret its meaning; and while it is not deemed necessary to express an opinion as to the soundness or unsoundness of the decision, it is not competent for the Department to review and in effect to reverse it by exercising diplomatic intervention in its support after it has been thus solemnly adjudged that it does not lie. The Department therefore regrets its inability to present the

claim to the government of Venezuela, until there has been a compliance with the aforesaid stipulation, resulting in a denial of justice."

Mr. Hay, Sec. of State, to Mr. Woodruff, Nov. 28, 1900, 249 MS. Dom. Let. 301.

This related to the claim of the Ferro Carril del Este against Venezuela.

Utterances of mixed commissions.

The nonintervention clause in contracts has on several occasions been discussed by international commissions, with results scarcely harmonious enough to be satisfactory. In the case of Day and Garrison, executors of Garrison, No. 38, before the mixed commission under the convention between the United States and Venezuela of Dec. 5, 1885, a claim was made against the Venezuelan government for damages for the violation of certain contracts which it had made with citizens of the United States. The agent of Venezuela based his defense to the claim on several grounds, one of which was that the contracts had never been legally entered into and were invalid, while another was that by their 18th article it was stipulated that "any doubts, differences, difficulties, or misunderstandings that may arise from, or have any connection with, or in any manner relate to this contract, directly or indirectly," should be submitted to private arbitration at Caracas, and that "therefore this contract shall never, under any pretext or reason whatever, be cause for any international claims or demands." All three commissioners held that the contracts were invalid; but two of them, namely, Findlay (American) and Andrade (Venezuelan) expressed the opinion that, even if the claim had been admissible on other grounds, it should have been rejected on the ground that by the 18th article a mode of settlement was provided which was "inconsistent with any attempt to make them cause for an international claim on any pretext whatever." The remaining commissioner, Judge John Little (American), dissented from this particular conclusion, on the ground that, quite apart from the question as to the validity of the contracts, it appeared that the Venezuelan executive had declared them to be annulled, and that this was tantamount to a refusal to arbitrate. As the government had declared "the *whole* of the contracts at an end," the company, said Judge Little, had a right to assume that the government "would not countenance action under *any* of their provisions. The government under the contracts had a voice in the selection of arbitrators. Its action closed the door, therefore, to arbitration, and the failure to resort to that means of adjustment can not, in my judgment, be rightfully set up as a defense here in its behalf."[a]

It may be observed that the position of Judge Little, which is

[a] Moore, Int. Arbitrations, IV. 3548–3564.

in harmony with that taken by Mr. Blaine in the case of McMurdo,[a] is strongly supported by the decision of the mixed commission under the convention between the United States and Chile of Aug. 7, 1892, in the case The North and South American Construction Company *v.* Chile, No. 7. In this case, which related to a contract made with the Chilean government for the construction of a railway, it was stipulated that the contractors should "be considered for the ends of the contract as Chilean citizens," "in consequence" of which they renounced "the protection which they might ask of their respective governments, or which these might officiously lend them in support of their pretensions;" and that any "difficulties or disputes" which might arise as to the execution or interpretation of the contract should be settled by arbitration in a specified manner. The tribunal thus agreed upon, having been afterwards suppressed by a decree of the Chilean government, the commission, with the dissent of the Chilean commissioner, held that the claimant had recovered his "entire right to invoke or accept the mediation or protection of the government of the United States."[b]

The question of the effect of a renunciation of the right to claim diplomatic protection came a second time before the mixed commission under the convention between the United States and Venezuela of Dec. 5, 1885, in the case of Woodruff, and Flanagan, Bradley, Clark & Co., *v.* Venezuela, Nos. 20 and 25. In this case a claim was made against Venezuela for the payment of certain bonds which were issued by the *Compañía del Ferrocarril del Este* (Company of the Railway of the East) for the construction of a railway, which railway subsequently came into the possession of the Venezuelan government. The bonds on which the claim was based belonged to Flanagan, Bradley, Clark & Co., to whom, together with certain Venezuelans, a concession was granted by the Venezuelan government in 1859 for the construction of the railway. The liability of the Venezuelan government for the payment of the bonds was denied; and it was also contended that a diplomatic claim was inadmissible because of art. 20 of the concession, which, translated, reads:

"Doubts and controversies which at any time may occur in virtue of the present agreement shall be decided by the common law and ordinary tribunals of Venezuela, and they shall never be, neither the decision which shall be pronounced upon them, nor anything relating to the agreement, the subject of international reclamation."

As it did not appear that the claimants had ever appealed to the Venezuelan courts, a majority of the commission, consisting of Messrs. Findlay and Andrade, held that they had no standing before the commission. In this relation they said:

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[a] See Mr. Blaine to Mr. Loring, Nov. 30, 1889, supra, 297.

[b] Moore, Int. Arbitrations, III. 2318.

"Nothing could be clearer, more comprehensive, or specific than the language of the concession upon this point. Even when such questions were transferred for adjudication by her [Venezuela's] courts, such was her anxiety to avoid any possible international entanglement, that she resorted to the doubtful expedient, perhaps, of providing that the decision of her courts should not be drawn in question by foreign intervention. Whether a decision so made in palpable violation of the rights of the parties could be allowed to stand on a claim of denial of justice is a question not necessary for the decision of this case, but we should think it more than doubtful."

Judge Little, dissenting, said:

"The majority of the commission express doubt whether that part of article 20 which binds the American concessionaires not to make a judgment, etc., the subject of an international claim is valid. I would go further, applying the objection to and holding invalid all that part inhibiting international reclamations. I do not believe a contract between a sovereign and a citizen of a foreign country not to make matters of difference or dispute, arising out of an agreement between them or out of anything else, the subject of an international claim, is consonant with sound public policy, or within their competence. It would involve *pro tanto* a modification or suspension of the public law, and enable the sovereign in that instance to disregard his duty towards the citizen's own government. If a state may do so in a single instance, it may in all cases. By this means it could easily avoid a most important part of its international obligations. It would only have to provide by law that all contracts made within its jurisdiction should be subject to such inhibitory condition. For such a law, if valid, would form a part of every contract therein made as fully as if expressed in terms upon its face. Thus we should have the spectacle of a state modifying the international law relative to itself! The statement of the proposition is its own refutation. The consent of the foreign citizens concerned can, in my belief, make no difference—confer no such authority. Such language as is employed in art. 20 contemplates the potential doing of that by the sovereign towards the foreign citizen for which an international reclamation may rightfully be made under ordinary circumstances. Whenever that situation arises, that is, whenever a wrong occurs of such a character as to justify diplomatic interference, the government of the citizen at once becomes a party concerned. Its rights and obligations in the premises can not be affected by any precedent agreement to which it is not a party. Its obligation to protect its own citizen is inalienable. He, in my judgment, can no more contract against it than he can against municipal protection."[a]

The claim having been dismissed, the claimants, after the adjourn-

[a] Moore, Int. Arbitrations, IV. 3564–3567.

ment of the commission, again invoked the intervention of the United States. The answer of the Department of State has heretofore been given.[a]

Subsequently, the case was laid before the mixed commission under the protocol between the United States and Venezuela of Feb. 17, 1903. The American and Venezuelan commissioners differed, Mr. Bainbridge, the American commissioner, maintaining the same position as had been held by Judge Little, whose words he quoted. The case was then referred to Mr. Charles Augustinus Henri Barge, of Holland, the umpire of the commission. As it still did not appear that the claimants had appealed to the Venezuelan courts for a decision on the question of liability, Mr. Barge held, October 2, 1903, that they were not as yet entitled to apply to the commission, and dismissed the claim "without prejudice on its merits." He construed art 20 of the contract as constituting, till an application should have been made to the Venezuelan courts, a waiver of the right to appeal to other judges, "except naturally," he added, "in case of denial or unjust delay of justice, which was not only not proved, but not even alleged." He thus admitted that a denial of justice would have justified the commission in taking jurisdiction of the claim; and he also expressly declared: "A contract between a sovereign and a citizen of a foreign country can never impede the right of the government of that citizen to make international reclamation, wherever according to international law it has the right or even the duty to do so, as its rights and obligations can not be affected by any precedent agreement to which it is not a party." This did not, however, as he maintained, "interfere with the right of a citizen to pledge to any other party that he, the contractor, in disputes upon certain matters will never appeal to other judges than to those designated by the agreement, nor with his obligation to keep this promise when pledged, leaving untouched the right of his government to make his case an object of international claim whenever it thinks proper to do so, and not impeaching his own right to look to his government for protection of his rights in case of denial or unjust delay of justice by the contractually designated judges."[b]

The effect of the renunciatory clause was again considered by Mr. Barge in the case of the Rudloffs, with results altogether favorable to the claimants. In this case a claim was made for damages for the breach by the Venezuelan government of a contract for the construction by claimants of a market house at Caracas. Art. 12 of the contract provided:

"The doubts and controversies that may arise on account of this

[a] Mr. Hay to Mr. Woodruff, Nov. 28, 1900, supra, 300–301.

[b] Venezuelan Arbitrations of 1903, Ralston and Doyle's Report, S. Doc. 316, 58 Cong. 2 sess. 151, 158–161.

contract shall be decided by the competent tribunals of the republic in conformity with the laws and shall not give reason for any international reclamations."

In this case a suit had actually been brought by the claimants and was still pending in the Venezuelan courts. Nevertheless, Mr. Barge, on Nov. 4, 1903, held that the renunciatory clause "by itself does not withdraw the claims based on such a contract from the jurisdiction of this commission, because it does not deprive them of any of the essential qualities that constitute the character which gives the right to appeal to this commission," and that it was open to the commission to determine whether, under all the circumstances of the case, the "absolute equity," which, according to the protocol, was to be the rule of decision, did not justify the assertion of jurisdiction.[a] On similar grounds he also rejected the contention of the agent of Venezuela that jurisdiction could not be asserted because by art. 216 of the Venezuelan civil code one party to a suit pending in court could not withdraw it without the consent of the other party, which consent had not in the present case been given. An award was subsequently made in favor of the claimants for $75,745, United States gold.[b]

The question as to the effect of the renunciatory clause was next raised before Mr. Barge in the case of the American Electric and Manufacturing Co. against Venezuela, which was decided on Nov. 18, 1903. Art. 10 of the contract with the Venezuelan government in this case provided:

"Doubts and controversies that may arise in consequence of this contract shall be settled by the courts of the republic in conformity with its law."

It appeared, however, that the real ground of the company's claim of damage was not any trouble arising out of the contract, but was the failure of the Venezuelan government to keep an alleged independent promise to abrogate a prior and inconsistent concession given to another company. Mr. Barge therefore held that art. 10 did not affect the question of jurisdiction. Proceeding then to dispose of the claim on its merits, he found that there was no proof of the alleged promise, and that, if such a promise had been given, it would have been illegal; and on these grounds he disallowed the claim.[c]

The application by Mr. Barge of the rule of "absolute equity" to the circumstances of the case led him on Feb. 20, 1904, to disallow the

[a] Art. 1 of the protocol provided: "The commisioners, or, in case of their disagreement, the umpire, shall decide all claims upon a basis of absolute equity, without regard to objections of a technical nature, or of the provisions of local legislation."

[b] Venezuelan Arbitrations of 1903, 182, 183–200.

[c] Venezuelan Arbitrations of 1903, 248.

greater part of the claim of the Orinoco Steamship Company against Venezuela. Art. 14 of the company's concession read:

"Disputes and controversies which may arise with regard to the interpretation or execution of this contract shall be resolved by the tribunals of the republic in accordance with the laws of the nation, and shall not in any case be considered as a motive for international reclamations."

Mr. Barge declared that the company had repeatedly invoked the intervention of the governments of Great Britain and the United States, without ever resorting to the Venezuelan courts; that the British government, while saying that its "general international rights" were "in no wise modified" by the renunciatory clause, had held that the action of the company in agreeing to art. 14 was an element to be taken into consideration in acting upon the application for intervention; that, although it was alleged by the company that the matter at issue was not a doubt or controversy relating to the interpretation or execution of the contract, but was the conduct of the Venezuelan government in annulling, by a dishonest and cunning trick, the entire concession, yet, in reality, "the only question at issue was whether in art. 12, in connection with art. 6, a concession for exclusive navigation was given or not—ergo, a question of doubt and controversy about the interpretation;" and that the rule of "absolute equity" could not permit a contract to be made "a chain for one party and a screw press for the other."[a]

The last case in which the renunciatory clause was discussed by Mr. Barge was that of George Turnbull et al., who presented petitions on account of the Manoa Company (Limited) and the Orinoco Company (Limited) against Venezuela. The contracts in this case contained the following clause:

"Art. 11. Any questions or controversies which may arise out of this contract shall be decided in conformity with the laws of the republic and by the competent tribunals of the republic."

Mr. Barge, finding that there had been no application by the claimants to the Venezuelan courts, disallowed the claim. His decision was rendered on April 12, 1904. The terms in which it denied a remedy to claimants were far more sweeping than those employed by him two months before in the case of the Orinoco Steamship Company, and were in fact such as to preclude altogether the exercise of the equitable jurisdiction which he had asserted in still earlier cases and which, six months before, actually produced an award in favor of claimants in the Rudloff case. In a word, he declared in the Turnbull case that, as the claimants had "deliberately contracted themselves out of any interpretation of the contract and out of any judgment

[a] Venezuelan Arbitrations of 1903, 90–91.

about the ground for damages for reason of the contract, except by the judges designed [designated?] by the contract," they had, in the absence of a decision by those judges that "the alleged reasons for a claim for damages really exist," "no right to these damages, and a claim for damages which parties have no right to claim can not be accepted."[a] It may be superfluous to remark that, according to this view, there can be no room whatever for international action, in diplomatic, arbitral, or other form, where the renunciatory clause exists, unless indeed to secure the execution of the judgment of a local court favorable to the claimant; for, if the parties have "no right to claim" damages which the local courts have not found to be due, it is obvious that international action of any kind would be as inadmissible where there had been an adverse judgment, no matter how unjust it might be, as where there had been no judgment whatever.

In connection with these expressions of opinion of the learned umpire, it is material to consider what was done by the concurrent action of the commissioners themselves in certain cases.

In the case of the Coro and La Vela Railway and Improvement Company damages were claimed for a violation of rights under a contract. The concession contained the following clause:

"ART. 11. Any doubt or controversy that may arise in the interpretation and execution of this contract will be decided by the ordinary tribunals of the republic, and in no case or for any motive will any international claims be admitted on account of this concession."

In this case jurisdiction was exercised, the Venezuelan commissioner, with the concurrence of his American colleague, rendering, on July 1, 1903, an award of $61,104.70 in favor of the claimant.[b]

A similar article, bearing the same number, was contained in the concession in the case of Virgilio del Genovese, in which an award of $70,083.28 was, on Oct. 2, 1903, made in favor of the claimant. The Venezuelan agent raised no question as to the effect of the clause, nor did the Venezuelan commissioner, who wrote the opinion in the case, although he discussed several other clauses of the contract.[c]

In the case of La Guaira Electric Light & Power Company, the commission, speaking through Bainbridge, United States commissioner, the opinion being also signed by Paúl, Venezuelan commissioner, on October 2, 1903, dismissed without prejudice a claim made against Venezuela on account of a breach of contract by a municipal corporation. The commission held that the claim was one against the corporation and not against the general government, but added: "The case is very different from one in which the government itself has violated a contract to which it is a party. In such a case the

[a] Venezuelan Arbitrations of 1903, 244–245.

[b] Morris's Report, 69–70.

[c] Venezuelan Arbitrations of 1903, 174.

jurisdiction of the commission under the terms of the protocol is beyond question."[a]

In Selwyn's case, before the British-Venezuelan commission, under the protocol between Great Britain and Venezuela of Feb. 13, 1903, objection was made by Venezuela to the jurisdiction of the commission on the grounds (1) that a suit by claimant against the Venezuelan government, based on the same cause of action, was then actually pending in the local courts; (2) that the contract between the government and claimant provided that "any doubts and controversies," etc., should be "settled by the tribunals of the Republic" and should never in any case be the subject of an international claim, and (3) that contract claims were not submitted to the commission. As to the first objection, Plumley, umpire, held that the jurisdiction of the commission under the protocol was not affected by the pendency of the suit in the local courts. The second and third objections he disposed of together by finding that the fundamental ground of the claim was "that the claimant was deprived of valuable rights, of moneys, properties, property, and rights of property by an act of the government which he was powerless to prevent and for which he claims reimbursement." How much of the claim came under this head he did not deem it necessary to consider, since, as the matter fundamentally was not one of contract, the second and third objections to jurisdiction were inapplicable.[b]

In Martini's case, before the Italian-Venezuelan commission, under the protocol between Italy and Venezuela of Feb. 13, 1903, the agent of Venezuela interposed a preliminary objection to the jurisdiction, on the ground that the contract in the case contained the following clause:

"ART. 16. The doubts or controversies which may arise as to the interpretation and execution of the present contract shall be resolved by the tribunals of the republic, conformably to the laws, and shall in no case afford ground for international claims."

Ralston, umpire, held that, even if the claim before him could be considered as embraced within the terms "doubts or controversies which may arise as to the interpretation and execution of the present contract," the objection might be disposed of by a single consideration, which he stated as follows:

"Italy and Venezuela, by their respective governments, have agreed to submit to the determination of this mixed commission the claims of Italian citizens against Venezuela. The right of a sovereign power to enter into an agreement of this kind is entirely superior to that of the subject to contract it away. It was, in the judgment

[a] Venezuelan Arbitrations of 1903, 178, 182.

[b] Venezuelan Arbitrations of 1903, 322–327.

of the umpire, entirely beyond the power of an Italian subject to extinguish the superior right of his nation, and it is not to be presumed that Venezuela understood that he had done so. But aside from this, Venezuela and Italy have agreed that there shall be substituted for national forums, which, with or without contract between the parties, may have had jurisdiction over the subject-matter, an international forum, to whose determination they fully agree to bow. To say now that this claim must be rejected for lack of jurisdiction in the mixed commission would be equivalent to claiming that not all Italian claims were referred to it, but only such Italian claims as have not been contracted about previously, and in this manner and to this extent only the protocol could be maintained. The umpire can not accept an interpretation that by indirection would change the plain language of the protocol under which he acts and cause him to reject claims legally well founded."[a]

(2) BY LEGISLATION.

§ 919.

Mexican matriculation.

"This Department has no doubt that the object and the effect of the ninth article of the treaty of 1831 was to exempt the citizens of one party from compulsory service in the military or naval service of the other. Supposing the fact of citizenship in any particular case to be acknowledged, the exemption must be insisted upon, including also any tax which may be imposed in lieu of that service. The question then occurs what proof of citizenship is either government warranted in requiring. The treaty being silent on this point, it is left for regulation by the municipal laws of the parties, which must be acquiesced in unless their purpose and effect should be to thwart a plain stipulation of the treaty. The Mexican law requiring the matriculation or registration of foreigners can scarcely be said to be of this character. Citizenship is a fact which, like others, may be proved by oral or documentary testimony. If the latter should be offered, the highest of this character would be a passport from the Mexican foreign office or from this Department. A passport is virtually a mere certificate of citizenship. It implies that the Department from which it may emanate has itself considered the evidence of the fact which it proposes to establish, and has decided accordingly. A passport may also issue from the legation, and may be presumed to be granted upon similar considerations.

"Upon the whole the Department is inclined to the opinion that the requirement of matriculation, as it is called by the Mexican govern-

[a] Venezuelan Arbitrations of 1903, 840–841.

ment, is not illegal, nor, under the circumstances, unduly oppressive in form, and can not properly be protested against generally or in any particular case, unless unusual or unattainable proof of citizenship should be required."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 43, Oct. 31, 1873, MS. Inst. Mexico, XIX. 37.

See, supra, § 483.

"Your despatch No. 301 of the 9th ultimo has been received. It relates to the claim of the Batopilas Mining Company. This, it appears, has been rejected, but for reasons which can not be regarded as satisfactory. Conceding, as is alleged in the note of Mr. Lafragua to you of the 31st of May last, that Mr. Robinson, the agent of the company, was not registered in the Mexican foreign office as a citizen of the United States, and that the company itself was not registered, as required, the Mexican government must not suppose that we can acquiesce in the injuries inflicted in this case merely on account of the omissions adverted to. Indeed, such an acquiesence would imply an acknowledgment on our part that by municipal laws the Mexican government can deprive citizens of the United States of their rights under treaties and international law, a pretension which can not be allowed to any government. It must not from this, however, be inferred that this government would counsel or justify, in the abstract, any disregard of the laws of Mexico by a citizen of the United States. On the contrary, we would prefer that the requirements of those laws should be complied with. It is only when the effect of their administration becomes tantamount to the infliction of the exorbitant penalty of denationalizing a citizen or an association that we deem ourselves warranted in protesting against such a course. That government may have sufficient reasons for enacting the laws referred to, and if a disregard of them, either accidental or willful, were to be visited with a punishment proportionate to the offence no one could reasonably complain."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 241, July 15, 1875, MS. Inst. Mexico, XIX. 210.

See, to the same effect, Mr. Fish, Sec. of State, to Mr. Russell, min. to Venezuela, No. 14, Sept. 15, 1874, MS. Inst. Venezuela, II. 262, as to laws attempting to exclude the resort by foreigners to the diplomatic intervention of their governments.

The instructions given by Mr. Fish with regard to matriculation were repeated by his successor, Mr. Evarts, with some explanation. Mr. Evarts said that the view that the requirement of matriculation was not at variance with treaties or public law might be concurred in so far as it applied to American citizens domiciled in Mexico, but

that its application to travelers or temporary sojourners seemed to be unreasonable and should be protested against. Nor could the pretension of the Mexican government to ignore the passport of the Department of State and to require in the case of naturalized citizens of the United States an inspection of the certificate of naturalization be acquiesced in. The Mexican government was to be apprised that it would be held accountable for any injury to a citizen of the United States which might be occasioned by a refusal to treat the passport of the Department as sufficient proof of nationality. The assumption of the Mexican government of a right to inspect and decide upon the validity of certificates of naturalization, issued by the various courts in the United States, instead of receiving the proof afforded by a passport of the Department of State must be regarded as wanting in proper courtesy to a friendly power. Besides, there were many citizens of the United States who were not naturalized in the ordinary way, such as the inhabitants of annexed territories. Such citizens were not native born, nor would they have any certificate of naturalization, and the only guarantee of their American nationality would be their passport.

Mr. Evarts, Sec. of State, to Mr. Foster, min. to Mexico, No. 642, June 16, 1879, MS. Inst. Mexico, XIX. 593.

"You will please say to the minister for foreign affairs that if the intervention of the United States in favor of Americans imprisoned is refused only because they are not matriculated, that the President expects such citizens to be now allowed to matriculate. And you are authorized to advance the requisite funds. Please send the names of prisoners and why imprisoned."

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, tel., April 12, 1882, quoted in Mr. Frelinghuysen to Mr. Morgan, No. 258, April 21, 1882, MS. Inst. Mex. XX. 442.

July 24, 1882, Mr. Frelinghuysen addressed to the American minister at Mexico a long instruction concerning the refusal to accept the interposition of the legation in regard to the murder of Mr. and Mrs. Thomas Gartrell, near the city of Durango, because they were not matriculated as American citizens. Mr. Frelinghuysen reviewed the subject at length. He was not, he said, disposed to question the convenience of matriculation as evidencing the right of foreigners resident in Mexico to certain civil and domiciliary rights prescribed under the Mexican law, but he questioned the claim of Mexico "to debar from the protection of their own Government citizens of the United States who may be temporarily in Mexico and who have not matriculated." He maintained that, as the reciprocal rights of allegiance and protection were not created by the laws of any foreign

country, they could not be denied by the municipal law of a foreign State.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, No. 298, July 24, 1882, For. Rel. 1882, 394.

In the subsequent case of Howard C. Walker, an American citizen, imprisoned at Minatitlan, Mr. Frelinghuysen said that until Mexico should meet the argument as to matriculation on such a basis as the United States might accept with due regard to its right to protect its citizens abroad, the legation was to "continue to ignore the Mexican contention that a failure to matriculate necessarily debars a citizen of the United States from the assistance of its diplomatic representative at the Mexican capital." (Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, No. 595, June 23, 1884, For. Rel. 1884, 369.)

"I have to acknowledge the receipt of your No. 962, of the 12th ultimo, in reply to the inquiries of this Department respecting the matriculation laws of Mexico. The Department has read with interest your careful review of the subject. It appears that matriculation of foreigners consists in registering their names and nationality in the foreign office of Mexico.

"The Mexican government contends that the national character of the foreigner is proved by this matriculation, which entitles him to special privileges and obligations, called the rights of foreigners. These are (1) the right to invoke the treaties and conventions existing between his country and Mexico; (2) the right to seek the protection of his own government.

"They further contend that the want of a certificate of matriculation will be considered sufficient to deny to this government the right of diplomatic intervention in any case.

"Against this contention this government protests as an interference in its relations to its citizens. The government of the United States recognizes 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 one of 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. No country is exempted from the necessity of examining into the correctness of its own acts. A sovereign who departs from the principles of public law can not find excuse therefor in his own municipal code. This government, being firmly convinced that the position of the Mexican government is untenable, can not assent to it.

"You will so inform the minister for foreign affairs in such form as you may deem proper."

Mr. Frelinghuysen Sec. of State, to Mr. Morgan, min. to Mex., No. 732, Feb. 17, 1885, For. Rel. 1885, 575.

For Mr. Morgan's No. 962, reporting on the law of matriculation, see For. Rel. 1885, 571–575.

See, as to the case of Thomas Monahan, Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, No. 698, Dec. 20, 1884, For. Rel. 1885, 570.

"There may arise two difficulties, as you will readily understand, in the way of presenting this case hopefully to the Government of Mexico:

"First. That E—— may not be matriculated as an American citizen. If not so registered, Mexico may, as usual, deny the right of this government to intervene diplomatically in his behalf. Although our position on this point is well understood by Mexico, and is that a Mexican municipal law can not abridge the right of a foreign government to protect one of its citizens in case of need, that government frequently sets up the plea of non-maltriculation, and thereby seeks to neutralize the duty of this government towards a citizen.

"Second. By the terms of railroad grants in Mexico, it is believed that officers and employés of the roads, within Mexican territory, are declared amenable to the laws as *Mexicans*, and are inhibited from pleading rights of alien protection and usage, *even if matriculated*. Their taking such service in Mexico is there deemed to be a contract, a condition of which is the surrender by them of the right to claïm the protection of their own government. I am not prepared to admit that such a waiver annuls the relation of the citizen of his own government, and I certainly can not think that it extinguishes the obligation of this government to protect its citizens in Mexico in the event of a denial of justice. Giving the contract its fullest scope, it can certainly mean no more than that the persons so bound are admitted to be entitled to *justice* in Mexico in lieu of the broader claim to international justice, and in case a denial of justice the obligation of this government to protect them remains unimpaired."

Mr. Bayard, Sec. of State, to Mr. Morgan, min. to Mexico, May 26, 1885, MS. Inst. Mex. XXI. 297.

The United States has never admitted the position of the Government of Mexico that the failure of an American citizen to be matriculated as such deprives him of the right of diplomatic intervention. (Mr. Bayard, Sec. of State, to Mr. Howe, May 8, 1885, 155 MS. Dom. Let. 323.)

By a note dated June 16, 1886, Mr. Romero, minister from Mexico, informed Mr. Bayard, Secretary of State, that "the laws which prescribed the matriculation of foreigners" have been repealed, "leaving it optional with foreigners residing in Mexico to request a certificate

of their nationality, which will be issued to them by the secretary of foreign relations."

MS. Notes from Mexican Leg.

"I am in receipt of a copy of the law of 28th May, sent hither by the United States legation in Mexico, and a perusal of its text confirms the gratifying impression conveyed by your note, that the substitution of an optional registration of foreigners as presumptive evidence of their status, in place of compulsory matriculation as the sole condition of proving alien status in Mexico, and enjoying international rights pertaining to such status, will remove the grounds of complaint which have heretofore obstructed the friendly consideration of international questions by the two governments.

"I observe, however, that the same section, the 39th, to which you refer, provides that 'the definite proof of determinate nationality shall be made before the competent courts and by the means established by the laws or treaties.' Reserving the point until it shall be better understood, I may express my confidence that nothing in Mexican domestic legislation or in the judicial proceedings thereunder will be found calculated to impair, as the compulsory system of matriculation has heretofore appeared to do, the reciprocal right and duty of a citizen of the United States in respect of the national protection to which he is entitled and the allegiance he owes."

Mr. Bayard, Sec. of State, to Mr. Romero, June 19, 1886, For. Rel. 1886, 732.

"I have the honor to transmit herewith inclosed copy and translation of the Mexican law of foreigners and naturalization, published in the *Diario Oficial* of 7th instant.

"From article 39 you will perceive that the laws which established the matriculation of foreigners have been repealed. Still, these certificates of matriculation *may* be issued.

"The inclosed law does not embrace all the rights and obligations of foreigners, as will be seen by reference to the 'Derecho Internacional Mexicano, Tercera Parte,' from page 369 to 421." (Mr. Morgan, min. to Mexico, to Mr. Bayard, Sec. of State, No. 241, June 10, 1886, For. Rel. 1886, 652.)

As to limitations on foreigners in Mexico, see Consular Reports, 1883, X. 688 et seq.

Salvadorean statute.

"By article 28, chapter iii [of the Salvadorean law of September 29, 1886], 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, by making the compliance of a foreigner with a municipal regulation a condition precedent to the recognition of his national character, the Salvadorean 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.

"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 governments. . . .

"The effect of the Salvadorean 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."

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., Nov. 29, 1886. For. Rel. 1887, 78.

"He [the Salvadorean minister of foreign affairs] 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 meantime I learn that the government has taken no steps to carry out the law." (Mr. Hall, min. to Cent. Am., to Mr. Bayard, Sec. of State, No. 641, April 11, 1887, For. Rel. 1887, 110, 111.)

Regulations in Cuba, 1895.

"I have to acknowledge the receipt of your despatch number 2444 of the 13th instant, enclosing copies of correspondence held by you with the judge advocate of the special military court of inquiry and with the secretary of the general government in relation to the arrest of José Maria Aguirre. You call particular attention to that part of the letter of the judge advocate requesting to be informed if the formalities of registration in the consulate-general prescribed by Cuban law have been complied with by Mr. Aguirre, and state that you have noticed a disposition on the part of the Cuban authorities in dealing with this and other similar cases to give greater weight to local laws and regulations relating to foreigners than to the agreement of January 12, 1877.

"In reply I have to say that while it may be expected that citizens of the United States sojourning in a foreign state shall comply with reasonable local requirements of registration, omission to do so can not vitiate their right to protection as citizens by their own government in case of need.

"Citizenship is a fact, of which the citizen's country is the authoritative judge under its own laws regarding naturalization and nationality, and its certification of that fact, by passport, imports a verity which the foreign government is bound prima facie to admit in executing any treaty obligations with regard to such citizens. The protocol of 1877 is an international compact and in fulfilling its obligations Spain can ask no more than the establishment of the fact of American citizenship according to due form of law, such fact to be attested by the competent authority of the United States. You have furnished the evidence desired, and mere failure to comply with the formalities of local registration, if indeed there should have been such failure, could not impeach the validity of this Government's attestation of the person's citizenship."

Mr. Gresham, Sec. of State, to Mr. Williams, consul-general at Havana, No. 1057, March 21, 1895, 147 MS. Inst. Consuls, 676.

"The Department has been advised by our consul at Matanzas that the governor of that province has issued an order requiring all foreigners in the province, resident or transient, to be registered at civil headquarters by February 15, 1896, under penalty of being considered immigrants.

"In an interview the governor gave the consul to understand that Americans not registered who got into trouble would not be recognized as citizens of the United States. The consul pointed out that under our treaties with Spain our citizens were entitled to full and ample protection whether they were registered or not.

"The Department has approved the position taken by our consul, and it is hoped that the governor will not consider American citizens who have not registered as debarred from the protection of their own government.

"The government of the United States is not disposed to question the right of the Spanish authorities to demand that our citizens shall register, as evidence of their right to certain privileges and immunities while residing in the Island of Cuba, but it does question their right to debar from the protection of their own government citizens of the United States who may not have so registered.

"The status of a foreigner is, under international law, inherent, and neither created nor destroyed by Cuban law.

"The evidence of the foreign status of an individual consists of the facts as they exist, or of the authentic certification of his own government, as in the form of a passport; it does not originate in the compliance with a Cuban municipal statute.

"The above principles are so thoroughly established in international law that it seems unnecessary to more than refer to them briefly here."

Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Spanish min., Feb. 17, 1896, For. Rel. 1896, 677.

Mr. Dupuy de Lôme, replying, Feb. 18, 1896, declared that, upon the proposition "that the interior or municipal laws can not modify the obligations which spring from international law," he was in accord with the opinion above expressed. He suggested that the governor of Matanzas "must have intended to say that it would be very difficult to accord to the citizens of the United States the privileged position in which they are set by the protocol of 1877 if they do not comply with the laws which facilitate their recognition as such." (For. Rel. 1896, 678.)

It appeared that the United States consul-general at Havana had, on Sept. 7, 1895, instructed the consuls within his jurisdiction to inform all duly registered American citizens that they should obtain the necessary personal certificates of identification as American citizens from the proper civil authorities of their respective districts. (Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Span. min., March 12, 1896, For. Rel. 1896, 679.)

Although the Spanish minister concurred in the views expressed in Mr. Olney's note of the 17th of February, General Weyler, as governor-general of Cuba, issued under date of July 14, 1896, an order which, after requiring all foreigners to be registered within one month, declared that all who failed to do so could not after that term "invoke the rights and privileges granted to them by our laws." General

Weyler justified the decree on the ground that it referred only to rights under municipal law which the government offering hospitality to a foreigner might either grant or deny. The United States, however, refused to accept this justification, declaring that the rights which a foreigner was entitled to enjoy necessarily included the right to invoke the municipal law so far as might be essential in carrying out the guarantees of international law and treaty, and that he could not "be excluded from the protection of the municipal law without violating his guaranteed rights under international law and treaty," the "two systems of law and the rights existing under them" being "inseparable." (Mr. Rockhill, acting Sec. of State, to Mr. Dupuy de Lôme, Span. min., July 25, 1896, and Sept. 9, 1896, For. Rel. 1896, 680, 682.)

Venezuelan decrees.

By a decree issued by General Guzman Blanco, provisional president of Venezuela, of February 14, 1873, abrogating the law of March 6, 1854, relative to the indemnification of foreigners, it is provided (articles 1 and 2) that persons preferring claims against the nation, whether natives or foreigners, on account of damages, injuries, or seizures by national or state officers, either in civil or international war or in time of peace, shall make a formal application to the high federal court. In the trial of such cases the admission of oral testimony is forbidden, unless the officer who caused the damage or made the seizure refuses to give written evidence, or unless it is impossible to obtain such evidence. The right is reserved to the nation to be reimbursed by the responsible officer or by the state to which he belongs for any sum required to be paid by the national treasury. It is further provided (article 8) that any claimant who shall manifestly appear to have exaggerated the amount of the damages claimed shall forfeit any right that he may have, and shall be liable to a fine of from 500 to 3,000 venezolanos, or to imprisonment for from three to twelve months," and that, if the claim shall appear to be wholly fraudulent, the guilty party shall be liable to a fine of from 1,000 to 5,000 venezolanos, or to imprisonment from six to twenty-four months. The decree also provides (article 9) that "in no case can it be claimed that the nation or the States are bound to grant indemnity for damages, injuries, or seizures that have not been executed by legally competent authorities, acting in their public capacity." No action can be brought after the lapse of two years from the time the damages were committed. The decree further declares that all persons not in a public capacity who shall order contributions or forced loans or commit acts of spoliation, as well as the persons executing such orders, shall be responsible directly and personally in their property to the injured party.

By another decree of February 14, 1873, defining the rights and duties of foreigners, it is declared that foreigners shall enjoy in

Venezuela the same civil rights as Venezuelans, subject only to limitations established by the constitution and special laws. The decree further declares (article 5) that neither domiciled nor transient foreigners shall have the right to seek redress by diplomatic action except when, having exhausted all legal recourse before the competent authorities, it shall clearly appear that there has been a denial of justice, or notorious injustice, and (article 6) that foreigners shall not have the right to ask indemnification from the government for losses or damages resulting from war, etc., except in cases in which natives of Venezuela have that right.

For. Rel. 1883, 917–918.
See, also, For. Rel. 1873, II. 1171.

"Your despatch, No. 80, of the 7th instant, with the book containing recent laws of Venezuela, to which it refers, has been received.

"Article 5 of the first of the laws says that neither domiciled nor transient foreigners have the right to diplomatic recourse except, after having exhausted the legal resource, it shall clearly appear that there has been a denial of justice, or notorious injustice. Though this may, in the main, be an enactment, in the shape of a municipal, of a general rule of international law, its application, especially to foreigners in Venezuela for temporary purposes, will be so inconvenient as to be found impracticable. It is well known that in that country a person may be arrested for an imputed offence without probable cause and without the affidavit of the accuser. The possibility of frivolous and unfounded charges against foreigners is in proportion to that antipathy to them, notorious in all countries ruled by the Spanish race, including Venezuela. To say that a foreigner so arrested must not seek relief in any way, except through the courts, is to require that, whatever may be his engagements at home or elsewhere, he must, if charged as above with an offence, linger in Venezuela, abide by the tardy course of justice there, and abstain from any application to the executive government. Though there is not known to be a case pending in which that government may plead the law referred to, it may be advisable for you to say informally to the proper authority that its application to citizens of the United States can not be acquiesced in.

"This government can not consent to the application to citizens of the United States of article 8 of the second law to which you refer. A law making it a penal offence to overestimate a loss which may have been sustained, or to fail in establishing any loss, is believed to be unexampled in the history of legislation, at least in modern times.

"In respect to article 9, it may be said that it has been the policy of foreign governments generally to require of the govern-

ment of Venezuela, for the time being, indemnification for losses inflicted upon their citizens or subjects by insurgents, at least, unless the rights of the latter as belligerents shall have been also acknowledged. To assume, therefore, to dictate that no claim for such losses shall ever be made, may be said to be arrogant to a degree likely to be offensive to most governments having relations with a republic so subject to sudden and violent changes in its authorities.

"Upon the whole the enactments adverted to may be regarded as superfluous in their substance, and in their form by no means adapted to foster confidence in the good will of that government towards foreigners who may resort to Venezuela."

Mr. Fish, Sec. of State, to Mr. Pile, min. to Venezuela, No. 63, May 29, 1873, United States & Venezuelan Claims Commission (1895), 451.

"These laws have evidently been enacted without any due sense of the obligations of the government of that Republic [Venezuela] to other governments, pursuant to public law and to treaties. The discharge of such obligations is sometimes irksome to the most stable and conscientious governments. It can easily be imagined, therefore, that one so recently established in Venezuela by means such as the chronicles of the times represent should be peculiarly reluctant to acknowledge accountability for acts of violence done by persons not directly in its service and known to be inimical to it.

"This reluctance, too, is no doubt enhanced by the well-known antipathy of the Spanish race to foreigners generally." (Mr. Davis, Acting Sec. of State, to Mr. Pile, No. 70, July 28, 1873, id. 453.)

The Venezuelan decrees of February 14, 1873, were reenforced by an executive resolution promulgated February 1, 1881, by the ministry of foreign relations, under the direction of President Guzman Blanco, by which it was declared that, as foreigners had insisted on resorting to diplomatic intervention instead of laying their claims before the high federal court, claims not presented in the manner required by the decrees of 1873 would in future be disregarded. The decrees of 1873 and the executive resolution of 1881 were invoked by the Venezuelan Government in 1883 in opposition to the claim of the Venezuelan Steam Transportation Company for damages for the seizure of its vessels in Venezuela in 1871, which claim the Venezuelan Government contended must be submitted to the high federal court. In reply, the Department of State said: "This proposition can not with propriety, under any circumstances, be entertained by this Government, and no discussion at length will be entered into with regard to it. Aside from the fact that the laws referred to were enacted long after the claim had been presented to the government of Venezuela, the provisions limiting and restricting the complaining party in the procuring and adducing documentary proofs offer most serious obstacles to a just, fair, and impartial hearing, and the

onerous penalties which the law visits on the claimant if he fails wholly or even in part in establishing his right to the amount claimed are quite sufficient to deter any foreign claimant, and especially a citizen of the United States, from seeking a remedy under it."

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 292, April 18, 1884, S. Ex. Doc. 143, 50 Cong. 1 sess. 81, 85.

"A foreigner's right to ask and receive the protection of his government does not depend upon the local law, but upon the law of his own country. His citizenship goes with him into whatever country he may visit, and the duty of his government to protect him so long as he does nothing to forfeit his citizenship accompanies him everywhere. This duty his government must discharge, and it could not, if it would, be relieved therefrom by the fact that the municipal law of the country where its citizen may happen to be has seen fit to provide under what circumstances he may be permitted to appear before the authorities of that country. Such a law can not control the action or duty of his government, for governments are bound among themselves only by treaties or by the recognized law of nations, and there is nothing in the existing treaties between the two countries or in the law of nations which recognizes as pertaining to Venezuela the right by the enactment of a municipal law to say how, or where, or under what circumstances the government of the United States may or may not ask justice in behalf of one of its own citizens.

"It may, perhaps, be broadly admitted that when the courts of a country afford adequate remedy to foreigners and natives alike in case of wrongful treatment, resort thereto in the first instance by the aggrieved party may be proper; but even in such a case the right of the sufferer's government to watch over the proceedings from the outset is inalienable. It is its duty to see at every stage that justice is done, to urge full and speedy compliance with the laws, and by its counsel and remonstrance, its moral and material support, to advance the interest of its wronged citizen.

"Mr. Wheelock's case has, however, passed far beyond the initial stage to which President Guzman's letter would now seek to recommit it. It has reached the higher plane of an apparent denial of justice.

"The correspondence lately published shows that the departmental and State courts of Venezuela successively decided that no grounds existed for continuing the process or ordering the arrest of the commissary, Sotillo, who inflicted the illegal torture upon Mr. Wheelock. On his excellency's own showing, this would have sufficed to dismiss the complaint forever, without recourse or appeal.

"Conceding the right of this government to ask justice for its injured citizen, the federal government of Venezuela ordered the State government to reopen the examination. This was done and the

result was the same. Here, then, we have three failures of justice, any one of which, if President Guzman's argument be admitted as well founded, was necessarily final.

"But two years afterwards the Venezuelan government discovered that 'the result of the proceedings involves civil responsibilities,' and a fourth investigation was held, the result of which amply bore out the allegations of Mr. Wheelock's complaint. Warrants were issued for the arrest of Sotillo, who had meanwhile left the country, and orders were issued to confiscate Sotillo's property, which he had before this placed out of reach of judicial embargo.

"Now, after more than four years have passed, it is claimed that the responsibility of Venezuela to punish the offender is met by these tardy and ineffectual proceedings; and, further, that the sufferer is wholly without civil recourse for material reparation, save such as the federal court may find due to him from the commissary, Sotillo.

"I may be permitted to pass over, as not meriting serious consideration or argument, the allegation which your note implies, that the government of Venezuela is not liable 'on account of occurrences over which it had absolutely no control and of which it had no knowledge.' It is not claimed that the federal government directed, or was cognizant of, or consented to, the outrage perpetrated by its public servant in the execution of his public functions.

"The simple complaint of this government is, that an officer of justice of Venezuela, in the exercise of his official functions, subjected an American citizen, whom he had arrested on suspicion, to grievous bodily torture to extort from him a confession of guilt. For this act this government asks the punishment of the offender, and expects that Venezuela will tender an equitable indemnity to the victim.

"The President is surprised at the tardy proposal of Venezuela, now for the first time heard of in connection with the case, that Mr. Wheelock shall seek redress at the hands of the high federal court. Even if he had been disposed to consent to such a disposition of the matter in the interest of friendship and harmony between the two countries, a casual examination of the provisional decrees of 14th February, 1873, concerning the rights and indemnification of foreigners, which prescribe the procedure to which the complaint would be subjected, leads the President to withhold his acceptance of such a resort.

"This government can not waive the right of its citizens to claim diplomatic protection as those decrees require. It can not admit that if the court shall deem the claim for indemnity exaggerated, the American claimant shall forfeit all rights and incur heavy fine or prolonged imprisonment. It can not consent to allow the court power to dismiss the claim because more than two years have passed since the commission of the injury. It can not, in a word, regard those

decrees as controlling the equitable or moral rights of an injured American citizen.

"I have remarked that more than two years elapsed before any judicial resort of Venezuela admitted that Sotillo was even liable to process. Permit me to ask, in no captious spirit, how it is supposed Mr. Wheelock would have fared had he submitted to those provisional decrees in the face of the solemn adjudication of three judicial tribunals of Venezuela that no grounds existed for subjecting the commissary, Sotillo, to legal process? Would fine and imprisonment have been added to the wrong under which he already lay? If so, would it not have been alleged that diplomatic redress was effectually barred to him by reason of his voluntary submission to the operation of those decrees?

"A copy of the present correspondence will be sent to the United States minister at Caracas with instructions to say that this government does not accept the reply made to its representations, and that it renews its demand for the punishment of the offender, and repeats its expectation that the government of Venezuela will tender to Mr. Wheelock a just indemnification."

Mr. Frelinghuysen, Sec. of State, to Mr. Soteldo, Venez. min., Apr. 4, 1884, For. Rel. 1884, 599.

See, as enforcing the same claim, Mr. Bayard, Sec. of State, to Mr. Soteldo, Apr. 3, 1885, For. Rel. 1885, 932; same to same, Apr. 10, 1885, id. 932; July 7, 1885, id. 934.

This claim was compromised for $6,000, payable in two installments, For. Rel. 1885, 936–939.

Resolution of Institute of International Law.

The Institute of International Law, at its session in 1900, when considering the question of the responsibility of states for damages suffered by aliens in riots, insurrections, or civil war, adopted unanimously the following resolution:

"L'Institut de Droit international exprime le vœu que les États évitent d'insérer dans les traités des clauses d'irresponsabilité réciproque. Il estime que ces clauses ont le tort de dispenser les États de l'accomplissement de leur devoir de protection sur leurs nationaux à l'étranger et de leur devoir de protection des étrangers sur leur territoires. Il estime que les États qui, par suite de circonstances extraordinaires, ne se sentent point en mesure d'assurer de manière suffisamment efficace la protection des étrangers sur leur territoire, ne peuvent se soustraire aux conséquences de cet état de choses qu'en interdisant temporairement aux éxtrangers l'accès de ce territoire.

Annuaire de l'Institut de Droit International, XVIII. 253, session of Sept. 10, 1900. The foregoing resolution may be translated: "The Institute of International Law recommends that states should refrain from inserting in treaties clauses of reciprocal irresponsibil-

ity. It thinks that such clauses are wrong in excusing states from the performance of their duty to protect their nationals abroad and their duty to protect foreigners within their own territory. It thinks that states which, by reason of extraordinary circumstances, do not feel able to assure in a manner sufficiently efficacious the protection of foreigners on their territory, can escape the consequences of such a state of things only by temporarily denying to foreigners access to their territory."

7. Good Offices.

(1) matters of business.

§ 920.

It is not within the province of the Department of State to make inquiries abroad as to matters of purely private business of citizens of the United States, nor is it the practice of the Department to call upon American ministers abroad to make such inquiries.

Mr. Buchanan, Sec. of State, to Mr. Hough, March 13, 1846, 35 MS. Dom. Let. 435; Mr. Marcy, Sec. of State, to Mr. Ready, Aug. 21, 1856, 45, MS. Dom. Let. 440; Mr. Marcy, Sec. of State, to Mr. French, Dec. 12, 1856, 46, MS. Dom. Let. 166.

"Under any circumstances, this [a question of succession to property], in the first instance, would be a question for the Swiss courts; but under the special provision of our treaty with Switzerland, it is a question for those courts finally. The 6th article [of the treaty of Nov. 25, 1850] . . . declares that any controversy that may arise among the claimants of the same succession as to whom the property shall belong shall be decided according to the laws, and by the judges of the country in which the property is situated. I think it to be a just construction of this section that it takes the question altogeher out of the domain of diplomacy."

Mr. Seward, Sec. of State, to Mr. Harrington, min. to Switzerland, March 21, 1868, Dip. Cor. 1868, II. 192.

In the case, however, to which the foregoing instruction relates, no civil suit having been instituted by anyone in Switzerland to contest the right of the American claimant, the Federal Council directed the communal council of Entfelden, Canton of Aargau, in whose custody the property lay, to recognize the rights of that claimant. (Dip. Cor. 1868, II. 197.)

"It is not, however, within the province or the usage of this Government to interfere in behalf of private citizens in their assertion of rights of private property situated in foreign nations. Such rights must be regulated and determined according to the laws of the country where the property may be situated.

"The consul of the United States at Warsaw is Mr. Charles de Hofman. Mr. Kulinski is at liberty to address him, requesting his good offices in his behalf, or whatever unofficial services he may be able and willing to render. By inclosing this present letter in the original to the consul, that officer will perceive the view which is taken by the Department of the case; but the Department can have no responsibility in the premises, nor can the consul be expected to incur charges or fees other than such which he may be provided with funds to meet. Any letter to the consul, if desired, may be sent to this Department for transmission to him."

Mr. Hale, Assist. Sec. of State, to Mr. Kalussowski, May 8, 1872, 94 MS. Dom. Let. 76.

"To a minister of your experience I need not point out the proper distinction between diplomatic good offices and personal advocacy. To extend all proper protection to American citizens, and to secure for them in any interests they may have a respectful hearing before the tribunals of the country to which you are accredited, and generally to aid them with information and advice, are among the imperative and grateful duties of a minister, duties which increase his usefulness and add to his respect, and duties which, I have no doubt, you will faithfully perform.

"To go beyond and assume the tone of advocacy, with its inevitable inference of personal interest and its possible suspicion of improper interest, will at once impair, if it does not utterly destroy, the acceptability and efficiency of a diplomatic representative."

Mr. Blaine, Sec. of State, to Mr. Hurlbut, min. to Peru, No. 18, Nov. 19, 1881, War in South America, 564.

See, in this relation, the Chile-Peruvian investigation, H. Report 1790, 47 Cong. 1 sess.

In a case where a man claimed to have been injured on the Metropolitan Railway in London, the Department of State said:

"It is not part of the minister's regular or official duties to assist American citizens in the conduct of their private law suits unless some discrimination against them or some denial of justice makes diplomatic intervention necessary."

Mr. Rives, Assistant Secretary, to Mr. Coakley, April 11, 1888, 168 MS. Dom. Let. 24.

With reference to a request for the intervention of the United States, through its diplomatic representative in Vienna, to present a petition addressed to the Emperor, praying that the legal guardian of His Highness, Prince Benjamin Rolan, jr., and the superior orphan's court at Pressburg be ordered to settle a claim for money alleged to be

due from the Prince for money advanced and assistance rendered to him, the Department of State said:

"In view of the peculiar relation between the nobles of the Austro-Hungarian court and His Majesty the Emperor, whereby the latter is the sole appellate power as to suits against the nobles, your request has received very careful consideration, and the conclusion has at last been reached that it would not be expedient to direct the United States minister at Vienna to interfere even by the use of good offices, in order to procure a remedy extraordinary in itself and concerning the relation between a sovereign and a peer of the realm.

"The presentation of any form of petition to an appellate tribunal is outside of the diplomatic channels. Such proceedings are understood to be generally conducted by legal counsel having experience in the particular practice involved, and familiar with the law and procedure of the tribunals of resort. It would seem necessary, therefore, for you to secure the services of a capable attorney to manage your case. If you should so desire, the services of the United States consul-general at Vienna to secure a proper attorney, may be offered to you."

Mr. Rives, Assist. Sec. of State, to Mr. Kutsch, May 7, 1888, 168 MS. Dom. Let. 309.

"Argentine government has granted to Central & South American Telegraph Company permission to extend line from Buenos Ayres to Brazil. Urge, if necessary, on Brazilian government, to grant landing rights at Rio, and thus secure through an American company independent communication between United States and all South America."

Mr. Bayard, Sec. of State, to Mr. Osborn, tel., June 30, 1885, quoted in Mr. Bayard, Sec. of State, to Mr. Jarvis, min. to Brazil, No. 4, July 7, 1885, MS. Inst. Brazil, XVII. 298.

See, on the same subject, Mr. Bayard to Mr. Jarvis, No. 5, July 20, 1885, id. 300; same to same, No. 21, March 6, 1886, id. 312; Mr. Blaine, Sec. of State, to Mr. Adams, min. to Brazil, No. 21, Sept. 30, 1889, id. 416.

"It is desirable to facilitate the extension of American cables in South America, particularly between Brazil and the United States. Assist Central & South American Cable Company in getting concession from Brazil." (Mr. Blaine, Sec. of State, to Mr. Lawrence, tel., April 27, 1892, MS. Inst. Brazil, XVII. 576.)

See, to the same effect, Mr. Gresham, Sec. of State, to Mr. Thompson, min. to Brazil, No. 4, Aug. 21, 1893, MS. Inst. Brazil, XVII. 677.

See, also, For. Rel. 1891, 120, 138, 139, 144, 145

With reference to differences between the Argentine government and the New York Life Insurance Company, growing out of a decree of that government, the Department of State observed that it would

be a matter of deep regret to the government of the United States if measures were taken which would inflict injury upon the interests and prestige of that important business institution. The United States did not question the right of the Argentine government to require of a foreign life insurance company security as a condition of transacting business within its jurisdiction, or a reasonable guarantee for the performance of outstanding contracts and the security of policy holders. The legation was instructed to continue the strenuous exercise of its good offices with a view to the adjustment of the differences between the government and the company in a manner alike honorable and acceptable to both parties, and it was stated that such a happy solution would be a matter of sincere gratification to the President of the United States and would, it was believed, redound to the mutual interest of both countries.

Mr. Hay, Sec. of State, to Mr. Buchanan, min. to Argentine Republic, No. 479, April 8, 1899, MS. Inst. Argentine Republic, XVII. 455.

Mr. Buchanan was authorized to communicate a copy of his instructions to the Argentine Government, if requested to do so.

In 1891, the American minister at Buenos Ayres was instructed to "protest against levying exceptionally large tax on foreign life insurance companies doing business in the Argentine," it being alleged that the proposed legislation would destroy the business of American life insurance in Buenos Ayres—a business that had reached large proportions. (Mr. Blaine, Sec. of State, to Mr. Pitkin, Jan. 5, 1891, For. Rel. 1891, 1–2; see also, pp. 3, 7, 9.) The matter was arranged by executive decree. (For. Rel. 1891, 11.)

For a bill imposing certain burdens on foreign insurance companies in Chile, see For. Rel. 1896, 43–45.

Referring to an instruction which he had sent to Mr. McLane, American minister at Paris, in relation to proposed legislation by the French assembly discriminating against American life insurance companies doing business in France, Mr. Bayard said: "It is my desire to avoid any unfavorable results that might arise from jealousy in any supposed interference with French legislation, but I have based my letter upon an intent to promote the interests of *both* countries by freedom of contract, and the mutual investment of capital in all its forms. *Retaliatory* legislation is easily stimulated and only adds to unwisdom, trying to make one right out of two wrongs."

Mr. Bayard, Sec. of State, to Mr. McCall, March 17, 1886, 159 MS. Dom. Let. 341.

"Occasion has been found to urge upon the Russian government equality of treatment for our great life-insurance companies whose operations have been extended throughout Europe. Admitting, as we do, foreign corporations to transact business in the United States,

we naturally expect no less tolerance for our own in the ample fields of competition abroad."

President Cleveland, annual message, Dec. 2, 1894, For. Rel. 1894, xiii.

"However clear may be the strict right of each state to determine the conditions on which it will permit foreign corporations to carry on business within its jurisdiction, there prevails in such matters a comity which it is the interest of all nations to maintain, and which is well illustrated in the freedom and equality with which foreign corporations are permitted to extend their operations to the United States. There is ground for the belief that the necessary result of the course lately adopted by the Prussian authorities in respect to the Mutual Life Insurance Company would be to give to the beneficent principle of comity a restricted and uncertain operation. Under the circumstances, the President is of the opinion that the subject is one proper for presentation through the present diplomatic channels, for consideration in all its aspects by the royal government of Prussia and by the imperial authorities as well, so far as the latter may have jurisdiction in the premises."

Mr. Uhl, Act. Sec. of State, to Mr. Runyon, ambass. to Germany, No. 313, June 4, 1895, For. Rel. 1895, I. 428. See, also, id. 429–453; II. Ex. Doc. 247, 54 Cong. 1 sess.

For further correspondence, see For. Rel. 1896, 192–198; For. Rel. 1897, 204–208.

In consequence of the exclusion of American life insurance companies from Prussia, Prussian insurance companies were prohibited to do business in the State of New York. In October, 1899, the New York Life Insurance Company was readmitted to do business in Prussia, and the German companies were readmitted to New York. (For. Rel. 1899, 291–293; President McKinley, annual message, Dec. 5, 1899.)

In the voluminous record of diplomatic negotiations with reference to trade and commerce not a little space, especially in the correspondence of the United States, is occupied with discussions as to the prohibition or restriction of the importation of cattle and hogs, beef and pork.

As examples, see the following:

Austria-Hungary, For. Rel. 1891, 31.

Belgium, For. Rel. 1891, 33–38; For. Rel. 1895, I. 25–37, referring to For. Rel. 1894, 50–52; For. Rel. 1896, 19.

Denmark, For. Rel. 1891, 487; For. Rel. 1894, 205; For. Rel. 1895, I. 210.

France, For. Rel. 1891, 489, 493, 495; For. Rel. 1892, 162; For. Rel. 1895, I. 402; For. Rel. 1896, 136–139.

Germany, For. Rel. 1891, 501–528; For. Rel. 1894, 226–233; For. Rel. 1895, I. 497–505; For. Rel. 1896, 163–185.

Great Britain, For. Rel. 1896, 317–363, the "Diseases of Animals Act, 1896," being printed at p. 363.

(2) APPEALS FOR CLEMENCY.

§ 921.

The government of the United States will, through the Secretary of State, interpose its good offices for the alleviation of the punishment of citizens of the United States convicted in a foreign country of political offenses against such country.

Mr. Webster, Sec. of State, to Mr. Cushing and others, Aug. 27, 1842, 32 MS. Dom. Let. 410.

"The judgment of mankind is that in revolutionary movements which are carried on by large masses, and which appeal to popular sympathy, capital executions of individuals who fall within the power of the government are unwise and often unjust. Such severity, when practiced upon a citizen of a foreign state, excites a new sympathy by enlisting feelings of nationality and patriotism.

"The fellow-citizens at home of the sufferer in a foreign country naturally incline to believe that the just and generous principle to which I have referred is violated in his case. The soundness of this principle is quite easily understood after the revolutionary movement is ended, although it is difficult to accept the truth in the midst of revolutionary terror or violence. When the President of the United States dismissed the prosecutions in the United States courts of the so-called Fenians who attempted an unlawful and forbidden invasion of Canada, and returned them to their homes at the expense of the government, and at the same time obtained, through the wise counsels of Sir Frederick Bruce and the governor-general of Canada, a mitigation of the capital punishments adjudged against those who were convicted in the Canadian courts, the President adopted proceedings which have practically assured the continuance of peace upon the Canadian border. It was believed here that similar clemency could be practiced in the Manchester case with benign results. Your dispatch leads us to believe that Her Majesty's government was so thoroughly convinced of the necessity of pursuing a different course in that case that further interposition than that which you adopted would have been unavailing and injurious to citizens of the United States. Certainly it belonged to the British government to decide whether the principle which we invoked could be wisely applied in the Manchester case."

Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 2106, Dec. 9, 1867, Dip. Cor. 1868, I. 37.

"Mr. Frelinghuysen informed Mr. Lowell of the action of the House of Representatives, as contained in the resolution of December

10, repeated his former instruction to consider the citizenship of O'Donnell established, and concluded by saying:

"'There being in Great Britain no judicial examination on appeal of the proceedings at a criminal trial, possible errors can only be corrected through a new trial or by executive action upon the sentence. Therefore this government is anxious that such careful examination be given to the proceedings in this case as to discover error, should one have been committed. You are therefore directed by the President to request a delay of the execution of the sentence, and that a careful examination of the case be made by Her Majesty's government, and that the prisoner's counsel be permitted to present any alleged points of error.'"

Mr. Frelinghuysen, Sec. of State, to Mr. Lowell, min. to England, tel., Dec. 11, 1883, For. Rel. 1883, 479.

With reference to a petition signed by prominent officials and private citizens of St. Louis, Missouri, and addressed to the King of Hawaii, praying for the pardon of a person who had been convicted of homicide at Honolulu, the Department of State said: "I have enclosed a copy of the correspondence to Mr. Rollin M. Daggett, United States minister there, for his information. The Department's understanding of this case is that Mr. ——— was fairly and impartially tried and convicted. Under these circumstances it is not perceived how Mr. Daggett could be instructed to intervene officially in the prisoner's behalf. Besides, it is not the province of this government to interfere in the judicial proceedings of a friendly foreign power, especially when those proceedings have been marked by a spirit of fairness and impartiality. At the same time I have every desire to extend Mr. ——— such assistance as his friends think him entitled to, and this Department consistently can. In this sense copies of the papers have gone to Mr. Daggett, who has been instructed that should the matter be brought to his attention by the King or the minister for foreign affairs, after the petition had been duly presented to His Majesty, or should a convenient opportunity present itself for Mr. Daggett to speak to the King or the minister for foreign affairs upon the subject, he was at liberty to do so unofficially, making such representations as from his position, and the circumstances of Mr. ———'s case, he might consider him entitled to."

Mr. Bayard, Sec. of State, to Mr. O'Neill, March 25, 1885, 154 MS. Dom. Let. 584.

"Full brief Sproule's case presented to imperial government by American minister earnestly urging clemency; execution consequently postponed by Canadian authorities. This Department has made every possible appeal and still hopes for commutation."

Mr. Bayard, Sec. of State, to Mr. Collins, tel., Oct. 25, 1886, 162 MS. Dom. Let. 8.

See, as to Sproule's case, Mr. Bayard, Sec. of State, to Mr. West, Brit. min., Feb. 17, April 14, April 23, 1886, MS. Notes to Great Britain, XX. 190; Mr. Porter, Act. Sec. of State, to Mr. West, Brit. min. Oct. 1, 1886, MS. Notes to Great Britain, XX. 231; Mr. Bayard, Sec. of State, to Mr. Phelps, min. to England, Sept. 24, 1886, MS. Inst. Great Britain, XX. 240.

"In the cause of mercy, I beg leave to place in your hands the enclosed letters of Baron Fava, the Italian minister at this capital, and of His Eminence, the Cardinal Archbishop of Naples, relating to the case of Vicenze Vika, an Italian now under sentence of death in the State of Pennsylvania, and already respited by your order. While I yield to the earnest request of Baron Fava to become the personal intermediary for placing in your hands these proofs of deep interest in the prisoner's fate, and appeals for the exercise of your official clemency, yet I have not such knowledge of the circumstances of the case as would warrant me in the expression of any opinion in relation thereto.

"The sincerity and earnestness of Baron Fava and his reverend correspondent induce, however, an expression of my hope that you may find ground for an interposition of the great discretion which is your official prerogative, by which a mitigation of the extreme penalty of the law can be granted."

Mr. Bayard, Sec. of State, to Gov. Beaver, April 16, 1888, 168 MS. Dom. Let. 105.

August 2, 1888, the Department of State communicated to the governor of Missouri a note of the preceding day from the British minister expressing the earnest desire of his Government that a respite of the sentence pronounced against Maxwell, alias Brooks, who was then under sentence of death at St. Louis for the murder of one Preller, might be granted. The Department of State, though without information of the reasons on which the respite was requested, felt bound to lay before the governor the application made by the minister of a friendly power, whose appeal to the governor's high official discretion and clemency in behalf of one of his countrymen was justly entitled to and doubtless would receive serious consideration.

Mr. Bayard, Sec. of State, to Governor Morehouse, Aug. 2, 1888, 169 MS. Dom. Let. 314.

Maxwell was in due time hanged. (Mr. Rives, Act. Sec. of State, to Mr. Francis, Oct. 9, 1888, 170 MS. Dom. Let. 183.)

The petition of numerous Ottoman subjects residing in Massachusetts, asking executive clemency for one of their countrymen who was undergoing a term of imprisonment in that State, having been com-

municated to the Department of State by the Turkish minister at Washington, was transmitted by the Department to the governor of Massachusetts for his consideration. (Mr. Blaine, Sec. of State, to the governor of Mass., May 4, 1889, 172 MS. Dom. Let. 665.)

"Circumstances have prevented an earlier acknowledgment of your letter, without date, but received here on the 3d of December last, in which you ask the intervention of this Department to cause the transmission to Her Majesty, Queen Victoria, of a petition of three thousand American women, having for its object the release of Mrs. Florence Maybrick, recently convicted in England of murder and now imprisoned at Woking under a life-sentence.

"Mrs. Maybrick's case had enlisted the Department's attention, and, shortly after her conviction, the minister of the United States at London, Mr. Robt. T. Lincoln, used his unofficial good offices with the authorities there to the end that the original capital sentence of the court, since commuted, might not be carried into execution.

"The question of any interference by one government in the administration of justice within the jurisdiction of another is, at all times, a delicate one, and the difficulty was increased in the present case by the fact that the defendant, although of American origin, had become the wife of a British subject. As Mrs. Maybrick's case is here understood, it is not perceived upon what grounds the government of the United States could at present further interfere in her behalf. I do not, therefore, feel warranted in making our legation at London the channel for the communication of the petition in question to the British government, especially as, in somewhat analogous cases heretofore, the direct presentation of such a petition, by the signers, to the British home office, has been advised as the regular and proper course to pursue."

Mr. Blaine, Sec. of State, to Mr. Campbell, Feb. 14, 1890, 176 MS. Dom. Let. 399.

See, to the same effect, Mr. Blaine, Sec. of State, to Mr. Ingraham, Feb. 1, 1890, id. 270; Mr. Blaine, Sec. of State, to Mr. Clark, June 27, 1890, 178 MS. Dom. Let. 131.

Mr. Lincoln was subsequently informed that a feeling of great interest attached to the pardon of Mrs. Maybrick, and he was instructed to "go as far as diplomatic privilege will allow and justify." (Mr. Blaine, Sec. of State, to Mr. Lincoln, min. to England, tel., April 18, 1891, MS. Inst. Gr. Br. XXIX. 469.) The application was unsuccessful.

See H. Doc. 370, 54 Cong. 1 sess. 10.

The British authorities, while admitting the right of petition for the pardon of persons under criminal sentence, require the prayer to come to the proper officer of the government, the home secretary, directly, and not through a foreign government. As a similar rule

is generally observed by the government of the United States and the States of the Union with regard to foreign petitions praying for clemency, the Department of State can not run counter to such usage and must decline to present the petition officially.

Mr. Adee, Act. Sec. of State, to Mr. Newlin, July 20, 1895, 203 MS. Dom. Let. 471.

8. Protection of Missionaries.

§ 922.

Missionaries sent out by religious communions in the United States to Mohammedan or Pagan land "are entitled to all the protection which the law of nations allows this government to extend to citizens who reside in foreign countries in the pursuit of their lawful avocations, but it would be a source of endless embarrassment to attempt to reverse the decisions of regular tribunals as to the questions connected with the peculiarities of doctrinal belief."

Mr. Everett, Sec. of State, to Mr. Marsh, min. to Turkey, No. 24, Feb. 5, 1853, S. Ex. Doc. 9, 33 Cong. 2 sess. 5.

This instruction related to the trial and sentence of banishment of the Reverend Jonas King, of Massachusetts, in Greece, for alleged offences against the established religion of the state. For the reason above stated, Mr. Everett held that it would not be expedient to require any pecuniary indemnity to be made to Dr. King. But, as he thought that Dr. King had not had a fair trial, he directed Mr. Marsh to say to the Greek government that the President expected a formal remission of the sentence of banishment should be granted. The Greek government declined directly to accede to this request, but in fact the judgment against Dr. King remained unexecuted. (S. Ex. Doc. 9, 33 Cong. 2 sess. 186.) For further particulars of this case, see supra, § 913.

The government of the United States, while protecting citizens of the United States in Turkey, so far as concerns their international rights, can not in any way assume a protectorship of Christian communions in Turkey, as is done by some European powers, nor in any way undertake to determine their dissensions.

Mr. Cass, Sec. of State, to Mr. Williams, Oct. 22, 1860, MS. Inst. Turkey, II. 27.

"It is a matter of regret that the Christian missionaries of the United States and of Hawaii to the Micronesian group should have experienced any obstacle in the prosecution of their calling, and especially that they should have been wronged in their person and property by the savage aborigines. It is hoped that the vessel of war which, it is understood, has been ordered thither, will have the effect of preventing any further outrages upon our citizens. Our

right, however, to demand redress for injuries to subjects of the Hawaiian Kingdom, independent, though a friendly state, may be regarded as questionable. We should, consequently, prefer not to direct an application to be made in their behalf, notwithstanding the connection between missionaries of this country and those of Hawaii, adverted to by Mr. Harris in his note to you of the 26th February. Still, as the native inhabitants of Micronesia are not understood to acknowledge the obligations of the law of nations, it will be competent for, and there would be no objection to, a United States naval commander interposing in behalf of any subjects of the Hawaiian Kingdom to protect them against any further injuries with which they might be threatened during his abode in Micronesia."

Mr. Fish, Sec. of State, to Mr. Peirce, min. to Hawaii, No. 13, April 6, 1870, MS. Inst. Hawaii, II. 196.

The minister of the United States at Constantinople may employ his good offices with the Turkish authorities to obtain for the Syrian Protestant College authority to grant medical degrees. This privilege, however, is not to be claimed as a matter of right, either under public law or treaty, but merely as a mark of good will.

Mr. Fish, Sec. of State, to Mr. Brown, min. to Turkey, No. 7, July 31, 1871, MS. Inst. Turkey, II. 346.

November 4, 1871, Mr. Brown, American minister at Constantinople, answered an inquiry of Mr. Hay, American vice-consul-general at Beirut, as to the amount of protection, if any, which consuls of the United States might give to teachers, pupils, and natives, who had been converted through the ministry of American missionaries, from persecution on account of their religious belief. Mr. Brown stated that he was without instructions on the subject, and that, much as the government of the United States might be interested in the principle of religious liberty, the question was one of so much delicacy as to prevent direct official interference to sustain it. Mr. Brown stated that by Article V. of the treaty between the United States and Turkey it was established that the legation and consulates of the United States should not protect Ottoman subjects either openly or secretly, and the same principle was repeated in the berat or exequatur issued to the consul-general. With these facts before him, Mr. Brown said that he could not instruct Mr. Hay to claim a right to give his official protection to the persons mentioned, and he believed that the local authorities would not allow it. Mr. Brown said that he did not advise Mr. Hay to refrain from offering unofficial solicitations in behalf of any clearly established case of religious persecution, no matter who the sufferer or what his faith might be, or from invoking the well-known liberal principles of the Ottoman government in

such matters; but this should be done with much discretion; and it "would be certainly an error to interfere in the affairs of the individuals you allude to disconnected with religion." Mr. Hay had stated that, if a Mohammedan subject of Turkey embraced Christianity, his evidence was by the laws of Mohammedanism worthless and he could be put to death, but that a recent decree of the Sultan proclaimed religious toleration throughout the empire. This decree, said Mr. Hay, was not practically enforced in Syria, and American missionaries often desired and expected consular interposition to succor persecuted native teachers and native converts, though such a course was offensive to the local authorities, who were upheld by their superiors in Constantinople. On this point Mr. Brown replied that Mr. Hay was incorrect in his statement that any Mussulman who had embraced Christianity might be put to death, since the Sultan had officially declared that this principle of Islam holy law should never be practiced; and there were in fact a few Christians, formerly Moslems, who resided at Constantinople and were in frequent intercourse with the higher functionaries of the government. Continuing, Mr. Brown said: "I would therefore not encourage you to do what, though very creditable to your feelings as a Protestant, I should not be able to sustain you in. . . . As to the American missionaries, I of course need not add that every possible means should be adopted for their protection. Their dwellings and establishments are inviolate, and will never, I presume, be molested."

With reference to this correspondence, Mr. Fish said: "I have received your dispatch No. 28, of the 6th ultimo, enclosing correspondence between yourself and the vice-consul-general at Beirut, in regard to the 'amount of protection, if any, consuls can give to the teachers, pupils, and natives, who have been converted through the ministry of American missionaries, from persecution on account of their religious belief.' In reply, I have to state that the general position and principles advanced by you on the subject are correct, and are within the provision of the treaty between the United States and Turkey, and your communication to the vice-consul-general is approved."

Mr. Fish, Sec. of State, to Mr. Brown, min. to Turkey, No. 24, Dec. 5, 1871, For. Rel. 1872, 669, acknowledging the receipt of Mr. Brown's No. 28, of Nov. 6, 1871, id. 663.

May 27, 1882, Mr. Frelinghuysen enclosed to the American legation at St. Petersburg a letter from the American Bible Society in relation to the introduction and sale in parts of Russia of copies of the Bible printed by that society. It was stated that the colporteurs of the society were forbidden to sell the Scriptures from house to house in Esthonia by the clergy of the Lutheran Church, and that the

Scriptures published by the society in Armenian and Syriac, imported by way of Tabreez or Constantinople, were excluded from the region of the Caucasus on the strength of a decree of the Russian minister of the interior. Mr. Frelinghuysen stated that the American Bible Society was an incorporated company under the laws of New York, and that, apart from its claims in common with other lawful American corporations to the kindly offices of the government, there was in its case the unselfish aim of doing good which commended it to the support of enlightened people. The legation was directed to read the instruction to the Russian minister of foreign affairs, and to express the hope that the Russian government would examine into the allegations submitted, and if they were found to be well grounded, issue such orders as might be deemed right and best fitted to afford the desired relief.

Mr. Frelinghuysen, Sec. of State, to Mr. Hoffman, chargé, No. 128, May 27, 1882, MS. Inst. Russia, XVI. 279.

In a subsequent instruction, Mr. Frelinghuysen stated that it was represented to him that Bibles of the British Bible Society were everywhere admitted and allowed to be sold by the Russian authorities, and that the refusal to promote the sale of American Bibles in like manner was a discrimination against American citizens. Mr. Frelinghuysen considered this a contravention of Articles VI. and IX. of the treaty of commerce and navigation of December 6–18, 1832. (Mr. Frelinghuysen, Sec. of State, to Mr. Hunt, min. to Russia, No. 28, Feb. 10, 1883, MS. Inst. Russia, XVI. 324.)

See, also, Mr. J. Davis, Act. Sec. of State, to Mr. Wurts, chargé, No. 45, May 25, 1883, MS. Inst. Russia, XVI. 346.

"Mr. Heap's despatch No. 300, of the 1st ultimo, reports the correspondence had with the Turkish government concerning the alleged conversion, by the missionaries in certain parts of Armenia, of their dwellings to ecclesiastical purposes, and their use of bells as a part of their worship.

"The explanatory memorandum, which, after causing investigations to be made, Mr. Heap communicated to the minister for foreign affairs is approved as temperate and courteous in tone.

"The right of private worship in a dwelling house must be maintained. If that is infringed, the remonstrances of your legation will not fail to be immediate and energetic.

"To ensure that the intervention of this government in such a case is obtained in good faith and due as a right, it is very desirable that such discretion should be observed by American citizens of non-Mohammedan faith who take up their abode in the Mohammedan regions of Turkey, as not to overstep the bounds which separate private from public worship, or to give grounds for any plausible complaint by the Turkish authorities that the sensibilities of their

people are wounded by any, to them, offensive demonstrations of a character usually connected with public ecclesiastical worship.

"The point may be best illustrated by the question of the bells said to have been hung by the missionaries in certain localities. It is presumed, from the nature of the complaint, that these bells have been hung in or upon private dwellings, that their purpose is to summon worshippers to the private services held within those dwellings, and that (in connection with the internal arangement of those dwellings, which it is supposed are such as to facilitate the assemblage of persons outside of the household), this use of bells is held by the Turks to indicate the use of a private dwelling for the usual purposes of a church.

"If the question were frankly presented by the Turkish government, as to whether a bell so hung, and so rung, openly and audibly over an extended neighborhood, is a needful or usual adjunct of a private dwelling, the answer would be as frankly made that it is not so regarded by this government. It is not unlikely that an equivalent or similarly conspicuous Mohammedan demonstration upon a private dwelling in any populous locality here, or in any Christian country, would be suppressed as a nuisance, and this without any idea of interfering with liberty of worship or individual conscience.

"It may be well for you to advise those missionaries who may seek your advice or intervention in this matter that this government would not be willing to make the right to use church bells on private dwellings a diplomatic question with Turkey. The part of discretion for them to pursue would appear to be the avoidance of opportunities of giving offense to the people among whom their lot is cast."

Mr. Frelinghuysen, Sec. of State, to Mr. Wallace, min. to Turkey, Jan. 9, 1884, MS. Inst. Turkey, IV. 77.

"The question of the *personal* protection of parties whose sojourn in Mexico may be under such conditions or associations as to bring them into conflict with Mexican law and, probably, worse still, with native prejudices, is a grave matter which, from its complexity, requires the most discreet handling. In the two cases mentioned in your present dispatch, the element of discretion in the proceeding of the American citizens concerned is not, I regret to say, evident. In the one, it is proposed to erect a Protestant house of worship in immediate proximity to a Catholic Church. In the other, the ruins of a consecrated edifice are proposed to be utilized for the worship of another faith. The legal right to do these things may be perfect in all respects, but the moral aggressiveness of the proceeding may tend to arouse local sensibilities and divert them into undesirable channels. It is one thing to be drawn unintentionally into a controversy; it is quite another to provoke it.

"I find in the records of this Department a recent instance bearing on this question and showing the views of my immediate predecessor touching the extent to which international right may be invoked to defend acts which may be lawful in themselves, but which may tend to disturb the popular feeling.

"In 1884 an instruction (No. 147, of January 9) was addressed to Mr. Wallace, United States minister at Constantinople, in reply to a dispatch reporting the correspondence had with the Turkish government concerning the alleged conversion by the missionaries, in certain parts of Armenia, of their dwellings to ecclesiastical purposes, and their use of bells as a part of their worship.

"Mr. Frelinghuysen remarked that the right of private worship in a dwelling house must be maintained, and that if it were infringed the remonstrances of the legation were to be immediate and energetic. To insure that the intervention of this government in such a case was obtained in good faith and due as a right, it was very desirable that such discretion should be observed by American citizens of non-Mohammedan faith, who had taken up their abode in the Mohammedan regions of Turkey, as to not overstep the bounds which separate private from public worship, or to give grounds for any plausible complaint by the Turkish authorities that the sensibilities of their people were wounded by any, to them, offensive demonstrations of a character usually connected with public ecclesiastical worship.

"I now quote Mr. Frelinghuysen's language literally.[a]

"Mr. Frelinghuysen also intimated to Mr. Wallace that it might be well to inform the missionaries who sought his advice or intervention in such matters, that the United States government was not willing to make the right to use church bells on private dwellings a diplomatic question with Turkey, and that the part of discretion for them to pursue would appear to be the avoidance of opportunities of giving offense to the people among whom their lot was cast.

"It is, however, quite clear in the cases now before me, that if antagonisms be created by acts in perfect accord with principles of domestic and international law, as well as the letter of individual rights, the parties are entitled to personal protection against any unlawful interference with those rights, by all means ordinarily within the power of the local authorities in the first instance, and secondly, in case of denial thereof, by the interposition of the government of the country of the complaining individual.

"The administrative and political system of civilized governments is designed to afford security to the individual in the enjoyment of

[a] Here follows a quotation of paragraphs 5 and 6, beginning with the words "The point," and ending with the words "individual conscience," of Mr. Frelinghuysen to Mr. Wallace, No. 147, Jan. 9, 1884, supra, 336–337.

his lawful personal rights, and is supposed to be adequate for all usual demands upon their power. The application of extraordinary means for individual protection, especially if the assertion of the individual's rights be demonstratively aggressive, and calculated from the nature of things in the locality to lead to conflict, is hardly to be expected.

"You will, of course, understand that much of this instruction is designed for your personal guidance. The tone of your dispatch, however, leads the Department to place the utmost reliance in your wisdom and discretion in dealing with this class of questions."

Mr. Bayard, Sec. of State, to Mr. Jackson, July 17, 1885, MS. Inst. Mexico, XXI. 329.

"I have to acknowledge the receipt of your letter of the 15th instant, accompanied by a newspaper extract entitled 'Fresh Turkish Atrocities,' meaning those perpetrated upon the Christian inhabitants of Bulgaria, and to say that the United States government has enough to do to protect its own citizens in the Turkish dominions. But, even with the right of treaties and of international law on our side, it is with the greatest difficulty that we obtain a satisfactory hearing for our complaints. It is thought, therefore, that it would weaken the force of our valid complaints were this government to press for the interests, no matter how deserving, of the native Christians of Bulgaria on the ground of sympathy alone; and, moreover, as the treaty of Berlin reserves the Bulgarian question to the Powers which negotiated that instrument, and as the government of the United States was not a party thereto, an appeal from this government to one of them alone would be a manifest intrusion and contrary to the practice of diplomatic intervention in such cases.

"In connection with this subject I quote from the message of the President to the Congress of the United States of December 4, 1883, as follows:

"'Under the treaty of Berlin, liberty of conscience and civil rights are assured to all strangers in Bulgaria. As the United States have no distinct conventional relations with that country and are not a party to the treaty, they shall in my opinion [the President's] maintain diplomatic representation at Sofia for the improvement of intercourse, and the proper protection of the many American citizens who resort to that country as missionaries and teachers. I [the President] suggest that I be given authority to establish an agency and consulate general at the Bulgarian capital.'

"I may observe, however, in conclusion, that we have no consular or other representative at that capital."

Mr. Frelinghuysen, Sec. of State, to Mr. Gifford, Dec. 19, 1884, 153 MS. Dom. Let. 470.

With reference to a request that the American minister at Lisbon be directed to use proper efforts for the removal of certain restrictions on the missionary activities of the American Board of Commissioners for Foreign Missions in Mozambique, the Department of State said: "Your letter . . . has been sent to that minister with a commendatory instruction authorizing his good offices in the matter. In Portugal, you are aware, as in other countries, freedom of worship might be allowed where proselytism would be discouraged. It is trusted that the very broad and practically unsectarian views and measures of your board, already known to the Portuguese government, will be found to favor the success of your request."

Mr. Frelinghuysen, Sec. of State, to Mr. Smith, Jan. 27, 1885, 154 MS. Dom. Let. 74.

Where certain American missionaries, because of a prohibition against citizens of the United States holding real estate in Mexico within 20 leagues of the frontier, organized a corporation under a Mexican charter in order to hold real estate under Mexican law, it was held that the question of title to the property thus held was one for the jurisdiction of the Mexican courts and was not a proper subject for diplomatic intervention.

Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, July 9, 1885, MS. Inst. Mexico, XXI. 324.

"If Mr. Norwood's statement is exact in all particulars (and there is no cause for me to doubt the good faith of his narrative), his well-disposed efforts to adjust the question in a manner which shall reconcile his indisputable civil and religious rights under the Mexican constitution, with a considerate respect for the sentiments of the community in which he dwells, have been rendered unavailing by the concerted opposition of the Mexican authorities. This is a grave charge, and if those whose duty it is to administer the laws under the Mexican constitution and to protect all law-abiding persons in their individual, civil, and religious rights, do in reality render the fundamental guarantees of no avail, the matter might well be made the occasion for formal and urgent remonstrances. It is alike the duty of the Mexican government to see that its laws are respected by and toward all persons within its jurisdiction, and the obligation of this government to see to it that any American citizen whose rights are infringed without due warrant of law, shall be protected in those rights."

Mr. Bayard, Sec. of State, to Mr. Jackson, July 31, 1885, MS. Inst. Mex. XXI. 347.

In enclosing to the American minister at Constantinople copies of a letter of the American Board of Commissioners for Foreign Missions

of July 29, 1885, and the reply thereto of August 17, in relation to the cause of American missionaries in the Ottoman Empire, the Department of State said: "You will communicate freely with the Department on this subject as you may deem it necessary, and while giving your own views as to the result of the practical knowledge you may be able to obtain on the spot, you will ask such special instructions as you may think needful. You will rest assured that it is the purpose of this government to go to all proper limits in protecting American rights and interests in Turkey, and any suggestions that you may offer as to the proper method of doing so will have careful consideration. At the same time you will not disguise from the Porte our sense of disappointment at the inadequacy of the protection accorded to law-abiding citizens of the United States in Turkey, and the bad impression which must be created from the continued failure to punish offenders whose identity has been amply established. The Turkish government is no less concerned than ourselves in seeing to it that no imputation on its good faith shall be possible, and that no culprit shall be screened from the consequences of his acts. The government of the United States recognizes in the missionaries an honest and worthy set of men who have achieved a vast amount of good and whose welfare is dear to multitudes in this country. They not only deserve all the protection possible, but should be shown every proper sympathy in their life-work."

Mr. Bayard, Sec. of State, to Mr. Cox, min. to Turkey, No. 9, Aug. 17, 1885, For. Rel. 1885, 855.

"Information received of maltreatment suffered by an inoffensive American woman engaged in missionary work in Turkish Koordistan was followed by such representations to the Porte as resulted in the issuance of orders for the punishment of her assailants, the removal of a delinquent official, and the adoption of measures for the protection of our citizens engaged in mission and other lawful work in that quarter."

President Cleveland, annual message, Dec. 4, 1893, For. Rel. 1893, x.

"Three of the assailants of Miss Melton, an American teacher in Mosul, have been convicted by the Ottoman courts, and I am advised that an appeal against the acquittal of the remaining five has been taken by the Turkish prosecuting officer."

President Cleveland, annual message, Dec. 3, 1894, For. Rel. 1894, xv.

The case was tried at Mosul, on the river Tigris, opposite old Nineveh. Twelve men were found guilty of the assault. The court for the correction of errors, at Bagdad, found that the evidence justified the conviction of eight of the men, but not of the other four; and the case was sent back to the trial court for further proceedings. September 17, 1894, four of Miss Melton's assailants were sentenced to three years'

imprisonment and five were discharged for insufficient evidence. In a note of September 26, 1894, the Turkish minister of foreign affairs stated that of the eight men who were under arrest for the assault, five were acquitted for insufficient evidence, while the others, two of whom had escaped, were condemned to three years' hard labor. The United States urged the recapture of the two escaped convicts, saying that until it was effected, or proper efforts were put forth to that end, the incident could hardly be regarded as closed, notwithstanding the energy displayed by the Turkish Government in pressing the prosecution. (For. Rel. 1894, 688–702, in connection with For. Rel. 1893, 642–704.)

October 10, 1895, the minister of the United States at Constantinople telegraphed that there was apprehension of a massacre of missionaries at Aleppo, Hadjin, Mersine, and Marash. Orders had been issued for all provinces to protect Americans. The U. S. S. *Marblehead* was ordered to the Gulf of Alexandretta. In response to an inquiry of the Turkish minister at Washington it was stated that the visit of this vessel to Turkish waters "is in pursuance of a long-established usage of this government to send its vessels, in its discretion, to the ports of any country which may for the time being suffer perturbation of public order and where its countrymen are known to possess interests. This course is very general with all other governments, and the circumstance that a transient occasion for such visits may exist does not detract from their essentially friendly character."

Mr. Olney, Sec. of State, to Mavroyeni Bey, Oct. 15, 1895, For. Rel. 1895, II. 1324.

Early in 1895 reports were received that American missionaries at Marash, Hadjin, Aintab, and Orfa apprehended a massacre, and that a hostile feeling toward them existed at Erzerum, Van, and Bitlis. On the demand of the legation of the United States at Constantinople, the Porte, while denying the existence of the rumored danger, sent telegraphic orders to the civil and military functionaries in Asia Minor, enjoining upon them the protection of Americans and their property. Besides, the U. S. S. *Marblehead* was ordered from Gibraltar to Beirut, and the U. S. S. *San Francisco*, with Rear-Admiral Kirkland, commander in chief of the European station, from Palermo to Smyrna, Alexandretta, and Adana, under instructions to ascertain, by conference with the United States consuls and resident American citizens in the places mentioned, what foundation existed for the alarming apprehensions expressed in regard to the massacre of Christians in Turkey, and, in case sufficient ground should be found for such anxiety, to intimate to the responsible authorities of the government of Turkey that it was the intention of the United States to afford full protection to its citizens who were peaceably residing in

that part of the world under the guarantee of treaties.[a] The visit of the ships bore a friendly character.[b] Admiral Kirkland reported that no information could be obtained of any outrages on American citizens, and that his reception was everywhere most courteous.[c]

"The number of citizens of the United States resident in the Turkish Empire is not accurately known. According to latest advices, there are 172 American missionaries, dependents of various mission boards in the United States, scattered over Asia Minor. There are also numbers of our citizens engaged in business or practicing professions in different parts of the Empire. Besides these, more or less persons, originally subjects of Turkey and since naturalized in the United States, have returned to the country of their birth and are temporarily residing there. The whole number of persons comprising these several classes can not be accurately estimated, but, the families of such citizens being considered, can hardly be less than five or six hundred, and may possibly exceed that total.

"Outside of the capital and a few commercial seaport towns, the bulk of this large American element is found in the interior of Asia Minor and Syria, remote from the few consular establishments maintained by this government in that quarter, inaccessible except by difficult journeys, and isolated from each other by the broken character of the mountain country and the absence of roads. Under these circumstances and in the midst of the alarming agitation which for more than a year past has existed in Asia Minor, it has been no slight task for the representative of the United States to follow the interests of those whose defense necessarily falls to his care, to demand and obtain the measures indispensable to their safety, and to act instantly upon every appeal for help in view of real or apprehended peril. It is, however, gratifying to bear testimony to the energy and promptness of the minister in dealing with every grievance brought to his notice, and his foresight in anticipating complaints and securing timely protection in advance of actual need. The efforts of the minister have had the moral support of the presence of naval vessels of the United States on the Syrian and Adanan coasts from time to time as occasion required, and at the present time the *San Francisco* and *Marblehead* are about to be joined by the *Minneapolis*, which has lately been ordered to the eastern waters of the Mediterranean, the squadron being under the command of Rear-Admiral Selfridge, an officer whose record indicates the necessary discretion in dealing with whatever emergencies may arise."

Mr. Olney, Sec. of State, report to the President, Dec. 19, 1895, S. Doc. 33, 54 Cong. 1 sess.; For. Rel. 1895, II. 1256, 1321 et seq.

[a] For. Rel. 1895, II. 1237, 1238, 1239, 1240, 1241, 1243, 1247, 1250.

[b] For. Rel. 1895, II. 1242, 1248, 1250.

[c] For. Rel. 1895, II. 1245–1247.

See, also, Mr. Olney, Sec. of State, to Mr. Terrell, min. to Turkey, Nov. 22, 1895, For. Rel. 1895, II. 1345.

The following instructions were telegraphed, Dec. 18, 1895, to Admiral Selfridge: "The *Minneapolis* ordered to Alexandretta, Syria, Marash, Turkey, center of danger. Suggest the concentration of vessels United States Navy, and taking missionaries and other Americans on board, if necessary. Act promptly if in your judgment advisable to land force. Keep Department fully informed. Acknowledge." (For. Rel. 1895, II. 1422.)

It has not been "the policy of this government to make the protection of American missionaries in Turkey dependent upon their withdrawal from their posts of duty. It has been made clear to Dr. Smith [foreign secretary of the American Board of Commissioners for Foreign Missions] that there has been no change of policy whatever in this regard. As in China during the recent war with Japan, when mob violence and anti-Christian spirit ran high in the remote interior provinces, this government stands ready to use its influence and its agencies to assert its rights by every permissible means to insure the safety of resident American citizens in Turkey, aiding them to reach places of safety should they voluntarily desire to do so, and exerting diplomatic pressure for their protection should they remain at their posts. If it aids those devoted men or their families to reach a place of temporary shelter, that in no way implies a condition of abandonment of their employment. Like yourself, this Department sympathizes very keenly with the perilous situation of the nonworkers, the helpless women and children, who are not reasonably to be regarded as tied to their posts by obligations of duty, and would be glad to see them shielded from harm which may possibly befall them. It understands that your advice as regards removal has been confined to those nonworkers, and that you have been unremitting in your efforts to protect the effective personnel of the missions at their posts under any and all circumstances. The Department would be glad to learn that you have made this clear to Mr. Dwight also.

"The communication of Mr. Dwight is interesting in that it brings prominently forward the commercial aspects of the American missionary enterprises in Turkey, a point of view of much importance in dealing with the problems presented; but not, according to his exposition of the matter, disassociated from the obligations of duty which in his view constrain his agents to personally remain among the communities where those interests of trade have been built up in order to afford moral protection to the native classes with whom they have been associated in their enterprises. The latter consideration is a matter of conscience as to which the representatives of American enterprises must follow their own judgment or the judgments of the boards which employ them. This Government can not and should

not assume to influence them in this regard. Whether as traders in vendible merchandise, according to Mr. Dwight, or as teachers in legitimate fields of instruction, they are entitled to the same protection as other American merchants or professional men, pursuing their trades or avocations peaceably under the guaranty of law, of existing capitulations, and of that usage which in Turkey has grown to have the force of conventional law.

"No problem of modern intercourse has more forcibly presented itself to this Government or more earnestly engaged its attention than that of the situation of our citizens in Turkey at the present time, and its determination to act without hesitancy and effectively as occasion may demand is as fixed as your own endeavor to aid the Government in the accomplishment of its purposes has been zealous and unflagging."

Mr. Olney, Sec. of State, to Mr. Terrell, Jan. 16, 1896, For. Rel. 1895, II. 1461–1462.

The communication of Mr. Dwight above referred to, bearing date Constantinople, Dec. 26, 1895, and addressed to Mr. Terrell, is printed, with Mr. Terrell's reply, in For. Rel. 1895, II. 1427–1434.

See, also, Mr. Goodell to Mr. Olney, Sec. of State, Jan. 4, 1896, and Mr. Olney, Sec. of State, to Mr. Goodell, Jan. 8, 1896, For. Rel. 1895, II. 1449–1452; and Mr. Terrell, min. to Turkey, to Mr. Olney, Sec. of State, Jan. 25, 1896, id. 1467–1468.

See, as to charges and denials of encouragement by American missionaries of sedition, For. Rel. 1895, II. 1413–1416, 1463, 1469.

In acknowledging the receipt from the Spanish minister at Washington of the procotol concluded between Germany and Spain through the mediation of Pope Leo XIII. relative to the sovereignty of Spain over the Caroline and Pelew islands, Mr. Bayard called attention to the fact that citizens of the United States had been actively engaged in disseminating information among the inhabitants of that quarter, with a view to their prosperity, and he observed that it was not presumed that their treatment under the rule of Spain, which the protocol recognized and affirmed as between Germany and Spain and which had never been contested by the United States, would be any less favorable than that of Germans and other foreigners commorant therein. The Spanish minister subsequently communicated to Mr. Bayard a note from his government, in which it was declared that nothing was further from the intention of that government than to seek to hamper or embarrass in the slightest degree the work of Christianizing and teaching of the American missionaries, but that it was, on the contrary, the determination of the government to favor and promote such beneficent enterprises to the extent of its ability. Subsequently, however, the Spanish authorities, when they assumed the government of the islands, closed

all the American schools but one. One of the missionaries was forbidden to preach; services at some of the churches were suppressed, and lands granted to the missions many years before by native chiefs were encroached upon and seized. These proceedings culminated in the arrest of Mr. E. T. Doane, the oldest of the American missionaries in the islands, because of a letter addressed by him to the governor protesting against the seizure of certain lands belonging to the mission. He was subsequently deported to Manila, where he was released. The government of the United States protested against these acts, and the Spanish government endeavored in a measure to repair the wrong that it had done by restoring Mr. Doane to the scene of his labors and by repeating its assurances with reference to the protection of the missionaries and their property. It made, however, an unsatisfactory response on the question of pecuniary indemnity. Subsequently, hostilities took place between the Spaniards and the natives, and all the buildings belonging to the American mission were burned by the Spanish troops; and the missionaries were forbidden to hold any meetings and were practically obliged to leave the islands. Complaints and claims were presented by the United States to the Spanish government, and early in 1893 the matter was pressed for a settlement, with a view (1) to secure the restoration of the missionaries to the scene of their labors, and (2) to obtain compensation for the property destroyed or taken from them by the Spanish authorities. In April, 1893, it was reported by the legation at Madrid that the question had been settled by Spain's agreeing to permit the return of the missionaries and to pay $17,500 on account of their losses of property. The Spanish government, however, qualified the concession of the first point by reserving "the right of fixing the moment" when the missionaries might return to Ponapé, and disclaiming all responsibility for their safety, should they return sooner.

Mr. Bayard, Sec. of State, to Mr. Strobel, chargé at Madrid, No. 394, Sept. 7, 1885, MS. Inst. Spain, XX. 100; Mr. Bayard, Sec. of State, to Mr. Valera, Spanish min., March 2, 1886, For. Rel. 1886, 831; Mr. Valera to Mr. Bayard, March 12, 1886, id. 832; Mr. Wharton, Act. Sec. of State, to Mr. Newberry, chargé at Madrid, No. 135, Oct. 6, 1891, For. Rel. 1892, 442.

See also, For. Rel. 1892, 485, 512, 513; For. Rel. 1893, 559 et seq., and especially, at page 565, a "chronological statement of events occurring in the island of Ponapé . . . from its first occupation by the American missionaries in 1852 until . . . November, 1890," by Mr. Snowden, min. to Spain; For. Rel. 1893, 574, 575, 584–588.

There being nothing in the treaties between the United States and France stipulating or regulating liberty of doctrinal teaching by

American citizens in the French dependencies, the intervention of the United States in behalf of certain American missionaries in the Society Islands "was necessarily confined to equitable representations that citizens of the United States in the French dependencies, who tranquilly obey the laws and regulations there in force, should enjoy all privileges and immunities permitted to any other foreigners."

Mr. Rockhill, Acting Sec. of State, to Mr. Burton, Aug. 6, 1896, 211 MS. Dom. Let. 669.

With reference to a letter of the Board of Foreign Missions of the Presbyterian Church in the United States relative to their mission at Benito, West Africa, the American minister at Madrid was instructed that he might, by way of good offices, bring the matter to the attention of the Spanish government and ask for American missionaries in the territories ceded by France to Spain on the west coast of Africa a continuance of the favorable treatment which had been accorded them in the past by the French authorities.

Mr. Hay, Sec. of State, to Mr. Storer, min. to Spain, No. 336, June 1, 1901, MS. Inst. Spain, XXIII. 150.

As to correspondence between Mr. Jay, United States minister at Vienna, and the Austrian foreign office, touching the admission of the Independent Order of Odd Fellows into the Austrian Empire, see Mr. Fish, Sec. of State, to Mr. Durham, M. C., Feb. 13, 1875, 106 MS. Dom. Let. 483, referring to a dispatch of Mr. Jay of Aug. 21, 1874, and the instructions previously sent him.

9. Intercession for Persecuted Jews.

(1) Mohammedan countries.

§ 923.

In 1840 Mr. Forsyth, referring to a resolution adopted at a meeting of Israelites in the city of New York in relation to the persecution of their brethren in Damascus, stated that the heart-rending scenes which took place had previously been brought to the notice of the President by the American consul there, and that in consequence an instruction was immediately written to the American consul at Alexandria, and that at the same time the diplomatic representative of the United States at Constantinople "was instructed to interpose his good offices in behalf of the oppressed and persecuted race of the Jews in the Ottoman dominions, among whose kindred are found some of the most worthy and patriotic of our own citizens, and the whole subject, which appeals so strongly to the universal sentiments of justice and humanity, was earnestly recommended to his zeal and discretion."

Mr. Forsyth, Sec. of State, to Mr. Kurschedt, chairman, Aug. 26, 1840, 31 MS. Dom. Let. 203.

"I have no remarks to make respecting the proceedings of the government in this case, at Damascus, which was marked by the most calumnious representations against the Jewish people and in which excruciating tortures were inflicted and many lives sacrificed, but I think it proper to observe that this single act on the part of the government can scarcely be said to change that character of national reserve which I attributed to our foreign policy. Those principles of our external intercourse may well be said to be established, which, during the seventy years of our national existence, and in a stirring period, abounding with great events, everywhere exciting corresponding interest, have been adhered to with that steadiness of purpose which, almost without exception, has marked the conduct of our government while dealing with those subjects.

"There are cruelties and outrages of such a revolting nature that it is natural, laudable indeed, that when they occur, they should meet with general condemnation. But this duty to 'outraged humanity' should be left to the action of individuals, and to the expression of public opinion, for it is manifest that if one government assumes the power to judge and censure the proceedings of another or the laws it recognizes, in cases which do not affect their own interests, or the rights of their citizens, the intercourse of nations will soon become a system of crimination and recrimination hostile to friendly communication. For, the principle of interference being once admitted, its application may be indefinitely extended, depending for its exercise on the opinion which each country may form of the civil polity of another, and of its practical operation." (Mr. Cass, Sec. of State, to Mr. Hart, Dec. 8, 1858, 49 MS. Dom. Let. 415, declining a request to express to the Papal government condemnation of acts of cruelty committed against Jews by the public authorities at Bologna in the Papal dominions.)

The joining by a consul of the United States, in a Mohammedan country, with consuls from other powers in a protest against the conviction and execution of a Jew for blasphemy, meets with the approval of the government of the United States.

Mr. Cass, Sec. of State, to Mr. Chandler, No. 12, July 29, 1857, MS. Inst. Barbary Powers, XIV. 193.

"I have to acknowledge the receipt of your letter of the 4th instant, in which you request that protection be granted by our representatives in the Ottoman dominions to Israelites of Russian birth in and near Jerusalem.

"As a rule our representatives abroad are permitted to extend the protection of the United States only to native-born or naturalized citizens thereof, but the sympathy of the United States for all oppressed peoples in foreign countries has been freely manifested in all cases where it could be done in accordance with the spirit of international courtesy and diplomatic usage. In granting such protection

it is requisite, of course, that the representatives of the country to which the persons requiring protection owe allegiance should request it, and that the authorities of the country in which they are at the time residing consent to it. The desired protection will be extended, if these conditions are complied with."

Mr. F. W. Seward, Act. Sec. of State, to Mr. Isaacs, June 29, 1877, 119 MS. Dom Let. 42.

"No official interposition in behalf of Israelites who are Moorish subjects can be sanctioned, as this would be improper in itself, and would be a precedent against us which could not be gainsaid. Still, there might be cases in which humanity would dictate a disregard of technicalities, if your personal influence would shield Hebrews from oppression."

Mr. Evarts, Sec. of State, to Mr. Mathews, March 20, 1878, MS. Inst. Barb. Powers, XV. 353. See same to same, July 2, 1878, id. 360.

"It is, as you are of course aware, difficult for a foreign government to make the full force of its influence felt in intervening for the protection of native subjects of the state addressed. Nevertheless, in view of the fact that the informal and friendly offices of the United States have, at times before now, been used with good effect, through the informal action of their representatives abroad in the interest of humanity and of that full religious toleration and equity which form so conspicuous a base for our own enlightened institutions, I shall be happy to instruct the United States consul at Tangier that he is at liberty to act, in the sense of your request, so far as may be consistent with his international obligations, and the efficiency of his official relations with the Scheriffian government."

Mr. Evarts, Sec. of State, to Messrs. Isaacs and Wolf, July 1, 1878, 123 MS. Dom. Let. 395.

The American consul at Tangier may without impropriety take such steps of inquiry as to the condition of Hebrews in Morocco as may tend to the amelioration of their condition and may not be inconsistent with international obligations.

Mr. Evarts, Sec. of State, to Mr. Mathews, No. 66, April 22, 1880, and No. 189, March 2, 1881, MS. Inst. Barbary Powers, XVI. 10, 39.

"At the invitation of the Spanish government, a conference has recently been held at the city of Madrid to consider the subject of protection by foreign powers of native Moors in the Empire of Morocco. The minister of the United States in Spain was directed to take part in the deliberations of this conference, the result of which is a convention signed on behalf of all the powers represented. The

instrument will be laid before the Senate for its consideration. The government of the United States has also lost no opportunity to urge upon that of the Emperor of Morocco the necessity, in accordance with the humane and enlightened spirit of the age, of putting an end to the persecutions which have been so prevalent in that country of persons of a faith other than the Moslem, and especially of the Hebrew residents of Morocco."

President Hayes' annual message, Dec. 6, 1880. For. Rel. 1880, xi.

(2) CASE OF THE MORTARA BOY.

§ 924.

"I have had the honor of receiving your favor of the 30th ultimo, with the resolutions recently adopted by 'the representatives of the United Congregations of the Israelites of the city of New York,' on the subject of the abduction and detention of Edgar Mortara from his parents, under the authority of the Papal government. . . .

"I have long been convinced that it is neither the right nor the duty of this government to exercise a moral censorship over the conduct of other independent governments and to rebuke them for acts which we may deem arbitrary and unjust towards their own citizens or subjects. Such a practice would tend to embroil us with all nations. We ourselves would not permit any foreign power thus to interfere with our domestic concerns and enter protests against the legislation or the action of our government towards our own citizens. If such an attempt were made we should promptly advise such a government in return to confine themselves to their own affairs and not intermeddle with our concerns.

"It is perhaps fortunate that the assertion of the principle of non-intervention on the part of the United States between foreign sovereigns and their own subjects has arisen in a case so well calculated to enlist our sympathies as that of the Mortara family. For this reason the precedent will be so much the stronger and be entitled to the more binding force.

"It is enough for us to defend the rights of our own citizens under treaties or the law of nations whenever and wherever these may be assailed by the government of any foreign country. Had Monola Mortara been a citizen of the United States, the case would have been very different. The Israelitish citizens of the United States have had occasion to know that I have not been regardless of their just rights in foreign countries; and they may rest assured that they shall receive the same protection, when domiciled abroad, during my administration, which is extended to all other citizens of our common country. They would ask no more and shall receive nothing less."

President Buchanan to Mr. Hart, Jan. 4, 1859, 49 MS. Dom. Let. 474.

This singular case of the "Mortara boy" attracted at the time great attention and produced much excitement in the United States as well as in Europe. Edgar Mortara was born at Bologna, then in the Papal dominions, in 1851, of Jewish parents. When less than a year old, being ill and apparently in danger of death, he was baptized by a Christian servant. On June 23, 1858, at ten o'clock in the evening, he was seized by a functionary of the Holy See, accompanied by a squad of Papal police, and taken to Rome, where he was placed with an order of monks, to be brought up in the Catholic faith. This was done by order of Pope Pius IX. It was subsequently reported that Edgar's parents, after his baptism, refused to receive him, and left him to be reared by the servant who had baptized him. It was also affirmed that his mother eventually died in the Christian faith. In a letter written at Rome, April 18, 1900, more than forty years after his abduction, Edgar Mortara himself, subscribing his name as an apostolic missionary of the Roman Catholic Church, denied both these reports. He declares that after his baptism he remained quietly with his parents till he was taken from them by order of the Pope, and that his mother never gave any indication of conversion to the Catholic faith. It appears that his parents, after he was taken from them, continued to petition for his return, but without success. He himself became and remained a devout ecclesiastic, expressing, in the letter above mentioned, the wish that his relations might become partakers of the Catholic faith. (*Journal de Genève*, April 26, 1900.)

See an interesting article entitled "Switzerland and American Jews," by Sol. M. Stroock, A. M., Publications of the American Jewish Historical Society, No. 11, 1903.

(3) RUSSIA.

§ 925.

"I have received a letter from Messrs. S. Wolf and A. S. Solomons, of this city, representing the 'Union of American-Hebrew Congregations,' in which they refer to newspaper statements indicating that the Jews in Russia have recently been subjected by the government there to extraordinary hardships, and expressing a desire that the minister of the United States to St. Petersburg may be instructed 'to make such representations to the Czar's government, in the interest of religious freedom and suffering humanity, as will best accord with the most emphasized liberal sentiments of the American people.' The writers of the letter observe at the same time that they are well 'aware of the impropriety of one nation interfering with the internal affairs of another in matters of a purely local character.'

"You are sufficiently well informed of the liberal sentiments of this government to perceive that whenever any pertinent occasion may arise its attitude must always be in complete harmony with the principle of extending all rights and privileges, without distinction on account of creed, and can not fail, therefore, to conduct any affair of

business or negotiation with the government to which you are accredited, which may involve any expression of the views of this government on the subject, in a manner which will subserve the interests of religious freedom. It would, of course, be inadmissible for the government of the United States to approach the government of Russia in criticism of its laws and regulations, except so far as such laws and regulations may injuriously affect citizens of this country, in violation of natural rights, treaty obligations, or the provisions of international law, but it is desired that the attitude of the minister, as regards questions of diplomatic controversy, which involve an expression of view on this subject, may be wholly consistent with the theory on which this government was founded."

Mr. Evarts, Sec. of State, to Mr. Foster, min. to Russia, No. 2, April 14, 1880, For. Rel. 1880, 873; H. Ex. Doc. 470, 51 Cong. 1 sess. 33.

Adopted by Mr. Blaine, Sec. of State, in a note to Mr. Bartholomei, Russian min., June 20, 1881, MS. Notes to Russia VII. 350.

"I am well aware that the domestic enactments of a state toward its own subjects are not generally regarded as a fit matter for the intervention of another independent power; but when such enactments directly affect the liberty and property of foreigners who resort to a country under the supposed guarantee of treaties framed for the most liberal ends—when the conscience of an alien owing no allegiance whatever to the local sovereignty is brought under the harsh yoke of bigotry or prejudice which bows the necks of the natives, and when enlightened appeals made to humanity, to the principles of just reciprocity, and to the advancing spirit of the age in behalf of tolerance are met with intimations of a purpose to still further burden the unhappy sufferers, and so to necessarily increase the disability of foreigners of like creed resorting to Russia, it becomes in a high sense a moral duty to our own citizens and to the doctrines of religious freedom we so strongly uphold to seek proper protection for those citizens and tolerance for their creed in foreign lands, even at the risk of criticism of the municipal laws of other states.

"It can not but be inexpressibly painful to the enlightened statesmen of Great Britain, as well as of America, to see a discarded prejudice of the dark ages gravely revived at this day, to witness an attempt to base the policy of a great and sovereign state on the mistaken theory that thrift is a crime, of which the unthrifty are the innocent victims, and that discontent and disaffection are to be diminished by increasing the causes from which they arise."

Mr. Blaine, Sec. of State, to Mr. Lowell, Nov. 22, 1881, MS. Inst. Great Britain, XXVI. 273.

"I transmit, herewith, for your perusal, a copy of a communication which I sent yesterday to Mr. Lowell, instructing him to approach

the British government in the direction of urging similar or concerted representations with the United States in behalf of the amelioration of the condition of the Jews in Russia. It is not desired, for the present, to communicate this action to the Russian government. You should, however, in conversation with the British ambassador, confer freely in regard to this matter, as one of equal interest to his government and yours, and in order to acquaint him with what has been done and is doing, you may let him read the enclosure herewith." (Mr. Blaine, Sec. of State, to Mr. Hoffman, chargé at St. Petersburg, No. 103, confid., Nov. 23, 1881, MS. Inst. Russia, XVI. 250.)

"The prejudice of race and creed having in our day given way to the claims of our common humanity, the people of the United States have heard with great regret the stories of the sufferings of the Jews in Russia. It may be that the accounts in the newspapers are exaggerated, and the same may be true of some private reports. Making, however, due allowance for misrepresentations, it can scarcely be doubted that much has been done which a humane and just person must condemn.

"The President of course feels that the government of the Emperor should not be held morally responsible for acts which it considers wrong, but which it may be powerless to prevent.

"If that be true of this case, it would be worse than useless for me to direct you, as the representative of the United States, to give official expression to the feeling which this treatment of the Jews calls forth in this country. Should, however, the attitude of the Russian government be different, and should you be of the opinion that a more vigorous effort might be put forth for the prevention of this great wrong, you will, if a favorable opportunity offers, state, with all proper deference, that the feeling of friendship which the United States entertain for Russia prompts this government to express the hope that the imperial government will find means to cause the persecution of these unfortunate fellow-beings to cease.

"This instruction devolves a delicate duty upon you, and a wide discretion is given you in its execution. However much this Republic may disapprove of affairs in other nationalities, it does not conceive that it is its right or province officiously and offensively to intermeddle. If, however, it should come to your knowledge that any citizens of the United States are made victims of the persecution, you will feel it your duty to omit no effort to protect them, and to report such cases to this Department."

Mr. Frelinghuysen, Sec. of State, to Mr. Hoffman, chargé at St. Petersburg, No. 123, April 15, 1882, H. Ex. Doc. 470, 51 Cong. 1 sess. 65.

As to anti-Jewish riots in Russia, to which the foregoing instruction partly related, see H. Ex. Doc. 470, 51 Cong. 1 sess. 52, 65.

"On the 20th of August last the House of Representatives adopted a resolution requesting the President to communicate to that body any information in his possession concerning the enforcement of proscriptive edicts against the Jews in Russia. To this resolution the President responded on the 1st of October, and accompanying his response there was a report in which, with reference to the rumors that new measures of repression were about to be put in force, I said:

"'Such a step, if in reality contemplated, would not only wound the universal and inmate sentiment of humanity, but would suggest the difficult problem of affording an immediate asylum to a million or more of exiles without seriously deranging the conditions of labor and of social organization in other communities.'

"The correspondence communicated to the House of Representatives included your reassuring despatch No. 44, of the 25th of September last; and this dispatch, together with assurances received in conversations with the diplomatic representative of Russia at this capital, tended to allay the apprehension necessarily aroused by the prospect either of the adoption of new measures or of the harsh enforcement of the old.

"Up to the present time the Department has not been advised that any new edicts affecting the Jews have been promulgated. The cases of distress that have been brought to our notice are the result, in some instances, of the new interpretation, and, in others, of the strict enforcement of regulations which have for some years been in existence, but of which the severity was not generally understood because they were not rigorously applied.

"The Department is informed that for many years the Jews in Russia have, as a race, been compelled to live within a certain area denominated the pale of settlement. Under the laws of May, 1882, it is understood that their places of residence within this area have been restricted by forbidding them to live in villages and to force them into the towns. The effect of the recent and summary enforcement of this measure in certain districts has been to deprive many of their means of livelihood. It is also understood that under the laws for many years in existence Jewish artisans have been permitted to reside outside of the pale of settlement. The Department is informed that by a new interpretation of the law many classes of workers formerly regarded as artisans are now denied that privilege, and being suddenly forced to quit their homes and to swell the number of their race in the overcrowded towns within the pale of settlement, find themselves unable to gain a subsistence by the pursuit of their respective occupations.

"Other measures, such as the withdrawal of the privilege of pursuing many occupations, the denial of admission to the schools, and the actual expulsion as 'alien vagrants' of persons long domiciled

in Russia, contribute to swell the emigration. I forbear to enumerate the edicts peculiarly applicable to the family, by which the ties of relationship are rent and a premium put upon their severance. I do not dwell on these things, not only because it is not my purpose to indulge in a general criticism of the anti-Jewish laws, but also because those that I have explicitly referred to in the main account for the cases that have been brought to my notice.

"That numbers of Jews have been and are daily being compelled to quit their homes in Russia by the enforcement of these oppressive measures, is amply shown by the present immigration of destitute Russian Jews into the United States. Heretofore this immigration, although large, being mainly made up of persons who were in some measure prepared for the change, has not overtaxed the resources of the various benevolent associations which are so generously maintained and admirably administered by the Jews of the United States. I am told on excellent authority that within ten years some 200,000 Jews of Russian origin have been received into this country, have been furnished, when necessary, with occupation and homes, and have become speedily assimilated into the body politic, of which they form an orderly, thrifty, and law-abiding element.

"The gravest fears are expressed lest this resource should fail if taxed with a great influx of Russian Jews, who, by reason of their sudden expulsion from their homes and their unfamiliarity with the language and ways of life in this country, would stand in need of immediate, and in many cases of long-continued, assistance and care.

"You are aware that the problem of efficiently controlling immigration has been before the national legislature for some years. Measures have already been adopted for its regulation, and several schemes of further legislation are now pending before Congress. These measures, however, have not been due to an inhospitable disposition. The policy of this government in respect to the admission of aliens to its shores has been most liberal. It has afforded to many thousands a home and a ready entrance into its political and social life, and it still offers to spontaneous, self-helpful, and independent immigration a cordial welcome.

"If measures of restriction have been adopted, it is only because it has been found necessary to avert the injection into the population of elements not assimilable and the bringing or sending hither of the indigent and helpless to become a charge upon the community. In no instance has any measure of expulsion or of oppression been adopted in respect to those who are already here, all of whom stand under the equal protection of the laws.

"But the hospitality of a nation should not be turned into a burden. And, however much we may sympathize with wanderers forced by untoward circumstances to quit their homes, and however ready the

disposition to relieve the deplorable condition into which they may be cast by the application of the laws of their native country, the government and people of the United States can not avoid a feeling of concern at the enforcement of measures which threaten to frustrate their efforts to minister to the wants and improve the condition of those who are driven to seek a livelihood within their borders.

"We are not forgetful of the ties of good relationship that have long subsisted between the United States and Russia, and of the friendly acts of Russia towards our country in the past. The government and people of the United States are fully animated with a desire to preserve this cordiality of feeling, and for this reason they the more strongly deprecate the enforcement in Russia, in respect to a portion of her people, of measures which not only arouse a general feeling of disappointment, but which also operate to impose a tax upon the charitable and humane in this country.

"The government of the United States does not assume to dictate the internal policy of other nations, or to make suggestions as to what their municipal laws should be or as to the manner in which they should be administered. Nevertheless, the mutual duties of nations require that each should use its power with a due regard for the results which its exercise produces on the rest of the world. It is in this respect that the condition of the Jews in Russia is now brought to the attention of the United States, upon whose shores are cast daily evidences of the suffering and destitution wrought by the enforcement of the edicts against this unhappy people. I am persuaded that His Imperial Majesty the Emperor of Russia and his councilors can feel no sympathy with measures which are forced upon other nations by such deplorable consequences.

"You will read this instruction to the minister of foreign affairs and give him a copy if he desires it."

Mr. Blaine, Sec. of State, to Mr. Smith, min. to Russia, No. 78, Feb. 18, 1891, For. Rel. 1891, 737.

A full, interesting, and instructive discussion of the condition and treatment of Israelites in Russia may be found in a despatch from Mr. White, American minister to Russia, No. 119, of July 6, 1893, For. Rel. 1894, 525–535. The discussion was suggested by a telegram sent to Mr. White by Mr. Gresham, Secretary of State, May 17, 1893, requesting information as to representations that the Russian government was about to enforce an edict against Jews which would result in a large emigration of destitute people of that class to the United States. In acknowledging the receipt of Mr. White's despatch, Mr. Gresham said: "The subject is receiving the President's earnest consideration. It has been for some time evident that the measures adopted by the imperial government against the Jews, although professedly a domestic policy directly affecting the subjects of the Czar, were calculated to injuriously affect the American people by abruptly forcing upon our shores a numerous class of immigrants

destitute of resources and unfitted in many important respects for absorption into our body politic. The continued enforcement of such harsh measures, necessarily forcing upon us large numbers of degraded and undesirable persons, who must, in great measure, be supported, can not be regarded as consistent with the friendship which the Russian government has long professed for the United States." (Mr. Gresham, Sec. of State, to Mr. Webb, chargé at St. Petersburg, No. 119, Aug. 28, 1893, For. Rel. 1894, 535.)

"I have the honor to report that I yesterday waited upon the minister of foreign affairs, Mr. de Giers, with a copy of your instruction No. 78, relating to the edicts and policy of Russia concerning the Jews. Upon hearing my statement of the object of my call Mr. de Giers requested me not to read the dispatch to him, but to leave a copy, which he could examine at leisure.

"I then gave him a brief verbal outline of its contents, referring to the resolution of inquiry passed by the House of Representatives in August of last year touching rumored proscriptive edicts against the Jews and to your report in response. You had received assurances, so you stated in this dispatch, which tended to allay apprehensions that had been aroused by alarming publications, and the Department had no information that any new measures hostile to the Jews had been undertaken. The cases of distress which had been brought to its attention were explained by the more rigorous enforcement of old laws whose severity had not been understood so long as they had not been applied. That the Jews in Russia were subjected to coercive and oppressive measures which compelled them to quit their homes was shown by the number of unfortunate and indigent Russian Jews who were now arriving in the United States. You had been informed on excellent authority that within a period of ten years this immigration amounted to 200,000. Most of these immigrants had been well provided for, but a further influx of destitute persons entirely unprepared for the conditions and requirements of American life would be a very serious burden upon the American people. It was in this aspect of the results forced upon our country that the condition of the Jews in Russia under existing measures presented itself to the attention of our government and people, and, in view of the mutual duties of nations, constrained this expression of their sentiments.

"On this statement of the general tenor of your dispatch, Mr. de Giers hastened to ask at the outset what was its conclusion—what demand it presented. I replied that it presented no demand, but was a declaration of the views of the government and people of the United States, which was submitted for the consideration of the imperial government of Russia under a sense of its own obligations. Mr. de Giers inquired particularly as to the statement that 200,000

Russian Jews had immigrated to the United States within ten years. I repeated your statement on this point. He rejoined that if such a number of people had gone to the United States as workers to aid in developing the country, he supposed they would be acceptable, but if they went to 'exploit' the American people, as he expressed it, he could understand how objectionable it was. After some further observations of a general character Mr. de Giers concluded by saying that the dispatch would be received in the same friendly spirit in which it was sent; that he would submit it to the Emperor; and that, if it was determined to make reply either verbally or in writing, it would be duly communicated."

Mr. Smith, min. to Russia, to Mr. Blaine, Sec. of State, No. 81, March 12, 1891, For. Rel. 1891, 741.

In a despatch No. 89 of April 20, 1891, Mr. Smith reported further expulsions or voluntary departures of Jewish families under the application of existing laws. (For. Rel. 1891, 742.)

In a despatch No. 92, April 27, 1891, Mr. Wurtz, chargé d'affaires ad interim, enclosed a copy of a ukase prohibiting the emigration of certain categories of Israelites from the zone assigned to them and their immigrating into or staying in the province of Moscow. (For. Rel. 1891, 743.)

In a despatch, No. 119, October 20, 1891, Mr. Smith reported upon the progress and prospects of the Baron de Hirsch colonization scheme and the increase of emigration under the sterner enforcement of the anti-Semitic laws. (For. Rel. 1891, 744.)

In a despatch, No. 136, December 24, 1891, Mr. Smith reported an interview with M. de Giers concerning the attitude and action of the Russian government respecting Hebrews in the empire. M. de Giers "thought the statements of the number of Russian Hebrews sailing from Hamburg and Bremen and landing in the United States must be exaggerated." Mr. Smith assured him that the figures were authentic. M. de Giers responded that Christians as well as Jews had emigrated, and that they had gone under the attraction of what he described as an idea that America is an El Dorado, where they would all be well off. Mr. Smith replied that the great increase in Jewish emigration had come "at the same time with the expulsion of Jews from Moscow and other places within the empire." M. de Giers remarked, in conclusion, that the subject came within the province of the minister of the interior, and he would confer with that minister. (For. Rel. 1892, 363.)

"This government has found occasion to express, in a friendly spirit, but with much earnestness, to the government of the Czar its serious concern because of the harsh measures now being enforced against the Hebrews in Russia. By the revival of anti-Semitic laws, long in abeyance, great numbers of those unfortunate people have been constrained to abandon their homes and leave the Empire by reason of the impossibility of finding subsistence within the pale

to which it is sought to confine them. The immigration of these people to the United States—many other countries being closed to them—is largely increasing, and is likely to assume proportions which may make it difficult to find homes and employment for them here and to seriously affect the labor market. It is estimated that over one million will be forced from Russia within a few years. The Hebrew is never a beggar; he has always kept the law—life by toil—often under severe and oppressive civil restrictions. It is also true that no race, sect, or class has more fully cared for its own than the Hebrew race. But the sudden transfer of such a multitude under conditions that tend to strip them of their small accumulations and to depress their energies and courage is neither good for them nor for us.

"The banishment, whether by direct decree or by not less certain indirect methods, of so large a number of men and women is not a local question. A decree to leave one country is, in the nature of things, an order to enter another—some other. This consideration, as well as the suggestions of humanity, furnishes ample ground for the remonstrances which we have presented to Russia, while our historic friendship for that government can not fail to give the assurance that our representations are those of a sincere well-wisher."

President Harrison, annual message, Dec. 9, 1891, For. Rel. 1891, XII.

(4) ROUMANIA.

§ 926.

"It is reported by telegraph that extensive murders of Jews have taken place in Roumania. Ascertain facts, and if true unofficially urge on Turkish government to put a stop to bloodshed. Answer by cable."

Mr. Fish, Sec. of State, to Mr. Morris, min. to Turkey, tel., June 4, 1870, For. Rel. 1872, 650.

See, as to the persecution of Jews in Roumania, S. Ex. Doc. 75, 42 Cong. 2 sess.

See, also, 62 Br. & For. State Papers, 679.

"Among the large number of Israelites in this country there are probably few whose sympathies have not been intensely excited by the recent intelligence of the grievous persecutions of their co-religionists in Roumania. This feeling has naturally been augmented by the contrast presented by the position of members of that persuasion here, who are equals with all others before the law, which sternly forbids any oppression on account of religion. Indeed, it may be said that the people of this country universally abhor persecution anywhere for

that cause, and deprecate the trials of which, according to your dispatches, the Israelites of Roumania have been victims.

"This government heartily sympathizes with the popular instinct upon the subject, and while it has no disposition or intention to give offense by impertinently interfering in the internal affairs of Roumania, it is deemed to be due to humanity to remonstrate against any license or impunity which may have attended the outrages in that country. You are consequently authorized to address a note to the minister of foreign affairs of the principalities, in which you will embody the views herein expressed, and you will also do anything which you discreetly can, with a reasonable prospect of success, toward preventing a recurrence or continuance of the persecution adverted to."

Mr. Fish, Sec. of State, to Mr. Peixotto, consul at Bucharest, April 10, 1872, For. Rel. 1872, 688.

"The Department has received your despatch No. 30, of the 19th ultimo, accompanied by a copy of a remonstrance addressed by the representatives of foreign governments at Bucharest to that of the principalities, against recent maltreatment of Israelites there.

"The Department approves your taking part in that remonstrance. Whatever caution and reserve may usually characterize the policy of this government in such matters may be regarded as inexpedient when every guarantee and consideration of justice appear to have been set at defiance in the course pursued with reference to the unfortunate people referred to. You will not be backward in joining any similar protest, or other measure which the foreign representatives there may deem advisable, with a view to avert or mitigate further harshness toward the Israelites residents in, or subjects of, the principalities."

Mr. Fish, Sec. of State, to Mr. Peixotto, consul at Bucharest, May 13, 1872, For. Rel. 1872, 691.

The remonstrance was signed by the representatives of Austria-Hungary, France, Germany, Great Britain, Greece, Italy, and the United States.

"It has been suggested to this Department, and the suggestion is concurred in, that if the sympathy which we entertain for the inhumanly persecuted Hebrews, in the principalities of Moldavia and Wallachia, were made known to the government to which you are accredited, it might quicken and encourage the efforts of that government to discharge its duty as a protecting power, pursuant to the obligations of the treaty between certain European states. Although we are not a party to that instrument, and, as a rule, scrupulously abstain from interfering, directly or indirectly, in the public affairs

of that quarter, the grievance adverted to is so enormous, as to impart to it, as it were, a cosmopolitan character, in the redress of which all countries, governments, and creeds are alike interested.

"You will consequently communicate on this subject with the minister for foreign affairs of the Austro-Hungarian Empire, in such way as you may suppose might be most likely to compass the object in view."

Mr. Fish, Sec. of State, to Mr. Jay, min. to Austria-Hungary, July 22, 1872. For. Rel. 1872, 55.

The foregoing instruction was suggested by Mr. Peixotto, United States consul at Bucharest. (For. Rel. 1872, 692–693.)

It was addressed, as a circular, to the diplomatic representatives of the United States at London, Berlin, Paris, Vienna, St. Petersburg, Rome, and Constantinople. The treaty referred to was the convention between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, concluded at Paris, Aug. 19, 1858, to carry into effect certain stipulations of the treaty of Paris of March 30, 1856, concerning the definitive organization of the principalities of Moldavia and Wallachia, afterwards consolidated into Roumania. The responses made to the instruction indicated that Austria-Hungary would not intervene; that France had made and would make representations; that Germany was disposed to intercede; that Great Britain had made representations; that Italy was noncommittal; and that Russia was opposed to intervention. (For. Rel. 1872, 62, 183, 194, 197, 320, 493. See, also, 678.)

"Your dispatch No. 256 of the 31st ultimo, inclosing the reply of His Highness the Prince of Roumania to the letter which the President addressed to him on the 15th of August, 1878, has been received. In connection with the subject of Roumanian recognition, I enclose for your consideration a copy of a letter under date of the 30th ultimo, from Mr. Myer S. Isaacs, president, and other officers of the board of delegates on civil and religious rights of the Hebrews, asking that the government of the United States may exert its influence towards securing for the Hebrew subjects and residents in Roumania the equality of civil and religious rights stipulated in Article XLIV. of the treaty of Berlin.

"As you are aware, this government has ever felt a deep interest in the welfare of the Hebrew race in foreign countries, and has viewed with abhorrence the wrongs to which they have, at various periods, been subjected by the followers of other creeds in the East. This Department is therefore disposed to give favorable consideration to the appeal made by the representatives of a prominent Hebrew organization in this country in behalf of their brethren in Roumania, and while I should not be warranted in making a compliance with their wishes a *sine qua non* in the establishment of official relations with

that country, yet any terms favorable to the interest of this much-injured people which you may be able to secure in the negotiations now pending with the government of Roumania would be agreeable and gratifying to this Department."

Mr. Evarts, Sec. of State, to Mr. Kasson, min. to Austria-Hungary, Nov. 28, 1879, For. Rel. 1880, 35.

Oct. 30, 1879, Mr. Myer S. Isaacs, president, and other officers of the board of delegates on civil and religious rights of the Hebrews, addressed a letter to Mr. Evarts, Secretary of State, asking that the United States might not be committed to an act of recognition of Roumanian independence till the condition of civil and religious liberty, expressed in Article XLIV. of the treaty of Berlin, had been complied with by Roumania. Mr. Evarts enclosed a copy of the letter to Mr. Kasson, then United States minister at Vienna, and said that, while a compliance with the writers' wishes could not be made 'a *sine qua non* in the establishment of official relations" with Roumania, yet "any terms favorable to the interest" of the Hebrew race, which he might be able to secure "in the negotiations now pending with the government of Roumania would be agreeable and gratifying to this Department."

Mr. Evarts, Sec. of State, to Mr. Kasson, No. 138, Nov. 28, 1879, For. Rel. 1880, 35; MS. Inst. Austria, III. 71.

See supra, § 41, as to the Executive recognition of Prince Charles of Roumania by a letter of the President of Aug. 15, 1878.

"It behooves the state to scrutinize most jealously the character of the immigration from a foreign land, and, if it be obnoxious to objection, to examine the causes which render it so. Should those causes originate in the act of another sovereign state, to the detriment of its neighbors, it is the prerogative of an injured state to point out the evil and to make remonstrance; for with nations, as with individuals, the social law holds good that the right of each is bounded by the right of the neighbor.

"The condition of a large class of the inhabitants of Roumania has for many years been a source of grave concern to the United States. I refer to the Roumanian Jews, numbering some 400,000. Long ago, while the Danubian principalities labored under oppressive conditions which only war and a general action of the European powers sufficed to end, the persecution of the indigenous Jews under Turkish rule called forth in 1872 the strong remonstrance of the United States. The treaty of Berlin was hailed as a cure for the wrong, in view of the express provisions of its forty-fourth article, prescribing that 'in Roumania, the difference of religious creeds and confessions shall not

be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honors, or the exercise of the various professions and industries in any locality whatsoever,' and stipulating freedom in the exercise of all forms of worship to Roumanian dependents and foreigners alike, as well as guaranteeing that all foreigners in Roumania shall be treated, without distinction of creed, on a footing of perfect equality.

"With the lapse of time these just prescriptions have been rendered nugatory in great part, as regards the native Jews, by the legislation and municipal regulations of Roumania. Starting from the arbitrary and controvertible premise that the native Jews of Roumania domiciled there for centuries are 'aliens not subject to foreign protection,' the ability of the Jew to earn even the scanty means of existence that suffice for a frugal race has been constricted by degrees, until nearly every opportunity to win a livelihood is denied; and until the helpless poverty of the Jew has constrained an exodus of such proportions as to cause general concern.

"The political disabilities of the Jews in Roumania, their exclusion from the public service and the learned professions, the limitations of their civil rights and the imposition upon them of exceptional taxes, involving as they do wrongs repugnant to the moral sense of liberal modern peoples, are not so directly in point for my present purpose as the public acts which attack the inherent right of man as a breadwinner in the ways of agriculture and trade. The Jews are prohibited from owning land, or even from cultivating it as common laborers. They are debarred from residing in the rural districts. Many branches of petty trade and manual production are closed to them in the overcrowded cities where they are forced to dwell and engage, against fearful odds, in the desperate struggle for existence. Even as ordinary artisans or hired laborers they may only find employment in the proportion of one 'unprotected alien' to two 'Roumanians' under any one employer. In short, by the cumulative effect of successive restrictions, the Jews of Roumania have become reduced to a state of wretched misery. Shut out from nearly every avenue of self-support which is open to the poor of other lands, and ground down by poverty as the natural result of their discriminatory treatment, they are rendered incapable of lifting themselves from the enforced degradation they endure. Even were the fields of education, of civil employment, and of commerce open to them as to 'Roumanian citizens,' their penury would prevent their rising by individual effort. Human beings so circumstanced have virtually no alternatives but submissive suffering or flight to some land less unfavorable to them. Removal under such conditions is not and can

not be the healthy, intelligent emigration of a free and self-reliant being. It must be, in most cases, the mere transplantation of an artificially produced diseased growth to a new place.

"Granting that, in better and more healthful surroundings, the morbid conditions will eventually change for good, such emigration is necessarily for a time a burden to the community upon which the fugitives may be cast. Self-reliance and the knowledge and ability that evolve the power of self-support must be developed, and, at the same time, avenues of employment must be opened in quarters where competition is already keen and opportunities scarce. The teachings of history and the experience of our own nation show that the Jews possess in a high degree the mental and moral qualifications of conscientious citizenhood. No class of emigrants is more welcome to our shores, when coming equipped in mind and body for entrance upon the struggle for bread, and inspired with the high purpose to give the best service of heart and brain to the land they adopt of their own free will. But when they come as outcasts, made doubly paupers by physical and moral oppression in their native land, and thrown upon the long-suffering generosity of a more favored community, their migration lacks the essential conditions which make alien immigration either acceptable or beneficial. So well is this appreciated on the Continent that, even in the countries where anti-Semitism has no foothold, it is difficult for these fleeing Jews to obtain any lodgment. America is their only goal.

"The United States offers asylum to the oppressed of all lands. But its sympathy with them in nowise impairs its just liberty and right to weigh the acts of the oppressor in the light of their effects upon this country and to judge accordingly.

"Putting together the facts now painfully brought home to this government during the past few years, that many of the inhabitants of Roumania are being forced, by artificially adverse discriminations, to quit their native country: that the hospitable asylum offered by this country is almost the only refuge left to them; that they come hither unfitted, by the conditions of their exile, to take part in the new life of this land under circumstances either profitable to themselves or beneficial to the community; and that they are objects of charity from the outset and for a long time—the right of remonstrance against the acts of the Roumanian government is clearly established in favor of this government. Whether consciously and of purpose or not, these helpless people, burdened and spurned by their native land, are forced by the sovereign power of Roumania upon the charity of the United States. This government can not be a tacit party to such an international wrong. It is constrained to protest against the treatment to which the Jews of Roumania are subjected, not alone because it has unimpeachable ground to remonstrate against the resultant

injury to itself, but in the name of humanity. The United States may not authoritatively appeal to the stipulations of the treaty of Berlin, to which it was not and can not become a signatory, but it does earnestly appeal to the principles consigned therein because they are the principles of international law and eternal justice, advocating the broad toleration which that solemn compact enjoins and standing ready to lend its moral support to the fulfillment thereof by its co-signatories, for the act of Roumania itself has effectively joined the United States to them as an interested party in this regard."

Mr. Hay, Sec. of State, to Mr. Wilson, min. to Roumania, July 17, 1902, For. Rel. 1902, 910.

See, also, For. Rel. 1903, 702.

As to the improvement in the relations between Jews and Christians in Roumania, see For. Rel. 1904, 706.

"In the course of an instruction recently sent to the minister accredited to the government of Roumania in regard to the bases of a negotiation begun with that government looking to a convention of naturalization between the United States and Roumania, certain considerations were set forth for the minister's guidance concerning the character of the emigration from that country, the causes which constrain it, and the consequences so far as they adversely affect the United States.

"It has seemed to the President appropriate that these considerations, relating as they do to the obligations entered into by the signatories of the treaty of Berlin of July 13, 1878, should be brought to the attention of the governments concerned and commended to their consideration in the hope that, if they are so fortunate as to meet the approval of the several powers, such measures as to them may seem wise may be taken to persuade the government of Roumania to reconsider the subject of the grievances in question.

"The United States welcomes now, as it has welcomed from the foundation of its government, the voluntary immigration of all aliens coming hither under conditions fitting them to become merged in the body politic of this land. Our laws provide the means for them to become incorporated indistinguishably in the mass of citizens, and prescribe their absolute equality with the native born, guaranteeing to them equal civil rights at home and equal protection abroad. The conditions are few, looking to their coming as free agents, so circumstanced physically and morally as to supply the healthful and intelligent material of free citizenhood. The pauper, the criminal, the contagiously or incurably diseased are excluded from the benefits of immigration only when they are likely to become a source of danger or a burden upon the community. The voluntary

character of their coming is essential; hence we shut out all immigration assisted or constrained by foreign agencies. The purpose of our generous treatment of the alien immigrant is to benefit us and him alike—not to afford to another state a field upon which to cast its own objectionable elements. The alien, coming hither voluntarily and prepared to take upon himself the preparatory and in due course the definitive obligations of citizenship, retains thereafter, in domestic and international relations, the initial character of free agency, in the full enjoyment of which it is incumbent upon his adoptive state to protect him.

"The foregoing considerations, whilst pertinent to the examination of the purpose and scope of a naturalization treaty, have a larger aim. It behooves the state to scrutinize most jealously the character of the immigration from a foreign land, and, if it be obnoxious to objection, to examine the causes which render it so. Should those causes originate in the act of another sovereign state, to the detriment of its neighbors, it is the prerogative of an injured state to point out the evil and to make remonstrance; for with nations, as with individuals, the social law holds good that the right of each is bounded by the right of the neighbor.

"The condition of a large class of the inhabitants of Roumania has for many years been a source of grave concern to the United States. I refer to the Roumanian Jews, numbering some 400,000. Long ago, while the Danubian principalities labored under oppressive conditions which only war and a general action of the European powers sufficed to end, the persecution of the indigenous Jews under Turkish rule called forth in 1872 the strong remonstrance of the United States. The treaty of Berlin was hailed as a cure for the wrong, in view of the express provisions of its forty-fourth article, prescribing that 'in Roumania, the difference of religious creeds and confessions shall not be alleged against any person as a ground for exclusion or incapacity in matters relating to the enjoyment of civil and political rights, admission to public employments, functions, and honors, or the exercise of the various professions and industries in any locality whatsoever,' and stipulating freedom in the exercise of all forms of worship to Roumanian dependents and foreigners alike, as well as guaranteeing that all foreigners in Roumania shall be treated, without distinction of creed, on a footing of perfect equality.

"With the lapse of time these just prescriptions have been rendered nugatory in great part, as regards the native Jews, by the legislation and municipal regulations of Roumania. Starting from the arbitrary and controvertible premise that the native Jews of Roumania domiciled there for centuries are 'aliens not subject to foreign protection,' the ability of the Jew to earn even the scanty means of exist-

ence that suffice for a frugal race has been constricted by degrees, until nearly every opportunity to win a livelihood is denied; and until the helpless poverty of the Jew has constrained an exodus of such proportions as to cause general concern. . . .[a]

"You will take an early occasion to read this instruction to the minister for foreign affairs and, should he request it, leave with him a copy."

Mr. Hay, Sec. of State, to U. S. representatives at London, Paris, Berlin, St. Petersburg, Vienna, Rome, and Constantinople, Aug. 11, 1902, For. Rel. 1902, 42.

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[a] Here follows an exact transcription from the instruction of Mr. Hay to Mr. Wilson, July 17, 1902, supra, 363–365, of the four last paragraphs, beginning with the phrase "The political disabilities of the Jews in Roumania," and ending with the words "an interested party in this regard."

CHAPTER XX.

MONROE DOCTRINE.

I. *EARLY EXPRESSIONS OF AMERICAN POLICY.*

§ 927.

"It is intimated to us in such a way as to attract our attention, that France means to send a strong force early this spring to offer independence to the Spanish-American colonies, beginning with those on the Mississippi, and that she will not object to the receiving those on the east side into our Confederation. Interesting considerations require that we should keep ourselves free to act in this case according to circumstances, and consequently that you should not, by any clause of treaty, bind us to guarantee any of the Spanish colonies against their own independence, nor indeed against any other nation. For, when we thought we might guarantee Louisiana on their ceding the Floridas to us, we apprehended it would be seized by Great Britain, who would thus completely encircle us with her colonies and fleets. This danger is now removed by the concert between Great Britain and Spain, and the times will soon enough give independence, and consequently free commerce to our neighbors, without our risking the involving of ourselves in a war with them."

Mr. Jefferson, Sec. of State, to Messrs. Carmichael and Short, mins. to Spain, March 23, 1793, MS. Inst. U. States Ministers, I. 260.

"Observe good faith and justice towards all Nations. Cultivate peace and harmony with all. Religion and Morality enjoin this conduct; and can it be that good policy does not equally enjoin it?—It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel

example of a People always guided by an exalted justice and benevolence. . . .

"Against the insidious wiles of foreign influence, I conjure you to believe me, fellow-citizens, the jealousy of a free people ought to be *constantly* awake, since history and experience prove that foreign influence is one of the most baneful foes of republican Government. . . .

"The great rule of conduct for us, in regard to foreign Nations, is, in extending our commercial relations, to have with them as little *Political* connexion as possible.—So far as we have already formed engagements, let them be fulfilled with perfect good faith.—Here let us stop.—

"Europe has a set of primary interests, which to us have none, or a very remote relation.—Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns.—Hence therefore it must be unwise in us to implicate ourselves, by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships, or enmities.

"Our detached and distant situation invites and enables us to pursue a different course. . . .

"Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humour, or caprice?

"'T is our true policy to steer clear of permanent alliances, with any portion of the foreign world;—so far, I mean, as we are now at liberty to do it—for let me not be understood as capable of patronising infidelity to existing engagements. . . . But in my opinion it is unnecessary and would be unwise to extend them."

Washington's Farewell Address, Sept. 17, 1796, 13 Writings of Washington, by Ford, 311–318. A text of the address, adhering in form less strictly to the original, may be found in Am. State Papers, For. Rel. I. 36–37.

"The purport of what I said was, that we are contented that the Floridas remain in the hands of Spain, but should not be willing to see them transferred, except to ourselves."

Mr. King, min. to England, to Sec. of State, June 1, 1801, Am. State Papers, For. Rel. II. 509, narrating a conversation with Lord Hawkesbury on the reported cession of the Floridas and Louisana by Spain to France.

"In a late conversation with Mr. Addington, he observed to me, if the war happen, it would, perhaps, be one of their first steps to

occupy New Orleans. I interrupted him by saying, I hoped the measure would be well weighed before it should be attempted; that, true it was, we could not see with indifference that country in the hands of France: but it was equally true, that it would be contrary to our views, and with much concern, that we should see it in the possession of England: we had no objection to Spain continuing to possess it, they were quiet neighbors, and we looked forward without impatience to events which, in the ordinary course of things, must, at no distant day, annex this country to the United States. Mr. Addington desired me to be assured that England would not accept the country, were all agreed to give it to her; that, were she to occupy it, it would not be to keep it, but to prevent another power from obtaining it; and, in his opinion, this end would be best effected by its belonging to the United States. I expressed my acquiescence in the last part of his remarks, but observed, that, if the country should be occupied by England it would be suspected to be in concert with the United States, and might involve us in misunderstandings with another power, with which we desired to live in peace. He said, if you can obtain it, well, but if not, we ought to prevent its going into the hands of France; though, you may be assured, continued Mr. Addington, that nothing shall be done injurious to the interests of the United States."

Mr. King, min. to England, to the Sec. of State, April 2, 1803, Am. State Papers, For. Rel. II. 551.

"We shall be well satisfied to see Cuba and Mexico remain in their present dependence; but very unwilling to see them in that of either France or England, politically or commercially. We consider their interests and ours as the same, and that the object of both must be to exclude all European influence from this hemisphere."

President Jefferson to Governor Claiborne, of Louisiana, Oct. 29, 1808, 9 Ford's Writings of Jefferson, 212.

"I hope he sees, and will promote in his new situation, the advantages of a cordial fraternization among all the American nations, and the importance of their coalescing in an American system of policy, totally independent of and unconnected with that of Europe. The day is not distant when we may formally require a meridian of partition through the ocean which separates the two hemispheres, on the hither side of which no European gun shall ever be heard, nor an American on the other; and when, during the rage of the eternal wars of Europe, the lion and the lamb, within our regions, shall be drawn together in peace. . . . The principles of society there and here, then, are radically different, and I hope no American patriot will ever lose sight of the essential policy of interdicting in the

seas and territories of both Americas the ferocious and sanguinary contests of Europe. I wish to see this coalition begin."

Mr. Jefferson to William Short, Aug. 4, 1820, Randolph's Memoirs of Jefferson, IV. 325, 328.

"We have a perfect horror at everything like connecting ourselves with the politics of Europe. It would indeed be advantageous to us to have neutral rights established on a broad ground; but no dependence can be placed in any European coalition for that. . . . To be entangled with them would be a much greater evil than a temporary acquiescence in the false principles which have prevailed." (Mr. Jefferson to William Short, Oct. 3, 1801, Jefferson's Writings, by Ford, VIII. 95.)

II. *RESOLUTIONS AS TO THE FLORIDAS.*

§ 928.

Jan. 3, 1811, President Madison sent to Congress a secret message, recommending that the Executive be authorized to take temporary possession of any part of the Floridas, in pursuance of arrangements with the Spanish authorities; or, without such arrangements, in case those authorities should be subverted and there should be apprehension of the occupancy of the territory by another foreign power.

Acting on this message, Congress, in secret session, on the 15th of January, "taking into view the peculiar situation of Spain, and of her American provinces," and "the influence which the destiny of the territory adjoining the southern border of the United States may have upon their security, tranquillity, and commerce," resolved that the United States could not "without serious inquietude, see any part of the said territory pass into the hands of any foreign power," and that "a due regard to their own safety" compelled them "to provide, under certain contingencies, for the temporary occupation of the said territory," the territory so occupied to be held "subject to future negotiation." The President was therefore authorized to take possession of and occupy all or any part of East Florida, "in case an arrangement has been, or shall be, made with the local authority of the said territory, for delivering up the possession of the same, or any part thereof, to the United States, or in the event of an attempt to occupy the said territory, or any part thereof, by any foreign government." For the purpose of occupying and holding the territory, the President was authorized to employ the Army and Navy of the United States; and the sum of $100,000 was appropriated "for defraying such expenses as the President may deem necessary for obtaining possession as aforesaid, and the security of the said territory." As to West Florida, Congress had already empowered the Executive to exercise acts of possession, on claim of title under the Louisiana cession.

3 Stats. at Large, 471; Am. State Papers, For. Rel. III. 571; Moore, Int. Arbitrations, V. 4519 et seq.

Both Mr. Pinkney, at London, and Gen. Armstrong, at Paris, were instructed to apprise the governments to which they were accredited of the foregoing resolutions. (Mr. Smith, Sec. of State, to Mr. Pinkney, min. to England, Jan. 22, 1811, MS. Inst. U. States Ministers, VII. 140.)

The report having got abroad that Spain had ceded the Floridas to Great Britain, the American minister in London was instructed to inquire whether it was so. West Florida, said Mr. Monroe, who was then Secretary of State, belonged to the United States. If a cession had been made only of East Florida, Great Britain would, if her policy was peace, explain her views in regard to it. It would be agreeable to the United States "to obtain it of her at a fair equivalent."

Mr. Monroe, Sec. of State, to Mr. J. Q. Adams, min. to England, Dec. 10, 1815, MS. Inst. U. States Ministers, VIII. 13.

See supra, §§ 101, 102, as to Louisiana and the Floridas.

III. *REVOLUTION IN SPANISH AMERICA.*

§ 929.

See supra, §§ 28–36.

"The revolution which is making rapid progress in South America becomes daily more interesting to the United States. From the best information that we can obtain, there is much cause to believe, that those provinces will separate from the mother country. Several of them have already abrogated its authority, and established independent governments. They insist on the acknowledgment of their governments by the United States, and when it is considered that the alternative between governments, which in the event of their independence would be free and friendly, and the relation which, reasoning from the past, must be expected from them, as colonies, there is no cause to doubt in which scale our interest lies. What are the views and intentions of the British Government on this important subject? Is it not the interest of Great Britain that the Spanish provinces should become independent? Will her Government promote it, at what time and under what circumstances? In case of a rupture between the United States and Spain at any future time, what part will Great Britain take in the contest, it being distinctly to be understood that we shall ask, in regard to the Spanish provinces, no privileges in trade which shall not be common to other nations? Spain has long been unfriendly to the United States, and done them positive injuries, for which reparation has been withheld, and her Government still assumes a tone which, in other respects, is far from being satisfactory. The part which the United States may

act hereafter towards that power must depend on circumstances. Should the Spanish Government persevere in its unjust policy, it might have some influence on our measures, and it would be advantageous to know the views of the British Government in these repects."

Mr. Monroe, Sec. of State, to Mr. J. Q. Adams, min. to England, Dec. 10, 1815, MS. Inst. U. States Ministers, VIII. 12.

IV. *THE HOLY ALLIANCE.*

1. Treaty of September 26, 1815.

§ 930.

On Sept. 26, 1815, the Emperors of Austria and Russia and the King of Prussia concluded at Paris a treaty which was known as the Holy Alliance. The object of this league was declared to be the administration of government, in matters both internal and external, according to the precepts of justice, charity, and peace; and to this end the allied monarchs, "looking upon themselves as delegated by Providence" to rule over their respective countries, engaged to "lend one another, on every occasion and in every place, assistance, aid and support." In the course of time, as revolt against the arrangements of the treaty of Vienna became more widespread and more pronounced, the alliance ceased to wear its originally benevolent aspect and came more and more to assume the form of a league for the protection of the principle of legitimacy—the principle of the divine right of kings as opposed to the rights of the people—against the encroachments of liberal ideas. Congresses were held at Aix-la-Chapelle, Troppau, and Laybach, for the purpose of maturing a program to that end. The league was joined by the King of France; but England, whose Prince Regent had originally given it his informal adhesion, began to grow hostile. Her own government, with its free and parliamentary institutions, was founded on a revolution; and the allies, in the circular issued at Troppau, had associated "revolt and crime," and had declared that the European powers "had an undoubted right to take a hostile attitude in regard to those states in which the overthrow of the government might operate as an example." In the circular issued at Laybach they denounced "as equally null, and disallowed by the public law of Europe, any pretended reform effected by revolt and open force." Popular movements were forcibly suppressed in Piedmont and Naples. In October, 1822, representatives of the allies assembled at Verona especially for the purpose of concerting measures against the revolutionary government in Spain. As the result of their deliberations they

issued a circular in which they announced their determination "to repel the maxim of rebellion, in whatever place and under whatever form it might show itself;" and they adjourned with the secret understanding that France should intervene to suppress the constitutional government in Spain. Their ultimate object was more explicitly expressed in a secret treaty in which they engaged mutually "to put an end to the system of representative governments" in Europe, and to adopt measures to destroy "the liberty of the press."

In April, 1823, France proceeded to execute the plans of the allies by invading Spain, for the purpose of restoring the absolute monarch, Ferdinand VII. Before the close of the ensuing summer such progress had been made in the execution of this design that notice was given to the British Government that, as soon as the allies should have achieved their military objects in Spain, they would propose a congress with a view to the termination of the revolutionary governments in Spanish America. At this time Lord Castlereagh, who had always been favorably disposed towards the alliance, had been succeeded in the conduct of the foreign affairs of England by George Canning, who reflected the popular sentiment as to the policy of the allied powers. The independence of the Spanish-American governments, which had now been acknowledged by the United States, had not as yet been recognized by Great Britain. But English merchants, like those of the United States, had developed a large trade with the Spanish-American countries, a trade which the restoration of those regions to a colonial condition, whether under Spain or any of the allies, would, under the commercial system then in vogue, have cut off and destroyed. Under these circumstances, Canning, toward the close of the summer of 1823, began to sound Richard Rush, then American minister at London, as to the possibility of a joint declaration by the two Governments against the intervention of the allies in Spanish-America.

"It is now well ascertained that before the congress of the great European powers at Aix-la-Chapelle, their mediation had been solicited by Spain, and agreed to be given by them for the purpose of restoring the Spanish dominion throughout South America, under certain conditions of commercial privileges to be guaranteed to the inhabitants. The Government of the United States had been informed of this project before the meeting at Aix-la-Chapelle, and that it had been proposed by some of the allied powers that the United States should be invited to join them in this mediation. When this information was received, the ministers of the United States to France, England, and Russia were immediately instructed to make known to those respective governments that the United States would

take no part in any plan of mediation or interference in the contest between Spain and South America, which should be founded on any other basis than that of the total independence of the colonies. This declaration was communicated before the meeting to Lord Castlereagh and to the Duke de Richelieu at the congress. It occasioned some dissatisfaction to the principal allies, particularly France and Russia, as it undoubtedly disconcerted their proposed mediation. Great Britain concurring with them in the plan of restoring the Spanish authority, but aware that it could not be carried into effect without the concurrence of the United States, declared it an indispensable condition of her participation in the mediation that there should be no resort to force against the South Americans, whatever the result of the mediation might be. To this condition, France and Russia after some hesitation assented; but they proposed that, if the South Americans should reject the terms of accommodation to be offered them with the sanction of the mediating powers, they should prohibit all commercial intercourse of their subjects respectively with them. To this condition Great Britain declined giving her assent; her motive for which is sufficiently obvious, when it is considered that, after the declaration of the United States, the practical operation of such a nonintercourse between the allies and the South Americans would have been to transfer to the United States the whole of the valuable commerce carried on with them by the merchants of Great Britain. As a last expedient it was proposed that the Duke of Wellington should be sent to Madrid with the joint powers of all the allied sovereigns, to arrange with the Spanish cabinet the terms to be offered to the South Americans, which was again defeated by the Duke's insisting that, if he should go, a previous entry should be made upon the protocol at Aix-la-Chapelle that no force against the South Americans was, in any result of his embassy, to be used. But Spain had always connected with the project of the mediation a demand that the allies should ultimately guarantee the restoration of her authority; and, finding that this was not to be obtained, she declined accepting the interposition upon any other terms.

"But while the Government of the United States have thus taken every occasion offered them in the course of events to manifest their good wishes in favor of the South Americans, they have never lost sight of the obligations incumbent on them, as avowedly neutral to the contest between them and Spain."

Mr. Adams, Sec. of State, to Mr. Thompson, Sec. of Navy, May 20, 1819, 17 MS. Dom. Let. 304.

"The present political system of Europe is founded upon the overthrow of that which had grown out of the French Revolution, and has assumed its shape from the body of treaties concluded at Vienna

in 1814 and 1815, at Paris towards the close of the same year, 1815, and in Aix-la-Chapelle in the autumn of 1818. Its general character is that of a compact between the five principal European powers—Austria, France, Great Britain, Prussia, and Russia—for the preservation of universal peace. These powers having then just emerged victorious from a long, portentous and sanguinary struggle against the oppressive predominancy of one of them, under revolutionary sway, appear to have bent all their faculties to the substitution of a system which should preserve them from that evil—the preponderancy of one power by the subjugation, virtual if not nominal, of the rest. Whether they perceived in its full extent, considered in its true colours, or provided by judicious arrangements for the revolutionary temper of the weapons by which they had so long been assailed and from which they had so severely suffered, is a question now in a course of solution. Their great anxiety appears to have been to guard themselves each against the other.

"The League of Peace, so far as it was a covenant of organized governments, has proved effectual to its purposes by an experience of five years. Its only interruption has been in this hemisphere, though between nations strictly European; by the invasion of the Portuguese on the territory claimed by Spain, but already lost to her, on the eastern shore of the Rio de la Plata. This aggression, too, the European alliance have undertaken to control; and in connection with it they have formed projects hitherto abortive of interposing in the revolutionary struggle between Spain and her South American colonies.

"As a compact between governments it is not improbable that the European alliance will last as long as some of the states who are parties to it. The warlike passions and propensities of the present age find their principal aliment, not in the enmities between nation and nation, but in the internal dissensions between the component parts of all. The war is between nations and their rulers.

"The Emperor Alexander may be considered as the principal patron and founder of the League of Peace. His interest is the more unequivocal in support of it. His empire is the only party to the compact free from that internal fermentation which threatens the existence of all the rest. His territories are the most extensive, his military establishment the most stupendous, his country the most improvable and thriving of them all. He is therefore naturally the most obnoxious to the jealousy and fears of his associates, and his circumstances point his policy to a faithful adhesion to the general system, with a strong reprobation of those who would resort to special and partial alliances, from which any one member of the league should be excluded. This general tendency of his policy is corroborated by the mild and religious turn of his individual character. He finds a

happy coincidence between the dictates of his conscience and the interest of his Empire. And as from the very circumstance of his preponderancy, partial alliances might be most easily contracted by him, from the natural resort of the weak for succour to the strong, by discountenancing all such partial combinations he has the appearance of discarding advantages entirely within his command, and reaps the glory of disinterestedness, while most efficaciously providing for his own security.

"Such is accordingly the constant indication of the Russian policy since the peace of Paris in 1815. The neighbors of Russia which have the most to dread from her overshadowing and encroaching power are Persia, Turkey, Austria, and Prussia; the two latter of which are members of the European and even of the Holy Alliance, while the two former are not only extra-European in their general policy, but of religions which excluded them from ever becoming parties, if not from ever deriving benefit from that singular compact.

"The political system of the United States is also essentially extra-European. To stand in firm and cautious independence of all entanglement in the European system, has been a cardinal point of their policy under every administration of their Government, from the peace of 1783 to this day. If at the original adoption of their system there could have been any doubt of its justice or its wisdom, there can be none at this time. Every year's experience rivets it more deeply in the principles and opinions of the nation. Yet in proportion as the importance of the United States as one of the members of the general society of civilized nations increases in the eyes of the others, the difficulties of maintaining this system and the temptations to depart from it increase and multiply with it. The Russian Government has not only manifested an inclination that the United States should concur in the general principles of the European league, but a direct though unofficial application has been made by the present Russian minister here that the United States should become formal parties to the Holy Alliance. It has been suggested, as inducement to obtain their compliance, that this compact bound the parties to no specific engagement of anything. That it was a pledge of mere principles—that its real as well as its professed purpose was merely the general preservation of peace—and it was intimated that if any question should arise between the United States and other governments of Europe, the Emperor Alexander, desirous of using his influence in their favour, would have a substantial motive and justification for interposing if he could regard them as *his allies*, which, as parties to the Holy Alliance, he would.

"It is possible that overtures of a similar character may be made to you: but whether they should be or not it is proper to apprize you of the light in which they have been viewed by the President.

No direct refusal has been signified to Mr. Poletica. It is presumed that none will be necessary. His instructions are not to make the proposal in form unless with a prospect that it will be successful. It might, perhaps, be sufficient to answer that the organization of our Government is such as not to admit of our acceding formally to that compact. But it may be added that the President, approving its general principles and thoroughly convinced of the benevolent and virtuous motives which led to the conception and presided at the formation of this system by the Emperor Alexander, believes that the United States will more effectually contribute to the great and sublime objects for which it was concluded by abstaining from a formal participation in it than they could as stipulated members of it. As a general declaration of principles, disclaiming the impulses of vulgar ambition and unprincipled aggrandizement and openly proclaiming the peculiarly Christian maxims of mutual benevolence and brotherly love to be binding upon the intercourse between nations no less than upon that of individuals, the United States not only give their hearty assent to the articles of the Holy Alliance, but will be among the most earnest and conscientious in observing them. But independent of the prejudices which have been excited against this instrument in the public opinion, which time and an experience of its good effects will gradually wear away, it may be observed that for the repose of Europe as well as of America, the European and American political system should be kept as separate and distinct from each other as possible. If the United States as members of the Holy Alliance could acquire a right to ask the influence of its most powerful member in their controversies with other states, the other members must be entitled in return to ask the influence of the United States, for themselves or against their opponents, in the deliberations of the league they would be entitled to a voice, and in exercising their right must occasionally appeal to principles, which might not harmonize with those of any European member of the bond. This consideration alone would be decisive for declining a participation in that league, which is the President's absolute and irrevocable determination, although he trusts that no occasion will present itself rendering it necessary to make that determination known by an explicit refusal."

Mr. Adams, Sec. of State, to Mr. Middleton, min. to Russia, No. 1, July 5, 1820, MS. Inst. to U. S. Mins. IX. 18.

2. Anxiety as to Cuba.

§ 931.

"The present condition of the Island of Cuba has excited much attention, and has become of deep interest to this Union. From the

public despatch, and other papers which you will receive with this, you will perceive the great and continued injuries which our commerce is suffering from pirates issuing from thence; the repeated demands made upon the authorities of the island for their suppression, and the exertions, but partially effectual, of our own naval force against them. There is another point of view, however, in which the condition of the island is yet more an object of concern. From various sources intimations have been received here that the British Government have it in contemplation to obtain possession of the island. It is even asserted from sources to which some credit is due that they have been for more than two years in secret negotiation with Spain for the cession of the island; and it is added that Spain, though disinclined to such an arrangement, might resist it with more firmness if for a limited period of time she could obtain the joint guarantee of the United States and France, securing the island to herself.

"There is reason also to believe that the future political condition of the island is a subject of much anxiety and of informal deliberations among its own inhabitants. That both France and Great Britain have political agents there observing the course of events and perhaps endeavoring to give them different directions. The President has therefore determined to despatch to you a special messenger to deliver this letter, upon receipt of which he wishes you to take such measures as may be adapted to obtain correct information whether such a negotiation as has been above suggested is on foot between Spain and Great Britain, and if so to communicate to the Spanish Government in a manner adapted to the delicacy of the case the sentiments of this Government in relation to this subject, which are favorable to the continuance of Cuba in its connection with Spain."

Mr. Adams, Sec. of State, to Mr. Forsyth, min. to Spain, No. 28, Dec. 17, 1822, MS. Inst. U. States Ministers, IX. 158.

"Monday night, 17 Feby. [1823] . . . Clay says that Canning told him the day before yesterday, as I also heard Mr. Adams state publickly, that England has no views on Cuba. Clay told him distinctly that we would fight for it should they attempt the possession, which sentiment I find more general than I supposed. Mr. Baylies, of Massachusetts, a Federalist, is for it as he said this afternoon. The idea given out is that any English force going there is to protect it from the French who might try to take it, as I heard Mr. Adams say, in the event of war between France & Spain."

Diary of Mr. Ingersoll, Life of Charles Jared Ingersoll, 128, 129–130.

"In the war between France and Spain, now commencing, other interests, peculiarly ours, will, in all probability, be deeply involved.

Whatever may be the issue of this war as between those two European powers, it may be taken for granted that the dominion of Spain upon the American continents, north and south, is irrevocably gone. But the islands of Cuba and Porto Rico still remain nominally, and so far really, dependent upon her, that she yet possesses the power of transferring her own dominion over them, together with the possession of them, to others. These islands, from their local position are natural appendages to the North American continent, and one of them (Cuba) almost in sight of our shores, from a multitude of considerations has become an object of transcendent importance to the commercial and political interests of our Union. Its commanding position, with reference to the Gulf of Mexico and the West India seas; the character of its population; its situation midway betwen our southern coast and the island of St. Domingo; its safe and capacious harbor of the Havana, fronting a long line of our shores destitute of the same advantage; the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce immensely profitable and mutually beneficial, give it an importance in the sum of our national interests with which that of no other foreign territory can be compared, and little inferior to that which binds the different members of this Union together. Such, indeed, are, between the interests of that island and of this country, the geographical, commercial, moral, and political relations, formed by nature, gathering, in the process of time, and even now verging to maturity, that, in looking forward to the probable course of events, for the short period of half a century, it is scarcely possible to resist the conviction that the annexation of Cuba to our Federal Republic will be indispensable to the continuance and integrity of the Union itself.

"It is obvious, however, that for this event we are not yet prepared. Numerous and formidable objections to the extension of our territorial dominions beyond sea present themselves to the first contemplation of the subject; obstacles to the system of policy by which alone that result can be compassed and maintained are to be foreseen and surmounted, both from at home and abroad; but there are laws of political as well as of physical gravitation; and if an apple, severed by the tempest from its native tree, can not choose but fall to the ground, Cuba, forcibly disjoined from its own unnatural connection with Spain, and incapable of self-support, can gravitate only towards the North American Union, which, by the same law of nature, can not cast her off from its bosom."

After this exordium Mr. Adams went on to say that, if the constitution of Spain should be demolished by the armies of the Holy Alliance, represented by France, and the people of Cuba should as a result be shorn of the liberties with which they had been invested under that

constitution, it was not to be presumed that they would be willing to surrender them to foreign violence committed upon the parent country. In that case France might attempt the invasion of Cuba, unless restrained by maritime weakness and the probability of resistance by Great Britain. Meanwhile the condition of the island was one of great, imminent, and complicated danger. If the people were homogeneous the invasion of Spain by France would be the signal for their declaration of independence, but in reality they were not competent to a system of permanent self-dependence; and if, in the event of the overthrow of the Spanish constitution, they were obliged to rely for protection on some force outside, their only alternative of dependence must be upon Great Britain or upon the United States. The United States had wished that the connection between Cuba and Spain as it has existed for several years should continue. Of this Mr. Forsyth, the American minister at Madrid, had been authorized in a suitable manner to advise the Spanish Government. But if a government was to be imposed by violence on the Spanish nation it was neither to be expected nor desired that the people of Cuba should submit to be governed by the oppressors of Spain. Great Britain had formally withdrawn from the councils of the European alliance in regard to Spain, and had avowed her determination to defend Portugal against the application of the principles on which the invasion of Spain was based; and unless the conflict between France and Spain should be as short and decisive as that of which Italy had lately been the scene, she might not be able to maintain her neutrality. If she made common cause with Spain, the two remaining islands of the latter in the West Indies might be considered the proper price of the alliance. The Government of the United States had been confidently told more than two years before, by indirect communication from the French Government, that Great Britain was negotiating with Spain for the cession of Cuba, and was so eager as to have offered Gibraltar in exchange. There was reason to believe that the French Government was misinformed. Recently the Government of the United States had been confidentially informed that the present British secretary for foreign affairs (Canning) had declared to the French Government that Great Britain would hold it disgraceful to avail herself of the distressed situation of Spain to obtain any portion of her American colonies. But this assurance was given with reference to a state of peace then existing, and the condition of the parties had since changed, and Great Britain had not forborne to take advantage of Spain's situation by order of reprisals given to two successive squadrons dispatched to the West Indies and stationed in immediate proximity to the island of Cuba. By this means she had obtained the revocation of the blockade which the Spanish generals had proclaimed on the coast of Terra Firma and pledges of reparation for

all the captures of British vessels made under cover of that military fiction. She had also secured from Spain the promise to pay many long-standing claims of British subjects upon the Spanish Government. In satisfaction of all these demands the island of Cuba might be the only indemnity in the power of Spain to grant, as it would undoubtedly be to Great Britain the most satisfactory indemnity which she could receive. Continuing, Mr. Adams said:

"The war between France and Spain changes so totally the circumstances under which the declaration above mentioned of Mr. Canning was made, that it may, at its very outset, produce events, under which the possession of Cuba may be obtained by Great Britain, without even raising a reproach of intended deception against the British Government for making it. An alliance between Great Britain and Spain may be one of the first fruits of this war. A guaranty of the island to Spain may be among the stipulations of that alliance; and, in the event either of a threatened attack upon the island by France, or of attempts on the part of the islanders to assume their independence, a resort to the temporary occupation of the Havana by British forces may be among the probable expedients through which it may be obtained, by concert, between Great Britain and Spain herself. It is not necessary to point out the numerous contingencies by which the transition from a temporary and fiduciary occupation to a permanent and proprietary possession may be effected.

"The transfer of Cuba to Great Britain would be an event unpropitious to the interests of this Union. This opinion is so generally entertained, that even the groundless rumors that it was about to be accomplished, which have spread abroad, and are still teeming, may be traced to the deep and almost universal feeling of aversion to it, and to the alarm which the mere probability of its occurrence has stimulated. The question both of our right and of our power to prevent it, if necessary by force, already obtrudes itself upon our councils, and the Administration is called upon, in the performance of its duties to the nation, at least to use all the means within its competency to guard against and forefend it.

"It will be among the primary objects requiring your most earnest and unremitting attention, to ascertain and report to us every movement of negotiation between Spain and Great Britain upon this subject. We can not, indeed, prescribe any special instructions in relation to it. We scarcely know where you will find the Government of Spain upon your arrival in the country, nor can we foresee, with certainty, by whom it will be administered. Your credentials are addressed to Ferdinand, the King of Spain, under the constitution You may find him under the guardianship of a Cortes, in the custody of an army of faith, or under the protection of the invaders of his country. So long as the *constitutional* government may con-

time to be administered in his name, your official intercourse will be with his ministers, and to them you will repeat, what Mr. Forsyth has been instructed to say, that the wishes of your Government are that Cuba and Porto Rico may continue in connection with independent and constitutional Spain.

"You will add that no countenance has been given by us to any projected plan of separation from Spain, which may have been formed in the island. This assurance becomes proper, as by a late despatch received from Mr. Forsyth, he intimates that the Spanish Government have been informed that a revolution in Cuba was secretly preparing, fomented by communications between a society of Freemasons there and another of the same fraternity in Philadelphia. Of this we have no other knowledge; and the societies of Freemasons in this country are so little in the practice of using agency of a political nature on any occasion, that we think it most probable the information of the Spanish Government, in that respect, is unfounded. It is true that the Freemasons at the Havana have taken part of late in the politics of Cuba, and, so far as it is known to us, it has been an earnest and active part in favor of the continuance of their connexion with Spain. While disclaiming all disposition on our part either to obtain possession of Cuba or Porto Rico ourselves, you will declare that the American Government had no knowledge of the lawless expedition undertaken against the latter of those islands last summer."

Mr. Adams, Sec. of State, to Mr. Nelson, min. to Spain, Apr. 28, 1823, H. Ex. Doc. 121, 31 Cong. 1 sess. 6; reprinted in 44 Br. & For. State Papers, 138. Other parts of the instruction are printed in Am. State Papers, For. Rel. V. 408; Am. Hist. Rev. VII. 680.

See, also, Moore Int. Arbitrations, V. 4534 et seq.

"During your residence in the island of Cuba, you will from time to time, as *safe* opportunities may occur, communicate to this Department, in private and confidential letters, all such information as you may be able to obtain, relating to the political condition of the island; the views of its government and the sentiments of its inhabitants. You will attentively observe all occurrences having relation to their connection with Spain, and to the events which may result from the war between France and Spain, probably now commenced. Should there be French or British agents residing at the Havanna, you will endeavour to ascertain, without direct enquiries, or apparent curiosity, on the subject, their objects and pursuits; and you will notice whatever maritime force of either of those powers may be stationed in the West Indies, or present themselves in the vicinity of the island.

"You will be mindful of any apparent popular agitation; particularly of such as may have reference either to a transfer of the island from Spain to any other power, or to the assumption by the inhabi-

tants of an independent government. If, in your intercourse with society, inquiries should be made of you with regard to the views of the Government of the United States concerning the political state of Cuba, you will say that, so far as they were known to you from having resided at the seat of government, the first wish of the Government was for the continuance of Cuba in its political connection with Spain, and that it would be altogether averse to the transfer of the island to any other power. You will cautiously avoid committing yourself upon any proposals which may be suggested to you, of cooperation in any measure proposing a *change* of the political condition of its people; but will report as above mentioned to me whatever may in any manner become known to you in this respect, and the communication of which may be useful to the public service. Exercise a discriminating judgment upon all evidence of what you shall report as information, so that we may distinguish the degree of credit due to every statement of fact. You will duly distrust mere popular rumours, but neglect no probable source of useful information.

"Should any uneasiness be manifested by the governor, at the duration of your residence at the Havanna, you will take such occasion as may be presented for removing it. During the sickly season at the Havanna, you may take the opportunity of making an excursion to any place in its neighborhood exempt from the danger."

Mr. Adams, Sec. of State, to Mr. Randall, special agent, April 29, 1823, MS. Desp. to Consuls, II. 283.

Mr. Jefferson, in a letter to President Monroe, June 11, 1823, suggested that, as Cuba seemed to "hold up a speck of war to us" and as the possession of the island by Great Britain "would indeed be a great calamity to us," it might be advisable to induce Great Britain to join the United States "in guaranteeing its independence against all the world, *except* Spain." Writing again to President Monroe, June 23, 1823, he said that his suggestion was based on the supposition that there was an English interest in Cuba as strong as that of the United States; but that, if there was no danger of the islands "falling into the possession of England," he must "retract an opinion founded on an error of fact." It would be better "to lie still in readiness to receive that interesting incorporation when solicited by herself. For, certainly, her addition to our confederacy is exactly what is wanting to round our power as a nation to the point of its utmost interest."

Jefferson's Works, VII. 288, 299.

"I did not leave Mr. de Chateaubriand (French minister for foreign affairs) without adverting to the affairs of Spain. That our sympathies were entirely on her side, and that we considered the war made

on her by France unjust, I did not pretend to conceal; but I added that the United States would undoubtedly preserve their neutrality, provided it was respected, and avoid every interference with the politics of Europe. . . . But I had every reason to believe that, on the other hand, they would not suffer others to interfere against the emancipation of America." (Mr. Gallatin, min. to France, to Mr. J. Q. Adams, Sec. of State, June 24, 1823, 2 Gallatin's Writings, 271.)

3. Canning–Rush Negotiations.

§ 932.

"When my interview with Mr. Canning, on Saturday, was about to close, I transiently asked him whether, notwithstanding the late news from Spain, we might not still hope that the Spaniards would get the better of all their difficulties. I had allusion to the defection of Ballasteros in Andalusia, an event seeming to threaten with new dangers the constitutional cause. His reply was general, importing nothing more than his opinion of the increased difficulties and dangers with which, undoubtedly, this event was calculated to surround the Spanish cause.

"Pursuing the topic of Spanish affairs, I remarked that should France ultimately effect her purposes in Spain, there was at least the consolation left that Great Britain would not allow her to go further and lay her hands upon the Spanish colonies, bringing them, too, under her grasp. I here had in my mind the sentiments promulgated upon this subject in Mr. Canning's note to the British ambassador at Paris of the 31st of March, during the negotiations that preceded the invasion of Spain. It will be recollected that the British Government say in this note that time and the course of events appeared to have substantially decided the question of the separation of these colonies from the mother country, although their formal recognization as independent states by Great Britain might be hastened or retarded by external circumstances, as well as by the internal condition of those new states themselves; and that as His Britannic Majesty disclaimed all intention of appropriating to himself the smallest portion of the late Spanish possessions in America, he was also satisfied that no attempt would be made by France to bring any of them under *her* dominion, either by conquest or by cession from Spain.

"By this we are to understand, in terms sufficiently distinct, that Great Britain would not be passive under such an attempt by France, and Mr. Canning, on my having referred to this note, asked me what I thought my Government would say to going hand in hand with this, in the same sentiment; not, as he added, that any concert in action under it could become necessary between the two countries, but that

the simple fact of our being known to hold the same sentiment would, he had no doubt, by its moral effect, put down the intention on the part of France, admitting that she should ever entertain it. This belief was founded, he said, upon the large share of the maritime power of the world which Great Britain and the United States shared between them, and the consequent influence which the knowledge that they held a common opinion upon a question on which such large maritime interests, present and future, hung, could not fail to produce upon the rest of the world.

"I replied that in what manner my Government would look upon such a suggestion I was unable to say, but that I would communicate it in the same informal manner in which he threw it out. I said, however, that I did not think I should do so with full advantage, unless he would at the same time enlighten me as to the precise situation in which His Majesty's Government stood at this moment in relation to those new states, and especially on the material point of their own independence.

"He replied that Great Britain certainly never again intended to lend her instrumentality or aid, whether by mediation or otherwise, towards making up the dispute between Spain and her colonies, but that if this result could still be brought about she would not interfere to *prevent* it. Upon my intimating that I had supposed that all idea of Spain ever recovering her authority over the colonies had long since gone by, he explained by saying that he did not mean to controvert that opinion, for he, too, believed that the day had arrived when all America might be considered as lost to Europe so far as the tie of political dependence was concerned. All that he meant was, that if Spain and the colonies should still be able to bring the dispute, not yet totally extinct between them, to a close upon terms satisfactory to both sides, and which should at the same time secure to Spain commercial or other advantages not extended to other nations, that Great Britain would not object to a compromise in this spirit of preference to Spain. All that she would ask would be to stand upon as favored a footing as any other nation after Spain. Upon my again alluding to the improbability of the dispute ever settling down now even upon this basis, he said that it was not his intention to maintain such a position, and that he had expressed himself as above rather for the purpose of indicating the feeling which this cabinet still had towards Spain in relation to the controversy than of predicting results.

"Wishing, however, to be still more specifically informed, I asked whether Great Britain was at this moment taking any step, or contemplating any, which had reference to the recognition of these States, this being the point in which we felt the chief interest.

"He replied that she had taken none whatever, as yet, but was upon the eve of taking one, not final, but preparatory, and which would still leave her at large to recognize or not, according to the position of events at a future period. The measure in question was to send out one or more individuals under authority from this Government to South America, not strictly diplomatic, but clothed with powers in the nature of a commission of inquiry, and which in short he described as analogous to those exercised by our own commissioners in 1817, and that upon the result of this commission much might depend as to the ulterior conduct of Great Britain. I asked whether I was to understand that it would comprehend all the new States, or which of them. To which he replied that for the present it would be limited to Mexico.

"Reverting to his first idea, he again said that he hoped that France would not, should even events in the Peninsula be favorable to her, extend her views to South America for the purpose of reducing the colonies, nominally, perhaps, for Spain, but in effect to subserve ends of her own; but that, in case she should meditate such a policy, he was satisfied that the knowledge of the United States being opposed to it, as well as Great Britain, could not fail to have its influence in checking her steps. In this way he thought good might be done by prevention, and peaceful prospects all around increased. As to the form in which such knowledge might be made to reach France, and even the other powers of Europe, he said, in conclusion, that that might probably be arranged in a manner that would be free from objection.

"I again told him that I would convey his suggestions to you for the information of the President, and impart to him whatever reply I might receive. My own inference rather is that his proposition was a fortuitous one; yet he entered into it, I thought, with some interest, and appeared to receive with a corresponding satisfaction the assurance I gave him that it should be made known to the President. I did not feel myself at liberty to express any opinion unfavorable to it, and was as careful to give none in its favor.

"Mr. Canning mentioned to me, at this same interview, that a late confidential dispatch which he had seen from Count Nesselrode to Count Lieven, dated, I think, in June, contained declarations respecting the Russian ukase, relative to the northwest coast, that were satisfactory; that they went to show that it would probably not be executed in a manner to give cause of complaint to other nations, and that, in particular, it had not yet been executed in any instance under orders issued by Russia subsequently to its first promulgation."

Mr. Rush, min. to England, to Mr. Adams, Sec. of State, No. 323, Aug. 19, 1823 (received Oct. 9, 1823), Cor. in relation to the Proposed Interoceanic Canal (Washington, 1885), 179.

See John Quincy Adams and the Monroe Doctrine, by W. C. Ford, 7 Am. Hist. Rev. 680 et seq. Also, 15 Proceedings of the Mass. Hist Society, Jan. 1902, 412.

"My Dear Sir: Before leaving town I am desirous of bringing before you in a more distinct, but still in an unofficial and confidential shape, the question which we shortly discussed the last time that I had the pleasure of seeing you.

"Is not the moment come when our Governments might understand each other as to the Spanish-American colonies? And if we can arrive at such an understanding, would it not be expedient for ourselves, and beneficial for all the world, that the principles of it should be clearly settled and plainly avowed?

"For ourselves we have no disguise.

"1. We conceive the recovery of the colonies by Spain to be hopeless.

"2. We conceive the question of the recognition of them, as independent states, to be one of time and circumstances.

"3. We are, however, by no means disposed to throw any impediment in the way of an arrangement between them and the mother country by amicable negotiation.

"4. We aim not at the possession of any portion of them ourselves.

"5. We could not see any portion of them transferred to any other power with indifference.

"If these opinions and feelings are, as I firmly believe them to be, common to your Government with ours, why should we hesitate mutually to confide them to each other, and to declare them in the face of the world?

"If there be any European power which cherishes other projects, which looks to a forcible enterprise for reducing the colonies to subjugation, on the behalf or in the name of Spain, or which meditates the acquisition of any part of them to itself, by cession or by conquest, such a declaration on the part of your Government and ours would be at once the most effectual and the least offensive mode of intimating our joint disapprobation of such projects.

"It would at the same time put an end to all the jealousies of Spain with respect to her remaining colonies, and to the agitation which prevails in those colonies, an agitation which it would be but humane to allay, being determined (as we are) not to profit by encouraging it.

"Do you conceive that, under the power which you have recently received, you are authorized to enter into negotiation, and to sign any convention upon this subject? Do you conceive, if that be not within your competence, you could exchange with me ministerial notes upon it?

"Nothing could be more gratifying to me than to join with you in such a work, and I am persuaded there has seldom, in the history of

the world, occurred an opportunity when so small an effort of two friendly Governments might produce so unequivocal a good, and prevent such extensive calamities.

"I shall be absent from London but three weeks at the utmost, but never so far distant but that I can receive and reply to any communication within three or four days."

Mr. Canning, British foreign secretary, to Mr. Rush, American min., "private and confidential," Aug. 20, 1823, Cor. in relation to the Proposed Interoceanic Canal (Washington, 1885), 182.

Also printed in 15 Proceedings of the Mass. Hist. Society, Jan. 1902, 415.

"My Dear Sir: Your unofficial and confidential note of the 20th instant reached me yesterday, and has commanded from me all the reflection due to the interests of its subject and to the friendly spirit of confidence upon which it is so emphatically founded.

"The Government of the United States having, in the most formal manner, acknowledged the independence of the late Spanish provinces in America, desires nothing more anxiously than to see this independence maintained with stability, and under auspices that may promise prosperity and happiness to these new states themselves, as well as advantage to the rest of the world. As conducing to these great ends, my Government has always desired, and still desires, to see them received into the family of nations by the powers of Europe, and especially, I may add, by Great Britain.

"My Government is also under a sincere conviction that the epoch has arrived when the interests of humanity and justice, as well as all other interests, would be essentially subserved by the general recognition of these states.

"Making these remarks, I believe I may confidently say, that the sentiments unfolded in your note are fully those which belong also to my Government.

"It conceives the recovery of the colonies by Spain to be hopeless.

"It would throw no impediment in the way of an arrangement between them and the mother country, by amicable negotiation, supposing an arrangement of this nature to be possible.

"It does not aim at the possession of any portion of those communities for or on behalf of the United States.

"It would regard as highly unjust and fruitful of disastrous consequences any attempt on the part of any European power to take possession of them by conquest, or by cession, or on any ground or pretext whatever.

"But in what manner my Government might deem it expedient to avow these principles and feelings, or express its disapprobation of such projects as the last, are points which none of my instructions, or the power which I have recently received, embrace; and they in-

volve, I am forced to add, considerations of too much delicacy for me to act upon them in advance.

"It will yield me particular pleasure to be the organ of promptly causing to be brought under the notice of the President the opinions and views of which you have made me the depositary upon this subject, and I am of nothing more sure than that he will fully appreciate their intrinsic interest, and not less the frank and friendly feelings towards the United States in which they have been conceived and communicated to me on your part.

"Nor do I take too much upon myself when I anticipate the peculiar satisfaction the President will also derive from the intimation which you have not scrupled to afford me as to the just and liberal determinations of His Majesty's Government in regard to the colonies which still remain to Spain.

"With a full reciprocation of the personal cordiality which your note also breathes, and begging you to accept the assurances of my great respect, I have, &c."

Mr. Rush, American min., to Mr. Canning, British foreign secretary, Aug. 23, 1823, Cor. in relation to the Proposed Interoceanic Canal (Washington, 1885), 182.

"I yesterday received from Mr. Canning a note, headed 'private and confidential,' setting before me, in a more distinct form, the proposition respecting South American affairs which he communicated to me in conversation on the 16th, as already reported in my number 323. Of his note I lose no time in transmitting a copy for your information, as well as a copy of my answer to it, written and sent this day.

"In shaping the answer on my own judgment alone, I feel that I have had a task of some embarrassment to perform, and shall be happy if it receives the President's approbation.

"I believe that this Government has the subject of Mr. Canning's proposition much at heart, and certainly his note bears, upon the face of it, a character of cordiality towards the Government of the United States which can not escape notice.

"I have therefore thought it proper to impart to my note a like character and to meet the points laid down in his, as far as I could, consistently with other and paramount considerations.

"These I conceived to be chiefly twofold: First, the danger of pledging my Government to any measure or course of policy which might in any degree, now or hereafter, implicate it in the federative system of Europe; and, secondly, I have felt myself alike without warrant to take a step which might prove exceptional in the eyes of France, with whom our pacific and friendly relations remain, I pre-

sume, undisturbed, whatever may be our speculative abhorrence of her attack upon the liberties of Spain.

"In framing my answer, I had also to consider what was due to Spain herself, and I hope that I have not overlooked what was due to the colonies.

"The whole subject is open to views on which my mind has deliberated anxiously. If the matter of my answer shall be thought to bear properly upon the motives and considerations which belong most materially to the occasion, it will be a source of great satisfaction to me.

"The tone of earnestness in Mr. Canning's note, and the force of some of his expressions, naturally start the inference that the British cabinet can not be without its serious apprehensions that ambitious enterprises are meditated against the independence of the South American states. Whether by France alone I can not now say on any authentic grounds."

Mr. Rush, min. to England, to Mr. Adams, Sec. of State, No. 325, Aug. 23, 1823 (received Oct. 9, 1823), Cor. in relation to the Proposed Interoceanic Canal (Washington, 1885), 181.

"My Dear Sir: Since I wrote to you on the 20th, an additional motive has occurred for wishing that we might be able to come to some understanding on the part of our respective Governments on the subject of my letter; to come to it soon, and to be at liberty to announce it to the world.

"It is this. I have received notice, but not such a notice as imposes upon me the necessity of any immediate answer or proceeding—that so soon as the military objects in Spain are achieved (of which the French expect, how justly I know not, a very speedy achievement) a proposal will be made for a Congress, or some less formal concert and consultation, specially upon the affairs of Spanish America.

"I need not point out to you all the complications to which this proposal, however dealt with by us, may lead.

"Pray receive this communication in the same confidence with the former; and believe me with great truth," etc.

Mr. Canning to Mr. Rush, "private and confidential," Aug. 23, 1823, enclosed with Mr. Rush's No. 326 of Aug. 28, 1823, which was received at Washington, Oct. 9, 1823, 29 MS. Desp. from England.

See a careful and convenient print of the correspondence in Writings of Monroe, by Hamilton, VI. 369 et seq.

Mr. Rush's No. 326 is printed in his Memoranda of a Residence at the Court of London, 420. See John Quincy Adams and the Monroe Doctrine, by W. S. Ford, 7 Am. Hist. Rev. 683.

4. Monroe-Jefferson-Madison Correspondence.

§ 933.

"I transmit to you two despatches, which were receiv'd from Mr. Rush, while I was lately in Washington, which involve interests of the highest importance. They contain two letters from Mr. Canning, suggesting designs of the holy alliance against the Independence of S° America, & proposing a cooperation, between G. Britain & the U. States, in support of it, against the members of that alliance. The project aims in the first instance, at a mere expression of opinion, somewhat in the abstract, but which it is expected by Mr. Canning, will have a great political effect, by defeating the combination. By Mr. Rush's answers, which are also inclosed, you will see the light in which he views the subject, & the extent to which he may have gone. Many important considerations are involved in this proposition. 1st. Shall we entangle ourselves, at all, in European politicks, & wars, on the side of any power, against others, presuming that a concert by agreement, of the kind proposed, may lead to that result? 2d. If a case can exist, in which a sound maxim may, & ought to be departed from, is not the present instance, precisely that case? 3d Has not the epoch arriv'd when G. Britain must take her stand, either on the side of the monarchs of Europe, or of the U. States, & in consequence, either in favor of Despotism or of liberty & may it not be presum'd, that aware of that necessity, her government, has seiz'd on the present occurrence, as that, which it deems, the most suitable, to announce & mark the commenc'ment of that career.

"My own impression is that we ought to meet the proposal of the British gov^t., & to make it known, that we would view an interference on the part of the European powers, and especially an attack on the Colonies, by them, as an attack on ourselves, presuming that if they succeeded with them, they would extend it to us. I am sensible however of the extent, & difficulty of the question, & shall be happy to have yours, & Mr. Madison's opinions on it. I do not wish to trouble either of you with small objects, but the present one is vital, involving the high interests, for which we have so long & so faithfully, & harmoniously, contended together. Be so kind as to enclose to him the despatches, with an intimation of the motive."

President Monroe to Mr. Jefferson, Oakhill, Oct. 17, 1823. Received Oct. 23.

From the Jefferson MSS., now in the Library of Congress, as printed by W. C. Ford in 15 Proceedings of the Mass. Hist. Soc., Jan. 1902, 375; also, S. Doc. 26, 57 Cong. 1 sess.; Writings of Monroe, by Hamilton, VI. 323.

"I forward you two most important letters sent to me by the President and add his letter to me by which you will perceive his primâ facie views. This you will be so good as to return to me, and forward the others to him." (Jefferson to Madison, October 24, 1823, 15 Proceedings of the Mass. Hist. Soc. 375.)

"The question presented by the letters you have sent me, is the most momentous which has ever been offered to my contemplation since that of independence. That made us a nation, this sets our compass and points the course which we are to steer through the ocean of time opening on us. And never could we embark upon it under circumstances more auspicious. Our first and fundamental maxim should be, never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs. America, North and South, has a set of interests distinct from those of Europe, and particularly her own. She should therefore have a system of her own, separate and apart from that of Europe. While the last is laboring to become the domicile of despotism, our endeavor should surely be, to make our hemisphere that of freedom.

"One nation, most of all, could disturb us in this pursuit; she now offers to lead, aid, and accompany us in it. By acceding to her proposition, we detach her from the bands, bring her mighty weight into the scale of free government, and emancipate a continent at one stroke, which might otherwise linger long in doubt and difficulty. Great Britain is the nation which can do us the most harm of any one, or all on earth; and with her on our side we need not fear the whole world. With her, then, we should most sedulously cherish a cordial friendship; and nothing would tend more to knit our affections than to be fighting once more, side by side, in the same cause. Not that I would purchase even her amity at the price of taking part in her wars.

"But the war in which the present proposition might engage us, should that be its consequence, is not her war, but ours. Its object is to introduce and establish the American system, of keeping out of our land all foreign powers—of never permitting those of Europe to intermeddle with the affairs of our nations. It is to maintain our own principle, not to depart from it. And if, to facilitate this, we can effect a division in the body of the European powers, and draw over to our side its most powerful member, surely we should do it. But I am clearly of Mr. Canning's opinion, that it will prevent instead of provoking war. With Great Britain withdrawn from their scale and shifted into that of our two continents, all Europe combined would not undertake such a war, for how would they propose to get at either enemy without superior fleets? Nor is the occasion to be slighted

which this proposition offers of declaring our protest against the atrocious violations of the rights of nations by the interference of any one in the internal affairs of another, so flagitiously begun by Bonaparte, and now continued by the equally lawless Alliance calling itself Holy.

"But we have first to ask ourselves a question. Do we wish to acquire to our own confederacy any one or more of the Spanish provinces? I candidly confess that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States. The control which, with Florida Point, this island would give us over the Gulf of Mexico, and the countries and isthmus bordering on it, as well as all those whose waters flow into it, would fill up the measure of our political well-being. Yet, as I am sensible that this can never be obtained, even with her own consent, but by war, and its independence, which is our second interest (and especially its independence of England), can be secured without it, I have no hesitation in abandoning my first wish to future chances, and accepting its independence, with peace and the friendship of England, rather than its association, at the expense of war and her enmity.

"I could honestly, therefore, join in the declaration proposed, that we aim not at the acquisition of any of those possessions, that we will not stand in the way of any amicable arrangement between them and the mother country; but that we will oppose, with all our means, the forcible interposition of any other power, as auxiliary, stipendiary, or under any other form or pretext, and most especially their transfer to any power by conquest, cession or acquisition in any other way. I should think it, therefore, advisable, that the Executive should encourage the British Government to a continuance in the dispositions expressed in these letters by an assurance of his concurrence with them as far as his authority goes; and that as it may lead to war, the declaration of which requires an act of Congress, the case shall be laid before them for consideration at their first meeting, and under the reasonable aspect in which it is seen by himself.

"I have been so long weaned from political subjects, and have so long ceased to take any interest in them, that I am sensible I am not qualified to offer opinions on them worthy of any attention; but the question now proposed involves consequences so lasting, and effects so decisive of our future destinies, as to rekindle all the interest I have heretofore felt on such occasions, and to induce me to the hazard of opinions which will prove only my wish to contribute still my mite toward anything which may be useful to our country. And, praying you to accept it at only what it is worth, I add the assurance of my constant and affectionate friendship and respect."

Mr. Jefferson to President Monroe, dated at Monticello, Oct. 24, 1823. Writings of Jefferson, by Ford, X. 315; S. Doc. 26, 57 Cong. 1 sess.

I have just received from Mr. Jefferson your letter to him, with the correspondence between Mr. Canning and Mr. Rush, sent for his and my perusal, and our opinions on the subject of it.

"From the disclosures of Mr. Canning it appears, as was otherwise to be inferred, that the success of France against Spain would be followed by an attempt of the holy allies to reduce the revolutionized colonies of the latter to their former dependence.

"The professions we have made to these neighbours, our sympathies with their liberties and independence, the deep interest we have in the most friendly relations with them, and the consequences threatened by a command of their resources by the great powers, confederated against the rights and reforms of which we have given so conspicuous and persuasive an example, all unite in calling for our efforts to defeat the meditated crusade. It is particularly fortunate that the policy of Great Britain, though guided by calculations different from ours, has presented a co-operation for an object the same with ours. With that co-operation we have nothing to fear from the rest of Europe, and with it the best assurance of success to our laudable views. There ought not, therefore, to be any backwardness, I think, in meeting her in the way she has proposed, keeping in view, of course, the spirit and forms of the Constitution in every step taken in the road to war, which must be the last step if those short of war should be without avail.

"It can not be doubted that Mr. Canning's proposal, though made with the air of *consultation*, as well as concert, was founded on a predetermination to take the course marked out, whatever might be the reception given here to his invitation. But this consideration ought not to divert us from what is just and proper in itself. Our co-operation is due to ourselves and to the world; and whilst it must ensure success in the event of an appeal to force, it doubles the chance of success without that appeal. It is not improbable that Great Britain would like best to have the merit of being the sole champion of her new friends, notwithstanding the greater difficulty to be encountered, but for the dilemma in which she would be placed. She must, in that case, either leave us, as neutrals, to extend our commerce and navigation at the expense of hers, or make us enemies, by renewing her paper blockades and other arbitrary proceedings on the ocean. It may be hoped that such a dilemma will not be without a permanent tendency to check her proneness to unnecessary wars.

"Why the British Cabinet should have scrupled to arrest the calamity it now apprehends, by applying to the threats of France against Spain the small effort which it scruples not to employ in behalf of Spanish America, is best known to itself. It is difficult to find any other explanation than that interest in the one case has more weight in its casuistry than principle had in the other.

"Will it not be honorable to our country, and possibly not altogether in vain, to invite the British Government to extend the 'avowed disapprobation' of the project against the Spanish colonies to the enterprise of France against Spain herself, and even to join in some declaratory act in behalf or the Greeks? On the supposition that no form could be given to the act clearing it of a pledge to follow it up by war, we ought to compare the good to be done with the little injury to be apprehended to the United States, shielded as their interests would be by the power and the fleets of Great Britain united with their own. These are questions, however, which may require more information than I possess, and more reflection than I can now give them.

"What is the extent of Mr. Canning's disclaimer as to 'the remaining possessions of Spain in America?' Does it exclude future views of acquiring Porto Rico, &c., as well as Cuba? It leaves Great Britain free, as I understand it, in relation to other quarters of the globe."

Mr. Madison to President Monroe, Oct. 30, 1823, 3 Madison's Works, 339.

"I return the letter of the President. The correspondence from abroad has gone back to him, as you desired. I have expressed to him my concurrence in the policy of meeting the advances of the British Government, having an eye to the forms of our Constitution in every step in the road to war. With the British power and navy combined with our own, we have nothing to fear from the rest of the world; and in the great struggle of the epoch between liberty and despotism, we owe it to ourselves to sustain the former, in this hemisphere at least. I have even suggested an invitation to the British Government to join in applying the 'small effort for so much good' to the French invasion of Spain, and to make Greece an object of some such favorable attention. Why Mr. Canning and his colleague did not sooner interpose against the calamity, which could not have escaped foresight, can not be otherwise explained but by the different aspect of the question when it related to liberty in Spain, and to the extension of British commerce to her former colonies."

Mr. Madison to Mr. Jefferson, dated at Montpelier, Nov. 1, 1823, 3 Madison's Works, 341.

5. Adams-Tuyll Correspondence.

§ 934.

Oct. 16, 1823, Baron Tuyll, the Russian minister, in an interview at the Department of State, informed Mr. Adams that the Emperor of Russia, having heard that General Devereux had been appointed as

a minister plenipotentiary from the Republic of Colombia to reside at his court, had determined not to receive him in that capacity, nor to receive any agent from any of the governments recently formed in the New World; and that he (Baron Tuyll) was instructed to make this determination of his Imperial Majesty known, so that there might be no doubt entertained in that respect with regard to his intentions. Baron Tuyll added that he had not been instructed to make an official communication of this fact to the American Government, but that, as he considered such a communication the most effectual means of making it known to them, and thereby of fulfilling the instructions of his sovereign, he should address to Mr. Adams an official note to that effect.

The baron further stated that by two several instructions of prior dates, in June and December, 1882, he had been informed of the satisfaction with which the Emperor had observed that the Government of the United States, when recognizing the independence of the South American States, had declared that it was not their intention to deviate from the neutrality which they had until then observed in the contests between Spain and her American colonies; and that it was the wish and hope of the Emperor that the United States should persevere in that course of neutrality. The baron added that he had not thought it necessary to communicate officially the purport of these instructions, and that he should not refer to them in the note which he proposed to transmit to the Department of State.

Mr. Adams replied that upon the President's return from Virginia, which was expected in a very few days, he would lay before him as well the note which he should in the meantime receive as the purport of the oral communication just made to him; that he should probably be instructed to return a written answer to the note, and also directed what to say in answer to the oral communication; that the declaration of the American Government, when they recognized the Southern American nations, that they would persevere in the neutrality till then observed between Spain and her emancipated colonies had been made under the observance of a like neutrality by all the European powers to the same contest; that so long as that state of things should continue he could take upon himself to assure the Baron that the United States would not depart from the neutrality so declared by them but that if one or more of the European powers should depart from their neutrality, that change of circumstances would necessarily become a subject of further deliberation on the part of the United States, the result of which it was not in his power to foretell.

On the same day Mr. Adams received a note from Baron Tuyll in the sense expected.

Further conferences took place, and on the President's return from Virginia on the 5th of November, Mr. Adams laid before him Baron Tuyll's note of Oct. 16, and reported the substance of their conferences. The President, after consulting the members of the administration in Washington, directed Mr. Adams to request another interview with the baron, which took place on the 8th of November.

In this interview Mr. Adams told Baron Tuyll that he had submitted to the President the note declaring the Emperor's determination not to receive any minister or agent from any of the South American states, and that an answer would shortly be given; that he had also reported to the President the substance of their verbal conferences, and that the President had directed him to say that he approved of his answers as far as they had gone, and to add "that he received the observations of the Russian Government relating to the neutrality of the United States in the contest between Spain, and the independent states of South America, amicably; and in return for them wished him to express to the Court *the hope of the Government of the United States that Russia would on her part also continue to observe the same neutrality.*" After some conversation the baron desired Mr. Adams to repeat what he had said, so that he might be sure of perfectly understanding it, which Mr. Adams did. The baron then observed that he should immediately prepare a dispatch to his Government, relating the purport of the conversation, and (it being Saturday) to be sure of its accuracy he would send it to Mr. Adams's house the next day for examination and comment.

Baron Tuyll subsequently handed to Mr. Adams other papers, including extracts from instructions which he had received from Count Nesselrode with reference to the intervention in Spain.

Memorandum of Mr. Adams, Sec. of State, 1823, MS. Inst. Special Missions, I. 1. Published by W. C. Ford in 15 Proceedings of the Mass. Hist. Society, Jan. 1902, 394–399.

For the correspondence referred to in the memorandum, see 15 Proceedings of the Mass. Hist. Soc., Jan. 1902, 378, 400–405.

See, also, 8 Am. Hist. Rev. (Oct. 1902), 29–46.

6. Cabinet Deliberations.

§ 935.

From the 7th to the end of November, 1823, the question of Canning's proposals, and the correspondence and conferences between Mr. Adams and Baron Tuyll, frequently occupied the attention of President Monroe and his Cabinet. Mr. Adams thought that Canning wanted some public pledge from the United States not only against the forcible intervention of the Holy Alliance in Spanish America, but also especially against the acquisition by the United States of any

part of those countries. Mr. Calhoun inclined to give discretionary powers to Mr. Rush to join in a declaration against the interference of the Holy Alliance, if necessary, even if it should pledge the United States not to take Cuba or Texas. Mr. Adams was not in favor of this. On the 15th of November, Mr. Adams states in his diary, President Monroe showed him the letters from Jefferson and Madison. "Calhoun," says Adams, "is perfectly moonstruck by the surrender of Cadiz, and says the Holy Allies, with ten thousand men, will restore all Mexico and all South America to Spanish dominion."

At a Cabinet meeting on the 15th of November Mr. Adams expressed himself thus: "Considering the South Americans as independent nations, they themselves, and no other nation, had the *right* to dispose of their condition. *We* have no right to dispose of them, either alone or in conjunction with other nations. Neither have any other nations the right of disposing of them without their consent. This principle will give us a clew to answer all Mr. Canning's questions with candor and confidence."

At one time President Monroe seemed to be inclined to Calhoun's idea of giving Rush discretionary powers, but Adams was "utterly averse to this." From time to time the nature of the contents of the coming message of the President to Congress formed a topic of discussion. Adams thought a stand should be taken against the interference of the Holy Alliance in American affairs. Wirt intimated that the people would not support the Government in a war for the independence of South America. Calhoun thought otherwise; he believed the Holy Alliance "had an ultimate eye to us; that they would, if not resisted, subdue South America. . . . Violent parties would arise in this country, one for and one against them, and we should have to fight upon our own shores for our own institutions." Adams did not believe that the Holy Alliance had any intention of ultimately attacking the United States; but, if they should subdue the Spanish provinces, they might recolonize them and partition them out among themselves. Russia might take California, Peru, and Chile; France, Mexico, where she had been intriguing to get a monarchy under a prince of the house of Bourbon, as well as at Buenos Ayres, and Great Britain, if she could not resist this course of things, would take at least the island of Cuba as her share of the scramble. Then what would be the situation of the United States—England holding Cuba and France, Mexico? On the other hand, if the allies should interpose and Great Britain successfully oppose them alone, it would throw the colonies completely into her arms and make them her colonies rather than those of Spain. The United States must, therefore, declared Adams, act promptly and decisively. But the act of the Executive could not after all commit the nation to a pledge of war. This was not contemplated by Canning's proposals. As Great

Britain would not be pledged, by what Canning had proposed, to war, "so would anything now done by the Executive here leave Congress free hereafter to act or not, according as the circumstances of the emergency may require."

On the 25th of November Adams prepared a draft of observations upon the communications lately made by Baron Tuyll. The draft was discussed and amended, and under date of the 27th of November was read to Baron Tuyll. It contained a full exposition of the policy of the United States and concluded with the declaration, "That the United States of America, and their Government, could not see with indifference, the forcible interposition of any European power, other than Spain, either to restore the dominion of Spain over her emancipated colonies in America, or to establish monarchical governments in those countries, or to transfer any of the possessions heretofore or yet subject to Spain in the American hemisphere, to any other European power."

See Memoirs of J. Q. Adams, VI. 177, 185, 186, 192, 194, 199, 200, 205, 206.

For the text of Adams's memorandum of Nov. 27, 1824, as amended, see W. C. Ford, in Proceedings of the Mass. Hist. Society, Jan. 1902, XV. 405–408; and for the discussion upon it in cabinet, see Adams's Memoirs, VI. 199–212; 8 Am. Hist. Rev. (Oct. 1902), 41–46.

See, also, Mr. Adams, Sec. of State, to Mr. Rush, min. to England, No. 77, Nov. 30, 1823, 8 Am. Hist. Rev. (Oct. 1902), 46–48.

As to Adams's reply to Baron Tuyll's note Oct. 16, 1823, see Proceedings of the Mass. Hist. Society, Jan. 1902, XV. 378.

"If success should favor the allied monarchs, would they be satisfied with reforming the Government of Spain? Would not the Spanish colonies, as part of the same empire, then demand their parental attention? And might not the United States be next considered as deserving their kind guardianship?" (N. Am. Rev., Oct. 1823, 373.)

V. *MONROE'S MESSAGE, DECEMBER 2, 1823.*

§ 936.

"At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal has been made by his Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his Government. In the discussions to which this

interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. [Paragraph 7, message of December 2, 1823.]

"It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been, so far, very different from what was then anticipated. Of events in that quarter of the globe with which we have so much intercourse, and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparation for our defense. With the movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between these new governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered and shall continue to adhere, provided

no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

"The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed, by force, in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government de facto as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course." [Paragraphs 48 and 49, message of Dec. 2, 1823.]

President Monroe's annual message, Dec. 2, 1823, Am. State Papers, For. Rel. V. 246, 250.

See President Monroe to Jefferson, Dec. 1823, 15 Proceedings of the Mass. Hist. Soc., Jan. 1902, 411–412; 8 Am. Hist. Rev. (Oct. 1902), 50. In this letter President Monroe said: "There is some danger that the British Govt., when it sees the part we have taken, may endeavour to throw the whole burden on us, and profit, in case of such interposition of the allied powers; of her neutrality, at our expense. But I think this would be impossible after what has passed on the subject; besides it does not follow, from what has been said, that we should be bound to engage in the war, in such event. Of this intimations may be given, should it be necessary. A messenger will depart for Engl[d] with despatches for Mr. Rush in a few days, who will go on to St. Petersb[g], with others to Mr. Middleton. And considering the crisis, it has occurr'd, that a special mission, of the

first consideration from the country, directed to Engl[d]. in the first instance, with power, to attend, any congress, that may be conven'd, on the affrs of S[n]. am: or Mexico, might have the happiest effect. You shall hear from me further on this subject."

"The logical conclusion seems to be that the conception of the Monroe Doctrine and much of its phraseology came from Adams, and that the share of Monroe did not extend beyond revision." (Reddaway, The Monroe Doctrine, 87.)

VI. *CONTEMPORARY ACTS AND EXPOSITIONS.*

§ 937.

"By direction of the President of the United States, you are authorized to proceed to London as soon as possible with the despatches herewith committed to you for the minister of the United States at that place.

"After delivering them, you will hold yourself in readiness to proceed, and, under the directions of Mr. Rush, and of Mr. Brown, if he shall arrive in Paris in season to give them, will proceed to any place where a European congress may be held with a view to the consideration of the affairs of Spain and South America. You will thence report to me all such information relating to the proceedings at such congress as you shall deem it may be useful to make known to this Government. You will assume no public character, but take passports as a private citizen of the United States, from the minister of the United States in England or France, as circumstances may require. And you will take all proper precautions for avoiding any appearance or suspicion of your being employed on a public agency. At the conclusion of the meeting of such congress, the occasion for your agency on this service will cease, and you will return to the United States. You will be particularly careful to secure your correspondence from disclosure, either by access to your own papers, or by inspection of it in the process of conveyance."

Mr. Adams, Sec. of State, to Mr. Alexander McRae (secret), Dec. 15, 1823, MS. Inst. Special Missions, I. 25.

See, also, Mr. Adams, Sec. of State, to Mr. Rush, min. to England, No. 2 (secret), Dec. 17, 1823, MS. Inst. Special Missions, I. 26, as to supplying Mr. McRae with funds.

January 20, 1824, Mr. Clay introduced in the House the following joint resolution:

"That the people of these States would not see, without serious inquietude, any forcible interposition by the Allied Powers of Europe in behalf of Spain, to reduce to their former subjection those parts of the continent of America which have proclaimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States."

On May 26 Mr. Clay announced that he "should continue to abstain from pressing upon the attention of the House his resolution, and should allow it to sleep, where it now reposes, on the table." The reason he gave for this decision was that the resolution "proposed an expression of the feelings of Congress in regard to an attack supposed to be meditated by Allied Europe upon the independence of Spanish America;" that events since the President's message tended to show that "if such a purpose was ever seriously entertained, it had been relinquished," and that to pass the resolution "in the absence of any sufficient evidence" of such an inimical design might be thought "unfriendly, if not offensive."

Annals of Congress (1823–24), I. 1104; II. 2763. See Cong. Debates, 19 Cong. 1 sess. (1825–26), II. part 2, p. 2489.

"The amount of it [Mr. Monroe's declaration] was, that this Government could not look with indifference on any combination among other Powers, to assist Spain in her war against the South American states; that we could not but consider any such combination as dangerous or unfriendly to us; and that, if it should be formed, it would be for the competent authorities of this Government to decide, when the case arose, what course our duty and our interest should require us to pursue."

Mr. Webster, Mar. 27, 1826, in House of Rep., Cong. Debates, 19 Cong. 1 sess., II., part 2, p. 1807.

"It has sometimes been assumed that the Monroe doctrine contained some declaration against any other than democratic-republican institutions on this continent, however arising or introduced. The message will be searched in vain for anything of the kind. We were the first to recognize the imperial authority of Dom Pedro in Brazil, and of Iturbide in Mexico; and more than half the northern continent was under the scepters of Great Britain and Russia; and these dependencies would certainly be free to adopt what institutions they pleased, in case of successful rebellion, or of peaceful separation from their parent States." (Dana's note, Dana's Wheaton, § 67, note 36.)

"It [the Monroe doctrine] has been said, in the course of this debate, to have been a loose and vague declaration. It was, I believe, sufficiently studied. I have understood, from good authority, that it was considered, weighed, and distinctly and decidedly approved, by every one of the President's advisers at that time. Our Government could not adopt on that occasion precisely the course which England had taken. England threatened the immediate recognition of the provinces, if the allies should take part with Spain against them. We had already recognized them. It remained, therefore, only for our Government to say how we should consider a combination of the allied powers, to effect objects in America, as affecting ourselves; and the message was intended to say, what it does say, that we should

regard such combination as dangerous to us. Sir, I agree with those who maintain the proposition, and I contend against those who deny it, that the message did mean something; that it meant much; and I maintain, against both, that the declaration effected much good, answered the end designed by it, did great honor to the foresight and the spirit of the Government, and that it can not now be taken back, retracted, or annulled without disgrace. It met, sir, with the entire concurrence and the hearty approbation of the country. The tone which it uttered found a corresponding response in the breasts of the free people of the United States. That people saw, and they rejoiced to see, that, on a fit occasion, our weight had been thrown into the right scale, and that, without departing from our duty, we had done something useful, and something effectual, for the cause of civil liberty. One general glow of exultation, one universal feeling of the gratified love of liberty, one conscious and proud perception of the consideration which the country possessed, and of the respect and honor which belonged to it, pervaded all bosoms. Possibly the public enthusiasm went too far; it certainly did go far. But, sir, the sentiment which this declaration inspired was not confined to ourselves. Its force was felt everywhere, by all those who could understand its object and foresee its effect. In that very House of Commons of which the gentleman from South Carolina has spoken with such commendation, how was it received? Not only, sir, with approbation, but, I may say, with no little enthusiasm. While the leading minister [Mr. Canning] expressed his entire concurrence in the sentiments and opinions of the American President, his distinguished competitor [Mr. Brougham] in that popular body, less restrained by official decorum, and more at liberty to give utterance to all the feeling of the occasion, declared that no event had ever created greater joy, exultation, and gratitude among all the free men in Europe; that he felt pride in being connected by blood and language with the people of the United States; that the policy disclosed by the message became a great, a free, and an independent nation; and that he hoped his own country would be prevented by no mean pride, or paltry jealousy, from following so noble and glorious an example.

"It is doubtless true, as I took occasion to observe the other day, that this declaration must be considered as founded on our rights, and to spring mainly from a regard to their preservation. It did not commit us, at all events, to take up arms on any indication of hostile feeling by the powers of Europe towards South America. If, for example, all the states of Europe had refused to trade with South America until her states should return to their former allegiance, that would have furnished no cause of interference to us. Or if an armament had been furnished by the allies to act against provinces the most remote from us, as Chili or Buenos Ayres, the distance of

the scene of action diminishing our apprehension of danger, and diminishing also our means of effectual interposition, might still have left us to content ourselves with remonstrance. But a very different case would have arisen, if an army, equipped and maintained by these powers, had been landed on the shores of the Gulf of Mexico, and commenced the war in our own immediate neighborhood. Such an event might justly be regarded as dangerous to ourselves, and, on that ground, call for decided and immediate interference by us. The sentiments and the policy announced by the declaration, thus understood, were, therefore, in strict conformity to our duties and our interest."

Mr. Webster's speech on the Panama mission, April 14, 1826, 3 Webster's Works, 203; Cong. Debates, 19 Cong. 1 sess. II., part 2, pp. 2254, 2268.

"The allied powers were the four great continental monarchies—Russia, Prussia, Austria, and France. Shortly after the overthrow of Bonaparte these powers entered into an alliance called the 'Holy Alliance,' the object of which was to sustain and extend monarchical principles as far as possible, and to oppress and put down popular institutions. England, in the early stages of the alliance, favored it. The members of the alliance held several congresses, attended either by themselves or their ambassadors, and undertook to regulate the affairs of all Europe, and actually interfered in the affairs of Spain for the purpose of putting down popular doctrines. In its progress, the alliance turned its eyes to this continent in order to aid Spain in regaining her sovereignty over her revolted provinces. At this stage England became alarmed. Mr. Canning was then prime minister. He informed Mr. Rush of the project, and gave to him, at the same time, the assurance that, if sustained by the United States, Great Britain would resist. Mr. Rush immediately communicated this to our Government. It was received here with joy: for so great was the power of the alliance that even we did not feel ourselves safe from its interpositions. . . . I remember the reception of the dispatch from Mr. Rush as distinctly as if all the circumstances had occurred yesterday. I well recollect the great satisfaction with which it was received by the Cabinet. It came late in the year—not long before the meeting of Congress. As was usual with Mr. Monroe upon great occasions, the papers were sent round to each member of the Cabinet, so that each might be duly apprised of all the circumstances and be prepared to give his opinion. The Cabinet met. It deliberated. There was long and careful consultation: and the result was the declaration which I have just announced. All this has passed away. That very movement on the part of England, sustained by this declaration, gave a blow to the celebrated alliance from which it never recovered. From

that time forward it gradually decayed, till it utterly perished. The late revolutions in Europe have put an end to all its work, and nothing remains of all that it ever did." This declaration, Mr. Calhoun proceeded to state, must be limited by the conditions under which it was spoken, as otherwise "it would have involved the absurdity of asserting that the attempt of any European state to extend its system of government to this continent, the smallest as well as the greatest, would endanger the peace and safety of our country." "The next declaration," Mr. Calhoun proceeded to say, "was that we would regard the interposition of any European power to oppress the Governments of this continent, which we had recently recognized as independent, or to control their destiny in any manner whatever, as manifesting an unfriendly disposition towards the United States. This declaration, also, belongs to the history of that day. It grew out of the same state of circumstances, and may be considered as an appendage to the declaration to which I have just alluded. By the governments on this continent, which we had recognized, were meant the republics which had grown up after having thrown off the yoke of Spain. They had just emerged from their protracted revolutionary struggles. They had hardly yet reached a point of solidity, and in that tender stage, the Administration of Mr. Monroe thought it proper not only to make that general declaration in reference to the Holy Alliance, but to make a more specific one against the interference of any European power—in order to countenance and encourage these young republics as far as we could with propriety."

Speech of Mr. Calhoun in the Senate, May 15, 1848, 4 Calhoun's Works, 455 et seq.

In a report of Mr. Clay, Secretary of State, March 29, 1826, addressed to the President, and by him sent to Congress, it is stated that "the United States have contracted no engagement, nor made any pledge to the Governments of Mexico and South America, or to either of them, that the United States would not permit the interference of any foreign powers, with the independence or form of government of those nations: nor have any instructions been issued, authorizing any such engagement or pledge. It will be seen that the message of the late President of the United States of the 2nd December, 1823, is adverted to in the extracts now furnished from the instructions to Mr. Poinsett, and that he is directed to impress its principles upon the Government of the united Mexican States.

"All apprehensions of the danger, to which Mr. Monroe alludes, of an interference, by the allied powers of Europe, to introduce their political systems into this hemisphere, have ceased. If, indeed, an attempt by force had been made, by allied Europe, to subvert the liberties of the southern nations on this continent, and to erect, upon

the ruins of their free institutions, monarchical systems, the people of the United States would have stood pledged, in the opinion of their Executive, not to any foreign state, but to themselves and to their posterity, by their dearest interests, and highest duties, to resist, to the utmost, such attempt; and it is to a pledge of that character that Mr. Poinsett alone refers."

13 British and Foreign State Papers (1825–26), 484.

"The United States Government did not relax its efforts in behalf of the South American states with the recognition of England, but continued to exert itself in order to secure the acknowledgment of their independence by the other powers of Europe, particularly Spain. Mr. Clay tried to get the other members of the alliance, especially the Emperor of Russia, to use their good offices with Spain for the purpose of inducing her to recognize her late colonies, but the Emperor of Russia, the head of the alliance, continued to preach to Spain 'not only no recognition of their independence, but active war for their subjugation.' To the request of the United States he replied that, out of respect for 'the indisputable titles of sovereignty,' he could not prejudge or anticipate the determination of the King of Spain. It was some ten years before Spain could be persuaded to renounce her ancient claims."

Latané, The Diplomatic Relations of the United States and Spanish America, 88.

"By the decease of the Emperor Alexander, of Russia, which occurred contemporaneously with the commencement of the last session of Congress, the United States have been deprived of a long-tried, steady, and faithful friend. . . . A candid and confidential interchange of sentiments between him and the Government of the United States upon the affairs of Southern America took place at a period not long preceding his demise, and contributed to fix that course of policy which left to the other governments of Europe no alternative but that of sooner or later recognizing the independence of our southern neighbors, of which the example had by the United States already been set."

President John Quincy Adams, annual message, Dec. 5, 1826, Richardson's Messages, II. 350.

VII. *ENGLISH ACTION AND OPINION.*

§ 938.

After the dispatch to the United States of the correspondence which called forth the opinions of Jefferson and Madison, the negotiations between Canning and Rush continued, and Rush continued

to make reports of his proceedings, some of which reached Washington during the deliberations of the Cabinet on the Government's policy. On the 22d of October Rush wrote that the Spanish-American topic had been "dropped" by Canning "in a most extraordinary manner," not a word having come from Canning on the subject since the 26th of September, when Rush had an interview with him at Gloucester Lodge. The cause of this suspense Rush learned only on the 24th of November, when Canning exhibited to him at the foreign office a memorandum of a conference held with Prince de Polignac, the French ambassador, on the 9th of October. A joint minute was made of the conference, in order that each Government might have an authentic record of what passed. Canning, on the part of his Government, declared that, while Great Britain would remain neutral in any war between Spain and her colonies, the junction of any foreign power with Spain against the colonies would be viewed as constituting entirely a new question, upon which Great Britain must take such decision as her interests required; that Great Britain disclaimed any desire of appropriating any of the Spanish colonies, or of forming any political connection with them beyond that of amity and commerce, and that she sought no preference, but would be willing to see the colonies free, with Spain holding a preference. Prince de Polignac, on the part of France, reciprocally declared that his Government believed it to be utterly hopeless to reduce Spanish America to the state of its former relations to Spain. He disclaimed any intention on the part of France to appropriate any part of the Spanish possessions in America or to obtain any exclusive advantages, and declared that she would, like England, willingly see the mother country in possession of superior commercial advantages, by amicable arrangements, and would be contented to rank, after Spain, among the most favored nations. Lastly, he affirmed that France abjured, in any case, any design of acting against the colonies by force of arms.

7 Am. Hist. Rev. (July, 1902), 691; 15 Proceedings of the Mass. Hist. Soc., Jan., 1902, 382, 428; Annual Register, 1824, 485.

The following is from a "private" letter from Canning, on December 31, 1823, to Sir William à Court, British minister at Spain (Stapleton's Canning and his Times, 395): "Monarchy in Mexico and monarchy in Brazil would cure the evils of universal democracy and prevent the drawing of the line of demarcation which I most dread—America *vs.* Europe. The United States, naturally enough, aim at this division, and cherish the democracy which leads to it. But I do not much apprehend their influence, even if I believe (which I do not altogether) in all the reports of their activity in America. Mexico and they are too neighbourly to be friends. In the meantime they have aided us materially. . . . While I was yet hesitating (in September) what shape to give to the declaration and protest, which ulti-

mately was conveyed in my conference with P. de Polignac; and while I was more doubtful as to the effect of that protest and declaration, I sounded Mr. Rush (the American minister here) as to his powers and disposition, to join in any step which we might take, to prevent a hostile enterprise on the part of the European powers against Spanish America. He had no powers; but he would have taken upon himself to join with us, if we would have begun by recognizing the Spanish-American States. This we could not do, and so we went on without. But I have no doubt that his report to his Government of this *sounding* (which he probably represented as an overture) had a great share in producing the explicit declarations of the President."

As Stapleton remarks, Canning's position was simply that Great Britain would not permit other European powers to interfere on behalf of Spain in her contest with her American colonies. So far from assenting to the position that the "unoccupied parts of America are no longer open to colonization from Europe," he held that "the United States had no right to take umbrage at the establishment of new colonies from Europe on any such unoccupied parts of the American continent."

The message of President Monroe was received in England "not only with satisfaction but with enthusiasm. Mr. Brougham said: 'The question with regard to Spanish America is now, I believe, disposed of, or nearly so; for an event has recently happened than which none has ever dispersed greater joy, exultation, and gratitude over all the free men of Europe; that event, which is decisive on the subject, is the language held with respect to Spanish America in the message of the President of the United States.' Sir James Mackintosh said: 'This coincidence of the two great English commonwealths (for so I delight to call them; and I heartily pray that they may be forever united in the cause of justice and liberty) can not be contemplated without the utmost pleasure by every enlightened citizen of the earth.' This attitude of the American Government gave a decisive support to that of Great Britain, and effectually put an end to the designs of the absolutist powers of the Continent to interfere with the affairs of Spanish America. Those dynasties had no disposition to hazard a war with such a power, moral and material, as Great Britain and the United States would have presented, when united, in the defense of independent constitutional governments."

R. H. Dana, jr., Dana's Wheaton, § 67, note 36.

"The French troops continuing to occupy Spain after the time stipulated by treaty, Canning sought an explanation from France, but without satisfactory results. He therefore determined at a cabinet meeting held December 14, 1824, to recognize Mexico and Colombia forthwith. On January 1, 1825, after the ministers had left England with instructions and full powers, the fact of recognition

was communicated officially to the diplomatic corps, and two days later it was made public."

Latané, The Diplomatic Relations of the United States and Spanish America, 86, citing Official Corresp. of Canning, II. 242, letter to Lord Granville; Life of Lord Liverpool, III. 297–304.

VIII. *THE NONCOLONIZATION PRINCIPLE.*

1. Controversy with Russia.

§ 939.

The announcement, made in the seventh paragraph of President Monroe's message of Dec. 2, 1823, of the principle that the American continents were "henceforth not to be considered as subjects for future colonization by any European powers," was occasioned by the discussions with Russia as to territorial rights on the northwest coast of America.

In 1821 the Emperor of Russia issued a ukase by which he assumed, as owner of the shore, to exclude foreigners from carrying on commerce and from navigating and fishing within a hundred Italian miles of the northwest coast of America, from Bering Straits down to the 51st parallel of north latitude. As this assertion of title embraced territory which was claimed by the United States as well as by Great Britain, both those governments protested against it. In consequence, the Russian Government proposed to adjust the matter by amicable negotiation; and instructions to that end were prepared for Mr. Middleton, then our minister to Russia, and for Mr. Rush, our minister to England, in the summer of 1823. John Quincy Adams was then Secretary of State. At a meeting of the Cabinet on June 28 the subject of Mr. Middleton's instructions was discussed, and Mr. Adams expressed the opinion that the claim of the Russians could not be admitted, because they appeared to have no "settlement" upon the territory in dispute. On July 17 he informed Baron Tuyl, the Russian minister, at a conference at the Department of State, "that we [the United States] should contest the right of Russia to *any* territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments."

Memoirs of John Quincy Adams, VI. 163. See 82 N. Am. Rev. 494; Tucker's Monroe Doctrine, 12–14, 21, 40, 111.

See Foster, A Century of Am. Diplomacy, 442; Moore, American Diplomacy, 150 et seq.

"It is not imaginable that, in the present condition of the world, *any* European nation should entertain the project of settling a *colony*

on the northwest coast of America. That the United States should form establishments there, with views of absolute territorial right and inland communication, is not only to be expected, but is pointed out by the finger of nature, and has been for many years a subject of serious deliberation in Congress. A plan has, for several sessions, been before them for establishing a territorial government on the borders of the Columbia River. It will undoubtedly be resumed at their next session, and even if then again postponed there can not be a doubt that, in the course of a very few years, it must be carried into effect.

"As yet, however, the only useful purpose to which the northwest coast of America has been or can be made subservient to the settlements of civilized men are the fisheries on its adjoining seas and trade with the aboriginal inhabitants of the country. These have, hitherto, been enjoyed in common by the people of the United States, and by the British and Russian nations. The Spanish, Portuguese and French nations have also participated in them hitherto, without other annoyance than that which resulted from the exclusive territorial claims of Spain, so long as they were insisted on by her. . . .

"The discussion of the Russian pretentions in the negotiation now proposed necessarily involves the interests of the three powers, and renders it manifestly proper that the United States and Great Britain should come to a mutual understanding with respect to *their respective* pretentions, as well as upon their joint views with reference to those of Russia. Copies of the instructions to Mr. Middleton are, therefore, herewith transmitted to you, and the President wishes you to confer freely with the British Government on the subject.

"The principles settled by the Nootka Sound convention of October 28, 1790, were—

"1st. That the rights of fishery in the south seas, of trading with the natives of the northwest coast of America, and of making settlements on the coast itself for the purposes of that trade, north of the *actual* settlements of Spain, were common to all the European nations, and of course to the United States.

"2d. That so far as the actual settlements of Spain had extended, she possessed the exclusive rights, territorial, and of navigation and fishery, extending to the distance of ten miles from the coasts so *actually occupied.*

"3d. That on the coasts of *South America*, and the adjacent islands *south* of the parts already occupied by Spain, no settlements should thereafter be made either by British or Spanish subjects, but on both sides should be retained the liberty of landing, and of erecting temporary buildings for the purposes of the fishery. These rights were, also, of course, enjoyed by the people of the United States.

"The exclusive rights of Spain to any part of the American continents have ceased. That portion of the convention, therefore, which recognizes the exclusive colonial rights of Spain on these continents, though confirmed as between Great Britain and Spain, by the first additional article to the treaty of the 5th of July, 1814, has been extinguished by the fact of the independence of the South American nations and of Mexico. Those independent nations will possess the rights incident to that condition, and their territories, will, of course, be subject to no *exclusive* right of navigation in their vicinity, or of access to them by any foreign nation.

"A necessary consequence of this state of things will be, that the American continents, henceforth, will no longer be subjects of colonization. Occupied by civilized independent nations, they will be accessible to Europeans and to each other on that footing alone, and the Pacific Ocean in every part of it will remain open to the navigation of all nations, in like manner with the Atlantic.

"Incidental to the condition of national independence and sovereignty, the rights of anterior navigation of their rivers will belong to each of the American nations within its own territories.

"The application of colonial principles of exclusion, therefore, can not be admitted by the United States as lawful upon any part of the northwest coast of America, or as belonging to any European nation. Their own settlements there, when organized as territorial governments, will be adapted to the freedom of their own institutions, and, as constituent parts of the Union, be subject to the principles and provisions of their constitution."

Mr. Adams, Sec. of State, to Mr. Rush, min. to England, July 22, 1823, Am. State Papers, For. Rel. V. 447.

For the instruction to Mr. Middleton, above referred to, see id. 436.

It has sometimes been remarked that if Mr. Adams intended to do no more than announce that territory already occupied by civilized powers was not subject to future colonization, he merely stated a truism. But in its application to the American continents at that time the announcement was far from being a truism. It was by no means generally admitted that the American continents were then wholly occupied by civilized nations. There were vast regions of territory not actually settled by the subjects of civilized powers.

"There can, perhaps, be no better time for saying, frankly and explicitly, to the Russian Government, that the future peace of the world, and the interest of Russia herself, can not be promoted by Russian settlements upon any part of the American continent. With the exception of the British establishments north of the United States, the remainder of both the American continents must henceforth be left to the management of American hands.

"It can not possibly be the purpose of Russia to form extensive *colonial* establishments in America. The new American republics will be as impatient of a Russian neighbor as the United States; and the claim of Russia to territorial possessions extending to the fifty-first degree of north latitude is equally compatible with the British pretensions."

Observations of Mr. Adams, Sec. of State, accompanying instruction of July 22, 1823, to Mr. Middleton, min. to Russia, Am. State Papers, For. Rel. V. 443, 445.

"January 6. [1824.] In a dispatch to the Secretary of State of this date, I mention Mr. Canning's desire that the negotiation at St. Petersburg, on the Russian ukase of September, 1821, respecting the northwest coast, to which the United States and England had equally objected, should proceed separately, and not conjointly, by the three nations, as proposed by the United States, and my acquiescence in this course. It being a departure from the course my Government had contemplated, I give the following reasons for it:

"1. That whatever force of argument I might be able to give to the principle of non-colonization as laid down in the President's message, which had arrived in England since my instructions for the negotiation, my opinion was, that it would still remain a subject of contest between the United States and England; and that, as by all I could learn since the message arrived, Russia also dissented from the principle, a negotiation at St. Petersburg relative to the northwest coast, to which the three nations were parties, might place Russia on the side of England and against the United States. This I thought had better be avoided.

"2. That a preliminary and detached discussion of so great a principle, against which England protested *in limine*, brought on by me when her foreign secretary was content to waive the discussion at present, and preferred doing so, might have an unpropitious influence on other parts of the negotiation of more immediate and practical interest.

"3. That by abstaining from discussing it at present, nothing was given up. The principle as promulgated in the President's message, would remain undiminished, as notice to other nations, and a guide to me in the general negotiation with England when that came on."

Rush, Memoranda of a Residence at the Court of London, II. 88; quoted in 82 N. Am. Rev. (April, 1856), 508.

"You will bring to the notice of the Mexican Government, the message of the late President of the United States to their Congress, on the 2nd December, 1823, asserting certain important principles of inter-continental law, in the relations of Europe and America. The

first principle asserted in that message is, that the American continents are not henceforth to be considered as subjects for future colonization by any European powers. In the maintenance of that principle, all the independent governments of America have an interest, but that of the United States has, probably, the least. Whatever foundation may have existed three centuries ago, or even at a later period, when all this continent was under European subjection, for the establishment of a rule, founded on priority of discovery and occupation, for apportioning among the powers of Europe parts of this continent, none can be now admitted as applicable to its present condition. There is no disposition to disturb the colonial possessions, as they may now exist, of any of the European powers; but it is against the establishment of new European colonies, upon this continent, that the principle is directed. The countries in which any such new establishments might be attempted, are now open to the enterprize and commerce of all Americans; and the justice or propriety can not be recognized, of arbitrarily limiting and circumscribing that enterprize and commerce, by the act of voluntarily planting a new colony without the consent of America, under the auspices of foreign powers belonging to another and a distant continent. Europe would be indignant at any American attempt to plant a colony on any part of her shores, and her justice must perceive, in the rule contended for, only perfect reciprocity."

Mr. Clay, Sec. of State, to Mr. Poinsett, min. to Mexico, March 25, 1825, 13 Br. & For. State Papers, 485.

2. The Panama Congress.

§ 940.

In his special message to Congress of Dec. 26, 1825, touching the Panama Congress, President Adams suggested, as one of the subjects that might be discussed, "an agreement between all the parties represented at the meeting that each will guard by its own means against the establishment of any future European colony within its borders." The noncolonization principle was, added President Adams, "more than two years since announced by my predecessor to the world as a principle resulting from the emancipation of both the American continents. It may be so developed to the new southern nations that they will all feel it as an essential appendage to their independence."

Proceedings of the Int. Am. Conference, IV. 22; Am. State Papers, For. Rel. V. 834.

Mr. Clay, in his instructions to the American plenipotentiaries to Panama, of May 8, 1826, said that it was not intended to commit the parties, who might concur in any joint declaration against future coloniza-

tion, "to the support of the particular boundaries which may be claimed by any one of them; nor is it proposed to commit them to a joint resistance against any future attempt to plant a new European colony." (Proceedings of Int. Am. Conf. IV. 137.)

See Cong. Debates, 1825–26, II., part 2, for debates on the Panama Congress.

"The late President of the United States, in his message to Congress of the 2d of December, 1823, while announcing the negotiation then pending with Russia, relating to the northwest coast of this continent, observes that the occasion of the discussions to which that incident had given rise, had been taken for asserting, as a principle in which the rights and interests of the United States were involved, that the American continents, by the free and independent condition which they had assumed and maintained, were thenceforward not to be considered subjects for colonization by any European power. The principle had first been assumed in that negotiation with Russia. It rested upon a course of reasoning, equally simple and conclusive. With the exception of the existing European colonies, which it was in nowise intended to disturb, the two continents consisted of several sovereign and independent nations, whose territories covered their whole surface. By this, their independent condition, the United States enjoyed the right of commercial intercourse with every part of their possessions. To attempt the establishment of a colony in those possessions, would be to usurp to the exclusion of others a commercial intercourse which was the common possession of all. It could not be done without encroaching upon existing rights of the United States. The Government of Russia has never disputed these positions, nor manifested the slightest dissatisfaction at their having been taken. Most of the new American republics have declared their entire assent to them; and they now propose, among the subjects of consultation at Panama, to take into consideration the means of making effectual the assertion of that principle, as well as the means of resisting interference from abroad with the domestic concerns of the American governments."

President John Q. Adams, special message, March 15, 1826, Richardson's Messages, II. 334.

In this message President Adams stated that "should it be deemed advisable to contract any conventional engagement on this topic, our views would extend no further than to a mutual pledge of the parties to the compact to maintain the principle in application to its own territory." (Id. 335; Proc. of the Int. Am. Conf. IV. 42.)

As to the Congress of Panama, see Am. State Papers, For. Rel. VI. 356 et seq.

The report of Mr. Clay, Sec. of State, of Jan. 31, 1827, as to the salaries and duties of the ministers to Panama in 1826, is contained in Am. State Papers, For. Rel. VI. 554.

See, also, as to the Panama mission and the Monroe doctrine, Benton's Thirty Years' View, I. chap. xxv.

"In December, 1823, the then President of the United States, in his annual message upon the opening of Congress, announced, as a principle applicable to this continent, what ought hereafter to be insisted upon, that no European nation ought to be allowed to plant upon it new colonies. It was not proposed, by that principle, to disturb pre-existing European colonies already established in America; the principle looked forward, not backward."

Mr. Clay, Sec. of State, to Messrs. Anderson and Sergeant, envoys to the Panama Congress, May 8, 1826.

The full instructions from which the foregoing extract is taken are printed in 15 Brit. & For. State Papers, 832; in the appendix to 5 Congressional Debates 38, and in the Proceedings of the Int. Am. Conference, IV. 113.

The commissions of Messrs. Anderson and Sergeant, dated March 14, 1826, are given in Am. State Papers, For. Rel. VI. 383.

The congress met at Panama on June 22, 1826, and adjourned July 15, to meet again at Tacubaya, Mexico. Only four of the Spanish-American states sent representatives. Of these states only one, Colombia, ratified any part of the treaties that were formulated. The congress adjourned before the American plenipotentiaries, Messrs. Anderson and Sergeant, reached their destination. In reality, it was decided in May, 1826, to delay Mr. Sergeant's departure from the United States till the autumn. Mr. Anderson left Bogotà for Cartagena, on his way to Panama, about the 10th of June. When the report was received at Washington that the congress had met and adjourned, preparations were made to send Mr. Sergeant on a sloop-of-war from Philadelphia to Vera Cruz, in order that he might attend the sessions which it was expected would be held at Tacubaya. Meanwhile, Mr. Anderson had died. His place as special plenipotentiary was filled by the appointment of Mr. Poinsett, then minister to Mexico. The general instructions of the American plenipotentiaries were not changed, but, in a communication to Mr. Sergeant of Nov. 14, 1826, Mr. Clay said: "Since they [the general instructions] were prepared the meeting . . . has taken place, and it is understood that they concluded several treaties and conventions among themselves, relating principally to the prosecution of the existing war with Spain. You will signify to the congress, when it shall be reorganized, our expectation to be put in possession of copies of those treaties and conventions, and to be fully informed of all the transactions at Panama. This expectation is founded not only upon its own reasonableness in the general, but on the consideration that every power represented in the congress ought to know what has been proposed or transacted in a conference either of the whole body or of any less portion of its members."

The congress did not reassemble. Mr. Clay, in supplementary instructions, observed that the "ambitious projects and views of Bolivar" had dampened the hopes of a favorable result of the congress.

Mr. Clay, Sec. of State, to Mr. William B. Rochester (of Rochester, N. Y.), sec. to the Panama mission, May 10, 1826, MS. Inst. U. States Ministers, XI. 67; Mr. Clay, Sec. of State, to Mr. Sergeant, May 11, 1826, id. 69; Mr. Brent, Act. Sec. of State, to Mr. Rochester, May 25, 1826, id. 80; Mr. Brent, Act. Sec. of State, to Mr. Anderson, July 17, 1826, id. 146; Mr. Clay, Sec. of State, to Mr. Sergeant, Nov. 14, 1826, id. 211; Mr. Clay, Sec. of State, to Mr. Poinsett, Feb. 28, 1827, id. 256.

For the printed correspondence respecting the mission, see Am. State Papers, For. Rel. V. 834–905; for debates, see Cong. Debates (1826), vol. 2, part 2.

"'The congress of Panama, in 1826, was planned by Bolivar to secure the union of Spanish America against Spain. It had originally military as well as political purposes. In the military objects the United States could take no part; and indeed the necessity for such objects ceased when the full effects of Mr. Monroe's declarations were felt. But the specific objects of the congress, the establishment of close and cordial relations of amity, the creation of commercial intercourse, of interchange of political thought, and of habits of good understanding between the new Republics and the United States and their respective citizens, might perhaps have been attained had the administration of that day received the united support of the country. Unhappily they were lost; the new states were removed from the sympathetic and protecting influence of our example, and their commerce, which we might then have secured, passed into other hands, unfriendly to the United States.

"'In looking back upon the Panama Congress from this length of time, it is easy to understand why the earnest and patriotic men who endeavored to crystallize an American system for this continent failed. . . . One of the questions proposed for discussion in the conference was "the consideration of the means to be adopted for the entire abolition of the African slave trade," to which proposition the committee of the United States Senate of that day replied: "The United States have not certainly the right, and ought never to feel the inclination, to dictate to others who may differ with them upon this subject; nor do the committee see the expediency of insulting other states with whom we are maintaining relations of perfect amity by ascending the moral chair and proclaiming from thence mere abstract principles, of the rectitude of which each nation enjoys the perfect right of deciding for itself." The same committee also alluded to the possibility that the condition of the islands of Cuba and Porto Rico, still the possessions of Spain and still slave-holding, might be made the subject of discussion and of contemplated action by the Panama Congress. "If ever the United States (they said) permit themselves to be associated with these nations in any general congress assembled for the discussion of common plans in any way affecting European interests, they will, by such act, not only deprive themselves of the ability they now possess of rendering useful

assistance to the other American States, but also produce other effects prejudicial to their interests.'" (Davis, Notes, Treaty Volume (1776–1887) 1273.)

See, to the same effect, as to the failure of the Panama Congress and the slavery question, Report of Mr. Fish, Sec. of State, to the President, July 14, 1870, S. Ex. Doc. 112, 41 Cong. 2 sess. 6–9.

During the debates on the Panama Congress, the following resolution, April 18, 1826, on motion of Mr. Buchanan, passed the House of Representatives by a vote of 99 to 95:

"It is, therefore, the opinion of this House, that the Government of the United States ought not to be represented at the congress of Panama, except in a diplomatic character, nor ought they to form any alliance, offensive or defensive, or negotiate respecting such an alliance, with all or any of the Spanish American republics; nor ought they to become parties with them, or either of them, to any joint declaration for the purpose of preventing the interference of any of the European powers with their independence or form of government, or to any compact for the purpose of preventing colonization upon the continent of America; but that the people of the United States should be left free to act, in any crisis, in such a manner as their feelings of friendship towards these republics, and as their own honor and policy may at the time dictate."

Cong. Debates, 1825–1826, II. part 2, pp. 2369, 2457; 82 N. Am. Rev. (Apr., 1856), 507.

See Tucker's Monroe Doctrine, 56.

For the proceedings of the Panama Congress, see **Proceedings of the Int.** Am. Conf. IV.

The Panama Congress is discussed in Calvo, Droit Int., 3d ed. 255; Lawrence, Com. sur. Droit Int. II. 310 et seq. Lawrence argues (id. 312) that Monroe's doctrine as to foreign interposition is substantially the same as that advanced by the French Government against the Prussian movement of 1830 to interfere in Belgium.

For further discussion of the Monroe doctrine, see 1 Phillimore Int. Law, 3d ed. 590; W. H. Trescot, 9 South. Quar. Rev., N. S., Apr., 1854, 429; D. Urquhart, 13 Free Press, Lib. Dept. of State.

3. President Polk's Message, 1845.

§ 941.

"It is well known to the American people and to all nations, that this Government has never interfered with the relations subsisting between other governments. We have never made ourselves parties to their wars or their alliances; we have not sought their territories by conquest; we have not mingled with parties in their domestic struggles; and, believing our own form of government to be the best, we have never attempted to propagate it by intrigues, by diplomacy,

or by force. We may claim on this continent a like exemption from European interference. The nations of America are equally sovereign and independent with those of Europe. They possess the same rights, independent of all foreign interposition, to make war, to conclude peace, and to regulate their internal affairs. The people of the United States can not, therefore, view with indifference attempts of European powers to interfere with the independent action of the nations on this continent. The American system of government is entirely different from that of Europe. Jealousy among the different sovereigns of Europe, lest any one of them might become too powerful for the rest, has caused them anxiously to desire the establishment of what they term the 'balance of power.' It can not be permitted to have any application on the North American continent, and especially to the United States. We must ever maintain the principle, that the people of this continent alone have the right to decide their own destiny. Should any portion of them, constituting an independent state, propose to unite themselves with our confederacy, this will be a question for them and us to determine, without any foreign interposition. We can never consent that European powers shall interfere to prevent such a union, because it might disturb the 'balance of power' which they may desire to maintain upon this continent. Near a quarter of a century ago the principle was distinctly announced to the world, in the annual message of one of my predecessors, that 'the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power.' This principle will apply with greatly increased force, should any European power attempt to establish any new colony in North America. In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy. The reassertion of this principle, especially in reference to North America, is, at this day, but the promulgation of a policy which no European power should cherish the disposition to resist. Existing rights of every European nation should be respected; but it is due alike to our safety and our interests, that the efficient protection of our laws should be extended over our whole territorial limits, and that it should be distinctly announced to the world as our settled policy, that no future European colony or dominion shall, with our consent, be planted or established on any part of the North American continent."

President Polk, annual message, Dec. 2, 1845, S. Doc. 1, 29 Cong. 1 sess. 14.

See resolution offered by Senator Allen, Jan. 14, 1846, Cong. Globe, 29 Cong. 1 sess. 197 et seq.

See, also, 1 Curtis's Buchanan, 619 et seq.; Dix's Memoirs of John A. Dix, I. 217; Wharton's Com. on Am. Law, § 175.

Mr. J. Q. Adams, narrating in his diary, under date of December 6, 1845, a conversation with Mr. Bancroft, then in Mr. Polk's Cabinet, thus speaks: "I said that I approved entirely of Mr. Polk's repeated assertion of the principle first announced by President James Monroe, in a message to Congress, that the continents of North and South America were no longer to be considered as scenes for their future European colonization. He said he had heard that this part of the message of Mr. Monroe had been inserted by him at my suggestion. I told him that was true; that I had been authorized by him to assert the principle in a letter of instruction to Mr. Rush, then minister in England, and had written the paragraph in the very words inserted by Mr. Monroe in his message."

Memoirs of J. Q. Adams, XII. 218.

See, as to the Oregon question, Benton's Thirty Years' View, II. chaps. clviii., clix.

"The late annual message of the President to Congress has so clearly presented the great American doctrine in opposition to the interference of European governments in the internal concerns of the nations of this continent, that it is deemed unnecessary to add another word upon this subject. That Great Britain and France have flagrantly violated this principle by their armed intervention on the La Plata is manifest to the whole world. Whilst existing circumstances render it impossible for the United States to take part in the present war; yet the President desires that the whole moral influence of this Republic should be cast into the scale of the injured party. We cordially wish the Argentine Republic success in its struggle against foreign interference. It is for these reasons that although the Government of the United States never did authorize your predecessor Mr. Brent to offer his mediation in the affairs of Great Britain, France and the Argentine Republic, this act has not been publicly disavowed. His example, however, is not to be followed by you without express instructions. An offer of mediation by one nation in the disputes of other nations is an act of too much importance and may involve consequences too serious to be undertaken by a diplomatic agent on his own responsibility.

"Mr. Pakenham on the 7th of November last, placed in my hands the copy of a despatch from Lord Aberdeen to himself under date the 3d of October last, with which you shall be furnished. From this it would appear that Great Britain and France in their armed intervention have no view to territorial aggrandisement on the La Plata. It will be your duty closely to watch the movements of these two powers in that region; and should either of them in violation of this declaration attempt to make territorial acquisitions, you will immediately communicate the fact to this Government."

Mr. Buchanan, Sec. of State, to Mr. Harris, min. to Argentine, March 30, 1846, MS. Inst. Argentine Republic, XV. 19.

Though the United States had in its possession in 1846 information that would justify it in extending, in accordance with its settled policy, recognition to Paraguay as an independent state, yet the President determined to suspend action on the subject "purely from regard to the Argentine Republic and in consideration of the heroic struggle" which it was "maintaining against the armed intervention of Great Britain and France in the concerns of the Republics on the La Plata and its tributaries."

Mr. Buchanan, Sec. of State, to Mr. Harris, March 30, 1846, MS. Inst. Arg. Republic, XV. 19.

The situation referred to in the foregoing instruction arose as follows: In 1828 Brazil and Buenos Ayres, by a treaty concluded through the mediation of England, recognized the independence of what now constitutes the Republic of Uruguay. In 1844 Brazil invoked the intervention of England and France to protect the independence of Uruguay against a Buenos Ayrean attack. In compliance with this request those governments in 1845 instituted a blockade of the coasts of Buenos Ayres.

4. Case of Yucatan.

§ 942.

An Indian outbreak having occurred in Yucatan the authorities of the country offered to transfer "the dominion and sovereignty" to the United States, and at the same time made a similar offer to Great Britain and Spain. With reference to this offer President Polk said:

"Whilst it is not my purpose to recommend the adoption of any measure, with a view to the acquisition of the 'dominion and sovereignty' over Yucatan, yet, according to our established policy, we could not consent to a transfer of this 'dominion and sovereignty' to either Spain, Great Britain, or any other European power. In the language of President Monroe, in his message of December, 1823, 'we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.' In my annual message of December, 1845, I declared that 'near a quarter of a century ago, the principle was distinctly announced to the world, in the annual message of one of my predecessors, that the "American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European power."' 'This principle will apply with greatly increased force, should any European power attempt to establish any new colony in North America.

In the existing circumstances of the world, the present is deemed a proper occasion to reiterate and reaffirm the principle avowed by Mr. Monroe, and to state my cordial concurrence in its wisdom and sound policy.' "

President Polk's special message, April 29, 1848, Cong. Globe, 30 Cong. 1 sess. 709.

See, also, S. Ex. Docs. 40, 45, 49, 30 Cong. 1 sess.; 51 Br. & For. State Papers (1860–61), 1184 et seq.

On May 4, 1848, a bill to enable the President "to take temporary military occupation of Yucatan" was introduced in the Senate. On May 17, however, Mr. Hannegan, who had reported the bill from the Committee on Foreign Relations, of which he was chairman, asked that it be informally passed over, as news had been received of the conclusion of a treaty between the whites and the Indians.

Cong. Globe, 30 Cong. 1 sess. 727, 778.

Seen Lawrence's Wheaton (1863), 124, citing Calhoun's Works, IV. 454; Works of Sir James Mackintosh, 555.

The foregoing bill gave rise in the Senate to a spirited debate, in which Mr. Calhoun, who had been a member of President Monroe's Cabinet took part. After discussing that part of Monroe's message relating to the Holy Alliance he proceeded to examine the noncolonization principle, to which, as he contended, President Polk had given an unwarranted extension. The word "colonization," said Mr. Calhoun, had a specific meaning, namely, "the establishment of a settlement by emigrants from the parent country in a territory either uninhabited or from which the inhabitants have been partially or wholly expelled." The passage on colonization, in President Monroe's message, did not, said Mr. Calhoun, become a subject of discussion in the Cabinet. In this respect his memory did not differ from that of Mr. Adams. "My impression," said Mr. Calhoun, "is that it never became a subject of deliberation in the Cabinet. I so stated when the Oregon question was before the Senate. I stated it in order that Mr. Adams might have an opportunity of denying it, or asserting the real state of the facts. He remained silent, and I presume my statement is correct, that this declaration was inserted after the Cabinet deliberation. It originated entirely with Mr. Adams, without being submitted to the Cabinet, and it is, in my opinion, owing to this fact that it is not made with the precision and clearness with which the two former are. It declares, without qualification, that these continents have asserted and maintained their freedom and independence, and are no longer subject to colonization by any European power. This is not strictly accurate. Taken as a whole, these continents had not asserted and maintained their freedom and independence. At

that period Great Britain had a larger portion of the continent in her possession than the United States. Russia had a considerable portion of it, and other powers possessed some portions on the southern parts of this continent. The declaration was broader than the fact, and exhibits precipitancy and want of due reflection. Besides, there was an impropriety in it when viewed in conjunction with the foregoing declarations. I speak not in the language of censure. We were, as to them, acting in concert with England, on a proposition coming from herself—a proposition of the utmost magnitude, and which we felt at the time to be essentially connected with our peace and safety; and of course it was due to propriety as well as policy that this declaration should be strictly in accordance with British feeling. Our power then was not what it is now, and we had to rely upon her co-operation to sustain the ground we had taken. We had then only about six or seven millions of people, scattered, and without such means of communication as we now possess to bring us together in a short period of time. The declaration accordingly, with respect to colonization, striking at England as well as Russia, gave offense to her, and that to such an extent that she refused to co-operate with us in settling the Russian question. Now, I will venture to say that if that declaration had come before that cautious Cabinet—for Mr. Monroe was among the wisest and most cautious men I have ever known—it would have been modified, and expressed with a far greater degree of precision, and with much more delicacy in reference to the feelings of the British Government.

"In stating the precise character of these declarations, and the manner in which they originated, I have discharged a double duty; a duty to my country, to whom it is important that these declarations should be correctly understood—and a duty to the Cabinet of which I was a member, and am now the only survivor. I remove a false interpretation, which makes safe and proper declarations improper and dangerous.

" But it is not only in these respects that these famous declarations are misunderstood by the Chief Magistrate of the country, as well as by others. They were but declarations—nothing more; declarations, announcing in a friendly manner to the powers of the world, that we should regard certain acts of interposition of the allied powers as dangerous to our peace and safety; interposition of European powers to oppress the Republics which had just arisen upon this continent, as manifesting an unfriendly disposition, and that this continent, having become free and independent, was no longer the subject of colonization by European powers. Not one word in any one of them in reference to resistance. There is nothing said of it; and with great propriety was it omitted. Resistance belonged to us—to Con-

gress: it is for us to say whether we shall resist or not, and to what extent. . . .

"Whether you will resist or not, and the measure of your resistance—whether it shall be by negotiation, remonstrance, or some intermediate measure, or by a resort to arms; all this must be determined and decided on the merits of the question itself. This is the only wise course. We are not to have quoted on us, on every occasion, general declarations to which any and every meaning may be attached. There are cases of interposition where I would resort to the hazard of war with all its calamities. Am I asked for one? I will answer. I designate the case of Cuba. So long as Cuba remains in the hands of Spain—a friendly power—a power of which we have no dread—it should continue to be, as it has been the policy of all Administrations ever since I have been connected with the Government, to let Cuba remain there: but with the fixed determination, which I hope never will be relinquished, that, if Cuba pass from her, it shall not be into any other hands but ours: This, not from a feeling of ambition, not from a desire for the extension of dominion, but because that island is indispensable to the safety of the United States; or rather, because it is indispensable to the safety of the United States that this island should not be in certain hands. If it were, our coasting trade between the Gulf and the Atlantic would, in case of war, be cut in twain, to be followed by convulsive effects. In the same category, I will refer to a case in which we might most rightfully have resisted, had it been necessary, a foreign power; and that is the case of Texas."

Calhoun's Works, IV. 457 et seq.

Mr. Calhoun's views as to President Polk's position are adopted in Woolsey, Int. Law, § 48. See, also, Wharton, Com. on Am. Law, § 175.

As to the seizure by the British Government of Tigre Island in the Gulf of Fonseca, see Message of President Fillmore, July 22, 1850, and accompanying papers, H. Ex. Doc. 75, 31 Cong. 1 sess.

"It is to be borne in mind that the declarations known as the Monroe doctrine have never received the sanction of an act or resolution of Congress; nor have they any of that authority which European governments attach to a royal ordinance. They are, in fact, only the declarations of an existing administration of what its own policy would be, and what it thinks should ever be the policy of the country, on a subject of paramount and permanent interest. Thus, at the same session in which the message was delivered, Mr. Clay introduced the following resolution: 'That the people of these States would not see, without serious inquietude, any forcible interposition by the allied powers of Europe, in behalf of Spain, to reduce to their former subjection those parts of the continent of America which have pro-

claimed and established for themselves, respectively, independent governments, and which have been solemnly recognized by the United States.' But this resolution was never brought up for action or discussion. It is seen also, by the debates on the Panama mission and the Yucatan intervention, that Congress has never been willing to commit the nation to any compact or pledge on this subject, or to any specific declaration of purpose or methods, beyond the general language of the message.

"In the debates on the Clayton-Bulwer treaty, in 1855–56, above referred to, all the speakers seemed to agree to this position of the subject. Mr. Clayton said: 'In reference to this particular territory, I would not hesitate at all, as one Senator, to assert the Monroe doctrine and maintain it by my vote; but I do not expect to be sustained in such a vote by both branches of Congress. Whenever the attempt has been made to assert the Monroe doctrine in either branch of Congress, it has failed. The present Democratic party came into power, after the debate on the Panama mission, on the utter abnegation of the whole doctrine, and stood upon Washington's doctrine of nonintervention. You can not prevail on a majority, and I will venture to say that you can not prevail on one-third, of either House of Congress to sustain it.' Mr. Cass said: 'Whenever the Monroe doctrine has been urged, either one or the other House of Congress, or both Houses, did not stand up to it.' Mr. Seward said: 'It is true that each House of Congress has declined to assert it; but the honorable Senators must do each House the justice to acknowledge that the reason why they did decline to assert the doctrine was that it was proposed, as many members thought, as an abstraction, unnecessary, not called for at the time.' Mr. Mason spoke of it as having 'never been sanctioned or recognized by any constitutional authority.' Mr. Cass afterwards, in a very elaborate speech (of January 28, 1856), gave his views of the history and character of the doctrine. He placed it upon very high ground, as a declaration not only against European intervention or future colonization, but against the acquisition of dominion on the continent by European powers, by whatever mode or however derived; and seemed to consider it as a pledge to resist such a result by force, if necessary, in any part of the continent. He says: 'We ought years ago, by Congressional interposition, to have made this system of policy an American system, by a solemn declaration; and, if we had done so, we should have spared ourselves much trouble and no little mortification.' Referring to Mr. Polk's message, in 1845, he said there was then an opportunity for Congress to adopt the doctrine, not as an abstraction, but on a practical point. 'We refused to say a word; and, I repeat, we refused then even to take the subject into consideration.' He denied the correctness of Mr. Calhoun's explanation (supra), and contended that the non-

colonization clause was intended to be, and understood by England to be, a foreclosure of the whole continent against all future European dominion, however derived. It may well be said, however, and such seems now to be the prevalent opinion, that the complaints of Mr. Cass and others of his school, of the neglect and abandonment of the Monroe doctrine, apply rather to their construction of the doctrine than to the doctrine itself."

Note by Dana, Dana's Wheaton (1866), § 67, note 36.

5. Later Illustrations.

§ 943.

See the case of Venezuela, infra, § 966.

In 1870 the Government of the United States was sounded by that of Sweden as to the cession by the latter to the former of the island of St. Bartholomew. It appeared that the Italian Government had made an offer to Sweden for the island, and it was intimated that the United States might have it on the same terms. President Grant felt constrained to decline the offer under the circumstances, especially as measures for the purchase of Russian America and the Danish islands of St. Thomas and St. John were still pending and incomplete. "As, however," said Mr. Fish, "we would prefer to avoid any controversy with a friendly power which the acceptance by Sweden and Norway of the offer of Italy . . . might involve, an acceptance which might be construed as adverse to that cardinal policy of the United States which objects to new colonies of European governments on this hemisphere, it is hoped that it may comport with the views of your Government to postpone for the present any definite disposition of the subject."

Mr. Fish, Sec. of State, to Count Lewenhaupt, Swedish and Norwegian min., Feb. 14, 1870, MS. Notes to Sweden, VI. 221, acknowledging receipt of the latter's note of Feb. 10.

"Until recently, the acquisition of outlying territory has not been regarded as desirable by us. The purchase of Russian America and the proposed purchase of the Danish West India Islands of St. Thomas and St. John may seem to indicate a reversal of the policy adverted to. Those measures, however, may be presumed to have been adopted for special reasons. In any event, it appears to be inadvisable to decide upon the offer of St. Bartholomew while the question of the cession of St. Thomas and St. John shall be pending, and even when that question shall have been disposed of the President, before he should make up his mind upon the subject, would probably prefer to consult Congress in regard to it, either directly or indirectly." (Mr. Fish, Sec. of State, to Mr. Bartlett, min. to Sw. and Nor., No. 22, June 17, 1869, MS. Inst. Sweden, XIV. 168.)

"The United States have no disposition to interfere with the existing relations of Spain to her colonial possessions on this continent. They believe that in due time Spain and other European powers will find their interest in terminating those relations and establishing their present dependencies as independent powers—members of the family of nations. These dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers."

President Grant, annual message, Dec. 6, 1869, Richardson's Messages, VII. 32.

As to the Cuban insurrection in 1869, see S. Ex. Doc. 7, 41 Cong. 2 sess.; H. Ex. Docs. 140 and 160, 41 Cong. 2 sess.

"The avoidance of entangling alliances, the characteristic feature of the foreign policy of Washington, sprang from this condition of things. But the entangling alliances which then existed were engagements made with France as a part of the general contract under which aid was furnished to us for the achievement of our independence. France was willing to waive the letter of the obligation as to her West India possessions, but demanded, in its stead, privileges in our ports which the Administration was unwilling to concede. To make its refusal acceptable to a public which sympathized with France, the Cabinet of General Washington exaggerated the principle into a theory tending to national isolation. . . .

"The foreign policy of these early days was not a narrow one. During this period we secured the evacuation by Great Britain of the country wrongfully occupied by her on the lake; we acquired Louisiana; we measured forces on the sea with France, and on the land and sea with England; we set the example of resisting and chastising the piracies of the Barbary States; we initiated in negotiations with Prussia the long line of treaties for the liberalization of war and the promotion of international intercourse; and we steadily demanded, and at length obtained, indemnification from various governments for the losses we had suffered by foreign spoliations in the wars of Europe.

"To this point in our foreign policy we had arrived when the revolutionary movements in Spanish and Portuguese America compelled a modification of our relations with Europe, in consequence of the rise of new and independent states in America. . . .

"The new states were, like ourselves, revolted colonies. They continued the precedent we had set, of separating from Europe. Their assumption of independence was stimulated by our example. They professedly imitated us, and copied our national Constitution, sometimes even to their inconvenience. . . .

"The formation of these new sovereignties in America was important to us, not only because of the cessation of colonial monopolies to that extent, but because of the geographical relations to us, held by so many new nations, all, like ourselves, created from European stock, and interested in excluding European politics, dynastic questions, and balances of power from further influence in the New World.

"Thus the United States were forced into new lines of action, which, though apparently in some respects conflicting, were really in harmony with the line marked out by Washington. The avoidance of entangling political alliances and the maintenance of our own independent neutrality became doubly important from the fact that they became applicable to the new republics as well as to the mother country. The duty of noninterference had been admitted by every President. The question came up in the time of the first Adams, on the occasion of the enlistment projects of Miranda. It appeared again under Jefferson (anterior to the revolt of the Spanish colonies) in the schemes of Aaron Burr. It was an ever present question in the administrations of Madison, Monroe, and the younger Adams, in reference to the questions of foreign enlistment or equipment in the United States, and when these new Republics entered the family of nations, many of them very feeble, and all too much subject to internal revolution and civil war, a strict adherence to our previous policy and a strict enforcement of our laws became essential to the preservation of friendly relations with them. . . .

"A vast field was thus opened to the statesmen of the United States for the peaceful introduction, the spread, and the permanent establishment of the American ideas of republican government, of modification of the laws of war, of liberalization of commerce, of religious freedom and toleration, and of the emancipation of the New World from the dynastic and balance of power controversies of Europe.

"Mr. John Quincy Adams, beyond any other statesman of the time in this country, had the knowledge and experience, both European and American, the comprehension of thought and purpose, and the moral convictions which peculiarly fitted him to introduce our country into this new field, and to lay the foundation of an American policy. The declaration known as the Monroe doctrine, and the objects and purposes of the congress of Panama, both supposed to have been largely inspired by Mr. Adams, have influenced public events from that day to this, as a principle of government for this continent and its adjacent islands. . . .

"This declaration resolved the solution of the immediate question of the independence of the Spanish American colonies, and is supposed to have exercised some influence upon the course of the British cabinet in regard to the absolutist schemes in Europe as well as in America.

"It has also exercised a permanent influence on this continent. It was at once invoked in consequence of the supposed peril of Cuba on the side of Europe; it was applied to a similar danger threatening Yucatan; it was embodied in the treaty of the United States and Great Britain as to Central America; it produced the successful opposition of the United States to the attempt of Great Britain to exercise dominion in Nicaragua under the cover of the Mosquito Indians; and it operated in like manner to prevent the establishment of a European dynasty in Mexico.

"The United States stand solemnly committed by repeated declarations and repeated acts to this doctrine, and its application to the affairs of this continent. In his message to the two Houses of Congress at the commencement of the present session, the President, following the teachings of all our history, said that the existing 'dependencies are no longer regarded as subject to transfer from one European power to another. When the present relation of colonies ceases, they are to become independent powers, exercising the right of choice and of self-control in the determination of their future condition and relations with other powers.'

"This policy is not a policy of aggression; but it opposes the creation of European dominion on American soil, or its transfer to other European powers, and it looks hopefully to the time when, by the voluntary departure of European governments from this continent and the adjacent islands, America shall be wholly American.

"It does not contemplate forcible intervention in any legitimate contest; but it protests against permitting such a contest to result in the increase of European power or influence; and it ever impels this Government, as in the late contest between the South American Republics and Spain, to interpose its good offices to secure an honorable peace."

Report of Mr. Fish, Sec. of State, to the President, July 14, 1870, S. Ex. Doc. 112, 41 Cong., 2 sess. 1, 3.

An extract from this report is printed in the Correspondence in relation to the Proposed Interoceanic Canal (Washington, 1885), 305.

The American diplomatic representative in Peru having, in an interview with President Prado, stated that "if the political relations between the United States and the Spanish American republics, proposed during the administration of Mr. John Quincy Adams, could now be established, certain results, supposed to be desirable, must necessarily ensue," Mr. Fish, although the minister had informed President Prado that his remarks were not authorized, said: "Hopes may have been inspired and perhaps opinions formed for which it is believed there will be no foundation or justification in the future course of this Government. However desirable certain events may be, there is believed to be no encouragement derivable for their accomplishment in the political history of this hemisphere, since 1824. Consequently it would have been preferable if you had not adverted to the subject in the way which you mention." (Mr. Fish, Sec. of State, to Mr. Thomas, No. 97, Aug. 18, 1874, MS. Inst. Peru, XVI. 278.)

"The time is not probably far distant when, in the natural course of events, the European political connection with this continent will cease. Our policy should be shaped, in view of this probability, so as to ally the commercial interests of the Spanish American States more closely to our own, and thus give the United States all the preëminence and all the advantage which Mr. Monroe, Mr. Adams, and Mr. Clay contemplated when they proposed to join in the Congress of Panama."

President Grant, annual message, Dec. 5, 1870, For. Rel. 1870, 6.

With reference to confidential reports that Great Britain desired to obtain from Honduras the Bay Islands, Mr. Evarts said: "Aside from the well understood doctrines of this Government as to any new acquisitions of American territory by European powers, it seems unquestionable that the Clayton-Bulwer treaty precludes the acquisition of those islands by Great Britain. The intentions which are imputed, therefore, to that power, looking in that direction, may well be discredited. Still, they should awaken the attention and arouse the vigilance of this Government. Even should the tendency you report toward the alienation of the Bay Islands take another direction, it would, of course, be impossible for us to remain indifferent, or to acquiesce in any other European power acquiring any of them."

Mr. Evarts, Sec. of State, to Mr. Logan, min. to Cent. Am., No. 53, confid., March 4, 1880, MS. Inst. Cent. Am., XVIII. 73.

The Haytian Government having on Nov. 8, 1883, proposed to cede to the United States the peninsula of the Mole St. Nicholas, or the whole island of Tortuga, in consideration of certain specified guarantees and the payment by the United States of a sum of money, and the proposition having been declined by the United States "on account of the obstacles which our national policy interposes to such acquisitions," it was a year later reported that the Haytian Government was contemplating the transfer either of the Mole or of the island to France. This report was not credited; but the American minister at Paris was instructed, should a proper occasion arise, "in suitable terms" to "call the attention of the foreign office to the fact that acquisition of Haytian territory by France would conflict with the principles of our public policy known as the Monroe doctrine."

Mr. Frelinghuysen, Sec. of State, to Mr. Morton, min. to France, No. 698, Feb. 28, 1885, MS. Inst. France, XXI. 172, enclosing copies of dispatches from Mr. Langston, min. to Hayti, Nos. 691 and 696, Dec. 3 and Dec. 24, 1884.

Mr. Vignaud, chargé, and Mr. Morton had interviews, respectively, with MM. Billot and Ferry, both of whom emphatically denied that France

had any intention of acquiring any such territory. (Mr. Vignaud's No. 672, Nov. 26, 1884; Mr. Morton's No. 734, March 19, 1885. See, also, Mr. Bayard, Sec. of State, to Mr. McLane, min. to France, No. 414, Dec. 21, 1888, MS. Inst. France, XXI. 616.)

With reference to a rumor that Great Britain intended to seize the island of Tortuga, a copy of some of the foregoing correspondence was sent to the American minister at London, with instructions, if he should discover that any such step was in contemplation, promptly "to remonstrate, in suitable terms, against the consummation of any measure on the part of Her Britannic Majesty's Government, which would violate the well known principles of the Monroe doctrine." (Mr. Bayard, Sec. of State, to Mr. Phelps, min. to England, No. 546, Feb. 24, 1887, MS. Inst. Gr. Br. XXVIII. 272, enclosing copies of Mr. Frelinghuysen to Mr. Morton, No. 698, Feb. 28, 1885; same to same, No. 700, March 2, 1885; Mr. Morton to Mr. Bayard, April 2, 1885; Mr. Thompson, min. to Hayti, to Mr. Bayard, Jan. 25, 1887.

With reference to rumors in Hayti in regard to efforts of the French diplomatic agent to induce his Government in certain contingencies to declare a protectorate over or even to annex that country, the Department of State of the United States, while discrediting the rumors, said:

"That Government [the French] is perfectly aware of the well-settled policy of the United States which would lead us to oppose any attempt on the part of a European government to extend its influence in any portion of America. In view of events which are currently reported to be taking place in France at this time arising out of the pecuniary embarrassments of the Panama Canal Company, and of the possibility of the French Government being asked to undertake the construction of that work as a national measure, it may be well for you, without referring especially to affairs in Panama, to take this opportunity also to call the attention of the minister of foreign affairs in somewhat explicit language to the consistent attitude maintained by the United States in regard to this subject. The wish of the United States has always been that the independent countries to the south of us should be left free to develop their own resources in such manner as they might deem most advisable for their own interests free from foreign dictation or interference of any kind. The United States has no interest other than that of the well being and prosperity of its neighbors. It has never attempted colonization, but it has consistently maintained that no part of America is to be considered as a subject for future colonization of any European power. The views of this Government in this regard have heretofore been fully explained to the Government of France, not only on the occasion above referred to, when some acquisition by it of Haytian territory was reported to be in contemplation, but also on the occasion of the expedition to Mexico,

undertaken upwards of 25 years ago, and at the time of the commencement of work by the French company upon the Panama Canal."

Mr. Bayard, Sec. of State, to Mr. McLane, min. to France, No. 414, Dec. 21, 1888, MS. Inst. France, XXI. 616.

IX. *SPECIAL APPLICATIONS OF MONROE DOCTRINE.*

1. Argentine Republic.

§ 944.

Replying to an inquiry of the Argentine Republic as to the scope of the declarations contained in President Monroe's message of December 22, 1823, against European interference in American affairs, Mr. Clay said that, when the declaration was made, "apprehensions were entertained of designs on the part of the allied powers of Europe to interfere in behalf of Spain to reduce again to subjection those parts of the continent of America which had thrown off the Spanish yoke." The declaration was made by the President as the head of the executive government, and, although there was every reason to believe that the policy which it announced was in conformity with the opinion both of the nation and of Congress, "the declaration must be regarded as having been voluntarily made, and not as conveying any pledge or obligation, the performance of which foreign nations have a right to demand." Should the case ever occur of such European interference as the message supposed, and it became necessary to decide whether the country would or would not engage in war, Congress alone would by the Constitution be competent to decide that question, although there could be little doubt that the sentiment of the message would be still that of the people and the Government of the United States.

As to the war raging between the Argentine Republic and the Emperor of Brazil, Mr. Clay said that it could not be conceived "as presenting a state of things bearing the remotest analogy to the case which President Monroe's message deprecates. It is," continued Mr. Clay, "a war strictly American in its origin and its object. It is a war in which the allies of Europe have taken no part. Even if Portugal and the Brazils had remained united, and the war had been carried on by their joint arms against the Argentine Republic, that would have been far from presenting the case which the message contemplated."

Mr. Clay, Sec. of State, to Mr. Forbes, chargé d'affaires to Buenos Ayres, No. 6, Jan. 3, 1828, MS. Inst. U. States Ministers, XII. 49.

As to the difficulty between France and the Argentine Confederation in 1838, see memorandum, Oct. 27, 1838, MS. Inst. Special Missions, I. 167.

"As the resumption of actual occupation of the Falkland Islands by Great Britain in 1833 took place under a claim of title which had been previously asserted and maintained by that Government, it is not seen that the Monroe doctrine, which has been invoked on the part of the Argentine Republic, has any application to the case. By the terms in which that principle of international conduct was announced, it was expressly excluded from retroactive operation.

"If the circumstances had been different, and the acts of the British Government had been in violation of that doctrine, this Government could never regard its failure to assert it as creating any liability to another power for injuries it may have sustained in consequence of the omission."

Mr. Bayard, Sec. of State, to Mr. Quesada, March 18, 1886, MS. Notes to Argentine Republic, VI. 256.

For further information in relation to the incident here referred to, see supra, I. 298, § 89; Mr. Baylies, chargé d'affaires, to the Buenos Ayrean Government, July 10, 1832, 20 Br. & For. State Papers, 338, based on Mr. Livingston, Sec. of State, to Mr. Baylies, Jan. 26, 1832, MS. Inst. Am. States, XIV. 235.

Mr. Bayard, in his note of March 18, 1886, supra, quoted from a note of Mr. Webster, Sec. of State, to Mr. Alvear, Argentine minister, of Dec. 4, 1841, reading as follows:

"The right of the Argentine Government, therefore, to jurisdiction over it [the territory of the Falkland Islands], being contested by another power [Great Britain], and upon grounds of claim long antecedent to the acts of Captain Duncan which General Alvear details, it is conceived that the United States ought not, until the controversy upon the subject between those two Governments shall be settled, to give a final answer to General Alvear's note, involving, as that answer must, under existing circumstances, a departure from that which has hitherto been considered as the cardinal policy of this Government."

As to the seizure of the ship *Hudson* and the schooner *Washington* by the British authorities at the Falkland Islands in 1854, see S. Ex. Doc. 19, 42 Cong. 2 sess.

With reference to a suggestion made in certain quarters that the United States should join Germany and Great Britain in representations to the Argentine Republic in relation to the latter's reported refusal to proceed with the arbitration of the boundary question with Chile, the Department of State observed that the fact that the Queen of Great Britain had already been chosen as arbitrator would appear to stand in the way of joint representations by Great Britain and Germany to the Argentine Republic against the latter's refusal to arbitrate. The Department of State added that it of course did not wish to appear as opposing any suggestion of arbitration "made benevolently and not in the form of intervention, joint or otherwise, inconsistent with the independence of the nation to which it was addressed;" and that the United States had already tendered its

good offices impartially to the Argentine Republic and Chile for the purpose of bringing about the execution of the treaty of arbitration, but had not yet received a reply. The American ambassador in London reported that the British Government held similar views to those expressed by the United States.

Mr. Moore, Act. Sec. of State, to Mr. Hay, ambass. to England, tel., Sept. 1, 1898, MS. Inst. Great Britain, XXXII. 640; Mr. Hay to Mr. Moore, Sept. 6, 1898, MS. Desp. from Great Britain; Mr. Moore to Mr. Hay, No. 833, Sept. 7, 1898, MS. Inst. Great Britain, XXXII. 643.

2. Bolivia.

§ 945.

"The nations on this continent are placed in a peculiar position. Their interests and independence require that they should establish and maintain an American system of policy for their protection and security entirely distinct from that which has so long prevailed in Europe. To tolerate any interference on the part of European governments with controversies in America and to suffer them to establish new colonies of their own intermingled with our free republics would be to make, to the same extent, a voluntary sacrifice of our independence. These truths ought everywhere throughout the continent of America to be impressed on the public mind."

Mr. Buchanan, Sec. of State, to Mr. Appleton, min. to Bolivia, No. 2, June 1, 1848, MS. Inst. Bolivia, I. 2.

In the course of this instruction Mr. Buchanan said it was greatly to be deplored that the instability of the Spanish-American republics, and in many instances their disregard for private rights, had afforded a pretext for the unfounded assumption that man is not fit for self-government. So long, said Mr. Buchanan, as it should be in the power of successive military chieftains to subvert the governments of those republics by the sword, their peoples could not expect to enjoy the blessings of liberty; and anarchy, confusion, and civil war must be the result. In his intercourse with the Bolivian authorities, Mr. Appleton was to omit no opportunity of pressing these truths upon them. He was also, by his counsel and advice, should an opportunity offer, to promote, without attempting to interfere with the domestic concerns of either republic, the cession by Peru to Bolivia of the port of Arica, which Bolivia was understood to desire. In this relation Mr. Buchanan referred to the onerous transit duties then levied by Peru at Arica on merchandise destined for consumption in Bolivia, and observed that so long as Arica should continue to be a Peruvian port it would be a perpetual cause of irritation between the two republics and always endanger their friendly relations with each other.

3. Brazil.

§ 946.

By notes of January 28 and April 6, 1825, the chargé d'affaires of Brazil, in behalf of his Government, proposed (1) that the United States should enter into an alliance with Brazil to maintain its independence, if Portugal should be assisted by any foreign power to reestablish her former sway, and (2) that an alliance might be formed to expel the arms of Portugal from any part of the Brazilian territory of which they might happen to take possession. Mr. Clay replied that, while the President adhered to the principles set forth in the message of his predecessor of Dec. 2, 1823, the prospect of a speedy peace between Portugal and Brazil, founded on the independence which the United States was the first to acknowledge, seemed to remove the ground which would be necessary to justify the acceptance of the first proposition; but that, if there should be a renewal of demonstrations on the part of the European allies against the independence of American States, the President would give to that condition of things every consideration which its importance would undoubtedly demand. The prospect of peace also rendered unnecessary such an alliance as was referred to in the second proposition. Such a treaty, however, would be contrary to the policy the United States had pursued, which was "that whilst the war is confined to the parent country and its former colony, the United States remain neutral, extending their friendship and doing equal justice to both parties."

Mr. Clay, Sec. of State, to Mr. Rebello, Brazilian chargé d'affaires, April 13, 1825, MS. Notes to For. Legs. III. 212.

The Earl of Aberdeen, in a note to the Marquis of Barbacena, Jan. 13, 1829, said:

"Undoubtedly the King did advise His Imperial Majesty [of Brazil] to complete the act of abdication of the Kingdom of Portugal, and thus to perform an obligation which H. I. M. himself, as far back as the month of May, 1826, had solemnly contracted before the world. His Majesty further advised the Emperor to send his daughter to Europe, in accordance with the declaration of H. I. M. made at the same period. These measures were well calculated to conciliate and to tranquillize the Portuguese nation, by removing the just suspicions of the people, and convincing them that it was not intended to govern them as a colony of Brazil. It is unfortunate that the measures thus advised, were not carried into execution previous to the arrival of the Infant at Lisbon. . . . But the assurance given to Dom Miguel, and entered upon the protocol of the con-

ference, to offer to the Emperor Dom Pedro, this advice, does not render His Majesty the guarantor of the performance of those promises contained in the letters of Dom Miguel, which were laid before the conference, and annexed to the protocol."

16 Br. & For. State Papers, 424, 430–431.

In the protocol of the conference at Vienna, Oct. 20, 1827, between representatives of Austria, Great Britain, and Dom Miguel, it is stated that it was very natural that Portugal should attach high value to the question, which was necessarily bound up with that of the confirmation of the act of abdication of the Emperor Dom Pedro, of the sending of the young Queen Maria da Gloria to Portugal, and of the total separation of the two Crowns; and that they might rest tranquil in that regard, seeing that Austria and England were penetrated with the importance of no longer leaving undecided questions of such high interest to the internal tranquillity of Portugal, and that the two powers were determined to unite their means and efforts in order to press for and obtain a decision at Rio de Janeiro.

15 Br. & For. State Papers, 991.

In extending to Brazil an invitation to an International American Peace Congress which was proposed to be held at Washington in November, 1882, Mr. Blaine said: "Brazil holds, in the south, much the same relationship to the other countries that the United States does in the north. Her domanial extent, her commerce and her advancement in the path of successful progress, exerts a beneficial and lasting influence in South America. Her intercourse with her neighbors has been marked by peace and good will, and, on memorable occasions, Brazil has lent wise counsels in momentous arbitrations. All this tends to make that Empire as necessary a factor in securing peace and harmony in America as the United States itself, while its interests in the great and humane results proposed are fully commensurate with our own. Moreover, the good friendship between Brazil and the United States is singularly strong. The ties which join them are intimate and permanent. What, then, is more natural than that these two great powers should earnestly unite in a movement which, it is hoped, will mark a historical epoch in America, and exert its influence on countries beyond the seas, and on generations yet unborn?"

Mr. Blaine, Sec. of State, to Mr. Osborn, min. to Brazil, No. 9, Dec. 1, 1881, MS. Inst. Brazil, XVII. 207.

In September, 1893, a revolt took place of the Brazilian navy at Rio de Janeiro under the command of Admiral Mello. On December 1, 1893, Admiral Mello, in his flagship, went south, and was succeeded in command of the naval forces at Rio de Janeiro by Admiral

da Gama, who announced in a proclamation his espousal of the cause of the revolution and of the restoration of the Empire, subject to ratification by the people. Commercial operations were interfered with by the insurgents, and threats were made by them to bombard the city. The insurgents, without maintaining an actual blockade, sought to prevent vessels from going to the docks. Thereupon Admiral Benham, U. S. Navy, announced that he would protect, by force if necessary, all American vessels that might wish to go to the docks alongside the wharves. A shot was fired from one of the insurgents' vessels at a boat belonging to an American vessel. Admiral Benham replied with a shot from a 6-pounder, which struck under the insurgent's bows. The latter then fired a shot to leeward and subsequently another over the merchant vessel. Admiral Benham answered with a musket shot which struck the insurgent's sternpost, and notified the latter that he would fire into and sink her if she fired again. Military operations between the insurgents and the Government were not interfered with by Admiral Benham. It was reported by the United States minister at Rio de Janeiro that all the foreign commanders agreed with Admiral Benham, and that his action had restored tranquillity to the conduct of commercial operations. Subsequently, the insurgent movement utterly failed, and the insurgent commanders and a large number of their followers found asylum in Portuguese men-of-war. As it was reported that the insurgents had the sympathy, if not the assistance, of certain European powers, the contest was narrowly watched by the United States. President Cleveland, in his annual message of December 3, 1894, said: "It apeparing at an early stage of the insurrection that its course would call for unusual watchfulness on the part of this Government, our naval force in the harbor of Rio de Janeiro was strengthened. This precaution, I am satisfied, tended to restrict the issue to a simple trial of strength between the Brazilian Government and the insurgents, and to avert complications which at times seemed imminent. Our firm attitude of neutrality was maintained to the end. The insurgents received no encouragement of eventual asylum from our commanders, and such opposition as they encountered was for the protection of our commerce and was clearly justified by public law."

See, as to the insurrection in Brazil and the action of Admiral Benham, Naval War College, International Law Situations, 1901, pp. 118–128.

See, as to the question of asylum, supra, § 305.

See, as to the allegation of sympathy with the insurgents, Mr. Gresham, Sec. of State, to Mr. Bayard, ambass. to England, No. 240, Dec. 18, 1893, MS. Inst. Gr. Br. XXX. 429; same to same, No. 342, April 6, 1894, id. 518; same to same, No. 411 (confid.), June 4, 1894, id. 576; Mr. Gresham to Mr. Enstis, ambass. to France, No. 223, June 6, 1894, MS. Inst. France, XXII. 645.

Nov. 15, 1894, the corner stone of the pedestal of a monument to be erected to the memory of President Monroe was laid in the city of Rio de Janeiro. (For. Rel. 1895, I. 48–52.)

As to the protest made in behalf of Brazil against the infringement of any rights which that Government might have in any part of the territory submitted to arbitration under the treaty between Great Britain and Venezuela of February 2, 1897, see Mr. Adee, Act. Sec. of State, to Mr. Assis-Brasil, Brazilian min., No. 12, Sept. 16, 1899, MS. Notes to Brazil, Leg. VII. 191.

On July 11, 1901, the Bolivian Government, acting through its envoy extraordinary and minister plenipotentiary at the Court of St. James, entered, at London, into a contract with an Anglo-American syndicate, which was incorporated in the United States under the title of "The Bolivian Syndicate of New York City." By this contract, which was approved by the Bolivian Congress December 20, 1901, and duly published as a law, the Bolivian Government assumed to make to the syndicate a concession of important rights, powers, and privileges in the territory of Acre (Aquiry), concerning which the controversy with Brazil was then pending.

"The syndicate," so the concession declared, was formed for the purpose of "constituting and incorporating" a "company," which was to take over for thirty years, with a privilege of renewal, the "fiscal administration" of the entire territory of Acre, and which was to that end to be invested with "powers," and with "rights, privileges, and lands," for its development and "colonization." This company was to be incorporated "England, or in the United States of North [sic] America, or one of such States, or in some other foreign country," and was to have a capital "of not less than £500,000 sterling," in "the currency of the country in which" it should be "incorporated;" and the first privilege it was to possess was the enjoyment for five years of the exclusive right to buy in fee simple lands not already disposed of in the territory.

It was also to possess "all mineral rights" in the territory, the mineral laws of Bolivia meanwhile remaining suspended, as well as the right to construct and maintain docks, railroads, tramways, telegraphs, electric works, and telephones; and these things it might do either itself, or throught other countries which it might constitute, thus exercising the power indefinitely to reproduce itself and to increase the hold of foreign interests.

These vast privileges were, however, but subsidiary to the political and sovereign powers to be exercised by the company.

It was to possess for thirty years "the sole, absolute, exclusive and uncontrolled right, power, and authority to collect and enforce payment of" revenues, rents, and taxes, subject only to an accounting and division with the Bolivian Government; and, subject only to the

provision of treaties, and of the traffic "of such vessels as now exist," it was to have "the exclusive right to grant concessions for the navigation of the rivers and navigable waters of the territory.

The Bolivian Government was indeed to be permitted to appoint a representative in the territory, to be known as the "national delegate;;" but, subject only to the "supervision" of this delegate, whose salary the company was to pay, the company was to "provide and maintain" a "sufficient force of police" for the "protection of the inhabitants" and the enforcement of law and order; and if at any time the Government should think it necessary, the company was to equip and maintain, in addition to the police force, military and naval forces "for the defense of the rivers" and "the preservation of internal order."

Finally, it was stipulated that if, on the expiration of the specified term, the concession should not be renewed "on the same conditions," or on other mutually agree on, the Government was to "resume" the "administration" of the territory.

In consequence of this concession, which embraced territory a part of which was claimed by Brazil, the Brazilian Government, apprehensive as to the ultimate results of the syndicate's operations, entered upon a course of reprisals against Bolivia, and suppressed in Brazilian rivers the freedom of transit for exports and imports of that country. Subsequently a modus vivendi was entered into between the two countries, and on November 17, 1903, a treaty was concluded by which Brazil purchased from Bolivia all the latter's rights in the Acre territory. As one of the preliminaries to the amicable settlement with Bolivia, the Government of Brazil obtained from the syndicate, for a sum of money, the absolute renunciation of all its rights and claims under the concession, the effect of which was thus completely nullified.

In a report to the President of Brazil of December 27, 1903, on the treaty of settlement with Bolivia, Baron Rio Branco, Brazilian Minister of Foreign Relations, said: "An Anglo-American syndicate, called the *Bolivian Syndicate*, armed with almost sovereign rights which the Bolivian Government had granted it for the administration, defence, and use of Acre, tried, happily without success, to interest some commercial powers of Europe and the United States of America in the enterprise, which was the first attempt to introduce in our continent the African and Asiatic system of *chartered companies*. . . . From the foreign syndicate we legally obtained a declaration absolutely renouncing any and all rights or possible claims against anyone whatsoever, in consideration of a pecuniary indemnity incomparably less than the smallest expense which either Brazil or Bolivia would incur on account of a serious international complication." In the same report Baron Rio Branco referred to the

attempt to introduce "the perturbing system of the chartered companies" as a "menace" to the "security of this continent."

Brazil and Bolivia. Boundary Settlement. Treaty for the Exchange of Territories and other Compensations, signed at Petropolis, November 17, 1903, together with the Report of Baron Rio Branco, Minister for Foreign Relations of Brazil: New York; especially pp. 19, 22, 23, 41. See, also, For. Rel. 1903, 34–36.

See the charter of the Imperial British East Africa Company, Sept. 3, 1888, 79 Br. & For. State Papers, 641; also, the charter of the British South Africa Company, Oct. 29, 1889, 81 id. 617.

4. CENTRAL AMERICA.

§ 947.

The British settlers on the Bay of Honduras, under the treaties between Great Britain and Spain, began very early "to make encroachments on the surrounding lands; and these have been carried to such an extent, that the Government of Central America, upon which they have been principally made, has become alarmed, and has appointed a commissioner to proceed to Great Britain for the purpose of remonstrating. In the meantime an agent has been dispatched by the occupants of the territory in question to London, to solicit that the settlement may be declared to be a colony of Great Britain, and that its limits may be coextensive with their usurpations. This agent, it is understood, has been directed by the British Government to proceed to Madrid, for the purpose of arranging the matter with the Spanish Government. The Government of Central America has asked the intermediation of the United States in the negotiation which is about to be set on foot with the Court of St. James. A brief history of the settlement alluded to, with the necessary references, is sent to you with this dispatch. It is expected that you will keep an eye upon the movements of the agent above mentioned in Madrid, and that you will use all prudent means to prevent the conclusion of any arrangement on the subject, as being incompatible with with the rights of the Republic of Central America, and injurious to the commercial interests of the whole world, including those of Spain herself."

Mr. Forsyth, Sec. of State, to Mr. Barry, min. to Spain, No. 2, June 30, 1835, MS. Inst. Spain, XIV. 70.

"The independence, as well as the interests of the nations on this continent, require that they should maintain an American system of policy, entirely distinct from that which prevails in Europe. To suffer any interference on the part of the European governments with the domestic concerns of the American republics, and to permit them to establish new colonies upon this continent, would be to jeopard their

independence and ruin their interests. These truths ought everywhere throughout this continent to be impressed upon the public mind; but what can the United States do to resist such European interference whilst the Spanish-American republics continue to weaken themselves by division and civil war and deprive themselves of the ability of doing anything for their own protection?"

Mr. Buchanan, Sec. of State, to Mr. Hise, min. to Cent. Am., June 3, 1848, 1 Curtis's Buchanan, 623; H. Ex. Doc. 75, 31 Cong. 1 sess. 92–96.

"A guarantee for the general use and security of a transit route, and also for its neutrality, is a desirable measure, which would meet the hearty concurrence of the United States. These views have already been made known to the Governments of Costa Rica and Nicaragua, and they have been informed "that the President indulges the hope that these routes may yet be considered by general consent as neutral highways for the world, not to be disturbed by the operations of war.' These great avenues of intercommunication are vastly interesting to all commercial powers, and all may well join in securing their freedom and use against those dangers to which they are exposed from aggressions or outrages originating within or without the territories through which they pass.

"But the establishment of a political protectorate by any of the powers of Europe over any of the independent states of this continent, or, in other words, the introduction of a scheme of policy which would carry with it a right to interfere in their concerns, is a measure to which the United States have long since avowed their opposition, and which, should the attempt be made, they will resist by all the means in their power. The reasons for the attitude they have assumed have been fully promulgated, and are everywhere well known. There is no need upon this occasion to recapitulate them. They are founded on the political circumstances of the American continent, which has interests of its own, and ought to have a policy of its own, disconnected from many of the questions which are continually presenting themselves in Europe, concerning the balance of power and other subjects of controversy arising out of the condition of its States, and which often find their solution of their postponement in war. It is of paramount importance to the states of this hemisphere that they should have no entangling union with the powers of the Old World, a connection which would almost necessarily make them parties to wars having no interest in them, and which would often involve them in hostilities with the other American states, contiguous or remote. The years which have passed by since this principle of separation was first announced by the United States have served still more to satisfy the people of this country of its wisdom and to fortify their resolution to maintain it, happen what may."

Mr. Cass, Sec. of State, to Mr. Lamar, min. to Cent. Am., July 25, 1858, partly printed in Correspondence in relation to the Proposed Interoceanic Canal (Washington, 1885), 281; full text in MS. Inst. Am. States, XV. 321.

Wharton, in his Int. Law. Digest, said: "The Clayton-Bulwer treaty is the only exception to the rule that the Government of the United States will decline to enter into any combinations or alliances with European powers for the settlement of questions connected with the United States."

See, fully, as to Central America, the Clayton-Bulwer treaty, and the Interoceanic Canal, supra, Chap. XI.

M. de Sartiges, the French minister, having called at the Department of State and stated that he had been directed by Count Walewski to say "that the French Government had been invited by the British Government to despatch a naval force to San Juan del Norte with orders to land a force, if requested to do so by the Nicaraguan Government, to repel any attack which might be made by illegal military expeditions against that country," Mr. Cass replied: "That this measure, if carried into effect, would but complicate still more the difficulties in Central America. That this Government was doing all in its power to prevent such expeditions from leaving the United States. That a concert of action between France and Great Britain for the employment of force in that region would give much dissatisfaction to the American people, as well as to this Government. Although we have no treaty with France respecting the affairs of Central America, still the French Government is aware of the position which the United States have taken against the exercise of a protectorate or of any dominion over the Isthmian states, and could not view with indifference the adoption of a policy which could scarcely be carried out without the exercise of a control, which would be unacceptable."

Mr. Cass, Sec. of State, to Mr. Dallas, min. to England, confid., Nov. 26, 1858, MS. Inst. Gr. Br. XVII. 137.

See, also, Mr. Cass, Sec. of State, to Mr. Mason, min. to France, No. 169, Nov. 26, 1858, MS. Inst. France, XV. 401.

"Should unforeseen and unfortunate circumstances ever bring it into question, the United States will be prepared to repeat and enforce the principle declared by its highest authority, more than half a century ago, that 'with the Governments [of the American continents] which have declared their independence and maintained it, and whose independence we have on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing or controlling in any other manner, their destiny, by an European power, in any other light than as the manifestation of an unfriendly disposition towards the United States.'"

Mr. Blaine, Sec. of State, to Mr. Logan, min. to Cent. Am., May 7, 1881, MS. Inst. Cent. Am. XVIII. 171.

5. CHILE.

§ 948.

"The policy of the United States in regard to the several Spanish-American States, is, or ought to be well known now, after the exposition it has received during the last five years. We avoid in all cases giving encouragement to expectations which, in the varying course of events, we might find ourselves unable to fulfill; and we desire to be known as doing more than we promise rather than falling short of our engagements. On the other hand, we maintain and insist with all the decision and energy which is compatible with our existing neutrality, that the republican system which is accepted by the people in any one of those States shall not be wantonly assailed, and that it shall not be subverted as an end of a lawful war by European powers. We thus give to those Republics the moral support of a sincere, liberal, and as we think it will appear, a useful friendship. We could claim from foreign states no concession to our own political, moral, and material principles or interests if we should not conform our own proceedings in the needful intercourse with foreign states to the just rules of the laws of nations. We, therefore, concede to every nation the right to make peace or war, for such causes other than political or ambitious as it thinks right and wise. In such wars as are waged between nations which are in friendship with ourselves, if they are not pushed, like the French war in Mexico, to the political point before mentioned, we do not intervene, but remain neutral, conceding nothing to one belligerent that we do not concede to the other, and allowing to one belligerent what we allow to the other. . . .

"We certainly thought that is was an act of friendship on our part that we obtained assurances from Spain, at the beginning and at other stages of the present war, that in any event her hostilities against Chile should not be prosecuted beyond the limits which I have before described. We understand ourselves now and henceforth ready to hold Spain to this agreement, if, contrary to our present expectations, it should be found necessary. In this we think we are acting a part certainly not unfriendly to Chile. It was thought to be an act of friendship when we used our good offices with both parties to prevent the war. We have thought we were acting a friendly part using the same good offices to secure an agreement for peace without dishonor, or even damage, to Chile. Those who think that the United States could enter as an ally into every war in which a friendly republican State on this continent becomes involved, forget that peace is the constant interest and the unwavering policy of the United States. They forget the frequency and variety of wars in

which our friends in this hemisphere engage themselves entirely independent of all control or counsel of the United States. We have no armies for the purpose of aggressive war; no ambition for the character of a regulator. Our Constitution is not an imperial one, and does not allow the Executive Government to engage in war except upon the well considered and deliberate decree of the Congress of the United States. A Federal Government consisting of thirty-six equal States, which are in many respects self-governing, cannot easily be committed by its representatives to foreign wars, either of sympathy or of ambition. If there is any one characteristic of the United States which is more marked than any other, it is that they have from the time of Washington adhered to the principle of nonintervention, and have perseveringly declined to seek or contract entangling alliances, even with the most friendly States."

Mr. Seward, Sec. of State, to Mr. Kilpatrick, min. to Chile, No. 9, June 2, 1866, MS. Inst. Chile, XV. 333; Dip. Cor. 1866, part 2, p. 413.

6. Colombia.

§ 949.

See, as to the Isthmus of Panama, and the treaty of 1846, supra, Chap. XI.

"Mr. Salazar, the minister from Columbia [*sic*], stated lately, by order of his govt., that a French agent was expected at Bogota, having already arrived at the port, with power to treat with his govt. respecting its independence. He observed that his govt. had been advised, from an authentic source, that the govt. of France would acknowledge its independence on one condition, the establishment of monarchy, and leave the person to be placed in that station to the people of Colombia; that Bolivar would not be objected to if preferred by them. He asked, should the proposition be rejected and France become hostile in consequence, what part the U. States would take in that event? What aid might they expect from us? The subject will of course be weighed thoroughly in giving the answer. The Executive has no right to compromit the nation in any question of war, nor ought we to presume that the people of Columbia will hesitate as to the answer to be given to any proposition which touches so vitally their liberties."

President Monroe to Mr. Madison, Aug. 2, 1824, 7 Writings of Monroe, 30, 31.

It was hoped that the attempt to bring about a "more harmonious condition of things" between Colombia and Spain, and one "better calculated to inure in benefits to the Spanish-American state in its intercourse with its former parent country," would be successful. (Mr. Evarts, Sec. of State, to Mr. Dichman, min. to Colombia, No. 30, Feb. 18, 1879, MS. Inst. Colombia, XVII. 76.)

7. Cuba.

(1) declarations of policy.

§ 950.

"Of all the European powers, this country prefers that Cuba and Porto Rico should remain dependent on Spain. If the war should continue between Spain and the new republics, and those islands should become the object and the theater of it, their fortunes have such a connection with the prosperity of the United States that they could not be indifferent spectators; and the possible contingencies of such a protracted war might bring upon the Government of the United States duties and obligations, the performance of which, however painful it should be, they might not be at liberty to decline."

Mr. Clay, Sec. of State, to Mr. Everett, min. to Spain, No. 1, April 27, 1825, MS. Inst. U. States Ministers, X. 297.

The United States "could not consent to the occupation" of Cuba and Porto Rico "by any other European power than Spain, under any contingency whatever." (Mr. Clay, Sec. of State, to Mr. Brown, min. to France, No. 3, Oct. 25, 1825, MS. Inst. U. States Ministers, X. 404; Am. State Papers, For. Rel. V. 855.)

Mr. Gallatin, when minister to London, tried to "impress strongly" on Canning's mind that it was "impossible that the United States could acquiesce in the conquest by or transfer of" the island of Cuba to "any great maritime power." (Mr. Gallatin to Mr. Clay, Dec. 22, 1866, 2 Gallatin's Writings, 346.)

On December 20, 1825, Mr. Clay addressed a note to the ministers of Colombia and Mexico, requesting them to prevail upon their respective governments to suspend any expedition which both or either of them might be fitting out against the islands of Cuba and Porto Rico until the sense of the Congress of Panama might be known on the subject. The President considered that such suspension might have a favorable effect upon the cause of peace, and it was also recommended by other considerations. The Colombian Government promised a substantial compliance with this request, and a copy of its reply was communicated to the Russian Government with a view to incite that Government to new efforts to bring about peace between Spain and her colonies. The Mexican Government appears to have received the request of the United States unfavorably.

Mr. Clay, Sec. of State, to Mr. A. H. Everett, min. to Spain, April 13, 1826, MS. Inst. U. States Ministers, XI. 21; 44 Br. & For. State Papers, 151; Mr. Clay to Mr. Middleton, min. to Russia, May 26, 1826, MS. Inst. U. States Ministers, XI. 81; Mr. Clay to Mr. Poinsett, min. to Mexico, June 23, 1826, id. 139.

See, also, Mr. Clay to Mr. Middleton, Dec. 26, 1825, Am. State Papers, For. Rel. V. 850; and note of Mr. Everett to the Spanish minister of foreign affairs, Jan. 20, 1826, Am. State Papers, For. Rel. VI. 1006.

"The Government of the United States has always looked with the deepest interest upon the fate of those islands, but particularly of Cuba. Its geographical position, which places it almost in sight of our southern shores, and, as it were, gives it the command of the Gulf of Mexico and the West India seas; its safe and capacious harbours; its rich productions, the exchange of which, for our surplus agricultural products and manufactures, constitutes one of the most extensive and valuable branches of our foreign trade, render it of the utmost importance to the United States that no change should take place in its condition which might injuriously affect our political and commercial standing in that quarter. Other considerations, connected with a certain class of our population, make it the interest of the southern section of the Union that no attempt should be made in that island to throw off the yoke of Spanish dependence, the first effect of which would be the sudden emancipation of a numerous slave population, the result of which could not but be very sensibly felt upon the adjacent shores of the United States.

"On the other hand, the wisdom which induced the Spanish Government to relax in its colonial system, and to adopt with regard to those islands a more liberal policy, which opened their ports to general commerce, has been so far satisfactory in the view of the United States, as, in addition to other considerations, to induce this Government to desire that their possession should not be transferred from the Spanish Crown to any other power."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, min. to Spain, No. 2, Oct. 2, 1829; MS. Inst. U. States Ministers, XIII. 19; 26 Br. & For. State Papers, 1149.

See publications in 26 Br. & For. State Papers (1837–'38), 1124–1159, including: Mr. Forsyth (Madrid) to Mr. Adams (Sec.), Nov. 20, 1822; Mr. Forsyth (Madrid) to Mr. Adams (Sec.), Dec. 13, 1822; Mr. Adams to Mr. Forsyth, Dec. 17, 1822; Mr. Forsyth to Mr. Adams, Feb. 10, 1823; Mr. Adams to Mr. Nelson, Apr. 28, 1823 (suggesting purchase of Cuba); Mr. Appleton (Cadiz) to Mr. Adams, July 10, 1823; Mr. Nelson to Mr. Clay (Sec.), July 10, 1825; Mr. Clay to Mr. Everett, Apr. 27, 1825; Mr. Nelson to Mr. Bermudez, June 22, 1825; Mr. Bermudez to Mr. Nelson, July 12, 1825 (stating that Spain would not part with Cuba); Mr. Everett to Mr. Clay, Sept. 25, 1825; Mr. Everett to Mr. Clay, Aug. 17, 1827; the Spanish minister at London to the minister of state, June 1, 1827; Mr. Everett to Mr. Clay, Dec. 12, 1827; confidential memorandum of Mr. Everett for the Spanish secretary of state, Dec. 10, 1827, stating, among other things, that the Government of "His Catholic Majesty can not of course be ignorant, of the movements commenced a few months ago by the British Ministry, in conjunction with the Spanish refugees in London, and now in a course of execution, for the purpose of revolutionizing the Island of Cuba and the Canaries," saying that the United States would not consent to Cuba passing to any third power, and complaining of discrimination against the United States; Mr. Van Ness (Mad-

rid) to Mr. Forsyth (Sec.), Aug. 10, 1836, speaking of rumors of disquiet in Cuba; Mr. Van Ness to Mr. Forsyth, Dec. 10, 1836, as to the effect of Spanish political changes on Cuba; Mr. Stevenson (London) to Mr. Forsyth, June 16, 1839, as to conversation with Lord Palmerston, Mr. S. protesting against foreign interference in Cuba; Mr. Eaton (Madrid) to Mr. Forsyth, Aug. 10, 1837, stating that Mr. Villiers, British minister in Spain, disclaimed the idea of Great Britain taking Cuba.

"This Government has . . . been given to understand that if Spain should persevere in the assertion of a hopeless claim to dominion over her former colonies, they will feel it to be their duty as well as their interest to attack her colonial possessions in our vicinity—Cuba and Porto Rico. Your general instructions are full upon the subject of the interest which the United States take in the fate of those islands, and particularly of the latter [former]. They inform you that we are content that Cuba should remain as it now is, but could not consent to its transfer to any European power. Motives of reasonable state policy render it more desirable to us that it should remain subject to Spain rather than to either of the South American States. Those motives will readily present themselves to your mind. They are principally founded upon an apprehension that, if possessed by the latter, it would, in the present state of things, be in greater danger of becoming subject to some European power than in its present condition. Although such are our own wishes and true interests, the President does not see on what ground he would be justified in interfering with any attempts which the South American States might think it for their interest, in the prosecution of a defensive war, to make upon the islands in question. If indeed an attempt should be made to disturb them by putting arms in the hands of one portion of their population to destroy another, and which, in its influence, would endanger the peace of a portion of the United States, the case might be different. Against such an attempt the United States (being informed that it was in contemplation) have already protested, and warmly remonstrated in their communications, last summer, with the Government of Mexico. But the information lately communicated to us, in this regard, was accompanied by a solemn assurance that no such measures will, in any event, be resorted to, and that the contest, if forced upon them, will be carried on, on their part, with strict reference to the established rules of civilized warfare."

Mr. Van Buren, Sec. of State, to Mr. Van Ness, min. to Spain, Oct. 13, 1830, MS. Inst. U. States Ministers, XIII. 184; 26 Br. & For. State Papers, 1152.

"Should you have reason to suspect any design on the part of Spain to transfer voluntarily her title to the island [Cuba], whether of ownership or possession, and whether permanent or temporary, to Great Britain, or any other power, you will distinctly state that the United States will prevent it, at all hazards, as they will any foreign military occupation for any pretext whatsoever; and you are authorized to assure the Spanish Government that in case of any attempt, from whatever quarter, to wrest from her this portion of her territory, she may securely depend upon the military and naval resources of the United States to aid her in preserving or recovering it."

Mr. Forsyth, Sec. of State, to Mr. Vail, min. to Spain, No. 2, July 15, 1840, MS. Inst. Spain, XIV. 111; 32 Br. & For. State Papers, 861.
To the same effect, Mr. Upshur, Sec. of State, to Mr. Irving, min to Spain, No. 21, Jan. 9, 1844, MS. Inst. Spain, XIV. 167.

Early in 1843 a special messenger was sent to Havana to deliver in person to Mr. Campbell, the United States consul, a letter from a person of high standing in Cuba in relation to conditions there. The name of the writer of the letter was not disclosed, and he maintained an air of great secrecy, representing that he was in honor bound not to reveal to the local authorities in Cuba what he had made known to his correspondent in the United States. He declared that the situation in Cuba was dangerous and critical, and that the authorities of the island were incompetent to meet the crisis; that, in spite of the treaty of 1817 between Great Britain and Spain, the slave trade had been carried on in full vigor up to 1841; and that the British ministry and abolition societies, finding themselves foiled or eluded by the Spanish authorities, had resolved upon the total and immediate ruin of the island, and were through their agents offering independence to the creoles on condition that they would unite with the colored people in effecting a general emancipation of the slaves and in converting the government into a black military republic under British protection. With 600,000 blacks in Cuba and 800,000 in her own West India islands, Great Britain, it was said, would strike a death blow at the existence of slavery in the United States, and, intrenched at Havana and San Antonio, would be able to close the two entrances to the Gulf of Mexico and even to prevent free passage of the commerce of the United States over the Bahama bank and through the Florida channel. Upon the strength of the last census in Cuba, the writer of the letter inferred that the white creoles would be able to preserve their rights in the future Ethiopico-Cuban republic, and that the Spaniards would leave the island at once; but he expressed the opinion that the mass of the white population in Cuba in easy circumstances, including Spaniards, would always prefer the flag of the United States to that of England. In commu-

nicating these statements to Mr. Campbell, the Department of State declared that the Government of the United States neither adopted nor rejected the speculations contained in the letter. Mr. Campbell was directed to examine and report on the allegations with scrupulous care and with as much promptness as strict secrecy and discretion would permit. It was obvious, said Mr. Webster, who was then Secretary of State, that any attempt on the part of England to employ force in Cuba, for any purpose, would bring on a war, involving, possibly, all Europe as well as the United States, and, as she could hardly fail to see this, and probably did not desire it, there might be reason to doubt the accuracy of the information given by the writer of the letter. The Spanish Government, said Mr. Webster, had repeatedly been told that the United States "never would permit the occupation of that island [Cuba] by British agents or forces upon any pretext whatsoever: and that in the event of any attempt to wrest it from her, she might securely rely upon the whole naval and military resources of this country to aid her in preserving or recovering it."

Mr. Webster, Sec. of State, to Mr. Campbell, consul at Havana, Jan. 14, 1843, 44 Br. & For. State Papers, 174; H. Ex. Doc. 121, 32 Cong. 1 sess.

See, also, Mr. Upshur, Sec. of State, to Mr. Irving, min. to Spain, No. 21, Jan. 9, 1844, MS. Inst. Spain, XIV. 167; 32 Br. & For. State Papers, 867.

"By direction of the President, I now call your attention to the present condition and future prospects of Cuba. The fate of this island must ever be deeply interesting to the people of the United States. We are content that it shall continue to be a colony of Spain. Whilst in her possession we have nothing to apprehend. Besides, we are bound to her by the ties of ancient friendship, and we sincerely desire to render these perpetual.

"But we can never consent that this island shall become a colony of any other European power. In the possession of Great Britain or any strong naval power it might prove ruinous both to our domestic and foreign commerce, and even endanger the Union of the States. The highest and first duty of every independent nation is to provide for its own safety; and acting upon this principle, we should be compelled to resist the acquisition of Cuba by any powerful maritime State, with all the means which Providence has placed at our command.

"Cuba is almost within sight of the coast of Florida, situated between that State and the peninsula of Yucatan, and possessing the deep, capacious and impregnably fortified harbor of the Havana. If this island were under the dominion of Great Britain she could command both the inlets to the Gulf of Mexico. She would thus be

enabled, in time of war, effectively to blockade the mouth of the Mississippi, and to deprive all the Western States of this Union, as well as those within the Gulf, teeming as they are with an industrious and enterprising population, of a foreign market for their immense productions. But this is not the worst. She could also destroy the commerce by sea between our ports on the Gulf and our Atlantic ports, a commerce of nearly as great a value as the whole of our foreign trade.

"Is there any reason to believe that Great Britain desires to acquire the island of Cuba?

"We know that it has been her uniform policy, throughout her past history, to seize upon every valuable commercial point throughout the world, whenever circumstances have placed this in her power. And what point so valuable as the island of Cuba? The United States are the chief commercial rival of Great Britain; our tonnage at the present moment is nearly equal to hers, and it will be greater, within a brief period, if nothing should occur to arrest our progress. Of what vast importance would it, then, be to her to obtain the possession of an island from which she could at any time destroy a very large portion both of our foreign and coasting trade? Besides, she well knows that if Cuba were in our possession, her West India Islands would be rendered comparatively valueless. From the extent and fertility of this island, and from the energy and industry of our people, we should soon be able to supply the markets of the world with tropical productions, at a cheaper rate than these could be raised in any of her possessions."

Mr. Buchanan, Sec. of State, to Mr. Saunders, min. to Spain, June 17, 1848, MS. Inst. Spain, XIV. 256; H. Ex. Doc. 121, 32 Cong. 1 sess. 42.

Mr. Saunders was informed that the United States would pay $100,000,000 for the island, if it could not be obtained for less.

See supra, § 118, I. 584–587.

"Whilst this Government is resolutely determined that the island of Cuba shall never be ceded by Spain to any other power than the United States, it does not desire, in future, to utter any threats, or enter into any guaranties with Spain, on that subject. Without either guaranties or threats, we shall be ready, when the time comes, to act. The news of the cession of Cuba to any foreign power would, in the United States, be the instant signal for war. No foreign power would attempt to take it, that did not expect a hostile collision with us as an inevitable consequence."

Mr. Clayton, Sec. of State, to Mr. Barringer, min. to Spain, No. 2, Aug. 2, 1849, MS. Inst. Spain, XIV. 295.

On October 8, 1851, M. de Sartiges, French minister at Washington, informed Mr. Crittenden, Acting Secretary of State, that the

French Government had issued orders to its ships of war in the West Indies to give assistance to Spain and to prevent by force the adventurers of any nation from landing with hostile intent on the island of Cuba. A few days previously the British chargé d'affaires at Washington had given official notice that his Government had issued similar orders to its naval forces. Commenting on these interviews, Mr. Crittenden said that the President regarded this action of the two powers as a matter of grave importance. The orders had no doubt been occasioned by the then recent unlawful expedition of less than 500 men which had evaded the vigilance of the United States and escaped from New Orleans. The expedition was landed by the steamer *Pampero*, in Cuba, where it was soon captured, and many of its members were executed. The President did not regard this accident as a sufficient basis for the combined action of the two great European powers. Their object could hardly be accomplished without claiming a dangerous power of visit and search; but, apart from this, there was another point of view in which the intervention of France and England could not be viewed with indifference by the President. The geographical position of Cuba was such that it would become, in the hands of any European nation, an object of just jealousy and apprehension to the people of the United States. The Government of France and other European nations had long been officially apprised that the United States could not see without concern the island transferred by Spain to any other European state. Moreover, the people of the United States were "naturally jealous of European interference in American affairs."

Mr. Crittenden, Acting Sec. of State, to M. de Sartiges, French min., Oct. 22, 1851, MS. Notes to French Leg. VI. 163.

M. de Sartiges, in a note to Mr. Crittenden, of October 27, 1851, stated that the instructions issued by his Government were (1) "spontaneous and isolated," and (2) for "an exclusive case," and were applicable "only to the class, and not to the nationality of any pirate or adventurer that should attempt to land, in arms, on the shores of a friendly power." France herself, said M. de Sartiges, was sensitive on the subject of the right of search, and the orders given to the French commander were intended to apply only to the case of piracy according to her maritime code. Moreover, the attitude assumed by President Fillmore and his Cabinet had been so upright that the French Government, far from intending to imply any doubts on the subject, had reason to believe that it would find in those same latitudes the American squadron, acting in the same spirit and pursuing a similar object. (MS. Notes from French Legation.)

On the 18th of November Mr. Webster replied that he had submitted M. de Sartiges' note to the President, who had directed him to say that the apprehensions of the United States and the reasons therefor were considered to have been frankly stated in Mr. Crittenden's note of the 22nd of October, and that, as M. de Sartiges "now avers that the French Government had only in view the execution of the pro-

vision of its maritime code against pirates, further discussion of the subject would seem to be for the present unnecessary." (Mr. Webster, Sec. of State, to M. de Sartiges, French min., Nov. 18, 1851, MS. Notes to French Leg. VI. 171.)

See President Fillmore's message of July 13, 1852, and accompanying documents, II. Ex. Doc. 121, 31 Cong. 1 sess.

"For many reasons the United States feel deeply interested in the destiny of Cuba. They will never consent to its transfer to either of the intervening nations, or to any other foreign state. They would regret to see foreign powers interfere to sustain Spanish rule in the island should it provoke resistance too formidable to be overcome by Spain herself."

Mr. Marcy, Sec. of State, to Mr. Buchanan, min. to England, No. 2, July 2, 1853, MS. Inst. Gr. Brit. XVI. 220.

"Nothing will be done, on our part, to disturb its [Cuba's] present connexion with Spain, unless the character of that connexion should be so changed as to affect our present or prospective security. While the United States would resist at every hazard the transference of Cuba to any European nation, they would exceedingly regret to see Spain resorting to any power for assistance to uphold her rule over it. Such a dependence on foreign aid would, in effect, invest the auxiliary with the character of a protector, and give it a pretext to interfere in our affairs, and also generally in those of the North American continent."

Mr. Marcy, Sec. of State, to Mr. Soulé, min. to Spain, No. 2, July 23, 1853, II. Ex. Doc. 93, 33 Cong. 2 sess. 3; same to same, Apr. 3, 1854, and Nov. 13, 1854, id. 80, 134.

"Should the rule of Spain over Cuba be so severe as to excite revolutionary movements in that island, she will undoubtedly find volunteers in the ranks of the Cubans from various countries, and, owing to very obvious causes, more from the United States probably than from any other; but it would be unjust to impute to this and the other governments to which those volunteers formerly belonged, an unfriendly disposition towards her, or a desire to aid clandestinely in the attempt to wrest that island from her. There is reason to believe that Spain herself, as well as other European governments, suspects that the people of the United States are desirous of detaching Cuba from its present transatlantic dependence, regardless of the rights of Spain, with a view of annexing it to this Union, and that our Government was disposed to connive at the participation of our citizens in the past disturbances in that island, and would again do so on the recurrence of similar events. Our defense against such an unfounded suspicion, and the only one which self-respect allows us to make, is an appeal to our past course."

Mr. Marcy, Sec. of State, to Mr. Soulé, July 23, 1853, H. Ex. Doc. 93, 33 Cong. 2 sess. 3, 4.

As to the seizure of the *Black Warrior*, see H. Ex. Docs. 76 and 86, 33 Cong. 1 sess.; H. Ex. Doc. 93, 33 Cong. 2 sess.

As to the Ostend Manifesto, see Mr. Marcy, Sec. of State, to Mr. Soulé, min. to Spain, No. 27, Nov. 13, 1854, H. Ex. Doc. 93, 33 Cong. 2 sess. 134; and Curtis's Life of Buchanan, II. 136 et. seq.

"The truth is, that Cuba, in its existing colonial condition, is a constant source of injury and annoyance to the American people. It is the only spot in the civilized world where the African slave trade is tolerated; and we are bound by treaty with Great Britain to maintain a naval force on the coast of Africa, at much expense both of life and treasure, solely for the purpose of arresting slavers bound to that island. The late serious difficulty between the United States and Great Britain respecting the right of search, now so happily terminated, could never have arisen if Cuba had not afforded a market for slaves. . . .

"It has been made known to the world by my predecessors that the United States have on several occasions endeavored to acquire Cuba from Spain by honorable negotiation. . . . We would not, if we could, acquire Cuba in any other manner. This is due to our national character. All the territory which we have acquired since the origin of the Government has been by fair purchase from France, Spain, and Mexico, or by the free and voluntary act of the independent State of Texas in blending her destinies with our own. This course we shall ever pursue, unless circumstances should occur which we do not now anticipate, rendering a departure from it clearly justifiable under the imperative and overruling law of self-preservation.

"The Island of Cuba, from its geographical position, commands the mouth of the Mississippi and the immense and annually increasing trade, foreign and coastwise, from the valley of that noble river, now embracing half the sovereign States of the Union. With that island under the dominion of a distant foreign power this trade, of vital importance to these States, is exposed to the danger of being destroyed in time of war, and it has hitherto been subjected to perpetual injury and annoyance in time of peace. . . .

"Whilst the possession of the island would be of vast importance to the United States, its value to Spain is comparatively unimportant. Such was the relative situation of the parties when the great Napoleon transferred Louisiana to the United States."

President Buchanan, annual message, Dec. 6, 1858; Richardson's Messages, V. 510.

Mr. Slidell's report on acquisition of Cuba, Jan. 24, 1859, is in S. Rept. 351, 35 Cong. 2 sess.

For minority report, of Jan. 24, 1859, of committee in the House of Representatives, objecting to the bill appropriating $30,000,000 for the purchase of Cuba, see H. Rept. 134, 35 Cong. 2 sess.

On May 7, 1867, Mr. Seward had a confidential interview with Mr. Goni, Spanish minister, upon the subject of the condition of Cuba and its connection with Spain. Mr. Seward intimated an opinion that Cuba would eventually, "by means of constant gravitation," "fall into the United States, without the practice of any injustice or unfriendliness and with the consent of the people of the island and of the Government of Spain." The United States, said Mr. Seward, were content that Cuba should indefinitely remain a colony of Spain, but they must regard with very great concern its transfer to any foreign power; and the subject had recently been forced upon his thoughts for the reason (1) that Cuba, being so near the United States, still remained a slave-holding province; (2) that a change in the relations of Cuba and Spain had more than once been suggested in quarters hostile to the Spanish Government; (3) that it was reported that a pledge of the financial chest of Cuba had been offered by the Spanish Government to American capitalists as security for a loan, and that the suggestion had been made that Congress might think it well to accept the pledge and lend its credit to such a loan; (4) that a report, apparently originating in Madrid, had been published to the effect that the Spanish Government had offered the Cuban revenues to French capitalists as security for a loan. In view of these facts Mr. Seward thought it proper to say to Mr. Goni that, if the Government of Spain either had or should have a desire to sell the island or pledge its revenues, it was hoped that they would make their wishes known to the United States before concluding an arrangement for such a purpose with the government or subjects of any other nation. Mr. Seward said that he would ask no reply, and that the suggestion might remain under the seal of confidence.

Memorandum of Mr. Seward, May 7, 1867, MS. Notes to Spanish Leg. IX. 398.

Rumors having reached Washington that the Spanish Government was attempting to negotiate a loan in London or Paris with the revenues of Cuba as security, the American minister at London was instructed, while avoiding "an offensive attitude of interference," to say, in case he should find the rumors to be well founded, "that, in view of assurances given to this Government by the Spanish authorities, the United States can not regard such hypothecation or pledge with favor." The Government of the United States could not look with favor upon any arrangement which might "hypothecate or pledge the revenues of that island, or compromit any interests con-

nected therewith, or give to any foreign government a right to interpose in the affairs of Cuba."

Mr. Fish, Sec. of State, to Mr. Motley, min. to England, No. 128 (confid.), Jan. 10, 1870, MS. Inst. Great Britain, XXII. 161.

A similar instruction was addressed to Mr. Washburne, at Paris, with whom Mr. Motley was authorized to correspond on the subject, if necessary. (Ibid.)

Referring, nearly a year later, to a report that the Spanish Government intended to ask authority from the Cortes to raise a considerable loan on the pledge of the revenues of Cuba, Mr. Fish said: "The relations of this Government towards the island of Cuba are such that, while ourselves abstaining scrupulously from any effort to hasten the time when we believe that the connection of the island with Spain must cease, we can not contemplate with indifference, or in silence, any measures which may promise to give any possible ground of claim on the part of any foreign power to acquire any rights of ownership, or control, over that island or its revenues." (Mr. Fish, Sec. of State, to Mr. Moran, chargé at London, No. 26, Dec. 1, 1870, MS. Inst. Great Britain, XXII. 329.)

As a matter of fact such a pledge of the revenues of Cuba was subsequently given by the Spanish Government. (S. Doc. 62, 55 Cong. 3 sess. part 2, pp. 48–50 et seq.

(2) REFUSAL OF NEUTRALIZATION.

§ 951.

On August 21, 1825, Mr. King, American minister at London, transmitting a proposal from Canning that the United States, Great Britain, and France should sign either of three ministerial notes—one between Great Britain and the United States, one between the United States and France, and one between France and Great Britain—or else one tripartite note, signed by all, disclaiming each for itself any intention to occupy Cuba and protesting against such an occupation by either of the others. This proposal was declined by the United States, first, on the ground that to allay the apprehensions of the King of Spain with regard to the seizure of his colonial possessions by another power, might induce him to desire to prolong the war with his colonies. Viewing the matter in another light, the Government of the United States considered it unnecessary to make any declaration on its own part because of its pacific policy and the forbearance which it had already shown. Nor was any apprehension felt that Great Britain would entertain "views of aggrandizement in regard to Cuba, which could not fail to lead to a rupture with the United States." The case of France might be different, and the fact that instructions had been given to the commander of the French forces in the West Indies to aid the governor of Havana in quelling internal disturbances, proved that the French Government had delib-

erated on a contingent occupation of Cuba; and possession once gained, it might be retained under one pretext or another. "With the view, therefore," said the Government of the United States, "of binding France by some solemn and authentic act to the same course of forbearance which the United States and Great Britain have mutually prescribed to themselves, the President sees no great objection, at present, to acceding to one or other of the two alternatives contained in Mr. Canning's proposal. As information, however, is shortly expected from Russia as to the manner in which the Emperor has received the invitation to employ his friendly offices to bring about a peace, no instruction will now be given you as to the definitive answer to be communicated to the British Government. In the meantime you are authorized to disclose to it the sentiments and views contained in this dispatch."

Mr. Clay, Sec. of State, to Mr. King, min. to England, No. 7, Oct. 17, 1825, MS. Inst. U. States Ministers, X. 394.

On September 8, 1825, Canning wrote to Mr. King that the French Government, after having encouraged the overture of the British ambassador in a manner which led him to believe that France would willingly concur in the proposed declaration respecting the Spanish islands, had suddenly changed its language and formally declined to accede to the proposal. Under these circumstances, it seemed to the President to be altogether useless and improper for the United States to unite with Great Britain in repeating the proposal to France; and the United States instructed its minister at Paris to inform the French Government that under no contingency, with or without the consent of Spain, could the United States agree to the occupation of Cuba or Porto Rico by France.

Mr. Clay, Sec. of State, to Mr. King, min. to England, No. 8, Oct. 26, 1825, MS. Inst. U. States Ministers, X. 405.

As to the attitude which the United States would assume in case one of the South American States then at war with Spain should attack Cuba and carry on the war in a "desolating manner," see Mr. Clay, Sec. of State, to Mr. Middleton, min. to Russia, Dec. 26, 1825, Am. State Papers, For. Rel., V. 850.

On December 7, 1825, Mr. Clay instructed Mr. Thomas B. Robertson, of New Orleans, to go to Cuba as a confidential agent to report on the condition of affairs in the island. March 12, 1827, Mr. Clay appointed Daniel P. Cook as a confidential agent to Cuba for a similar purpose. On March 30, 1829, James A. Hamilton, as Acting Secretary of State, instructed Richard K. Call to proceed to Cuba as a special agent. The object of Call's visit, however, was to obtain documents relating to land titles in the Floridas. (MS. Inst. U. States Ministers, X. 418; XI. 267; XII. 214.)

"Mr. Rives writes that a treaty has been entered into between France, Spain, and Great Britain to guarantee Cuba to Spain; but

does not send it, or its contents or date. The English *chargé* gives us notice that England has ordered her vessels to protect Cuba against the unlawful invasion from this country, but says he knows of no treaty. Mr. Rives has been written to for further information. It appears to me that such a step on the part of Great Britain is ill-advised; and, if the attempt upon Cuba shall be resumed (which I trust they will not be), any attempt to prevent such expeditions by British cruisers must necessarily involve a right of search into our whole mercantile marine in those seas, to ascertain who ought to be arrested, and who ought to pass, and this would be extremely annoying, and well calculated to disturb the friendly relations now existing between the two Governments."

President Fillmore to Mr. Webster, Sec. of State, Washington, Oct. 2, 1851, 2 Curtis's Life of Webster, 551.

"The information communicated by Mr. Rives, if true, may become important; but we must wait, to learn its particulars. I doubt exceedingly whether the English Government would do so rash a thing as to interfere with American vessels, on the seas, under pretense of their containing Cuban invaders. This could never be submitted to. I do not think that any further attempt is likely to be made at present, by these lawless people, as I do not see where they can now raise the funds, and therefore I hope we may have no more trouble. If an official communication be made to us of such a treaty as Mr. Rives supposes may have been entered into, it will deserve close consideration. We must look to our own antecedents. In General Jackson's time, it was intimated to Spain, by our Government, that if she would not cede Cuba to any European power, we would assist her in maintaining possession of it. A lively fear existed, at that time, that England had designs upon the island. The same intimation was given to Spain, through Mr. Irving, when I was formerly in the Department of State. Mr. J. Quincy Adams often said that, if necessary, we ought to make war with England sooner than to acquiesce in her acquisition of Cuba. It is indeed obvious enough what danger there would be to us, if a great naval power were to possess this key to the Gulf of Mexico and the Caribbean Sea. Before receiving your letter, I had made up my mind that, if this matter of the treaty between England and France should be announced to us, and should seem to require immediate attention, I would hasten to Washington."

Mr. Webster, Sec. of State, to President Fillmore, Marshfield, Oct. 4, 1851, 2 Curtis's Life of Webster, 551.

For an account of the application of the doctrine of intervention to the West Indies by European powers, and of the position of the United States, see Phillimore Int. Law, I. (3d ed.) 600.

Reports made by heads of Departments on June 3 and June 19, 1850, on revolutionary movement in Cuba, will be found in S. Ex. Doc. 57, 31 Cong. 1 sess.

"There is no doubt that Lord Malmesbury has justly described the course of policy which has influenced the Government of the United States heretofore in regard to the island of Cuba. It has been stated, and often repeated, to the Government of Spain by this Government, under various administrations, not only that the United States have no design upon Cuba themselves, but that if Spain should refrain from a voluntary cession of the island to any other European power, she might rely on the countenance and friendship of the United States, to assit her in the defense and preservation of that island. At the same time it has always been declared to Spain that the Government of the United States could not be expected to acquiesce in the cession of Cuba to an European power. The undersigned is happy in being able to say that the present Executive of the United States entirely approves of this past policy of the Government, and fully concurs in the general sentiments expressed by Lord Malmesbury, and understood to be identical with those entertained by the Government of France. The President will take Mr. Crampton's communication into consideration, and give it his best reflections. But the undersigned deems it his duty, at the same time, to remind Mr. Crampton and, through him, his Government, that the policy of the United States has uniformly been to avoid, as far as possible, alliances or agreements with other states, and to keep itself free from national obligations, except such as affect directly the interests of the United States themselves."

Mr. Webster, Sec. of State, to Mr. Crampton, British min., April 29, 1852, 44 Br. & For. State Papers, 122; MS. Notes to British Leg. VII. 309. An identic note was sent to the French minister. (Mr. Webster, Sec. of State, to M. de Sartiges, April 29, 1852, MS. Notes to French Leg. VI. 176.)

"You are well acquainted with the melancholy circumstances which have hitherto prevented a reply to the note which you addressed to my predecessor on the 8th of July.

"That note, and the instruction of M. de Turgot of the 31st March, with a similar communication from the English minister, and the *projet* of a convention between the three powers relative to Cuba, have been among the first subjects to which my attention has been called by the President.

"The substantial portion of the proposed convention is expressed in a single article in the following terms:

"'The high contracting parties hereby, severally and collectively, disclaim, now and for hereafter, all intention to obtain possession of the island of Cuba, and they respectively bind themselves to discountenance all attempt to that effect on the part of any power or individuals whatever.'

"'The high contracting parties declare, severally and collectively, that they will not obtain or maintain for themselves, or for any one of themselves, any exclusive control over the said island, nor assume nor exercise any dominion over the same.'

"The President has given the most serious attention to this proposal, to the notes of the French and British ministers accompanying it, and to the instructions of M. de Turgot and the Earl of Malmesbury, transmitted with the project of the convention, and he directs me to make known to you the view which he takes of this important and delicate subject.

"The President fully concurs with his predecessors, who have on more than one occasion authorized the declaration referred to by M. de Turgot and Lord Malemsbury, that the United States could not see with indifference the island of Cuba fall into the possession of any other European Government than Spain; not, however, because we should be dissatisfied with any natural increase of territory and power on the part of France or England. France has, within twenty years, acquired a vast domain on the northern coast of Africa, with a fair prospect of indefinite extension. England, within half a century, has added very extensively to her Empire. These acquisitions have created no uneasiness on the part of the United States.

"In like manner, the United States have, within the same period, greatly increased their territory. The largest addition was that of Louisiana, which was purchased from France. These accessions of territory have probably caused no uneasiness to the great European powers, as they have been brought about by the operation of natural causes, and without any disturbance of the international relations of the principal states. They have been followed, also, by a great increase of mutually beneficial commercial intercourse between the United States and Europe.

"But the case would be different in reference to the transfer of Cuba from Spain to any other European power. That event could not take place without a serious derangement of the international system now existing, and it would indicate designs in reference to this hemisphere which could not but awaken alarm in the United States.

"We should view it in somewhat the same light in which France and England would view the acquisition of some important island in the Mediterranean by the United States, with this difference, it is true; that the attempt of the United States to establish themselves in Europe would be a novelty, while the appearance of a European power in this part of the world is a familiar fact. But this difference in the two cases is merely historical, and would not diminish the anxiety which, on political grounds, would be caused by any great demonstration of European power in a new direction in America.

"M. de Turgot states that France could never see with indifference the possession of Cuba by *any* power but Spain, and explicitly declares that she has no wish or intention of appropriating the island to herself; and the English minister makes the same avowal on behalf of his Government. M. de Turgot and Lord Malmesbury do the Government of the United States no more than justice in remarking that they have often pronounced themselves substantially in the same sense. The President does not covet the acquisition of Cuba for the United States; at the same time, he considers the condition of Cuba as mainly an American question. The proposed convention proceeds on a different principle. It assumes that the United States have no other or greater interest in the question than France or England; whereas it is necessary only to cast one's eye on the map to see how remote are the relations of Europe, and how intimate those of the United States, with this island.

"The President, doing full justice to the friendly spirit in which his concurrence is invited by France and England, and not insensible to the advantages of a good understanding between the three powers in reference to Cuba, feels himself, nevertheless, unable to become a party to the proposed compact, for the following reasons:

"It is, in the first place, in his judgment, clear (as far as the respect due from the Executive to a coordinate branch of the Government will permit him to anticipate its decision) that no such convention would be viewed with favor by the Senate. Its certain rejection by that body would leave the question of Cuba in a more unsettled position than it is now. This objection would not require the President to withhold his concurrence from the convention if no other objection existed, and if a strong sense of the utility of the measure rendered it his duty, as far as the executive action is concerned, to give his consent to the arrangement. Such, however, is not the case.

"The convention would be of no value unless it were lasting: accordingly its terms express a perpetuity of purpose and obligation. Now, it may well be doubted whether the Constitution of the United States would allow the treaty-making power to impose a permanent disability on the American Government for all coming time, and prevent it, under any future change of circumstances, from doing what has been so often done in times past. In 1803 the United States purchased Louisiana of France; and in 1819 they purchased Florida of Spain. It is not within the competence of the treaty-making power in 1852 effectually to bind the Government in all its branches; and, for all coming time, not to make a similar purchase of Cuba. A like remark, I imagine, may be made even in reference both to France and England, where the treaty-making power is less subject than it is with us to the control of other branches of the Government.

"There is another strong objection to the proposed agreement. Among the oldest traditions of the Federal Government is an aversion to political alliances with European powers. In his memorable farewell address, President Washington says: 'The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.' President Jefferson, in his inaugural address in 1801, warned the country against 'entangling alliances.' This expression, now become proverbial, was unquestionably used by Mr. Jefferson in reference to the alliance with France of 1778—an alliance, at the time, of incalculable benefit to the United States; but which, in less than twenty years, came near involving us in the wars of the French revolution, and laid the foundation of heavy claims upon Congress, not extinguished to the present day. It is a significant coincidence, that the particular provision of the alliance which occasioned these evils was that, under which France called upon us to aid her in defending her West Indian possessions against England. Nothing less than the unbounded influence of Washington rescued the Union from the perils of that crisis, and preserved our neutrality.

"But the President has a graver objection to entering into the proposed convention. He has no wish to disguise the feeling that the compact, although equal in its terms, would be very unequal in substance. France and England, by entering into it, would disable themselves from obtaining possession of an island remote from their seats of government, belonging to another European power, whose natural right to possess it must always be as good as their own—a distant island in another hemisphere, and one which by no ordinary or peaceful course of things could ever belong to either of them. If the present balance of power in Europe should be broken up, if Spain should become unable to maintain the island in her possession, and France and England should be engaged in a death struggle with each other, Cuba might then be the prize of the victor. Till these events all take place, the President does not see how Cuba can belong to any European power but Spain.

"The United States, on the other hand, would, by the proposed convention, disable themselves from making an acquisition which might take place without any disturbance of existing foreign relations, and in the natural order of things. The island of Cuba lies at our doors. It commands the approach to the Gulf of Mexico, which washes the shores of five of our States. It bars the entrance of that great river which drains half the North American continent, and with its tributaries forms the largest system of internal water-communication in the world. It keeps watch at the door-way of our intercourse

with California by the Isthmus route. If an island like Cuba, belonging to the Spanish Crown, guarded the entrance of the Thames and the Seine, and the United States should propose a convention like this to France and England, those powers would assuredly feel that the disability assumed by ourselves was far less serious than that which we asked them to assume.

"The opinions of American statesmen, at different times, and under varying circumstances, have differed as to the desirableness of the acquisition of Cuba by the United States. Territorially and commercially it would, in our hands, be an extremely valuable possession. Under certain contingencies it might be almost essential to our safety. Still, for domestic reasons, on which, in a communication of this kind, it might not be proper to dwell, the President thinks that the incorporation of the island into the Union at the present time, although effected with the consent of Spain, would be a hazardous measure; and he would consider its acquisition by force, except in a just war with Spain, (should an event so greatly to be deprecated take place,) as a disgrace to the civilization of the age.

"The President has given ample proof of the sincerity with which he holds these views. He has thrown the whole force of his constitutional power against all illegal attacks upon the island. It would have been perfectly easy for him, without any seeming neglect of duty, to allow projects of a formidable character to gather strength by connivance. No amount of obloquy at home, no embarrassments caused by the indiscretions of the colonial government of Cuba, have moved him from the path of duty in this respect. The captain-general of that island, an officer apparently of upright and conciliatory character, but probably more used to military command than the management of civil affairs, has, on a punctilio in reference to the purser of a private steamship, (who seems to have been entirely innocent of the matters laid to his charge,) refused to allow passengers and the mails of the United States to be landed from a vessel having him on board. This certainly is a very extraordinary mode of animadverting upon a supposed abuse of the liberty of the press by the subject of a foreign Government in his native country. The captain-general is not permitted by his Government, 3,000 miles off, to hold any diplomatic intercourse with the United States. He is subject in no degree to the direction of the Spanish minister at Washington; and the President has to choose between a resort to force, to compel the abandonment of this gratuitous interruption of commercial intercourse, (which would result in war,) and a delay of weeks and months, necessary for a negotiation with Madrid, with all the chances of the most deplorable occurrences in the interval—and all for a trifle, that ought to have admitted a settlement by an exchange of notes between Washington and the Havana. The President has,

however, patiently submitted to these evils, and has continued faithfully to give to Cuba the advantages of those principles of the public law under the shelter of which she has departed, in this case, from the comity of nations. But the incidents to which I allude, and which are still in train, are among many others which point decisively to the expediency of some change in the relations of Cuba; and the President thinks that the influence of France and England with Spain would be well employed in inducing her so to modify the administration of the Government of Cuba as to afford the means of some prompt remedy for evils of the kind alluded to, which have done much to increase the spirit of unlawful enterprise against the island.

"That a convention such as is proposed would be a transitory arrangement, sure to be swept away by the irresistible tide of affairs in a new country, is, to the apprehension of the President, too obvious to require a labored argument. The project rests on principles applicable, if at all, to Europe, where international relations are, in their basis, of great antiquity, slowly modified, for the most part, in the progress of time and events; and not applicable to America, which, but lately a waste, is filling up with intense rapidity, and adjusting on natural principles those territorial relations which, on the first discovery of the continent, were in a good degree fortuitous.

"The comparative history of Europe and America, even for a single century, shows this. In 1752 France, England, and Spain were not materially different in their political position in Europe from what they are now. They were ancient, mature, consolidated states, established in their relations with each other and the rest of the world—the leading powers of western and southern Europe. Totally different was the state of things in America. The United States had no existence as a people; a line of English colonies, not numbering much over a million of inhabitants, stretched along the coast. France extended from the Bay of Saint Lawrence to the Gulf of Mexico, and from the Alleghanies to the Mississippi; beyond which, westward, the continent was a wilderness, occupied by wandering savages, and subject to a conflicting and nominal claim on the part of France and Spain. Everything in Europe was comparatively fixed; everything in America provisional, incipient, and temporary, except the law of progress, which is as organic and vital in the youth of states as of individual men. A struggle between the provincial authorities of France and England for the possession of a petty stockade at the confluence of the Monongahela and Alleghany, kindled the seven years' war; at the close of which, the great European powers, not materially affected in their relations at home, had undergone astonishing changes on this continent. France had disappeared from the map of America, whose inmost recesses had been penetrated by her zealous missionaries and her resolute and gallant adventurers;

England had added the Canadas to her transatlantic dominions; Spain had become the mistress of Louisiana, so that, in the language of the archbishop of Mexico, in 1770, she claimed Siberia as the northern boundary of New Spain.

"Twelve years only from the treaty of Paris elapsed, and another great change took place, fruitful of still greater changes to come. The American Revolution broke out. It involved France, England, and Spain in a tremendous struggle, and at its close the United States of America had taken their place in the family of nations. In Europe the ancient states were restored substantially to their former equilibrium; but a new element, of incalculable importance in reference to territorial arrangements, is henceforth to be recognized in America.

"Just twenty years from the close of the war of the American Revolution, France, by a treaty with Spain—of which the provisions have never been disclosed—possessed herself of Louisiana, but did so only to cede it to the United States; and in the same year Lewis and Clark started on their expedition to plant the flag of the United States on the shores of the Pacific. In 1819 Florida was sold by Spain to the United States, whose territorial possessions in this way had been increased threefold in half a century. This last acquisition was so much a matter of course that it had been distinctly foreseen by the Count Aranda, then prime minister of Spain, as long ago as 1783.

"But even these momentous events are but the forerunners of new territorial revolutions still more stupendous. A dynastic struggle between the Emperor Napoleon and Spain, commencing in 1808, convulsed the peninsula. The vast possessions of the Spanish Crown on this continent—vice-royalties and captain-generalships, filling the space between California and Cape Horn—one after another, asserted their independence. No friendly power in Europe, at that time, was able, or, if able, was willing, to succor Spain, or aid her to prop the crumbling buttresses of her colonial empire. So far from it, when France, in 1823, threw an army of one hundred thousand men into Spain to control her domestic policies, England thought it necessary to counteract the movement by recognizing the independence of the Spanish provinces in America. In the remarkable language of the distinguished minister of the day, in order to redress the balance of power in Europe, he called into existence a New World in the West—somewhat overrating, perhaps, the extent of the derangement in the Old World, and not doing full justice to the position of the United States in America, or their influence on the fortunes of their sister republics on this continent.

"Thus, in sixty years from the close of the seven years' war, Spain, like France, had lost the last remains of her once imperial possessions on this continent. The United States, meantime, were, by the arts of

peace and the healthful progress of things, rapidly enlarging their dimensions and consolidating their power.

"The great march of events still went on. Some of the new republics, from the effect of a mixture of races, or the want of training in liberal institutions, showed themselves incapable of self-government. The province of Texas revolted from Mexico by the same right by which Mexico revolted from Spain. At the memorable battle of San Jacinto, in 1836, she passed the great ordeal of nascent states, and her independence was recoginzed by this Government, by France, by England, and other European powers. Mainly peopled from the United States, she sought naturally to be incorporated into the Union. The offer was repeatedly rejected by Presidents Jackson and Van Buren, to avoid a collision with Mexico. At last the annexation took place. As a domestic question, it is no fit subject for comment in a communication to a foreign minister; as a question of public law, there never was an extension of territory more naturally or justifiably made.

"It produced a disturbed relation with the Government of Mexico; war ensued, and in its results other extensive territories were for a large pecuniary compensation on the part of the United States, added to the Union. Without adverting to the divisions of opinion which arose in reference to this war, as must always happen in free countries in reference to great meaures, no person surveying these events with the eye of a comprehensive statesmanship can fail to trace in the main result the undoubted operation of the law of our political existence. The consequences are before the world. Vast provinces, which had languished for three centuries under the leaden sway of a stationary system, are coming under the influences of an active civilization. Freedom of speech and the press, the trial by jury, religious equality, and representative government, have been carried by the Constitution of the United States into extensive regions in which they were unknown before. By the settlement of California, the great circuit of intelligence round the globe is completed. The discovery of the gold of that region—leading, as it did, to the same discovery in Australia—has touched the nerves of industry throughout the world. Every addition to the territory of the American Union has given homes to European destitution and gardens to European want. From every part of the United Kingdom, from France, from Switzerland and Germany, and from the extremest north of Europe, a march of immigration has been taken up, such as the world has never seen before. Into the United States—grown to their present extent in the manner described—but little less than half a million of the population of the Old World is annually pouring, to be immediately incorporated into an industrious and prosperous community, in the bosom of which they find political and religious liberty, social position, employment, and

bread. It is a fact which would defy belief, were it not the result of official inquiry, that the immigrants to the United States from Ireland alone, besides having subsisted themselves, have sent back to their kindred, for the three last years, nearly five million of dollars annually; thus doubling in three years the purchase money of Louisiana.

"Such is the territorial development of the United States in the past century. Is it possible that Europe can contemplate it with an unfriendly or jealous eye? What would have been her condition in these trying years but for the outlet we have furnished for her starving millions?

"Spain, meantime, has retained of her extensive dominions in this hemisphere but the two islands of Cuba and Porto Rico. A respectful sympathy with the fortunes of an ancient ally and a gallant people, with whom the United States have ever maintained the most friendly relations, would, if no other reason existed, make it our duty to leave her in the undisturbed possession of this little remnant of her mighty trans-Atlantic empire. The President desires to do so; no word or deed of his will ever question her title or shake her possession. But can it be expected to last very long? Can it resist this mighty current in the fortunes of the world? Is it desirable that it should do so? Can it be for the interest of Spain to cling to a possession that can only be maintained by a garrison of twenty-five or thirty thousand troops, a powerful naval force, and an annual expenditure for both arms of the service of at least twelve millions of dollars? Cuba, at this moment, costs more to Spain than the entire naval and military establishment of the United States costs the Federal Government. So far from being really injured by the loss of this island, there is no doubt that, were it peacefully transferred to the United States, a prosperous commerce between Cuba and Spain, resulting from ancient associations and common language and tastes, would be far more productive than the best contrived system of colonial taxation. Such, notoriously, has been the result to Great Britain of the establishment of the independence of the United States. The decline of Spain from the position which she held in the time of Charles the Fifth is coeval with the foundation of her colonial system: while within twenty-five years, and since the loss of most of her colonies, she has entered upon a course of rapid improvement unknown since the abdication of that Emperor.

"I will but allude to an evil of the first magnitude: I mean the African slave-trade, in the suppression of which France and England take a lively interest—an evil which still forms a great reproach upon the civilization of Christendom, and perpetuates the barbarism of Africa, but for which it is to be feared there is no hope of a complete remedy while Cuba remains a Spanish colony.

"But, whatever may be thought of these last suggestions, it would seem impossible for anyone who reflects upon the events glanced at in this note to mistake the law of American growth and progress, or think it can be ultimately arrested by a convention like that proposed. In the judgment of the President, it would be as easy to throw a dam from Cape Florida to Cuba, in the hope of stopping the flow of the Gulf Stream, as to attempt, by a compact like this, to fix the fortunes of Cuba 'now and for hereafter;' or, as expressed in the French text of the convention, 'for the present as for the future,' (*pour le present comme pour l'avenir*,) that is, for all coming time. The history of the past—of the recent past—affords no assurance that twenty years hence France or England will even wish that Spain should retain Cuba; and a century hence, judging of what will be from what has been, the pages which record this proposition will, like the record of the family compact between France and Spain, have no interest but for the antiquary.

"Even now the President can not doubt that both France and England would prefer any change in the condition of Cuba to that which is most to be apprehended, viz: An internal convulsion which should renew the horrors and the fate of San Domingo.

"I will intimate a final objection to the proposed convention. M. de Turgot and Lord Malmesbury put forward, as the reason for entering into such a compact, 'the attacks which have lately been made on the island of Cuba by lawless bands of adventurers from the United States, with the avowed design of taking possession of that island.' The President is convinced that the conclusion of such a treaty, instead of putting a stop to these lawless proceedings, would give a new and powerful impulse to them. It would strike a death-blow to the conservative policy hitherto pursued in this country toward Cuba. No administration of this Government, however strong in the public confidence in other respects, could stand a day under the odium of having stipulated with the great powers of Europe, that in no future time, under no change of circumstances, by no amicable arrangement with Spain, by no act of lawful war, (should that calamity unfortunately occur,) by no consent of the inhabitants of the island, should they, like the possessions of Spain on the American continent, succeed in rendering themselves independent: in fine, by no overruling necessity of self-preservation should the United States ever make the acquisition of Cuba.

"For these reasons, which the President has thought it advisable, considering the importance of the subject, to direct me to unfold at some length, he feels constrained to decline respectfully the invitation of France and England to become a party to the proposed convention. He is persuaded that these friendly powers will not attribute this refusal to any insensibility on his part to the advantages of the utmost

harmony between the great maritime states on a subject of such importance. As little will Spain draw any unfavorable inference from this refusal; the rather, as the emphatic disclaimer of any designs against Cuba on the part of this Government, contained in the present note, affords all the assurance which the President can constitutionally, or to any useful purpose, give of a practical concurrence with France and England in the wish not to disturb the possession of that island by Spain."

Mr. Everett, Sec. of State, to the Count Sartiges, Dec. 1, 1852, S. Ex. Doc. 13, 32 Cong. 2 sess. 15. This document was reprinted, with an appendix, by Messrs. Little, Brown & Co., at Boston, in 1853.

The same note of Dec. 1, 1852, addressed, mutatis mutandis, to Mr. Crampton, the British minister at Washington, is printed in 44 Br. & For. State Papers, 197, where it is preceded by much other correspondence showing the historic policy of the United States toward Cuba. The draft of the proposed tripartite convention is given at page 116.

The reply of Lord John Russell of Feb. 16, 1853, to Mr. Everett's note of Dec. 1, 1852, may be found in the same volume, at page 232. A personal and unofficial rejoinder by Mr. Everett, dated Sept. 17, 1853, may be found in the appendix to the Little, Brown & Co. reprint, above referred to; also, in Wharton's Int. Law Digest, I. 571–578.

"Lord John Russell took my letter of the 17th Sept., 1853, in good part, and wrote me a very civil private letter on the subject." (Mr. Everett to Mr. Wm. Hunter, May 11, 1855, MS.)

The controversy is reviewed by Mr. Wm. Henry Trescot, in the Southern Quarterly Review, N. S., IX. (April, 1854) 429.

Mr. Everett's position is approved in Mr. Marcy, Sec. of State, to Mr. Buchanan, min. to England, July 2, 1853, MS. Inst. Great Britain, XVI. 220.

"That rich island [Cuba], the key to the Gulf of Mexico and the field for our most extended trade in the Western hemisphere, is, though in the hands of Spain, a part of the American commercial system. Our relations, present and prospective, toward Cuba, have never been more ably set forth than in the remarkable note addressed by my predecessor, Mr. Secretary Everett, to the ministers of Great Britain and France in Washington, on the 1st of December, 1852, in rejection of the suggested tripartite alliance to forever determine the neutrality of the Spanish Antilles. In response to the proposal that the United States, Great Britain, and France, should severally and collectively agree to forbid the acquisition of control over Cuba, by any or all of them, Mr. Everett showed that, without forcing or even coveting possession of the island, its condition was essentially an American question; that the renunciation forever by this Government of contingent interest therein would be far broader than the like renunciation by Great Britain or France; that, if ever ceasing to be Spanish, Cuba must necessarily become American, and not fall under any other European domination, and that the ceaseless movement of

segregation of American interests from European control and unification in a broader American sphere of independent life could not and should not be checked by any arbitrary agreement.

"Nearly thirty years have demonstrated the wisdom of the attitude then maintained by Mr. Everett, and have made indispensable its continuance and its extension to all parts of the American Atlantic system where a disturbance of the existing status might be attempted in the interest of foreign powers. The present attitude of this Government toward any European project for the control of an isthmian route is but the logical sequence of the resistance made in 1852 to the attempted pressure of an active foreign influence in the West Indies."

Mr. Blaine, Sec. of State, to Mr. Comly, min. to Hawaii, Dec. 1, 1881, For. Rel. 1881, 635, 637.

(3) INDEPENDENCE.

§ 952.

See, as to intervention in Cuba, supra, §§ 906–910.

"The withdrawal of the authority of Spain from the island of Cuba was affected by the 1st of January, so that the full reestablishment of peace found the relinquished territory held by us in trust for the inhabitants, maintaining, under the direction of the Executive, such government and control therein as should conserve public order, restore the productive conditions of peace so long disturbed by the instability and disorder which prevailed for the greater part of the preceding three decades, and build up that tranquil development of the domestic state whereby alone can be realized the high purpose, as proclaimed in the joint resolution adopted by the Congress on the 19th of April, 1898, by which the United States disclaimed any disposition or intention to exercise sovereignty, jurisdiction, or control over Cuba, except for the pacification thereof, and asserted its determination when that was accomplished to leave the government and control of the island to its people. The pledge contained in this resolution is of the highest honorable obligation and must be sacredly kept.

"I believe that substantial progress has been made in this direction. All the administrative measures adopted in Cuba have aimed to fit it for a regenerated existence by enforcing the supremacy of law and justice; by placing wherever practicable the machinery of administration in the hands of the inhabitants; by instituting needed sanitary reforms; by spreading education; by fostering industry and trade; by inculcating public morality, and, in short, by taking every rational step to aid the Cuban people to attain to that plane of self-conscious respect and self-reliant unity which fits an enlightened

community for self-government within its own sphere, while enabling it to fulfill all outward obligations.

"This nation has assumed before the world a grave responsibility for the future good government of Cuba. We have accepted a trust the fulfillment of which calls for the sternest integrity of purpose and the exercise of the highest wisdom. The new Cuba yet to arise from the ashes of the past must needs be bound to us by ties of singular intimacy and strength if its enduring welfare is to be assured. Whether those ties shall be organic or conventional, the destinies of Cuba are in some rightful form and manner irrevocably linked with our own, but how and how far is for the future to determine in the ripeness of events. Whatever be the outcome, we must see to it that free Cuba be a reality, not a name, a perfect entity, not a hasty experiment bearing within itself the elements of failure. Our mission, to accomplish which we took up the wager of battle, is not to be fulfilled by turning adrift any loosely framed commonwealth to face the vicissitudes which too often attend weaker states whose natural wealth and abundant resources are offset by the incongruities of their political organization and the recurring occasions for internal rivalries to sap their strength and dissipate their energies."

President McKinley, annual message, Dec. 5, 1899, For. Rel. 1901, xxxi.

"In Cuba such progress has been made toward putting the independent government of the island upon a firm footing that before the present session of the Congress closes this will be an accomplished fact. Cuba will then start as her own mistress; and to the beautiful Queen of the Antilles, as she unfolds this new page of her destiny, we extend our heartiest greetings and good wishes. Elsewhere I have discussed the question of reciprocity. In the case of Cuba, however, there are weighty reasons of morality and of national interest why the policy should be held to have a peculiar application, and I most earnestly ask your attention to the wisdom, indeed to the vital need, of providing for a substantial reduction in the tariff duties on Cuban imports into the United States. Cuba has in her constitution affirmed what we desired, that she should stand, in international matters, in closer and more friendly relations with us than with any other power; and we are bound by every consideration of honor and expediency to pass commercial measures in the interest of her material well-being."

President Roosevelt, annual message, Dec. 3, 1901, For. Rel. 1901, xxxi.

See, supra, § 910, for the independence of Cuba and the Platt amendment.

A reciprocity treaty was concluded with Cuba Dec. 11, 1902, and was proclaimed, Dec. 17, 1903.

8. Ecuador.

§ 953.

"The military and naval expedition which General Flores, formerly President of Ecuador, organized a year or two since in Europe for the supposed purpose of recovering his authority, connived at as it was believed to have been by some of the monarchical governments of that quarter, created great alarm, not only in Ecuador itself but in the neighboring republics, from the apprehension that its ulterior were more extensive and important than its ostensible designs. It was fortunately arrested, however, before its departure. Señor Don Manuel Bustamente, the minister for foreign affairs of Ecuador, addressed to this Department an interesting communication upon the subject under date the 26th November 1846, which was received about the same time that intelligence of the failure of the expedition reached this city. Owing to this circumstance, the note was not formally answered, as any proceedings of this Government with reference to the expendition was rendered unnecessary. General Castilla, the President of Peru, also made an informal application in regard to it to Mr. Prevost, the consul of the United States at Lima. The accompanying extract from a letter of this Department to Mr. Prevost embodies the views of the President relative to the expedition, and you may at a proper time communicate the same to the Ecuadorian minister for foreign affairs. You will also assure him that the intervention or dictation, direct or indirect, of European governments in the affairs of the independent states of the American Hemisphere, will never be viewed with indifference by the Government of the United States. On the contrary all the moral means at least, within their power, shall upon every occasion be employed to discourage and arrest such interference."

Mr. Buchanan, Sec. of State, to Mr. Livingston, min. to Ecuador, May 13, 1848, MS. Inst. Ecuador, I. 3.

The Government of Colombia, having sought to bring about a reunion with Ecuador, received from the French minister at Bogotá a communication which was understood to imply a conditional threat of French interference. This fact having been made known by Colombia to the United States, the latter, in order to quiet apprehensions, asked explanations of the Government of France. The French Government promptly disclaimed the design attributed to it. The inquiry was made by the United States not in the interest of Colombia as against Ecuador, but in the interest of Ecuador not less than that of Colombia. (Mr. Seward, Sec. of State, to Mr. Hassaurek, min. to Ecuador, No. 59, Dec. 14, 1863, MS. Inst. Ecuador, I. 139.)

See, also, Mr. Seward to Mr. Hassaurek, No. 61, Jan. 11, 1864, MS. Inst. Ecuador, I. 141.

9. Hayti.

§ 954.

Emile Lueders, who was born in Hayti of German parents, was educated in Germany, and served in German army, cavalry branch, in a regiment in which the Kaiser was colonel. He afterwards returned to Hayti, where he engaged in the livery business. On a certain occasion a policeman without warrant entered his place of business to arrest an employee for retaining a key valued at 25 cents. A disturbance occurred, and Lueders, on ascertaining the cause, ordered the policeman to leave his premises; and he afterwards complained against the policeman to the bureau of police. Lueders, however, was arrested on a charge of assaulting a policeman, was thrown into prison, and was tried and sentenced to one month's imprisonment. He appealed and was tried again under another act, under which the right of appeal was denied to defendants. He was then fined $500 and sentenced to prison for a year. His employee was sentenced to six months. The German representative repeatedly asked for Lueders's release, but it was refused; and he finally cabled the matter to his Government, by which he was directed to see the President and demand Lueders's release, the removal from office of the justices who convicted him, the imprisonment of the policeman who made the charge, an indemnity of $1,000 a day for each day's imprisonment before the second judgment and $5,000 for every day thereafter. The German representative presented this demand to the President in person on a Sunday, at a public reception, without addressing the foreign office. The President, offended, refused to receive the demand. The United States minister, however, secured Lueders's release and sent him to New York. The Haytian Government wished to refer the matter to arbitration. The German Government declined, and demanded that the President should make the "amende honorable," by hearing the Emperor's dispatch read, and that an indemnity of $20,000 must be paid. The Haytian Government at first refused either to pay or to apologize, maintaining that the German flag had not been insulted, and that the German representative had not been denied an interview, but it afterwards offered to pay the indemnity. On December 6, 1897, at 6 a. m. two German naval vessels arrived at Port au Prince, and the German commander sent word that he would shell the public buildings and forts at one o'clock unless the Haytian Government acceded to the following demands: (1) An indemnity of $30,000; (2) the return of Lueders and responsibility for his safety; (3) an apology for the treatment of the German Emperor's representative; (4) the renewal of relations and

the prompt acceptance of a German representative. The Haytian Government yielded to all the demands.

Mr. Sherman, Sec. of State, to Mr. Boutell, M. C., Dec. 29, 1897, 224 MS. Dom. Let. 32.

"This Government is not under any obligation to become involved in the constantly recurring quarrels of the republics of this hemisphere with other states. The Monroe doctrine, to which you refer, is wholly inapplicable to the case, and the relations and interests of this Government with its neighbors are not benefitted by erroneous conceptions of the scope of the policy announced by President Monroe and since strictly followed."

Mr. Sherman, Sec. of State, to Mr. Powell, min. to Hayti, No. 83, December 22, 1897, MS. Inst. Hayti, IV. 23.

"I have received your No. 134, of the 24th ultimo, in which you report that, in view of the 'severe lesson' of the recent German event, you have been approached by friends of the present Haytian administration 'to get the views of the Government of the United States, to arrange for a new treaty, in which they desire a closer alliance with us, virtually placing themselves under our protection.' You accordingly ask instructions in this regard. . . .

"It would be unfortunate if, by your reception of the overtures you now report, or in your intercourse with the Haytian administration or its friends, you have encouraged any impression that this Government entertains a policy in this relation other than that to which it has scrupulously adhered from the beginnings of our national life.

"You can not be unaware that the proposal for a congress of the American States to be held at Panama in 1825–6, rested on the theory that all of them, with the United States at their head, should stand pledged to mutual protection against foreign aggression looking to interference with their political organization, yet, even as to this important aspect of the question, this country held aloof, in the conviction that in any such system 'the United States would necessarily be its protector, and the party responsible to the world, while the Spanish-American States would get the benefits of a system of mutual protection which the United States did not need.' (See Dana's Wheaton, page 101, footnote.)

"Moreover, protectorates over our neighbors have never been advocated in our foreign policy, being contrary to the principles upon which this Government is founded. A protectorate, however qualified, assumes a greater or less degree of responsibility on the part of the protector for the acts of the protected state, without the ability to shape or control these acts, unless the relation created be

virtually that of colonial dependency, with paramount intervention of the protector in the domestic concerns of the protected community. Any such relation is obviously out of the question in an arrangement between sovereign states, and would assuredly never be proposed by a state so jealous of its independence as Hayti.

"These observations are made for your personal guidance in dealing with the embarrassing suggestions which, it would seem, are made to you by well-meaning persons, who have not considered the subject in its true lights. They are not intended for communication to such persons. You certainly should not proceed on the hypothesis that it is the duty of the United States to protect its American neighbors from the responsibilities which attend the exercise of independent sovereignty.

"It behooves me to enjoin upon you the utmost circumspection and reticence as to matters of this character in your intercourse with the Haytians, in order that your representative utility be not impaired, nor the true policies of your Government be misunderstood."

Mr. Sherman, Sec. of State, to Mr. Powell, min. to Hayti, No. 97, Jan. 11, 1898, MS. Inst. Hayti, III. 629.

The court of cassation of Hayti having held, in a litigation between German subjects, that the tribunals of the country were incompetent to entertain suits between aliens, except by consent of the parties, the German minister suggested that there should be established at Port au Prince, through the action of the foreign powers, an independent tribunal for the trial of such suits, its decisions to be respected and carried out by the Haytian Government.

The American minister at Port au Prince was instructed that the proposed measure "would appear to be such an essential interference with the sovereign rights of Hayti that the Government of the United States could not view it with approval," and that, if the rights of aliens resident or engaged in business in Hayti was seriously compromised by the want of jurisdiction in the Haytian courts he might, in the form of good offices, bring to the attention of the Government the defect in the administration of justice, and suggest to it the great importance of remedying the defect by independent legislation, conferring upon its courts the necessary jurisdiction. In so doing, however, he was to act independently of the diplomatic representatives of other states.

Mr. Hay, Sec. of State, to Mr. Powell, min. to Haiti, May 18, 1900, For. Rel. 1900, 712.

The Haitian minister of foreign relations assured Mr. Powell that during the then current session of the Chambers an appropriate law would be passed. (For. Rel. 1900, 713.)

10. Mexico.

(1) European interference opposed, 1825–1860.

§ 955.

"The other principle asserted in the message is, that whilst we do not desire to interfere in Europe, with the political system of the allied powers, we should regard, as dangerous to our peace and safety, any attempt, on their part, to extend their system to any portion of this hemisphere. The political systems of the two continents are essentially different; each has an exclusive right to judge for itself, what is best suited to its own condition, and most likely to promote its happiness; but neither has a right to enforce upon the other the establishment of its peculiar system. This principle was declared in the face of the world, at a moment when there was reason to apprehend that the allied powers were entertaining designs inimical to the freedom, if not the independence, of the new governments. There is ground for believing, that the declaration of it had considerable effect in preventing the maturity, if not in producing the abandonment, of all such designs. Both principles were laid down, after much and anxious deliberation, on the part of the late administration. The President, who then formed a part of it, continues entirely to coincide in both. And you will urge upon the Government of Mexico the utility and expediency of asserting the same principles, on all proper occasions."

Mr. Clay, Sec. of State, to Mr. Poinsett, min. to Mexico, March 25, 1825, 13 Br. & For. State Papers (1825–1826), 485, 488.

"Late arrivals from Europe bring us reports that a naval and military armament is about to leave Spain, destined to attack Mexico, with a view, it is rumored, to acquire political ascendancy there, taking advantage of the distracted condition of that unfortunate Republic. . . . You are aware of the position taken by the United States, that they will not consent to the subjugation of any of the independent states of this continent to European powers, nor to the exercise of a protectorate over them, nor to any other direct political influence to control their policy or institutions. Recent circumstances have given to this determination additional strength, and it will be inflexibly adhered to whatever may be the consequences. . . . I do not desire you to draw the attention of the Spanish ministry to it by any formal communication; but it would be well to embrace such favorable opportunities as may present themselves, to bring the matter incidentally to the attention of the minister of foreign affairs, and to make known the interest, which this Government attaches to this subject, reminding him at the same time of

the policy concerning it which has been repeatedly declared by the United States, and which will in all human probability never be departed from.

"With respect to the causes of war between Spain and Mexico, the United States have no concern, and do not undertake to judge them. Nor do they claim to interpose in any hostilities which may take place. Their policy of observation and interference is limited to the permanent subjugation of any portion of the territory of Mexico, or of any other American state to any European power whatever."

Mr. Cass, Sec. of State, to Mr. Dodge, min. to Spain, No. 66 (confid.), Oct. 21, 1858, MS. Inst. Spain, XV. 187.

After the foregoing instruction was sent, Mr. Tassara, Spanish minister, called at the Department of State, and volunteered the information that a Spanish naval force had been ordered to the coast of Mexico solely for the purpose of protecting the persons and property of Spanish subjects and compelling the Mexican Government to do justice to Spain for injuries which had been committed. Mr. Tassara's assurances were received with satisfaction, and the American minister at Madrid was authorized so to advise the minister of foreign affairs, and at the same time to take advantage of the opportunity to say that the United States considered Mexico's "freedom from foreign control" to be "essential to the true policy of the independent states of America, and that any attempt to subdue or hold possession of" that country "would be considered by the United States as an unfriendly act, and would be firmly opposed by them."

Mr. Cass, Sec. of State, to Mr. Dodge, min. to Spain, No. 71 (confid.), Dec. 2, 1858, MS. Inst. Spain, XV. 197.

In a confidential letter of April 4, 1859, the British consul at Vera Cruz stated that his Government had determined to take advantage of the presence of the British fleet in the Gulf to enforce the payment of certain outstanding claims against Mexico, and as that force could not reach the central government at the City of Mexico to employ it for that purpose against the Liberal Government then having its seat at Vera Cruz, the British Government holding that place "*to be as it were* the treasury of Mexico." Mr. Dallas, the minister of the United States at London, was instructed to ascertain from Lord Malmesbury whether such instructions had been given, and if so to submit the following views:

That the United States assumed "no right to sit in judgment upon the causes of complaint which Great Britain may prefer against Mexico, nor upon the measures which may be adopted to obtain satis-

faction;" that these were "questions which pertain to national sovereignty, and which every power must determine for itself and upon its own responsibility;" that the position of Mexico and the United States, and the relations they bore to each other, rendered the situation of the former country, however, a subject of great concern to the United States, and the President therefore trusted that Her Majesty's Government would receive in a friendly spirit some suggestions connected with it; that the United States had "a deep interest in the stability and tranquillity of the Mexican Republic, not only in a commercial point of view, but as a coterminous neighbor, stretching along our frontier for a great distance, and commanding important routes of communication, between eastern and western portions of the Union;" that, while the Mexican experiment of self-government had been so far an unfortunate one, the permanent prosperity of the country was believed to be intimately connected with the establishment of the power of the Liberal party, and the President, being satisfied that it had "the adhesion of a majority of the Mexican people, as it certainly had of a majority of the Mexican States, and that it possessed the best means of consolidating their institutions, in a spirit of moderation and justice," had recognized its political existence; that an attack on Vera Cruz would in fact be directed against the Liberal Government, and would be a direct interference, which would necessarily work injury to that government, crippling its resources, while its opponents, holding the capital, would be beyond the reach of the operations; that Vera Cruz was a very important point for the commerce of the United States, of England, and of France, so that hostile measures could not be taken there without serious injury to all; that, if some delay were granted, the opportunity might present itself of requiring from the government which Great Britain had continued to recognize an equitable proportion of the contribution levied upon the Republic; and that it was hoped that Lord Malmesbury would under the circumstances review the decision to employ force, and await a more propitious time to enforce the claims.

Mr. Cass, Sec. of State, to Mr. Dallas, May 12, 1859, MS. Inst. Gr. Britain, XVII. 190.

About the middle of July, 1860, the British Government, through Lord Lyons, its minister at Washington, invited the United States to join Great Britain and France in addressing an identic note to the Miramon and Juarez governments in Mexico, advising the calling of a national assembly to settle their domestic difficulties upon some reasonable basis. This invitation was submitted to President Buchanan, and in due time Lord Lyons was advised that the general policy of the United States was "opposed to any interference, especially the joint interference, of other powers in the domestic affairs of an independent

nation; " that the motives of this policy were peculiarly strong in the case of Mexico; that the President had recognized the Juarez government as a constitutional one, which had in fact a far larger popular support than any other; that he would therefore be very unwilling to take any step which would appear to discredit the Juarez government or put it on the same level as its opponent; that he could not see any practical good to result from the joint intervention, and that, while desiring the happiest results from the proposed action of England and France, he did not feel either disposed or authorized to make the United States a party to it.

Mr. Trescot, Act. Sec. of State, to Mr. Elgee, secretary in charge of the legation in Mexico, No. 38, Aug. 8, 1860, MS. Inst. Mexico, XVII. 302.

When the invitation above referred to was given " all designs to interfere by force in the matter, or to influence the action of the Mexican authorities or people in any other manner than by friendly representations, was peremptorily disavowed;" but even then the President, our established policy being opposed to intervention in the internal affairs of other countries, did not think proper to take any part in the proceeding; and it was understood that the effort was made and that it proved to be abortive.

It appears that after Lord Lyons delivered the invitation above mentioned, the French chargé d'affaires made a similar communication to the Department of State, and, while giving an assurance that France had not the slightest idea of resorting to force in the matter, added that, if the rights and interests of French citizens should be violated in Mexico, the Government of France would feel at liberty to adopt such measures as might be deemed expedient. In reply, Mr. Cass declared " that the United States did not call in question the right of France to compel the Government of Mexico, by force if necessary, to do it justice," but that " the permanent occupation of any part of the territory of Mexico by foreign power, or an attempt in any manner forcibly to interfere in its internal concerns or to control its political destiny, would give great dissatisfaction to the United States." The policy of the United States on this subject was, said Mr. Cass, well known to all the powers interested in the question, and it would be " adhered to under all circumstances."

Mr. Cass, Sec. of State, to Mr. Faulkner, min. to France, No. 27, Aug. 31, 1860, MS. Inst. France, XV. 481.

Trustworthy information having been received that Spain had ordered a large naval force to Vera Cruz, and that the city would be attacked if certain demands against the Juarez government were not complied with, the naval forces of the United States in that quarter were increased, and the commander was ordered to afford all proper

and necessary protection to American rights and interests, though he was directed that, if Spain should resort to war measures against Mexico, he would of course not resist them. In an interview with Mr. Tassara, Spanish minister, at the Department of State, Mr. Cass declared that the United States was utterly opposed to the holding possession of Mexico by any foreign power, and to any forcible interference with a view to control its political destiny, and that any measures for such objects would be resisted by the United States "by all the means in their power." Mr. Tassara gave the most explicit assurances that Spain had no intention whatever of retaining possession of any part of Mexico or of undertaking to control its political destiny. The substance of this interview was reported by Mr. Cass to Mr. Preston, the minister of the United States at Madrid, who was authorized to say to the Spanish minister of foreign affairs, in a friendly manner, that it was desirable that the threatened warfare between Spain and Mexico should be averted, if possible, by some peaceful arrangement, and that if this could not be done the most peremptory orders should be issued by the Spanish Government to its officers to avoid giving just offense to other powers. Mr. Cass stated that he had reason to believe that the Juarez government would favorably receive a proposition to refer the matters in controversy to the arbitration of some friendly power.

Mr. Cass, Sec. of State, to Mr. Preston, min. to Spain, No. 30, Sept. 7, 1860, MS. Inst. Spain, XV. 247.

In September, 1860, Mr. Robert M. McLane, then minister to Mexico, was, in anticipation of hostilities between Spain and the government of President Juarez, directed to proceed to Vera Cruz without delay. The general position of the United States was expressed by Mr. Cass in an instruction of September 20, 1860, in the following terms:

"While we do not deny the right of any other power to carry on hostile operations against Mexico, for the redress of its grievances, we firmly object to its holding possession of any part of that country, or endeavoring by force to control its political destiny.

"This opposition to foreign interference is known to France, England, and Spain, as well as the determination of the United States to resist any such attempt by all the means in their power. Any design to act in opposition to this policy has been heretofore disavowed by each of those powers, and recently by the minister of Spain, in the name of his Government, in the most explicit manner."

Mr. Cass also adverted to the fact that Mr. McLane had previously expressed a confident opinion, which he seemed still to retain, that projects were meditated by the three powers referred to incompatible with the policy which the United States had announced. An effort

might, said Mr. Cass, be renewed by friendly representations to prevail on the contending parties in Mexico to establish by amicable arrangement the basis of a free, stable, and liberal government and to submit the result of their labors to the decision of the Mexican people. If such a plan could be honestly carried out, the United States would not oppose it, though its nonintervention principles would preclude any direct participation in the endeavor. Mr. Cass added: "You fear that the project will be converted into a scheme for control or acquisition by taking advantage of the weakness of the country and by operating upon its fears, so that an extorted assent may be given to the proposition and European ascendancy thus established. I have no reason to anticipate that any such effort will be made, and have only to add that, if attempted, it will be met by the armed action of the United States, should Congress adhere to the policy we have so long avowed and publicly proclaimed."

Mr. Cass, Sec. of State, to Mr. McLane, min. to Mexico, No. 39, Sept. 20, 1860, MS. Inst. Mexico, XVII. 306.

President Buchanan, in his annual message of 1860, reviewed the then recent relations between the United States and Mexico, which he had extensively discussed in his two previous annual messages. He adverted to the "series of wrongs and outrages" to which American citizens in Mexico had been subjected, and quoted the opinion of Mr. Forsyth, when minister to Mexico, in 1856, that "nothing but a manifestation of the power of the Government and of its purpose to punish these wrongs will avail." President Buchanan adverted to the adoption of a new constitution by Mexico in 1857, and the election of a President and Congress under its provisions; to the expulsion of this President from the capital by a rebellion in the army, and to the usurpation of supreme power by General Zuloaga, who in turn was soon compelled to give place to General Miramon. Under the constitution of 1857, however, said President Buchanan, Señor Juarez, as chief justice of the supreme court, became on the deposition of the elective President the lawful President of the Republic, and as the constitutional party which he represented continued to grow in power, his government was recognized in April 1859 by the United States. Meanwhile, the Miramon government held sway at the capital and over the surrounding country, and continued its outrages upon American citizens; and, to cap the climax, after the battle of Tacubaya, in April, 1859, General Marquez ordered three citizens of the United States, two of whom were physicians, to be seized in the hospital at that place and taken out and shot, without crime and without trial. The time had then arrived, said President Buchanan, when, in his opinion, the United States was bound to exert its power to secure redress for its citizens in Mexico and to afford them protec-

tion, and, under these circumstances, he deemed it his duty to recommend to Congress, in his annual message of 1859, the employment of a sufficient military force to penetrate into the interior, where the government of Miramon was to be found, with, or if need be without, the consent of the Juarez government, though it was not doubted that such consent could be obtained. As the result of such a movement on the part of the United States, it was expected that the constitutional government would have been able to establish itself at the City of Mexico, and would have been ready and willing to do justice. Moreover, European governments would thus have been deprived of all pretext to interfere in the territorial and domestic concerns of Mexico. "We should thus have been relieved," said President Buchanan, "from the obligation of resisting, even by force should this become necessary, any attempt by these Governments to deprive our neighboring Republic of portions of her territory—a duty from which we could not shrink without abandoning the traditional and established policy of the American people. I am happy to observe that, firmly relying upon the justice and good faith of these Governments, there is no present danger that such a contingency will happen.

"Having discovered that my recommendations would not be sustained by Congress, the next alternative was to accomplish, in some degree, if possible, the same objects by treaty stipulations with the constitutional Government. Such treaties were accordingly concluded by our late able and excellent minister to Mexico, and on the 4th of January last were submitted to the Senate for ratification. As these have not yet received the final action of that body, it would be improper for me to present a detailed statement of their provisions. Still, I may be permitted to express the opinion in advance that they are calculated to promote the agricultural, manufacturing, and commercial interests of the country and to secure our just influence with an adjoining Republic as to whose fortunes and fate we can never feel indifferent: whilst at the same time they provide for the payment of a considerable amount toward the satisfaction of the claims of our injured fellow-citizens."

President Buchanan, annual message, Dec. 3, 1860, Richardson's Messages, V. 646.

As to treaty negotiations with Mexico, see Davis' Notes, Treaty Volume (1776–1887), 1356–1357.

(2) REPRISALS BY ALLIED POWERS.

§ 956.

"The claims of Great Britain, France, and Spain against Mexico may be classified thus:

"1. British. On November 16, 1860, the house of the British legation was broken into and £152,000 sterling bonds, belonging to British

subjects, were carried off. (See Fraser's Mag., Dec., 1861, where it is said that this attack was a sort of 'reprisal' for the action of British naval officers, who had evaded the Mexican tariff on the exportation of silver by carrying off silver in British cruisers.) Damages were also claimed for the murder of a British subject on April 3, 1859. There was also a claim for bonded debts secured by a prior diplomatic arrangement with Mexico.

"2. French. During Miramon's revolutionary administration an issue of bonds for $15,000,000 was made through the agency of Jecker, a Swiss banker, the amount to be raised by this process being $750,000. These bonds fell into the hands of Jecker's French creditors. A claim was made also for $12,000,000 for torts on French subjects.

"3. Spanish. By the Miramon revolutionary government certain prior Spanish claims of various types were recognized. These, however, were repudiated by the Juarez government. Another grievance was the abrupt dismissal of the Spanish minister by the latter government. (See Tucker's Monroe Doct. 93.) As will be hereafter seen, Great Britain and Spain withdrew from the alliance before the hostile occupation of Mexican soil by France."

Wharton, Int. Law Digest, § 58, I. 311–312.

See Lawrence's Com. sur. Droit Int. II. 339, 340. As to the French claims and the convention of Oct. 31, 1861, see Maximilian in Mexico, by Sara Yorke Stevenson, 17–23.

See, also, as to the joint intervention and the grounds thereof, "The Present Condition of Mexico," H. Ex. Doc. 100, 37 Cong. 2 sess. 229 et seq.

"This Government has learned from information which leaves no room for doubt that an armed movement is being prepared by the Governments of Great Britain and France to proceed to Vera Cruz with a view to make demands of some nature upon Mexico.

"My dispatch to you of the 24th day of August last, will have shown you that this Government takes so deep an interest in the permanency of the Mexican Republic that it is even not unwilling to render it some extraordinary good offices in its present emergency.

"The President desires you to inform the Government of France that this Government looks with deep concern to the subject of the armed movement to which I have thus directed your attention, and to ask Mr. Thouvanel for such explanations of it as His Imperial Majesty may feel at liberty to give with a view to the satisfaction of the United States and the preservation of peace in this hemisphere. It is confidently believed that such explanations may not be unreasonably asked, in view of the instructions we have already given our minister in Mexico, in regard to an assumption of the payment of interest on the Mexican debt due to foreign bondholders."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 60, Sept. 24, 1861, MS. Inst. France, XVI. 57.

See, also, Mr. Seward, to Mr. Dayton, No. 79, Nov. 4, 1861, id. 83; Mr. Seward to Mr. Schurz, min. to Spain, No. 37, Oct. 14, 1861, H. Ex. Doc. 100, 37 Cong. 2 sess. 220.

Acknowledging the receipt of a joint note of the Spanish, French, and British ministers of Nov. 30, 1861, which enclosed the text of a convention between their governments, concluded at London, Oct. 31, 1861, for the purpose of obtaining, through combined action, the redress of grievances against the Republic of Mexico, Mr. Seward said:

"In the first article the high contracting parties bind themselves to make, immediately after the signing of the convention, the necessary arrangements to send to the shores of Mexico land and sea forces combined, the effective number of which shall be determined in a further exchange of communications between their Governments, but the total of which must be sufficient to enable them to seize and occupy the various fortresses and military positions of the Mexican sea-coasts; also that the commanders of the allied forces shall be authorized to accomplish such other operations as may, on the spot, be deemed most suitable for realizing the end specified in the preamble, and especially for insuring the safety of foreign residents; and that all the measures which are thus to be carried into effect shall be taken in the name and on account of the high contracting parties without distinction of the particular nationality of the forces employed in executing them.

"In the second article, the high contracting parties bind themselves not to seek for themselves, in the employment of the coercive measures foreseen by the present convention, any acquisition of territory, or any peculiar advantage, and not to exercise in the subsequent affairs of Mexico any influence of a character to impair the right of the Mexican nation to choose and freely to constitute the form of its own government.

"In the third article, the high contracting parties agree that a commission composed of three commissioners, one appointed by each of the contracting powers, should be established, with full power to determine all questions which may arise for the employment and distribution of the sums of money which shall be recovered from Mexico, having regard to the respective rights of the contracting parties.

"In the fourth article, the high contracting parties, expressing the desire that the measures which it is their intention to adopt may not have an exclusive character, and recognizing the fact that the Government of the United States, like themselves, has claims of its own to enforce against the Mexican Republic, agree that, immediately

after the signing of the present convention, a copy of it shall be communicated to the Government of the United States, and that this Government shall be invited to accede to it, and that in anticipation of such accession, their respective ministers at Washington shall be furnished with full powers to conclude and sign, collectively or severally, with a plenipotentiary of the United States, to be designated by the President, such an instrument.

"But as the high contracting powers would expose themselves, in making any delay in carrying into effect articles one and two of the convention, to failure in the end which they wish to attain, they have agreed not to defer, with a view to obtaining the accession of the United States, the commencement of the stipulated operations beyond the period at which their combined forces may be united in the vicinity of Vera Cruz.

"The plenipotentiaries, in their note to the undersigned, invite the United States to accede to the convention. The undersigned, having submitted the subject to the President, will proceed to communicate his views thereon.

"First. As the undersigned has heretofore had the honor to inform each of the plenipotentiaries now addressed, the President does not feel himself at liberty to question, and does not question, that the sovereigns represented have undoubted right to decide for themselves the fact whether they have sustained grievances, and to resort to war against Mexico for the redress thereof, and have a right also to levy the war severally or jointly.

"Secondly. The United States have a deep interest, which, however, they are happy to believe is an interest held by them in common with the high contracting powers and with all other civilized states, that neither of the sovereigns by whom the convention has been concluded shall seek or obtain any acquisition of territory or any advantage peculiar to itself, and not equally left open to the United States and every other civilized state, within the territories of Mexico, and especially that neither one nor all of the contracting parties shall, as a result or consequence of the hostilities to be inaugurated under the convention, exercise in the subsequent affairs of Mexico any influence of a character to impair the right of the Mexican people to choose and freely to constitute the form of its own government.

"The undersigned renews on this occasion the acknowledgment heretofore given, that each of the high contracting parties had informed the United States substantially that they recognized this interest, and he is authorized to express the satisfaction of the President with the terms in which that recognition is clearly embodied in the treaty itself.

"It is true, as the high contracting parties assume, that the United States have, on their part, claims to urge against Mexico. Upon due

consideration, however, the President is of opinion that it would be inexpedient to ask satisfaction of their claims at this time through an act of accession to the convention. Among the reasons for this decision which the undersigned is authorized to assign, are, first, that the United States, so far as it is practicable, prefer to adhere to a traditional policy recommended to them by the Father of their Country and confirmed by a happy experience, which forbids them from making alliances with foreign nations; second, Mexico being a neighbor of the United States on this continent, and possessing a system of government similar to our own in many of its important features, the United States habitually cherish a decided good will towards that Republic, and a lively interest in its security, prosperity, and welfare. Animated by these sentiments the United States do not feel inclined to resort to forcible remedies for their claims at the present moment, when the Government of Mexico is deeply disturbed by factions within, and war with foreign nations. And, of course, the same sentiments render them still more disinclined to allied war against Mexico, than to war to be waged against her by themselves alone.

"The undersigned is further authorized to state to the plenipotentiaries, for the information of the sovereigns of Spain, France, and Great Britain, that the United States are so earnestly anxious for the safety and welfare of the Republic of Mexico, that they have already empowered their minister residing there to enter into a treaty with the Mexican Republic, conceding to it some material aid and advantages which it is hoped may enable that Republic to satisfy the just claims and demands of the said sovereigns, and so avert the war which these sovereigns have agreed among each other to levy against Mexico. The sovereigns need not be informed that this proposal to Mexico has been made, not in hostility to them, but with a knowledge of the proceeding formally communicated to them, and with the hope that they might find, through the increased ability of Mexico to result from the treaty, and her willingness to treat with them upon just terms, a mode of averting the hostilities which it is the object of the convention now under consideration to inaugurate. What has thus far been done by the American minister at Mexico, under those instructions, has not yet become known to this Government, and the information is looked for with deep interest.

"Should these negotiations offer any sufficient grounds on which to justify a proposition to the high contracting parties in behalf of Mexico, the undersigned will hasten to submit such a proposition to those powers. But it is to be understood, first, that Mexico shall have acceded to such a treaty; and, secondly, that it shall be acceptable to the President and Senate of the United States.

"In the meantime the high contracting powers are informed that the President deems it his duty to provide that a naval force should

remain in the Gulf of Mexico, sufficient to look after the interests of American citizens in Mexico, during the conflict which may arise between the high contracting parties and that Republic; and that the American minister residing in Mexico be authorized to seek such conference in Mexico with the belligerent parties, as may guard each of them against inadvertent injury to the just rights of the United States, if any such should be endangered.

"The undersigned having thus submitted all the views and sentiments of this Government on this important subject to the high contracting parties, in a spirit of peace and friendship, not only towards Mexico, but towards the high contracting parties themselves, feels assured that there will be nothing in the watchfulness which it is thus proposed to exercise, that can afford any cause for anxiety to any of the parties in question."

Mr. Seward, Sec. of State, to Messrs. Tassara, Mercier, and Lord Lyons, Dec. 4, 1861, H. Ex. Doc. 100, 37 Cong. 2 sess. 187; 52 Br. & For. State Papers, 394.

For the note of Messrs. Tassara, Mercier, and Lord Lyons of Nov. 30, 1861, enclosing the convention, see H. Ex. Doc. 100, 37 Cong. 2 sess. 185–187.

See reports of June 16, 1864, and Feb. 5, 1865, S. Ex. Docs. Nos. 11 and 33, 38th Cong. 2d sess.; Sen. Ex. Doc. No. 33, same sess.

(3) FRENCH INTERVENTION, 1862–1867.

§ 957.

Toward the end of 1861, naval vessels of England, France, and Spain sailed for Vera Cruz, with the avowed intention of taking possession of the custom-houses of two or three Mexican ports for the purpose of satisfying the claims of their respective governments. Within a few weeks after the arrival of these ships and before the allies had done much more than seize Vera Cruz, the English and Spanish commanders became dissatisfied with the course of the French. The English and the Spanish forces withdrew in April, 1862, after an agreement had been reached with Mexico as to the claims of their governments. The triple alliance was thus dissolved. In spite of the fact that the three European powers had agreed to respect "the right of the Mexican nation to choose and constitute freely the form of its government," the French, after the English and the Spanish had retired from Vera Cruz, presented an ultimatum demanding the payment of $27,000,000, and soon afterwards began a forced march toward the City of Mexico, which they entered in June, 1863. They then set up a provisional government, and later named an assembly of notables, which was almost exclusively composed of enemies of the constitutional government of Juarez. In July, 1863, the assembly

met, and without debate resolved, with only two dissenting votes, that an empire should be established, that the throne should be offered to the Archduke Maximilian of Austria, brother of Francis Joseph, and that if he should decline it, the Emperor of the French should be asked to fill the vacancy. Maximilian expressed his willingness to accept, on certain conditions; and on April 10, 1864, he finally accepted the crown. On the same day a convention was entered into between France and the Imperial Government, by which the latter agreed to pay the French claims and the past and future cost of the intervention, under certain conditions; and France practically guaranteed to Maximilian her military protection. He entered the City of Mexico in June, 1864, as Maximilian I.

Bancroft, Life of Seward, II. 421–424.

In connection with the withdrawal of the Spanish and the English, see a remarkable letter of General Prim to Louis Napoleon, dated at Orizaba, March 17, 1862, given in Maximilian in Mexico, by Sara Yorke Stevenson, pp. 25–27, citing Gaulot, La Vérité sur l'expédition du Mexique (4th ed.), I. 47; Domenech, Histoire du Mexique, III. 8 et seq.

The President, while relying "upon the assurances given to this Government by the allies that they were seeking no political objects, and only a redress of grievances," deemed it "his duty to express to the allies, in all candor and frankness, the opinion that no monarchical government which could be founded in Mexico, in the presence of foreign navies and armies in the waters and upon the soil of Mexico, would have any prospect of security or permanence. Secondly, that the instability of such a monarchy there would be enhanced if the throne should be assigned to any person not of Mexican nativity. That, under such circumstances, the new government must speedily fall, unless it could draw into its support European alliances which, relating back to the first invasion, would, in fact, make it the beginning of a permanent policy of armed European monarchical intervention, injurious and practically hostile to the most general system of government prevailing on the continent of America, and this would be the beginning rather than the ending of revolution in Mexico. . . .

"The Senate of the United States has not indeed given its official sanction to the precise measures which the President has proposed for lending our aid to the existing Government of Mexico, with the approval of the allies, to relieve it from its present embarrassments. This, however, is only a question of domestic administration. It would be very erroneous to regard such a disagreement as indicating any serious difference of opinion in this Government or among the

American people in their cordial good wishes for the safety, welfare, and stability of the republican system of government in that country."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 121, March 3, 1862, "The Present Condition of Mexico." H. Ex. Doc. 100, 37 Cong. 2 sess. 216; MS. Inst. France, XVI. 118.

For an identic instruction, see Mr. Seward, Sec. of State, to Mr. Perry, chargé at Madrid, No. 17, March 3, 1862, MS. Inst. Spain, XV. 333; Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 198, March 3, 1862, H. Ex. Doc. 100, 37 Cong. 2 sess. 207.

See, as to the situation in the United States and in Mexico, Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 191, Feb. 19, 1862, MS. Inst. Gr. Br. XVIII. 127.

In March, 1862, Mr. Seward, referring to reports that the Government of France had favorably listened to Mexican emissaries, who proposed to subvert "the republican American system in Mexico and to import into that country a throne, and even a monarch from Europe," instructed the American minister at Paris, while not asking for explanations, to mention the fact that such rumors had reached the President and had awakened some anxiety on his part, and to call attention to the fact that the Government of the States had "more than once, and with perfect distinctness and candor, informed all the parties to the allinace that we can not look with indifference upon any armed European intervention for political ends in a country situated so near and connected with us so closely as Mexico."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 135, March 31, 1862, H. Ex. Doc. 100, 37 Cong. 2 sess. 218; MS. Inst. France, XVI. 135.

On May 9, 1862, Mr. Seward enclosed to the United States legation at Madrid an extract from a dispatch of the 25th of March from the American minister at Guatemala, concerning negotiations supposed to be pending between that Government and the representatives of certain European powers for purposes similar to those which were believed to have been entertained by those powers, or by some of them, in their intervention in Mexico. Although there was, said Mr. Seward, "no occasion for implicit credence" in these reports, yet, as they were not improbable, it was proper that the legation should be apprised of them, in order that it might do whatever might be necessary or advisable in the matter. (Mr. Seward, Sec. of State, to Mr. Perry, chargé at Madrid, No. 29, May 9, 1862, MS. Inst. Spain, XV. 341.)

A treaty was concluded between Spain and Guatemala on May 29, 1863, in which the independence of the latter country was for the first time acknowledged by Spain. (59 Br. & For. State Papers, 1200.)

"Mr. Drouyn de l'Huys . . . has not only reassured you of the friendly spirit of the Emperor towards the United States, but he has also, with marked decision and energy, reaffimed to you that France has no purpose in Mexico beyond asserting just claims

against her, obtaining payment of the debt due, with the expenses of the invasion, and vindicating by victory the honor of the French flag, and that France does not mean to colonize in Mexico, or to obtain Sonora or any other section permanently, and that all allegations propagated through the newspapers conflicting with these assurances are untrue.

"Your reply to these remarks of Mr. Drouyn de l'Huys, namely, that in all my correspondence with you, whether public or private, I have averred that this Government has no purpose to interfere in any way with the war between France and Mexico, was as truthful as it was considerate and proper. The United States have not disclaimed, and can never under existing circumstances disclaim, the interest they feel in the safety, welfare and prosperity of Mexico, any more than they can relinquish or disown their sentiments of friendship and good will towards France, which began with their national existence, and have been cherished with growing earnestness ever since. When the two nations towards which they are thus inclined are found engaged in such a war as Mr. Drouyn de l'Huys has described, the United States can only deplore the painful occurrence, and express in every way and everywhere their anxious desire that the conflict may be brought to a speedy close by a settlement consistent with the stability, prosperity and welfare of the parties concerned. The United States have always acted upon the same principle of forbearance and neutrality in regard to wars between powers with which our own country has maintained friendly relations, and they believe that this policy could not in this, more than in other cases, be departed from with advantage to themselves or to the interests of peace throughout the world."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, May 8, 1863, Dip. Cor. 1863, I. 665.

See, also, Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 336, April 24, 1863, Dip. Cor. 1863, I. 662.

"When France made war against Mexico, we asked of France explanations of her objects and purposes. She answered, that it was a war for the redress of grievances; that she did not intend to permanently occupy or dominate in Mexico, and that she should leave to the people of Mexico a free choice of institutions of government. Under these circumstances the United States adopted, and they have since maintained, entire neutrality between the belligerents, in harmony with the traditional policy in regard to foreign wars. The war has continued longer than was anticipated. At different stages of it France has, in her intercourse with us, renewed the explanations before mentioned. The French army has now captured Pueblo and the capital, while the Mexican Government, with its principal forces,

is understood to have retired to San Luis Potosi, and a provisional government has been instituted under French auspices in the City of Mexico, which, being supported by arms, divides the actual dominion of the country with the Mexican Government, also maintained by armed power. That provisional government has neither made nor sought to make any communication to the Government of the United States, nor has it been in any way recognized by this Government. France has made no communication to the United States concerning the provisional government which has been established in Mexico, nor has she announced any actual or intended departure from the policy in regard to that country which her before-mentioned explanations have authorized us to expect her to pursue. The United States have received no communications relating to the recent military events in Mexico from the recognized Government of that country.

"The Imperial Government of Austria has not explained to the United States that it has an interest in the subject, or expressed any desire to know their views upon it. The United States have heretofore, on proper occasions, frankly explained to every party having an interest in the question the general views and sentiments which they have always entertained, and still entertain, in regard to the interests of society and government on this continent. Under these circumstances it is not deemed necessary for the representatives of the United States, in foreign countries, to engage in the political debates which the present unsettled aspect of the war in Mexico has elicited. You will be promptly advised if a necessity for any representations to the Government of Austria shall arise."

Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria, No. 41, Sept. 11, 1863, Dip. Cor. 1863, II. 929.

"Your interesting despatch of September 1 (No. 32) has been received. The United States are not indifferent to the events which are occurring in Mexico. They are regarded, however, as incidents of the war between France and Mexico. While the Governments of those two countries are not improperly left in any uncertainty about the sentiments of the United States, the reported relations of a member of the imperial family of Austria to those events do not seem sufficient to justify this Government in making any representations on that subject to the Government of the Emperor. His candor and fairness towards the United States warrant the President in believing, as he firmly does, that His Majesty will not suffer his Government to be engaged in any proceeding hostile or injurious to the United States." (Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria, No. 43, Sept. 26, 1863, Dip. Cor. 1863, II. 936.)

"The French forces are understood to hold in subjection to the new provisional government established in Mexico three of the States, while all the other constituent members of the Republic of Mexico

still remain under its authority. There are already indications of designs, in those States, to seek aid in the United States, with the consent of this Government, if attainable, and without it if it shall be refused, and for this purpose inducements are held out well calculated to excite sympathies in a border population. The United States Government has hitherto practiced strict neutrality between the French and Mexico, and all the more cheerfully, because it has relied on the assurances given by the French Government that it did not intend permanent occupation of that country or any violence to the sovereignty of its people. The proceedings of the French in Mexico are regarded by many in that country, and in this, as at variance with those assurances. Owing to this circumstance, it becomes very difficult for this Government to enforce a rigid observance of its neutrality laws. The President thinks it desirable that you should seek an opportunity to mention these facts to Mr. Drouyn de l'Huys, and to suggest to him that the interests of the United States, and, as it seems to us, the interests of France herself, require that a solution of the present complications in Mexico be made, as early as may be convenient, upon the basis of the unity and independence of Mexico. I can not be misinterpreting the sentiments of the United States in saying that they do not desire an annexation of Mexico, or any part of it; nor do they desire any special interest, control, or influence there, but they are deeply interested in the reestablishment of unity, peace, and order in the neighboring Republic, and exceedingly desirous that there may not arise out of the war in Mexico any cause of alienation between them and France. Insomuch as these sentiments are by no means ungenerous, the President unhesitatingly believes that they are the sentiments of the Emperor himself in regard to Mexico."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 400, Sept. 21, 1863, Dip. Cor. 1863, II. 703.

Writing to Mr. Dayton, minister to France, Mr. Seward said that the first fruit of the Civil War in the United States was a new and, in effect, though not intentionally, unfriendly attitude on the part of Great Britain, France, and Spain. The Emperor of the French, on the breaking out of the insurrection, adopted the current opinion of European statesmen that the effort to preserve the Union would be unsuccessful. To this prejudgment the United States attributed the Emperor's agreement with Great Britain to act in concert with her upon questions which might arise out of the insurrection: his concession of a belligerent character to the insurgents: his repeated suggestions of accommodation by the United States with the insurgents: and his conferences on the subject of recognition. The United States, said Mr. Seward, held in regard to Mexico the same principles which they had held in regard to all other nations, and they had, in

the conflict that was going on there, adhered to their principles of non-intervention and neutrality. The Government of the United States, however, knew full well that the inherent, normal opinion of Mexico favored a government republican in form and domestic in its organization, in preference to any monarchical institutions to be imposed from abroad. The Government also knew that this normal opinion of the Mexican people resulted largely from the influence of popular opinion in the United States, and was continually invigorated by it; and this popular opinion the President believed to be just in itself and eminently essential to the progress of civilization on the American continent. Nor did the United States deny that, in their opinion, their own safety and the cheerful destiny to which they aspired were intimately dependent on the continuance of free republican institutions throughout America. The United States, continued Mr. Seward, had "submitted these opinions to the Emperor of France, on proper occasions, as worthy of his serious consideration, in determining how he would conduct and close what might prove a successful war in Mexico. Nor is it necessary to practice reserve upon the point, that if France should, upon due consideration, determine to adopt a policy in Mexico adverse to the American opinions and sentiments which I have described, that policy would probably scatter seeds which would be fruitful of jealousies, which might ultimately ripen into collision between France and the United States and other American republics. An illustration of this danger has occurred already. Political rumor, which is always mischievous, one day ascribes to France a purpose to seize the Rio Grande, and wrest Texas from the United States; another day rumor advises us to look carefully to our safety on the Mississippi; another day we are warned of coalitions to be formed, under French patronage, between the regency established in Mexico and the insurgent cabal at Richmond. The President apprehends none of these things. He does not allow himself to be disturbed by suspicions so unjust to France and so unjustifiable in themselves; but he knows, also, that such suspicions will be entertained more or less extensively by this country, and magnified in other countries equally unfriendly to France and to America; and he knows, also, that it is out of such suspicions that the fatal web of national animosity is most frequently woven. He believes that the Emperor of France must experience desires as earnest as our own for the preservation of that friendship between the two nations which is so full of guarantees of their common prosperity and safety. Thinking this, the President would be wanting in fidelity to France, as well as to our own country, if he did not converse with the Emperor with entire sincerity and friendship upon the attitude which France is to assume in regard to Mexico. The statements made to you by M. Drouyn de l'Huys, concerning the Emperor's intentions, are entirely satisfactory,

if we are permitted to assume them as having been authorized to be made by the Emperor in view of the present condition of affairs in Mexico. It is true, as I have before remarked, that the Emperor's purposes may hereafter change with changing circumstances. We, ourselves, however, are not unobservant of the progress of events at home and abroad; and in no case are we likely to neglect such provision for our own safety, as every sovereign state must always be prepared to fall back upon when nations with which they have lived in friendship cease to respect their moral and treaty obligations. Your own discretion will be your guide as to how far and in what way the public interests will be promoted by submitting these views to the consideration of M. Drouyn de l'Huys."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 406, Sept. 26, 1863, Dip. Cor. 1863, II. 709.

These instructions to Mr. Dayton were literally reproduced by Mr. Seward in an instruction to Mr. Motley, at Vienna, of October 9, 1863. It appeared that Mr. Motley had given to Count Rechberg a copy of Mr. Seward's instruction to Mr. Dayton, of March 3, 1862, with which he had been furnished. Mr. Seward approved Mr. Motley's action in this particular, but, after reproducing for Mr. Motley's information the instruction which had been sent to Mr. Dayton, said: "I remain of the opinion that national dignity is best conserved by confining the discussion of these affairs to the cabinets of the United States, France, and Mexico, and that no public interest is to be advanced by opening it at Vienna, and therefore I do not direct you to communicate this dispatch to the Imperial Royal Court." (Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria, No. 45, Oct. 9, 1863, Dip. Cor. 1863, II. 936, 938.)

In his No. 361, of October 9, 1863, Mr. Dayton reported an interview with M. Drouyn de l'Huys, in which the latter spoke of an election which was to be held in Mexico and which was expected to result in the choice of His Imperial Highness, Prince Maximilian of Austria to be Emperor of Mexico, and intimated that an early acknowledgment of the proposed empire by the United States would tend to shorten, or perhaps to end, all the troublesome complications of France in that quarter, so that the French might leave Mexico. With reference to this interview, Mr. Seward said: "We learn from other sources that the prince has declared his willingness to accept an imperial throne in Mexico on three conditions, namely: First, that he shall be called to it by the universal suffrage of the Mexican nation; secondly, that he shall receive indispensable guarantees for the integrity and independence of the proposed empire; and thirdly, that the head of his family, the Emperor of Austria, shall acquiesce. . . .

"Happily the French Government has not been left uninformed that, in the opinion of the United States, the permanent establishment of a foreign and monarchical government in Mexico will be

found neither easy nor desirable. You will inform Mr. Drouyn de l'Huys that this opinion remains unchanged. On the other hand, the United States can not anticipate the action of the people of Mexico, nor have they the least purpose or desire to interfere with their proceedings, or control or interfere with their free choice, or disturb them in the enjoyment of whatever institutions of government they may, in the exercise of an absolute freedom, establish. It is proper, also, that Mr. Drouyn de l'Huys should be informed that the United States continue to regard Mexico as the theater of a war which has not yet ended in the subversion of the Government long existing there, with which the United States remain in the relation of peace and sincere friendship; and that, for this reason, the United States are not now at liberty to consider the question of recognizing a government which, in the further chances of war, may come into its place. The United States, consistently with their principles, can do no otherwise than leave the destinies of Mexico in the keeping of her own people, and recognize their sovereignty and independence in whatever form they themselves shall choose that this sovereignty and independence shall be manifested."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 417, Oct. 23 1863, Dip. Cor. 1863, II. 726.

"The fact that her Majesty's Government has agreed to recognize the Archduke as Emperor of Mexico on his arrival in that country has not taken me by surprise. I have had reason to believe that all the European maritime powers, except Russia, have engaged to yield a recognition. It is mainly due to the necessary assumption of this fact that the President has thought it proper to practice especial circumspection in regard to the war between France and Mexico."

Mr. Seward, Sec. of State, to Mr. Adams, min. to England, No. 965 (confid.), May 28, 1864, MS. Inst. Gr. Br. XIX. 307.

On April 4, 1864, it was resolved without dissent, by the House of Representatives, that "the Congress of the United States are unwilling by silence to have the nations of the world under the impression that they are indifferent spectators of the deplorable events now transpiring in the Republic of Mexico, and that they think fit to declare that it does not accord with the policy of the United States to acknowledge any monarchical government erected on the ruins of any republican government in America under the auspices of any European power."

As to the effect of this resolution in France, see Tuckers's Monroe Doctrine, 103.

Mr. Seward's report of May 28, 1864, as to the course of trade between the United States and France during the French and Mexican war, is given in S. Ex. Doc. 47, 38 Cong. 1 sess.

Mr. Seward's policy in respect of the war in Mexico is vindicated in 103 N. Am. Rev. 498, Oct. 1866.

Resolutions concerning the French war in Mexico were offered in the Senate by Mr. McDougal, of California, on January 11, 1864. This action, said Mr. Seward, of which he had first heard through the press, had not only been inaugurated independently of the administration, but was "not in harmony with the policy of neutrality, forbearance, and conciliation which the President has so faithfully pursued. They [the resolutions] are, nevertheless," continued Mr. Seward, "not unworthy of attention in Paris. Beyond a doubt they echo the popular sentiment of the Western States, especially those bordering on Mexico. . . . When I look, first, at the complications of European politics, and then at the French forces in Rome, in Mexico, in Cochin-China, and in Japan, and see how the extended relations of the Empire must necessarily be more or less affected by moral considerations, I cannot cease to wonder why France should not earnestly desire a renewal of that relation of traditional friendship and affection between herself and the United States which she surrendered when she unnecessarily raised our domestic enemies to the rank of a belligerent naval power. . . . I make these suggestions not with a view to a formal communication of them to the Emperor's Government, but as hints to a conversation with Mr. Drouyn de l'Huys, which it seems to us you might profitably seek at the present conjuncture." (Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 456 (confid.), Jan. 12, 1864, MS. Inst. France, XVI. 504.)

The McDougal resolutions declared it to be the duty of the United States to require France to remove her armed forces from Mexico. See Bancroft's Life of Seward, II. 428.

When the House resolution of April 4, supra, was passed, Mr. Geofroy, the French minister at Washington, asked for an explanation of it. In reporting this incident to Mr. Dayton, Mr. Seward said that the resolution truly interpreted the unanimous sentiment of the American people in regard to Mexico, but that it was another question whether the Government would think it necessary or proper to express itself in the sense of the resolution at that time. This was a purely executive question belonging to the President of the United States. The declaration made by the House was in the form of a joint resolution, which must first be concurred in by the Senate and then approved by the President, or, if he disapproved it, be passed over his veto by a two-thirds majority of each body. "While the President," added Mr. Seward, "received the declaration of the House of Representatives with the profound respect to which it is entitled as an expression of the sentiments upon a grave and important subject, he directs that you inform the Government of France, that he does not at present contemplate any departure from the policy which this Government has hitherto pursued in regard to the war which exists between France and Mexico. It is hardly necessary to say that the proceeding of the House of Representatives was adopted upon sugges-

tions arising within itself, and not upon any communication of the Executive Department, and that the French government would be seasonably apprised of any change of policy upon this subject which the President might at any future time think it proper to adopt"

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, No. 525, April 7, 1864, MS. Inst. France, XVII. 43.

Replying to an inquiry of Mr. Motley as to what the policy of the United States would be when the Archduke Maximilian should have arrived in Mexico and assumed imperial authority there, Mr. Seward said that he was "allowed by the President to give only this answer, namely, that this Government sees no reason to declare itself in anticipation of contingent events. . . . It is not necessary for me to consider on this occasion whether, under circumstances different from those which now exist, the United States would think it their duty to stand unmoved spectators of the revolutionary proceedings which are going on in Mexico. . . . We are yet engaged in a civil war, and we find it expedient while avoiding, so far as possible, conflicts, collisions, and serious differences with foreign nations, to apply all our naval and military forces to bring this civil war to an end, and reestablish the national authority with the abolition of the political evil of human bondage. Even those among us who think that intervention by this Government in Mexico to prevent the establishment of an imperial monarchy would be just and wise in itself, admit that such a proceeding now, in the absence of any direct wrong committed against the United States, would be unwise." (Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria, No. 64 (confid.), April 14, 1864, MS. Inst. Austria, I. 215.)

For correspondence concerning conditions in Mexico, see message of the President, Feb. 4, 1863, H. Ex. Doc. 54, 37 Cong. 3 sess.

As soon as the restoration of the Union became assured, General Sheridan was sent with an army of about 50,000 men to the line of the Rio Grande; but, as Sheridan's troops were Union volunteers who had enlisted especially for the civil war, the necessity was recognized of organizing a new army for the purpose of acting against the French army in Mexico, in case of need. It was proposed that this new army should be enlisted and organized under the republican government of Mexico, which was recognized by the United States as the only legitimate government of that country. For the organization and command of this army, General John M. Schofield was selected by General Grant. General Schofield repaired to Washington, where he consulted with Mr. Romero, the Mexican minister, as well as with President Johnson, Mr. Seward, and Mr. Stanton. The War Department gave General Schofield a leave of absence for twelve months, with permission to go beyond the limits of the United States and to take with him any officers of his staff whom he might designate. It was expected that the officers and soldiers of the new army would be taken from the Union and Confederate forces, who were reported to be eager to enlist in the enter-

prise, but it was to be organized in Mexican territory under commissions from the Mexican Government.[1] In the summer of 1865, General Schofield, at the request of Mr. Stanton, met Mr. Seward at Cape May. Mr. Seward then proposed to General Schofield to go to France under the authority of the Department of State to see whether Louis Napoleon could not be made to understand the necessity of withdrawing his army from Mexico and thus avert the necessity of expelling it by force. General Schofield decided to undertake the mission. He sailed from New York on November 19, 1865, accompanied by two members of his staff. He arrived in Paris early in December. He found that the intervention in Mexican affairs was very unpopular in France, but that the national pride was touched at the thought of withdrawing under menace. General Schofield found opportunity in two interviews with Prince Napoleon, and in several conversations with officers of high rank on the Emperor's staff, to make known the views and purposes of the United States respecting Mexican affairs. It was understood that these unofficial conversations were faithfully reported to the Emperor. General Schofield was presented to the Emperor and Empress at a ball at the Tuileries. He received several intimations that he would be invited to a private interview with the Emperor, but no invitation came and none was sought. He closed his mission practically at the end of January, 1866. Having made a report to Mr. Seward on the 24th of that month, he received early in the following May a reply intimating that there was no further occasion for his remaining in that quarter. He then returned to the United States and reported at the Department of State on June 4, 1866.

[1] The Withdrawal of the French from Mexico: A Chapter of Secret History, by Lt. Gen. John M. Schofield, U. S. A., 32 Century Magazine, n. s. (May, 1879), 128; Schofield's Forty-six Years in the Army, 380; Pierce's Sumner, IV. 255; Grant's Memoirs, II. 545.

See Mr. Seward, Sec. of State, to Mr. Bigelow, min. to France (confid.), Nov. 4, 1865, MS. Inst. France, XVII. 465; Mr. Seward to Gen. Schofield, March 15, 1866, id. 545; Mr. Seward to Mr. Bigelow, No. 421, March 15, 1866, id. 546; Mr. Seward to Gen. Schofield, April 24, 1866, id. 560.

See Bancroft's Life of Seward, II. 435.

"The President feels himself bound to adhere to the opinion set forth in my despatch No. 259, which has, as we understand, been already read to Mr. Drouyn de l'Huys. The presence and operations of a French army in Mexico, and its maintenance of an authority there, resting upon force and not on the free will of the people of Mexico, is a cause of serious concern to the United States. Nevertheless, the objection of the United States is still broader, and includes the authority itself which the French army is thus maintaining.

That authority is in direct antagonism to the policy of this Government and the principle upon which it is founded. Every day's experience of its operations only adds some new confirmation of the justice of the views which this Government expressed at the time the attempt to institute that authority first became known. The United States have hitherto practiced the utmost frankness on that subject; they still regard the effort to establish permanently a foreign and imperial Government in Mexico as disallowable and impracticable. For these reasons they could not now agree to compromise the position they have heretofore assumed. They are not prepared to recognize or to pledge themselves hereafter to recognize any political institutions in Mexico, which are in opposition to the Republican Government with which we have so long and so constantly maintained relations of amity and friendship. I need hardly repeat my past assurances of our sincere desire to preserve our inherited relations of friendship with France. This desire greatly increases our regret that no communications, formal or informal, which have been received from the Government of that country, seem to justify us in expecting that France is likely soon to be ready to remove, as far as may depend upon her, the cause of our deep concern for the harmony of the two nations.

"The suggestion which you make of a willingness on the part of France to propose a revision of the commercial relations between the two countries is not regarded as having emanated from the Government of the Empire. However that may be, it is hardly necessary to say that we should not be dwelling so earnestly upon the branch of political relations, if it had not been our conviction that those relations at the present moment supersede those of commerce in the consideration of the American people."

Mr. Seward, Sec. of State, to Mr. Bigelow, min. to France, No. 390 (semi-official), Nov. 6, 1865, MS. Inst. France, XVII. 467.

For Mr. Seward's No. 259 to Mr. Bigelow, Sept. 6, 1865, above referred to, see H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 477.

With regard to the "alleged schemes of Dr. Gwin and his associates in Mexico," the United States was gratified to receive a renewed assurance of the French Emperor's resolution "to observe an impartial and scrupulous neutrality upon all internal questions which may agitate or divide the United States." (Mr. Seward, Sec. of State, to Mr. Bigelow, min. to France, No. 231, Aug. 24, 1865, MS. Inst. France, XVII. 424.)

An assurance was obtained from M. Drouyn de l'Huys that Nubian negro soldiers, embarked at Alexandria, Egypt, would not be employed in hostilities against Mexico. (Mr. Seward, Sec. of State, to Mr. Bigelow, min. to France, No. 331, Dec. 4, 1865, MS. Inst. France, XVII. 488.)

On November 29, 1865, the Marquis de Montholon, French minister at Washington, communicated to Mr. Seward a copy and translation

of a dispatch from M. Drouyn de l'Huys, French minister of foreign affairs, of October 18, 1865, in relation to affairs in Mexico. In this paper M. Drouyn de l'Huys intimated that, if the United States would adopt toward the Mexican Government "an amicable attitude," France would be ready to agree upon the basis of an understanding with the Cabinet of Washington. He asked to be assured that it was the intention of the United States "not to impede the consolidation of the new order of things founded in Mexico;" and of this he said the best guarantee would be the recognition of the Emperor Maximilian. He also intimated that, as the United States held official intercourse with all the monarchs of Europe and the New World, the American Government should not be kept back by the "difference of institutions."

Mr. Seward replied on the 6th of December that the condition which the Emperor suggested was quite impracticable. The chief cause of the prevailing discontent in the United States was not, said Mr. Seward, that there was a foreign army in Mexico, and much less that that army was French. "We recognize the right of sovereign nations," said Mr. Seward, "to carry on war with each other if they do not invade our right or menace our safety or just influence. The real cause of our national discontent is, that the French army which is now in Mexico is invading a domestic republican government there which was established by her people, and with whom the United States sympathize most profoundly, for the avowed purpose of suppressing it and establishing upon its ruins a foreign monarchical government, whose presence there, so long as it should endure, could not but be regarded by the people of the United States as injurious and menacing to their own chosen and endeared republican institutions."

Mr. Seward, Sec. of State, to the Marquis de Montholon, French min., Dec. 6, 1865, H. Ex. Doc. 73, 39 Cong. 1 sess., pt. 2, p. 347.

"It has been the President's purpose that France should be respectfully informed upon two points, namely: First. That the United States earnestly desire to continue and to cultivate sincere friendship with France. Secondly. That this policy would be brought in imminent jeopardy, unless France could deem it consistent with her interest and honor to desist from the prosecution of armed intervention in Mexico, to overthrow the domestic republican government existing there, and to establish upon its ruins the foreign monarchy which has been attempted to be inaugurated in the capital of that country."

Mr. Seward, Sec. of State, to Mr. Bigelow, min. to France, No. 332, Dec. 16, 1865, H. Ex. Doc. 73, 39 Cong. 1 sess., part 2, p. 495.

"This was as plain as if he [Seward] had written: *Withdraw or fight*: yet it was not said in a way to precipitate a conflict." (Bancroft, Life of Seward, II. 437–438.)

On this subject see Tucker's Monroe Doctrine, 97 et seq.

As to French occupation of Mexico, see Mr. Seward's report of Dec. 21, 1865, with documents annexed, S. Ex. Doc. 6, 39 Cong. 1 sess.

"Mr. Seward's protest against French interference, in 1863, in Mexican affairs, though sustained in the House of Representatives, was passed over, no doubt with the assent of the administration, without action in the Senate. And Mr. Seward, in his letter to Montholon, of December 6, 1865, does not place his objections to French interference in Mexico on the ground of the Monroe doctrine, but on the ground that 'the people of every state on the American continent have a right to secure for themselves a republican government if they choose, and that interference by foreign states to prevent the enjoyment of such institutions deliberately established is wrongful, and in its effects antagonistical to the free and popular form of government existing in the United States.' (Baker's Diplom. Hist. of the War, 427.) A striking speech on this topic by General Dix will be found in Dix's Life, i. 217, in which he says that the protests of Presidents Monroe and Polk 'are sustained by an undivided public opinion, even though they may not have received a formal response from Congress.' This is true so far as it concerns the arbitrary interference of European sovereigns in American affairs, or the attempt of any European power to obtain the control of the Isthmus of Panama. But the doctrine should not be extended so as to preclude a European power from receiving for its own purposes (*e. g.*, for coaling steamers) a cession of territory in South America." (Wharton, Com. Am. Law, § 175.)

With reference to the statement of M. Drouyn de l'Huys that France went to Mexico not for the purpose of establishing a monarchy, but to obtain reparation and guarantees, and that, being there, she sustained the government which was founded on the consent of the people, not from any ambitious motives, but because she expected to obtain satisfaction and security from it, Mr. Seward declared that it was his duty to insist that, whatever were the intentions and purposes of France, the proceedings which were adopted by a class of Mexicans for subverting the republican government there and for availing themselves of French intervention to establish on its ruins an imperial monarchy, were regarded in the United States as having been taken without authority and as having been prosecuted against the will and opinion of the Mexican people. This position, said Mr. Seward, was held without one dissenting voice by his countrymen. France need not, said Mr. Seward, for a moment delay her promised withdrawal of military forces from Mexico, and her putting the principle of nonintervention into full and complete practice in that country, through any apprehension that the United States would prove unfaithful to that principle. The practice of the United States from the beginning was a guarantee to all nations of the respect of the American people for the free sovereignty of the people of every other

State. It was, in reality, the chief element of the foreign policy of the United States.

Mr. Seward, Sec. of State, to the Marquis de Montholon, French min., Feb. 12, 1866, H. Ex. Doc. 73, 39 Cong. 1 sess. pt. 2, p. 548.

"It is with very great satisfaction that I find that the two Governments of the United States and France have come to an agreement in regard to the present military intervention of France in Mexico.

"This agreement I understand to be of the effect following, viz: The French military forces in Mexico will be withdrawn from that country in three separate detachments; the one to leave in November next, and the two others to leave in March and November, 1867. On our part all the sentiments heretofore expressed concerning the principle of nonintervention are now with cheerfulness reaffirmed. . . . I think it due to the frankness and sincerity which is required by the occasion to suggest that the continuance of the intervention during the period limited will necessarily be regarded with concern and apprehension by the masses of our people, and perhaps by Congress. Under these circumstances our army of observation must also be continued in some proportion on the southern bank of the Rio Grande. . . . It seems to me not improbable that France, having determined upon the complete withdrawal of her forces from Mexico within the term of seventeen months, may hereafter find it convenient and consistent with her interest and honor even to abridge that term."

Mr. Seward, Sec. of State, to the Marquis de Montholon, French min., April 25, 1866, Dip. Cor. 1866, I. 378.

For further correspondence in relation to the evacuation of Mexico by the French troops, see message of the President, Jan. 29, 1867, and accompanying correspondence, H. Ex. Doc. 76, 39 Cong. 2 sess.

See a memorandum of a conversation by the Secretary of State with the Marquis de Montholon, signed by Mr. Seward, July 30, 1866, MS. Notes to French Leg. VIII. 252.

See Mr. Seward, Sec. of State, to Mr. Campbell, min. to Mexico, No. 3, Oct. 25, 1866, Dip. Cor. 1866, III. 4.

As to attempts of Santa Anna and Oretga in 1866 to overthrow the Mexican Government, see Message of the President, Dec. 20, 1866, H. Ex Doc. 17, 39 Cong. 2 sess.

As to proceedings in Mexico and the French evacuation, see Mr. Seward's report, Jan. 29, 1867, H. Ex. Doc. 76, 39 Cong. 2 sess.

As to subsequent proceedings in Mexico, see S. Ex. Doc. 20, 40 Cong. 1 sess.; H. Ex. Doc. 30, 40 Cong. 1 sess.; H. Ex. Doc. 31, 40 Cong. 1 sess.

When the time came for the departure of the first detachment of the French army, it was intimated that the Emperor had decided to postpone the withdrawal of all his troops till the spring of 1867. Mr. Seward replied by cable, November 23, 1866, that the United States could not acquiesce in this plan, (1) because the term "next

spring" was vague and indefinite, (2) because there was no better guarantee for the withdrawal of the whole force in the spring than there had been for the withdrawal of a part in November, and (3) because such delay would seriously conflict with the plans of the United States. The Emperor intended to withdraw his troops, but wished to postpone their departure as long as possible. He proposed that a provisional government be formed to the exclusion of both Maximilian and Juarez. On January 18, 1867, Mr. Seward positively declined the proposition. The Emperor then gave up hope, and in February, 1867, the French evacuated the City of Mexico, and intervention quickly came to an end. In a few weeks Maximilian's forces were routed, and he and two of his most prominent Mexican supporters were tried by court-martial. On June 19, 1867, they were shot. Mr. Seward endeavored to obtain clemency for Maximilian, "but the passions of the army seem to have prevented Juarez from commuting the sentence."

Bancroft, Life of Seward, II. 438–440.

See, as to Louis Napoleon's attitude, Callahan's Diplomatic History of the Southern Confederacy, 99 et seq.; and as to the attitude of the Confederacy toward the Monroe doctrine, id. 75, 79, 83, 98, 161, 196, 204, 217, 241, 254, 257, 266, 275.

"In November, 1865, I went to Paris, at the solicitation of the Emperor Napoleon, breakfasted with him, and after breakfast spent two hours and a half with him in his cabinet, during which period he made with me a secret treaty, subject to the approval of the President, by which he agreed to withdraw his army from Mexico, in twelve, eighteen, and twenty-four months; and on that occasion I also arranged for the purchase of French Guiana, and placed in Mr. Seward's hands the terms of purchase fixed by the French minister of foreign affairs. The arrangement in regard to Mexico was approved by the President; and I so informed the Emperor. One of the conditions of that arrangement was, that it should be considered a profound secret, and not to be made known to our minister in Paris, or even to the French minister of foreign affairs, until the Emperor should make the announciation in the *Moniteur* in the following April. At the solicitation of Marshal Niel, however, who, when he was advised of the arrangement, declared it to be unsafe to try to evacuate Mexico in separate detachments, and insisted that the whole army must be removed at once, the Emperor subsequently gave us notice that he would retire from Mexico in March, 1867, sixteen months from the time of our arrangement, instead of twelve, eighteen, and twenty-four months, and this he did in good faith."

Letter of Gen. James Watson Webb to Mr. Fish, Sec. of State, May 17, 1873, S. Ex. Doc. 52, 43 Cong. 1 sess. 204.

"In regard to the purchase of French Guinea, the President disapproved, but Mr. Seward, I presume by authority of the President, directed me, in announcing the decision in regard to Mexico, to say to the Emperor Napoleon that we should be pleased to negotiate for the purchase of the island of Martinique or that of St. Pierre. Our proposition was declined, and there the matter ended." (Ibid.)

In his dispatch No. 43, of August 10, 1867, Gen. Webb, who was then still minister to Brazil, requested Mr. Seward to return to him "certain original notes of a conversation concerning Mexican affairs" which was held between him and the Emperor Louis Napoleon, and which notes, after having been transmitted to the President, were left in Mr. Seward's possession. "Your dispatch," said Mr. Seward, "also refers to autograph letters on the same subject, which, before that conversation, you had received from the Emperor of France, and which you at one time left in my care. The papers thus described were confidentially held by me and no copy of either of them was taken." It appeared, by Mr. Seward's statement, that two letters had been written to Gen. Webb by Mr. F. W. Seward, apparently for the purpose of returning the papers in question. "I shall regret the circumstance," said Mr. Seward, "if either or both of those communications miscarried. Until the receipt of your dispatch, I had no doubt that all the papers you have called for were in your possession. It is scarcely necessary to add that I have no copy or transcript of either of them." (Mr. Seward, Sec. of State, to Gen. Webb, min. to Brazil, No. 216, Sept. 28, 1867, MS. Inst. Brazil, XVI. 187.)

As to the resumption of diplomatic relations between France and Mexico, see Mr. Fish, Sec. of State, to Mr. Washburne, min. to France, No. 242, March 3, 1871, MS. Inst. France, XVIII. 485; Mr. Fish to Mr. Mariscal, Mex. min., Dec. 16, 1873, MS. Notes to Mex., VIII. 8; Mr. Fish to Mr. Nelson, min. to Mex., private and confidential, Dec. 19, 1872, MS. Inst. Mex. XVIII. 349; between Great Britain and Mexico, see Mr. Fish to Mr. Foster, min. to Mex., Jan. 31, 1874, MS. Inst. Mex. XIX. 66.

(4) PREVENTION OF AUSTRIAN AID, 1866.

§ 958.

With reference to a report that a representative of Maximilian was in Paris to obtain money to fit out 10,000 Austrian troops, who were ready to embark from Trieste for Mexico, Mr. Seward, on March 19, 1866, directed Mr. Motley, if the report appeared to be well founded, to bring it to the knowledge of the Austrian Government, and to say that the United States could not regard with unconcern a proceeding which would seem to bring Austria into an alliance with the invaders of Mexico, to subvert the domestic republic and build up foreign imperial institutions.

Subsequently news was received of the conclusion of a military convention under which the Austrian Government had consented that volunteers should be levied in the Empire by the Emperor's brother, in numbers sufficient to keep the full original legion in Mexico of

6,000 men, the levies to be made at the rate of 2,000 men a year for a certain period. Mr. Motley, in a despatch of April 6, 1866, raised a question whether the United States could protest against this proceeding, arguing that it was a matter within the sovereign rights of Austria; and, before sending the dispatch in which these views were advanced, he showed it to the Austrian minister of foreign affairs.

On April 6, 1866, Mr. Seward instructed Mr. Motley to state to the Austrian Government "that, in the event of hostilities being carried on hereafter in Mexico by Austrian subjects, under the command or with the sanction of the Government of Vienna, the United States will feel themselves at liberty to regard those hostilities as constituting a state of war by Austria against the Republic of Mexico; and in regard to such war, waged at this time and under existing circumstances, the United States could not engage to remain as silent or neutral spectators."

When Mr. Seward wrote this instruction he had not received Mr. Motley's despatch of the 6th of April. On reading it and perceiving that it had been submitted by Mr. Motley to Count Mensdorff, Mr. Seward, on the 30th of April, declared that it had become necessary to say that he did not acquiesce in Mr. Motley's position. His despatch, said Mr. Seward, was calculated to produce the impression that he expected the Austrian Government, in spite of the protest of the United States, still to permit the departure of volunteers under the convention, without waiting to discuss the matter with the United States. Should the Austrian Government take that course, and troops should be dispatched to Mexico in conformity with the convention, Mr. Motley was directed "at once to withdraw from Vienna to some convenient place in Europe and await instructions."

In a confidential dispatch, No. 161, of April 17, 1866, Mr. Motley reported that only 600 volunteers had been gathered to Laybach with a view to shipment from Trieste to Vera Cruz, and that the recruiting for the service was becoming very languid.

On May 6, 1866, Mr. Motley, in conformity with his instructions, addressed to Count Mensdorff a protest against the dispatch to Mexico of troops levied in Austria, and on May 12, 1866, he informed Mr. Seward that the departure of the volunteers for Mexico had been prevented.

On May 27, 1866, Count Mensdorff informed Mr. Motley, in an official note, that "the necessary measures have been taken to prevent the departure of the volunteers lately enlisted for Mexico."

Mr. Seward, Sec. of State, to Mr. Motley, min. to Austria, No. 167, March 19, 1866, MS. Inst. Austria, I. 287, S. Ex. Doc. 54, 39 Cong. 1 sess. 3, H. Ex. Doc. 73, 39 Cong. 1 sess. pt. 2, p. 573; same to same, No. 169, March 19, 1866, MS. Inst. Austria, I. 289, S. Ex. Doc. 54, 39 Cong. 1 sess. 4, H. Ex. Doc 73, 39 Cong. 1 sess, pt. 2, p. 573; same to same, No.

173, April 6, 1866, MS. Inst. Austria, I. 292, S. Ex. Doc. 54, 39 Cong. 1 sess. 5, H. Ex. Doc. 73, 39 Cong. 1 sess. pt. 2, p. 574; Mr. Motley to Mr. Seward, No. 158, April 6, 1866, S. Ex. Doc. 54, 39 Cong. 1 sess. 6, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 575; Mr. Seward to Mr. Motley, No. 174, April 16, 1866, MS. Inst. Austria, I. 295, S. Ex. Doc. 54, 39 Cong. 1 sess. 9, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 578; same to same, No. 176, (confid.), April 16, 1866, MS. Inst. Austria, I. 299; same to same, No. 181, April 30, 1866, MS. Inst. Austria, I. 302, S. Ex. Doc. 54, 39 Cong. 1 sess. 10, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 579; same to same, No. 182, May 3, 1866, MS. Inst. Austria, I. 306, S. Ex. Doc. 54, 39 Cong. 1 sess. 12, H. Ex. Doc. 73, 39 Cong 1 sess. part 2, p. 582; Mr. Motley to Count Mensdorff, May 6, 1866, S. Ex. Doc. 54, 39 Cong. 1 sess. 13, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 583; Count Mensdorff to Mr. Motley, May 20, 1866, S. Ex. Doc. 54, 39 Cong. 1 sess. 18, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 587; Mr. Seward to Mr. Motley, No. 189, June 9, 1866, MS. Inst. Austria, I. 311, S. Ex. Doc. 54, 39 Cong. 1 sess. 20, H. Ex. Doc. 73, 39 Cong. 1 sess. part 2, p. 589.

11. Peru.

§ 959.

In the controversy between Spain and Peru, which resulted in the war between Spain and the republics on the west coast of South America from 1864 to 1866, Spain was suspected of a purpose to overthrow the independence of Peru and subvert its government; and this suspicion derived at least apparent support from the declaration of certain representatives of Spain that, as she had never acknowledged the independence of Peru, she might rightly recover her ancient property in the Chincha Islands. In this relation the minister of the United States at Madrid was instructed on May 19, 1864, to make it known to the Spanish Government "that the United States can not yield their assent to the positions thus assumed in the name of Spain, or regard with indifference an attempt to reduce Peru by conquest and reannex its territory to the kingdom of Spain."

On June 3, 1864, the American minister reported that the prime minister had authorized him to assure the United States that Spain had not the slightest intention to reacquire any of her ancient colonies or to encroach upon the independence of Peru.

Mr. Seward, Sec. of State, to Mr. Koerner, min. to Spain, No. 95 (confid.), May 19, 1864, Dip. Cor. 1864, IV. 23–24; Mr. Koerner to Mr. Seward, No. 101, June 3, 1864, id. 30.

Toward the end of June, 1866, Mr. Tassara, Spanish minister at Washington, read to Mr. Seward a despatch from his Government, which, after explaining the progress of the war in South America, announced that the commander of the Spanish squadron in the Pacific was instructed, if he thought proper, to take possession of the

Chincha Islands, and, while respecting existing contracts between the Peruvian Government and the citizens of neutral nations, to sell and export guano therefrom. Mr. Tassara remarked, in compliance with the terms of the despatch, that it was doubtful whether the instruction to the Spanish commander would be carried into effect, and that his Government had not been influenced by the idea of acquiring territory or of intervening in the internal affairs of the Spanish-American republics, but was moved solely by the idea of taking important resources from its enemies and making itself whole for the sacrifices of Spain in the war.

After this interview Mr. Seward instructed the American minister at Madrid, by direction of the President, that, if the proceeding indicated in the despatch to Mr. Tassara should be persisted in, the United States must be understood as protesting against it, and that, if it should be persisted in in spite of the protest, the United States must not be expected "to remain in their present attitude of neutrality between Spain and the Spanish-American republics." Before sending off this instruction Mr. Seward permitted Mr. Tassara to read it, and, at the latter's instance, withheld it. At the same time Mr. Tassara withdrew the copy of the despatch which he had read to Mr. Seward, in order that he might refer the whole matter to his Government. Mr. Seward deemed it proper, however, confidentially to acquaint the American minister at Madrid with the circumstance and with the President's views, and instructed him to intimate to the Spanish minister of foreign affairs, "in an informal and most friendly manner, without entering into written correspondence, that the President sincerely and earnestly trusts that Spain may not proceed to any reoccupation of the Chincha Islands, because such a proceeding would seriously tend to disturb the harmonious relations with her Catholic Majesty's Government which it is the President's desire may remain without interruption."

Mr. Seward, Sec. of State, to Mr. Hale, min. to Spain, No. 35 (confid.), July 16, 1866, MS. Inst. Spain, XV. 568.

See, also, memorandum by Mr. Seward, approved by the President, MS. Notes to Spanish Leg. VIII. 481; Mr. Seward, Sec. of State, to Mr. Hale, min. to Spain, No. 14, Sept. 27, 1866, MS. Inst. Spain, XV. 578.

See, as to the bombardment of Valparaiso, March 31, 1866, Naval War College, International Law Situations, 1901, p. 30.

It was held in 1881 inexpedient for the United States to unite with France and Great Britain in intervening to terminate hostilities between Chile and Peru.

Mr. Blaine, Sec. of State, to Mr. Morton, min. to France, No. 30, Sept. 5, 1881, For. Rel. 1881, 426.

With reference to the possible renewal by France, Germany, and Great Britain of the project of intervention, which they had in contemplation in 1879, to bring about a settlement of the quarrel between

Chile on the one hand and Peru and Bolivia on the other, the American ministers at Lima, La Paz, and Santiago were instructed, in case the pressure of the governments in question upon the combatants should tend to assume a coercive character, to preserve an attitude which would facilitate a joint and friendly resort to the good offices of the United States. (Mr. Evarts, Sec. of State to Mr. Christiancy, min. to Peru, No. 68 (confid.), March 9, 1880, MS. Inst. Peru, XVI. 441; Mr. Evarts to Mr. Osborn, min. to Chile, No. 85 (confid.), March 9, 1880, MS. Inst. Chile, XVI. 273.)

The action of the American diplomatic representative at Lima, in February, 1883, in uniting with the representatives of France, Great Britain, and Italy in submitting to their respective governments a suggestion that they unite in an interference in the South American difficulties, was taken without authority and without previous communication with the Department of State, and was disapproved. (Mr. Frelinghuysen, Sec. of State, to Mr. Logan, min. to Chile, No. 39, March 7, 1883, MS. Inst. Chile, XVII. 60.)

12. Santo Domingo.

(1) American-European intervention, 1850–51.

§ 960.

In a circular of February 22, 1850, addressed to the American, British, and French consuls at Santo Domingo City, the minister of foreign affairs of the Dominican Republic solicited the mediation of the Governments of the United States, France, and Great Britain for the purpose of bringing about a peace between the Empire of Hayti and that Republic. This solicitation was followed by conferences at Washington between Mr. Clayton, who was then Secretary of State, and the British and French Ministers, in which a plan of cooperation was tentatively agreed upon. It comprised the appointment by the United States of a chargé d'affaires to the Dominican Republic.

In a note of May 11, 1850, Sir Henry Bulwer, who was then British minister at Washington, informed the Department of State that the French Government had expressed its willingness to cooperate with the Governments of Great Britain and the United States for the purpose indicated. Mr. Clayton replied, May 20, that upon the return to Washington of Mr. Green, the United States consul at Santo Domingo, his correspondence would be submitted to the Senate with the nomination of a chargé d'affaires, and that if the nomination should be confirmed the President would be prepared to cooperate with the Governments of England and France in the manner and for the purposes suggested. Soon after Mr. Green's return, however, President Taylor died and was succeeded by Mr. Fillmore, while Mr. Webster succeeded Mr. Clayton as Secretary of State; and it was decided, instead of nominating a chargé d'affaires to Santo Domingo, to confide the business to a special agent. For that mission

Mr. Robert M. Walsh was selected. He was furnished, through the Department of State, with letters of introduction from the British and French ministers at Washington to the British and French consuls at Port au Prince and Santo Domingo, and with a copy of the instructions which Sir Henry Bulwer had, by direction of his Government, addressed to Mr. Usher, British consul at Port au Prince. These instructions, which the French Government adopted, set forth, said Mr. Webster, in an instruction to Mr. Walsh of Jan. 18, 1851, "the motives and objects of the intervening parties . . . so clearly and luminously" that it was unnecessary for him to advert to them. He entirely concurred in the views which they expressed, and expected that Mr. Walsh would be governed by them. Mr. Webster further said:

"On arriving at Port au Prince you will accordingly seek a conference with Mr. Usher and the consul of France upon the subject of your mission, and particularly with a view of inducing the Emperor Soulouque to consent to a lengthened truce or a permanent peace with the Dominicans. As in co-operating for this end the three governments are actuated by philanthropic views, to which they believe any material interests which all or either may have in the question are quite subordinate, you will endeavor, in all your communications with your colleagues, and with either the Dominican or the Haytian governments, to keep your mind free from any prejudice resulting from color or forms of government. You will not deny justice to the Emperor Soulouque because he and his subjects are of African extraction and his government professes to be monarchical; and you will not be partial in your judgments in favor of the Dominican government because its officers are supposed to be for the most part of the Castilian race, and because it claims to be republican in its form.

"The material interests of the three countries, however, are largely involved in the restoration and preservation of peace between the contending parties in St. Domingo. France is a creditor of the government of the Emperor Soulouque to a large amount. She can not hope for a discharge of her debt when the resources of his country, instead of being developed by pacific pursuits and in part, at least, applied to that purpose, are checked in their growth and wasted in a war with a conterminous state. Great Britain and France are both interested in securing that great additional demand for their productions which must result from the impulse to be expected for industry in Hayti and the Dominican Republic from a termination of the war; and the United States have a similar interest, both from the augmentation of their trade with the island which would then ensue and from the consideration that their commercial prosperity is intimately connected with that of both France and Great Britain. When, there-

fore, you shall have held free and full conferences with your colleagues and shall have ascertained the reciprocal claims of the parties to the war, if the Emperor Soulouque shall insist upon maintaining a belligerent attitude until all his demands shall have been satisfied by the opposite party, you will unite with your colleagues in remonstrating against this course on his part. If the remonstrance should prove to be unavailing, you will signify to the Emperor that you shall give immediate notice to your government, that the President, with the concurrence of Congress, may adopt such measures, in cooperation with the governments of England and France, as may cause the intervention of the three powers to be respected; and you will lose no time in communicating the result to this Department. The Emperor should be made properly aware of the dangers which he and his country may encounter, if he should be unfortunately advised to reject reasonable terms of pacification; but you will stop at remonstrance until further orders.

"If, however, your joint and concurrent representations should induce the Emperor Soulouque to make an abatement of his demands, which you and your colleagues may deem reasonable, you will, in concert with them, make this known to the Dominican Government, and will recommend their adoption of a peace on that basis. You will, however, give a patient hearing to any objections which that government may advance, and if you and your colleagues should deem those objections solid, you will communicate them to the minister for foreign affairs of Hayti and will require from him an answer to them. If this answer should not be given within a reasonable time, or if when given it should not prove to be satisfactory, you will then, conjointly with your colleagues, require the Emperor to conclude a permanent peace with the Dominican Government, upon the basis which you may jointly prescribe to him, or to consent to a truce with that government of not less than ten years.

"You will write to the department as frequently as opportunities may permit, in order that, if further instructions should be necessary, they may, after consultation with the ministers of Great Britain and France, be transmitted accordingly."

The instructions given by Sir Henry Bulwer to Mr. Usher, and adopted by Mr. Webster, stated that the object of the powers was "to stop the effusion of blood which is being uselessly spilled in barbarous hostilities between the two races which inhabit the island"—"hostilities abhorrent to humanity, destructive to commerce, and threatening, by the possibility of jealousies or differences arising out of the intervention or supposed desire of intervention of one or other of the great powers interested in this question, to disturb the general good understanding which at present prevails between all such powers and Great Britain." The object to attain, consequently,

was either (1) "a settled peace upon a fair and durable basis," or (2) "a lengthened truce upon reasonable conditions." Whichever of these might seem the "most feasible" was to be considered the "best."

To this end Mr. Usher was to insist on an immediate cessation of hostilities, or, if hostilities were not actually taking place, on a postponement till "a certain limited period." Should the Emperor Soulouque refuse this reasonable request, he was to be advised that he had placed himself in a position that would justify the powers in immediately taking such steps as their interests or their general duty to humanity might lead them to adopt. Should he accede to it, the representatives of the powers were to present a plan for a truce or a peace, which was to be fair to both parties. "When great and civilized nations interfere," said Sir Henry, "to regulate the affairs or quarrels of smaller or less civilized ones, their justification must be founded on the beneficent policy which directs, and the strict impartiality which limits their line of conduct." Besides, all differences between the representatives of the powers were to be avoided, "so that no person within the governments of Hayti or St. Domingo should imagine that there is an English policy, or an American policy, or a French policy to be pursued in this matter, but that all should recognize that it is merely a general policy consistent with the general interests of commerce and humanity, which the three governments unanimously adopt, and expect their respective agents impartially to carry out." Should the Government of Hayti persist in refusing the "mediation," the Emperor was to be menaced, as a last resort, with the determination of the powers to have the terms proposed adopted in the main, or at all events not to allow the war to continue or to recommence till other terms had been "submitted by the mediating powers in lieu thereof." The measures of coercion which England and France would be willing to adopt were at the moment confined to a blockade of Haytian ports, such as Port au Prince, Jacmel, Aux Cayes, Gonaives; but, if it should seem that a blockade would not suffice to obtain the object in view, the menace of force, if made at all, should be made in such vague terms as would not commit Her Majesty's Government to employ force, till it should learn what species of force would be necessary. In the unforeseen contingency of a plan acceptable to Hayti being rejected by Santo Domingo, all that could be asked of the Haytian Government would be a suspension of hostilities till fresh instructions could be obtained.

Mr. Walsh embarked at Norfolk, January 25, 1851, on the U. S. S. *Saranac*, and on the 2d of February arrived at Port au Prince, where, after announcing his presence to the Duke of Tiberon, the Haytian minister of foreign affairs, he was promptly received by the latter, and, together with the officers of the *Saranac*, presented to the Emperor.

After consulting with the French and English agents at Port au Prince, Mr. Walsh had a long interview with the minister of foreign affairs. In this interview Mr. Walsh stated that his Government had determined to cooperate with the Governments of England and France in bringing about the pacification of the island; that it believed that the only proper way to accomplish this was for the Government of Hayti to ackowledge the independence of the Dominican Republic, an independence so long maintained as to show the impossibility of its being overturned by Hayti; and that any further prosecution of the war would be abhorrent to the dictates of humanity and reason and injurious to the interests of neutrals. The minister, however, persisted in declaring that the Emperor would never abandon his rights, and that even if he should consent to do so his people would not permit it. Mr. Walsh reported this response to his colleagues, and they at once addressed to the minister, February 11, 1851, a note in which they requested "a categorical answer to the following proposition: *A definitive treaty of peace, or a truce of ten years, between the Empire of Hayti and the Dominican Republic;*" and they expressed confidence that the Haytian Government would, by accepting one of these alternatives, "decide at last upon the only course which it can adopt in order to avoid the consequences that may result from any longer persistence in its resolution to destroy the nationality of St. Domingo."

The Haytian Government delayed its reply in the hope that the understanding between the three powers could not long endure. The representatives of the powers protested against this course, and the Government appointed four commissioners to confer with them. The negotiations lagged, and on March 14, 1851, Mr. Walsh, in a note to the minister of foreign affairs, asked for a definite answer, at the same time declaring that he would "warn the Government for the last time, in the most earnest and emphatic manner, against any attack upon the Dominican Republic," and that any attempt of the kind on the part of the Government would "only result in disaster to itself." In consequence of the urgency of the representatives of the powers, the Haytian legislative chambers were called together and a joint committee appointed to report on the Dominican question. A definite reply was received from the Haytian Government under date of April 19, 1851. It declined either to enter into a definitive peace or into a truce of ten years, but offered to continue a truce which had previously been made, and proposed that all points of difference should be settled by deputies to be named in equal number by the two contending parties, their decision to be made effective under the mediation and guaranty of the representatives of the three powers. In view of this proposal, which was supplemented by oral assurances of the minister of foreign affairs that

hostilities would not be renewed, the agents of England and France deemed themselves not to be authorized by their instructions to make any threat of force. May 1, 1851, Mr. Walsh left Port au Prince, and after paying a visit to Santo Domingo returned to the United States, his mission having been limited to four months.

S. Ex. Doc. 113, 32 Cong. 1 sess.; and particularly, Mr. Webster, Sec. of State, to Mr. Walsh, special agent, Jan. 18, 1851, id. 3–4.

See, also, Mr. Clayton, Sec. of State, to Sir H. L. Bulwer, Brit. min., May 20, 1850, MS. Notes to Gr. Br. VII. 243, S. Ex. Doc. 113, 32 Cong. 1 sess.; Mr. Webster, Sec. of State, to Sir H. L. Bulwer, Aug. 20, 1850, MS. Notes to Gr. Br. VII. 259; Mr. Webster, Sec. of State, to Mr. Boislecomte, French min., Aug. 24, 1850, MS. Notes to French Leg. VI. 147.

Orders were issued to the commanding officer of the home squadron of the United States "to cooperate with those of Great Britain and France in any measures short of actual coercion consistent with the views of this Government as conveyed in the instructions from this Department to its special agent in St. Domingo, and subsequently communicated to the British and French legations in this city." (Mr. Derrick, Act. Sec. of State, to Mr. Crampton, Brit. min., Sept. 4, 1851, MS. Notes to Gr. Br. VII. 290.)

President Fillmore, in his annual message of December 2, 1851, said: "Peace has been concluded between the contending parties in the island of St. Domingo, and, it is hoped, upon a durable basis. Such is the extent of our commercial relations with that island that the United States can not fail to feel a strong interest in its tranquillity." (Richardson's Messages, V. 122.)

See Paxson, A Tripartite Intervention in Hayti, 1851, The University of Colorado Studies (Feb. 1904), I. 323–330.

"I transmit you a document printed by order of the House of Representatives which will acquaint you with the steps taken by France, England, and the United States to preserve the tranquillity and integrity of the eastern portion of the island of San Domingo. The policy pursued by the United States in this respect has been wholly disinterested. It has been, no doubt, in our power to obtain a permanent foothold in Dominica; and we have as much need of a naval station at Samana as any European power could possibly have. It has, however, been the steady rule of our policy to avoid, as far as possible, all disturbance of the existing political relations of the West Indies. We have felt that any attempts on the part of any one of the great maritime powers to obtain exclusive advantages in any of the islands, where such an attempt was likely to be made, would be apt to be followed by others, and end in converting the archipelago into a great theater of national competition for exclusive advantages and territorial acquisitions which might become fatal to the peace of the world."

Mr. Everett, Sec. of State, to Mr. Rives, min. to France, No. 56, Dec. 17, 1852, MS. Inst. France, XV. 165.

The document referred to is S. Ex. Doc. 113, 32 Cong. 1 sess.

(2) SPANISH REANNEXATION, 1861–1865.

§ 961.

On April 2, 1861, Mr. Seward addressed a note to Mr. Tassara, Spanish minister at Washington, as to the reported subversion of the Dominican Republic by the Spanish authorities in Cuba, with a view to establish a Spanish protectorate or annexing the territory to Spain. If it should turn out, said Mr. Seward, that these proceedings were sanctioned by the Spanish Government, the President would "be obliged to regard them as manifesting an unfriendly spirit towards the United States, and to meet the further prosecution of enterprises of that kind in regard to either the Dominican Republic or any part of the American Continent or islands with a prompt, persistent, and, if possible, effective resistance."

Mr. Seward, Sec. of State, to Mr. Tassara, Span. min., April 2, 1861, MS. Notes to Span. Leg. VII. 200.

In 1853 the Secretary of the Navy was requested to send a vessel to the eastern end of Santo Domingo confidentially to investigate the reported occupation of Samana Bay by the French. (Mr. Everett, Sec. of State, to Mr. Kennedy, Sec. of Navy, Jan. 3, 1853, 41 MS. Dom. Let. 181.)

"We are informed by what seems reliable authority, that the Dominican Republic on the island of San Domingo has been overthrown by a force introduced there by subjects of Spain who proceeded thither from the island of Cuba. And on authority equally probable we are informed that the Government of Her Catholic Majesty has been speedily proclaimed on the subversion of the Republic, and that this proclamation is maintained by a very large detachment of the Spanish army stationed in the West Indies.

"By direction of the President, I have called the attention of the minister plenipotentiary of Her Catholic Majesty at this place to these very extraordinary facts and asked for an explanation thereof. You are furnished with a copy of that communication and also with a copy of Mr. Tassara's reply. He having promised to communicate further after consulting his Government, the President awaits that communication before taking any decisive measure concerning the transaction. You are authorized and instructed to call the attention of the Spanish Government to the subject, and in such manner as you can adopt without impropriety, urge the necessity of a prompt and satisfactory explanation. For this purpose you are authorized to say that the President will regard any attempt of Her Catholic Majesty's Government to retain the territory of the late Dominican Republic as a matter claiming very serious attention on the part of the Government of the United States."

Mr. Seward, Sec. of State, to Mr. Schurz, min. to Spain, April 27, 1861, MS. Inst. Spain, XV. 263.

"The United States have a traditional policy in regard to the islands of Cuba and Porto Rico, which are dependencies of Spain. In view of the propinquity of those islands to our own coast, the United States have felt it their right and duty to watch them and prevent their falling into the hands of an inimical power. They have constantly indulged the belief that they might hope at some day to acquire those islands by just and lawful means, with the consent of their sovereign. In the meantime the United States have believed it to be most conducive to their present and ulterior safety and interests that Cuba and Porto Rico remain in the possession and ownership of Spain.

"Although there have been times when a disposition to deviate from this policy has been manifested by some parties, yet it has nevertheless been persevered in with great fidelity on the part of the Government. The President is satisfied of the wisdom of this course and is well inclined to adhere to it as steadily as any of his predecessors.

"But it must be borne in mind that this forbearance on our part has always proceeded on the ground that Spain is not an aggressive power, and that she is content to leave the Spanish-American independent states free from her intervention, and at liberty to regulate their own affairs and work out their own destiny."

Mr. Seward, Sec. of State, to Mr. Schurz, min. to Spain, April 27, 1861, MS. Inst. Spain, XV. 263.

"The protest of the Haytians against the recent attempt of Spain to regain her foothold in that island [Santo Domingo] is fresh in the recollection of the public." (Mr. Fish, Sec. of State, to Mr. Bassett, min. to Hayti, Feb. 9, 1871, For. Rel. 1871, 566.)

See, also, Mr. Fish, Sec. of State, to Mr. Bassett, min. to Hayti, June 24, 1871, For. Rel. 1871, 568.

On May 21, 1861, Mr. Perry, chargé at Madrid, was instructed by Mr. Seward "to protest against the assumption or exercise of Spanish authority" in Santo Domingo, "a protest which, in every case, we shall," declared Mr. Seward, "expect to maintain."

On June 7, Mr. Seward telegraphed to Mr. Schurz, at New York, instructing him on his arrival at Madrid to confine his action with regard to Santo Domingo "to a protest against the assumption or exercise of Spanish authority in that island."

Writing to Mr. Schurz on the 22d of June, Mr. Seward said that Congress was to meet in special session on the 4th of July, and that it was not thought expedient "to divert its attention from the domestic subjects" for which it was convened. It was hoped that a protest had been made in pursuance of the instructions of May 21 to Mr. Perry. If not, Mr. Schurz was to make it "in such a manner as to indicate our firm denial of the rightfulness of the annexation." The

United States was desirous to know the views of France, and what she had said to Spain or to Great Britain.

Mr. Seward, Sec. of State, to Mr. Perry, chargé at Madrid, No. 2, May 21, 1861, MS. Inst. Spain, XV. 273; Mr. Seward to Mr. Schurz, min. to Spain, No. 4, June 10, 1861, id. 276; same to same, No. 7 (confid.) June 22, 1861, id. 278.

"Mr. Tassara called upon me yesterday, and delivered to me, confidentially, a royal decree pronouncing the annexation of Dominica to Spain. Presuming that our protest against this act of the Spanish Government has been already made known in pursuance of previous instructions, this confidential communication of the form of the act itself does not seem to us to require any official proceeding on our part at the present moment. The subject in its various and complicated bearings will in due time receive the deliberate consideration of the Government."

Mr. Seward, Sec. of State, to Mr. Schurz, min. to Spain, No. 10 (confid.), July 2, 1861, MS. Inst. Spain, XV. 279.

Mr. Schurz having asked for an explicit statement of the ulterior policy of the United States as to the absorption of Santo Domingo by Spain, Mr. Seward replied that the great diversity of important subjects requiring the consideration and action of the Government concurred with the uncertainty of political events in preventing a deliberate answer. The subject had passed over from the point where it was left in the official correspondence to the consideration of Congress at its next regular session. Under these circumstances, the sovereignty of the United States being respected by Spain, as it was "through the observance of our blockade and the closing of Spanish ports to the insurgent privateers," negotiations might be opened for the revision of the commercial treaty between the two countries. (Mr. Seward, Sec. of State, to Mr. Schurz, min. to Spain, No. 20 (confid.), Aug. 14, 1861, MS. Inst. Spain, XV. 287.)

War having broken out between the Spanish Government in Santo Domingo and the people of the island, the Government of the United States determined to maintain in regard to the conflict, just as in regard to all other foreign conflicts, the "same neutrality" which it exacted of friendly nations in regard to its own civil war. The necessary steps were therefore taken for the enforcement of the neutrality laws.

Mr. Seward, Sec. of State, to Mr. Tassara, Span. min., Nov. 23, 1863, MS. Notes to Span. Leg. VII. 440; Mr. Seward, Sec. of State, to Mr. Chase, Sec. of Treasury, Nov. 24, 1863 (and mutatis mutandis to Sec. of Navy and Attorney-General), 62 MS. Dom. Let. 328; Mr. Seward, Sec. of State, to Mr. Bates, At. Gen., March 18, 1864, 63 MS. Dom. Let. 460.

Owing to the constant disturbances in Santo Domingo, and the apparent inability of the Spanish Government to establish tran-

quillity there, an open agitation was begun in the press of Madrid in the winter of 1863–64 for the abandonment of the island. A bill for that purpose was eventually passed by the Cortes, and became a law by the signature of the Queen on April 30, 1865.

Mr. Koerner, min. to Spain, to Mr. Seward, Sec. of State, No. 76, Feb. 14, 1864, Dip. Cor. 1864, IV, 8; Mr. Seward, to Mr. Koerner, No. 86, May 4, 1864, id. 19; same to same, No. 87, May 6, 1864, id. 19; Mr. Koerner to Mr. Seward, No. 99, May 20, 1864, id. 29; Mr. Perry, chargé at Madrid, to Mr. Seward, No. 135, Oct. 28, 1864, Dip. Cor. 1865, II. 465; same to same, No. 161, Jan. 31, 1865, id. 471; Mr. Seward to Mr. Perry, No. 70, Feb. 27, 1865, id. 508; Mr. Perry to Mr. Seward, No. 196, May 7, 1865; id. 534.

Messrs. Wade, White, and Howe, commissioners to Santo Domingo, in 1871, reported that the failure of the Spanish there was attributable to the following things: (1) The filling of public offices with Spaniards to the exclusion of Dominicans; (2) the color prejudice of the Spanish subordinate officials, who were chiefly Spanish subjects from Cuba and Porto Rico, where the enslavement of persons of color still continued; (3) the brutality of some of the superior officers and of many of the soldiery; (4) the over-regulation of matters of daily life; (5) religious intolerance; (6) conflicts of political ideas; (7) an apprehension that slavery would be reestablished. The best opinion seemed to be that Spain sent about 35,000 troops to the island, of whom 6,000 or 8,000 were lost by disease or desertion. (Report of the Commission of Inquiry, 1871, S. Ex. Doc. 9, 42 Cong. 1 sess. 9–11.)

(3) Protocol of February 7, 1905.

§ 962.

In September, 1903, a project was submitted to the Dominican Congress by the Minister of Interior and Police for the neutralization of Dominican waters and the establishment of free ports at Samana and Manzanillo. It formed the subject of a correspondence between the legation of the United States and the Dominican foreign office, and in the middle of October was withdrawn.

Mr. Powell, chargé d'affaires to Santo Domingo, to Mr. Hay, Sec. of State, No. 579, Sept. 18, 1903; No. 585, Sept. 26, 1903; No. 597, Oct. 8, 1903; No. 601, Oct. 12, 1903; MS. Desp. from Santo Domingo.

"I submit herewith a protocol concluded between the Dominican Republic and the United States.

"The conditions in the Republic of Santo Domingo have been growing steadily worse for many years. There have been many disturbances and revolutions, and debts have been contracted beyond the power of the Republic to pay. Some of these debts were properly contracted and are held by those who have a legitimate right to their money. Others are without question improper or exorbitant, con-

stituting claims which should never be paid in full and perhaps only to the extent of a very small portion of their nominal value.

"Certain foreign countries have long felt themselves aggrieved because of the nonpayment of debts due their citizens. The only way by which foreign creditors could ever obtain from the Republic itself any guaranty of payment would be either by the acquisition of territory outright or temporarily, or else by taking possession of the custom-houses, which would of course in itself, in effect, be taking possession of a certain amount of territory.

"It has for some time been obvious that those who profit by the Monroe doctrine must accept certain responsibilities along with the rights which it confers; and that the same statement applies to those who uphold the doctrine. It can not be too often and too emphatically asserted that the United States has not the slightest desire for territorial aggrandizement at the expense of any of its southern neighbors, and will not treat the Monroe doctrine as an excuse for such aggrandizement on its part. We do not propose to take any part of Santo Domingo, or exercise any other control over the island save what is necessary to its financial rehabilitation in connection with the collection of revenue, part of which will be turned over to the Government to meet the necessary expense of running it, and part of which will be distributed pro rata among the creditors of the Republic upon a basis of absolute equity. The justification for the United States taking this burden and incurring this responsibility is to be found in the fact that it is incompatible with international equity for the United States to refuse to allow other powers to take the only means at their disposal of satisfying the claims of their creditors and yet to refuse, itself, to take any such steps.

"An aggrieved nation can without interfering with the Monroe doctrine take what action it sees fit in the adjustment of its disputes with American states, provided that action does not take the shape of interference with their form of government or of the despoilment of their territory under any disguise. But, short of this, when the question is one of a money claim, the only way which remains, finally, to collect it is a blockade, or bombardment, or the seizure of the custom-houses, and this means, as has been said above, what is in effect a possession, even though only a temporary possession, of territory. The United States then becomes a party in interest, because under the Monroe doctrine it can not see any European power seize and permanently occupy the territory of one of these Republics; and yet such seizure of territory, disguised or undisguised, may eventually offer the only way in which the power in question can collect any debts, unless there is interference on the part of the United States.

"One of the difficult and increasingly complicated problems, which often arise in Santo Domingo, grows out of the violations of contracts

and concessions, sometimes improvidently granted, with valuable privileges and exemptions stipulated for upon grossly inadequate considerations which were burdensome to the state, and which are not infrequently disregarded and violated by the governing authorities. Citizens of the United States and of other governments holding these concessions and contracts appeal to their respective governments for active protection and intervention. Except for arbitrary wrong, done or sanctioned by superior authority, to persons or to vested property rights, the United States Government, following its traditional usage in such cases, aims to go no further than the mere use of its good offices, a measure which frequently proves ineffective. On the other hand, there are governments which do sometimes take energetic action for the protection of their subjects in the enforcement of merely contractual claims, and thereupon American concessionaries, supported by powerful influences, make loud appeal to the United States Government in similar cases for similar action. They complain that in the actual posture of affairs their valuable properties are practically confiscated, that American enterprise is paralyzed, and that unless they are fully protected, even by the enforcement of their merely contractual rights, it means the abandonment to the subjects of other governments of the interests of American trade and commerce through the sacrifice of their investments by excessive taxes imposed in violation of contract, and by other devices, and the sacrifice of the output of their mines and other industries, and even of their railway and shipping interests, which they have established in connection with the exploitation of their concessions. Thus the attempted solution of the complex problem by the ordinary methods of diplomacy reacts injuriously upon the United States Government itself, and in a measure paralyzes the action of the Executive in the direction of a sound and consistent policy. The United States Government is embarrassed in its efforts to foster American enterprise and the growth of our commerce through the cultivation of friendly relations with Santo Domingo, by the irritating effects on those relations, and the consequent injurious influence upon that commerce, of frequent interventions. As a method of solution of the complicated problem arbitration has become nugatory, inasmuch as, in the condition of its finances, an award against the Republic is worthless unless its payment is secured by the pledge of at least some portion of the customs revenues. This pledge is ineffectual without actual delivery over of the custom-houses to secure the appropriation of the pledged revenues to the payment of the award. This situation again reacts injuriously upon the relations of the United States with other nations. For when an award and such security are thus obtained, as in the case of the Santo Domingo Improvement Company, some foreign government complains that the award conflicts with its

rights, as a creditor, to some portion of these revenues under an alleged prior pledge; and still other governments complain that an award in any considerable sum, secured by pledges of the customs revenues, is prejudicial to the payment of their equally meritorious claims out of the ordinary revenues; and thus controversies are begotten between the United States and other creditor nations because of the apparent sacrifice of some of their claims, which may be just or may be grossly exaggerated, but which the United States Government can not inquire into without giving grounds of offense to other friendly creditor nations. Still further illustrations might easily be furnished of the hopelessness of the present situation growing out of the social disorders and the bankrupt finances of the Dominican Republic, where for considerable periods during recent years the bonds of civil society have been practically dissolved.

"Under the accepted law of nations foreign governments are within their right, if they choose to exercise it, when they actively intervene in support of the contractual claims of their subjects. They sometimes exercise this power, and on account of commercial rivalries there is a growing tendency on the part of other governments more and more to aid diplomatically in the enforcement of the claims of their subjects. In view of the dilemma in which the Government of the United States is thus placed, it must either adhere to its usual attitude of nonintervention in such cases—an attitude proper under normal conditions, but one which in this particular kind of case results to the disadvantage of its citizens in comparison with those of other states—or else it must, in order to be consistent in its policy, actively intervene to protect the contracts and concessions of its citizens engaged in agriculture, commerce, and transportation in competition with the subjects and citizens of other states. This course would render the United States the insurer of all the speculative risks of its citizens in the public securities and franchises of Santo Domingo.

"Under the plan in the protocol herewith submitted to the Senate, insuring a faithful collection and application of the revenues to the specified objects, we are well assured that this difficult task can be accomplished with the friendly cooperation and good will of all the parties concerned, and to the great relief of the Dominican Republic.

"The conditions in the Dominican Republic not only constitute a menace to our relations with other foreign nations, but they also concern the prosperity of the people of the island, as well as the security of American interests, and they are intimately associated with the interests of the South Atlantic and Gulf States, the normal expansion of whose commerce lies in that direction. At one time, and that only a year ago, three revolutions were in progress in the island at the same time.

"It is impossible to state with anything like approximate accuracy the present population of the Dominican Republic. In the report of the Commission appointed by President Grant in 1871, the population was estimated at not over 150,000 souls, but according to the Statesman's Yearbook for 1904 the estimated population in 1888 is given as 610,000. The Bureau of the American Republics considers this the best estimate of the present population of the Republic. As shown by the unanimous report of the Grant Commission the public debt of the Dominican Republic, including claims, was $1,565,831.59½. The total revenues were $772,684.75½. The public indebtedness of the Dominican Republic, not including all claims, was on September 12 last, as the Department of State is advised, $32,280,000; the estimated revenues under Dominican management of custom-houses were $1,850,000; the proposed budget for current administration was $1,300,000, leaving only $550,000 to pay foreign and liquidated obligations, and payments on these latter will amount during the ensuing year to $1,700,000, besides $900,000 of arrearages of payments overdue, amounting in all to $2,600,000. It is therefore impossible under existing conditions, which are chronic, and with the estimated yearly revenues of the Republic, which during the last decade have averaged approximately $1,600,000, to defray the ordinary expenses of the Government and to meet its obligations.

"The Dominican debt owed to European creditors is about $22,000,000, and of this sum over $18,000,000 is more or less formally recognized. The representatives of European governments have several times approached the Secretary of State setting forth the wrongs and intolerable delays to which they have been subjected at the hands of the successive governments of Santo Domingo in the collection of their just claims, and intimating that unless the Dominican Government should receive some assistance from the United States in the way of regulating its finances, the creditor governments in Europe would be forced to resort to more effective measures of compulsion to secure the satisfaction of their claims.

"If the United States Government declines to take action and other foreign governments resort to action to secure payment of their claims, the latter would be entitled, according to the decision of The Hague tribunal in the Venezuelan cases, to the preferential payment of their claims; and this would absorb all the Dominican revenues and would be a virtual sacrifice of American claims and interests in the island. If, moreover, any such action should be taken by them, the only method to enable them to secure the payment of their claims would be to take possession of the custom-houses, and considering the state of the Dominican finances this would mean a definite and very possibly permanent occupation of Dominican territory, for no period

could be set to the time which would be necessarily required for the payment of their obligations and unliquidated claims. The United States Government could not interfere to prevent such seizure and occupation of Dominican territory without either itself proposing some feasible alternative in the way of action, or else virtually saying to European governments that they would not be allowed to collect their claims. This would be an unfortunate attitude for the Government of the United States to be forced to maintain at present. It can not with propriety say that it will protect its own citizens and interests, on the one hand, and yet on the other hand refuse to allow other governments to protect their citizens and interests.

"The actual situation in the Dominican Republic can not, perhaps, be more forcibly stated than by giving a brief account of the case of the San Domingo Improvement Company.

"From 1869 to 1897 the Dominican Government issued successive series of bonds, the majority of which were in the hands of European holders. Successive issues bore interest at rates ranging from 2¾ to 6 per cent, and what with commissions and other deductions and the heavy discount in the market the Government probably did not receive over 50 to 75 per cent of their nominal value. Other portions of the debt were created by loans, for which the Government received only one-half of the amount it was nominally to repay, and these obligations bore interest at the rate of 1 to 2 per cent a month on their face, some of them compounded monthly.

"The improvidence of the Government in its financial management was due to its weakness, to its impaired credit, and to its pecuniary needs, occasioned by frequent insurrections and revolutionary changes, and by its inability to collect its revenues.

"In 1888 the Government, in order to secure the payment of an issue of bonds, placed the custom-houses and the collection of its customs duties, which are substantially the only revenues of the Republic, in the hands of the Westendorps, bankers of Amsterdam, Holland. But the national debt continued to grow and the Government finally intrusted the collection of its revenues to an American corporation, the San Domingo Improvement Company, which was to take over the bonds of the Westendorps. The Dominican Government finally became dissatisfied with this arrangement, and, in 1901, ousted the improvement company from its custom-houses and took into its own hands the collection of its revenues. The company thereupon appealed to the United States Government to maintain them in their position, but their request was refused. The Dominican Government then sent its minister of foreign affairs to Washington to negotiate a settlement. He admitted that the improvement company had equities which ought not to be disregarded, and the Department of State suggested that the Dominican Government and the improvement

company should effect, by private negotiation, a satisfactory settlement between them. They accordingly entered into an arrangement for a settlement, which was mutually satisfactory to the parties. A similar arrangement was likewise made between the Dominican Government and the European bondholders. The latter arrangement was carried into execution by the Dominican Government and payments made toward the liquidation of the bonds held by the European holders. The Dominican Congress refused to ratify the similar arrangement made with the improvement company, and the Government refused to provide for the payment of the American claimants. In this state of the case it was evident that a continuance of this treatment of the American creditors, and its repetition in other cases, would, if allowed to run its course, result in handing over the island to European creditors, and in time would ripen into serious controversies between the United States and other governments, unless the United States should deliberately and finally abandon its interests in the island.

"The improvement company and its allied companies held, besides bonds, certain banking and railway interests in the island. The Dominican Government, desirous to own and possess these properties, agreed with the companies that the value of their bonds and properties was $4,500,000, and they submitted to arbitration the question as to the installments in which this sum should be paid and the security that should be given. The Hon. George Gray, judge of the United States circuit court of appeals, and the Hon. Manuel de J. Galvan, both named by the Dominican Republic, and the Hon. John G. Carlisle, named by the United States, were the arbitrators and rendered their award on July 14, 1904. By its terms the Dominican Government was to pay the above-mentioned sum of $4,500,000, with 4 per cent interest per annum, in monthly installments of $37,500 each during two years, and of $41,666.66 each month thereafter, beginning with the month of September, 1904, said award to be secured by the customs revenues and port dues of all the ports on the northern coast of Santo Domingo. The award further provides for the appointment of a financial agent of the United States, who was authorized, in case of failure during any month to receive the sum then due, to enter into possession of the custom-house at Puerto Plata in the first instance and assume charge of the collection of customs duties and port dues and to fix and determine these duties and dues and secure their payment; in case the sums collected at Puerto Plata should at any time be insufficient for the payment of the amounts due under the award, or in case of any other manifest necessity, or in case the Dominican Government should so request, the financial agent of the United States was authorized to have and exercise at any and all of the other ports above described all the rights and powers vested in

him by the award in respect of Puerto Plata. Under the award the financial agent could only apply the revenues collected toward its payment after he had first paid the expenses of collection and certain other obligations styled 'apartados,' which constituted prior charges on the revenues assigned. These prior charges are specified in the award. The Dominican Government defaulted in their payments; and in virtue of the award and the authority conferred by the Dominican Government, and at its request, possession was delivered of the custom-house of Puerto Plata to the fiscal agent appointed by the United States to collect the revenues assigned by the arbitrators for the payment of the award; and in virtue of the same authority possession of the custom-house of Monte Cristi has also been handed over. I submit herewith a report of Mr. John B. Moore, agent of the United States in this case, and a copy of the award of the arbitrators.

"During the past two years the European claimants, except the English, whose interests were embraced in those of the American companies, have, with the support of their respective governments, been growing more and more importunate in pressing their unsatisfied demands. The French and the Belgians, in 1901, had entered into a contract with the Dominican Government, but, after a few payments were made on account, it fell into neglect. Other governments also obliged the Dominican Government to enter into arrangements of various kinds by which the revenues of the Republic were in large part sequestrated, and under one of the agreements, which was concluded with Italy in 1903, the minister of that Government was empowered directly to collect from the importers and exporters that portion of the customs revenues assigned to him as security. As the result of chronic disorders, attended with a constant increase of debt, the state of things in Santo Domingo has become hopeless, unless the United States or some other strong government shall interpose to bring order out of the chaos. The custom-houses, with the exception of the two in the possession of the financial agent appointed by the United States, have become unproductive for the discharge of indebtedness, except as to persons making emergency loans to the Government or to its enemies for the purpose of carrying on political contests by force. They have, in fact, become the nuclei of the various revolutions. The first effort of revolutionists is to take possession of a custom-house so as to obtain funds, which are then disposed of at the absolute discretion of those who are collecting them. The chronic disorders prevailing in Santo Domingo have moreover become exceedingly dangerous to the interests of Americans holding property in that country. Constant complaints have been received of the injuries and inconveniences to which they have been subjected. As an evidence of the increasing aggravation of conditions, the fact may be mentioned that about a year ago the American railway, which had

previously been exempt from such attacks, was seized, its tracks torn up, and a station destroyed by revolutionary bands.

"The ordinary resources of diplomacy and international arbitration are absolutely impotent to deal wisely and effectively with the situation in the Dominican Republic, which can only be met by organizing its finances on a sound basis and by placing the custom-houses beyond the temptation of insurgent chieftains. Either we must abandon our duty under our traditional policy toward the Dominican people, who aspire to a republican form of government while they are actually drifting into a condition of permanent anarchy, in which case we must permit some other government to adopt its own measures in order to safeguard its own interests, or else we must ourselves take seasonable and appropriate action.

"Again and again has the Dominican Government invoked on its own behalf the aid of the United States. It has repeatedly done so of recent years. In 1899 it sought to enter into treaty relations by which it would be placed under the protection of the United States Government. The request was refused. Again, in January, 1904, its minister of foreign affairs visited Washington and besought the help of the United States Government to enable it to escape from its financial and social disorders. Compliance with this request was again declined, for this Government has been most reluctant to interfere in any way, and has finally concluded to take action only because it has become evident that failure to do so may result in a situation fraught with grave danger to the cause of international peace.

"In 1903 a representative of a foreign government proposed to the United States the joint fiscal control of the Dominican Republic by certain creditor nations, and that the latter should take charge of the custom-houses and revenues and give to the Dominican Government a certain percentage and apply the residue to the payment ratably of claims of foreign creditors. The United States Government declined to approve or to enter into such an arrangement. But it has now become evident that decided action of some kind can not be much longer delayed. In view of our past experience and our knowledge of the actual situation of the Dominican Republic, a definite refusal of the United States Government to take any effective action looking to the relief of the Dominican Republic and to the discharge of its own duty under the Monroe doctrine can only be considered as an acquiescence in some such action by another government.

"That most wise measure of international statesmanship, the Platt amendment, has provided a method for preventing such difficulties from arising in the new Republic of Cuba. In accordance with the terms of this amendment the Republic of Cuba can not issue any bonds which can be collected from Cuba, save as a matter of grace, unless with the consent of the United States, which is at liberty at all

times to take measures to prevent the violation of the letter and spirit of the Platt amendment. If a similar plan could now be entered upon by the Dominican Republic, it would undoubtedly be of great advantage to them and to all other peoples, for under such an arrangement no larger debt would be incurred than could be honestly paid, and those who took debts not thus authorized would, by the mere fact of taking them, put themselves in the category of speculators or gamblers, who deserved no consideration and who would be permitted to receive none; so that the honest creditor would on the one hand be safe while on the other hand the Republic would be safeguarded against molestation in the interest of mere speculators.

"But no such plan at present exists; and under existing circumstances, when the condition of affairs becomes such as it has become in Santo Domingo, either we must submit to the likelihood of infringement of the Monroe doctrine or we must ourselves agree to some such arrangement as that herewith submitted to the Senate. In this case, fortunately, the prudent and far-seeing statesmanship of the Dominican Government has relieved us of all trouble. At their request we have entered into the agreement herewith submitted. Under it the custom-houses will be administered peacefully, honestly, and economically, 45 per cent of the proceeds being turned over to the Dominican Government and the remainder being used by the United States to pay what proportion of the debts it is possible to pay on an equitable basis. The Republic will be secured against over-seas aggression. This in reality entails no new obligation upon us, for the Monroe doctrine means precisely such a guarantee on our part.

"It is perhaps unnecessary to state that no step of any kind has been taken by the Administration under the terms of the protocol which is herewith submitted.

"The Republic of Santo Domingo has by this protocol wisely and patriotically accepted the responsibilities as well as the privileges of liberty, and is showing with evident good faith its purpose to pay all that its resources will permit of its obligations. More than this it can not do, and when it has done this we should not permit it to be molested. We on our part are simply performing in peaceful manner, not only with the cordial acquiescence, but in accordance with the earnest request of the Government concerned, part of that international duty which is necessarily involved in the assertion of the Monroe doctrine. We are bound to show that we perform this duty in good faith and without any intention of aggrandizing ourselves at the expense of our weaker neighbors or of conducting ourselves otherwise than so as to benefit both these weaker neighbors and those European powers which may be brought into contact with them. It is in the highest degree necessary that we should prove by our action that the world may trust in our good faith and may understand that

this international duty will be performed by us within our own sphere, in the interest not merely of ourselves, but of all other nations, and with strict justice toward all. If this is done a general acceptance of the Monroe doctrine will in the end surely follow; and this will mean an increase of the sphere in which peaceful measures for the settlement of international difficulties gradually displace those of a warlike character.

"We can point with just pride to what we have done in Cuba as a guaranty of our good faith. We stayed in Cuba only so long as to start her aright on the road to self-government, which she has since trod with such marked and distinguished success; and upon leaving the island we exacted no conditions save such as would prevent her from ever becoming the prey of the stranger. Our purpose in Santo Domingo is as beneficent. The good that this country got from its action in Cuba was indirect rather than direct. So it is as regards Santo Domingo. The chief material advantage that will come from the action proposed to be taken will be to Santo Domingo itself and to Santo Domingo's creditors. The advantages that will come to the United States will be indirect, but nevertheless great, for it is supremely to our interest that all the communities immediately south of us should be or become prosperous and stable, and therefore not merely in name but in fact independent and self-governing.

"I call attention to the urgent need of prompt action on this matter. We now have a great opportunity to secure peace and stability in the island, without friction or bloodshed, by acting in accordance with the cordial invitation of the governmental authorities themselves. It will be unfortunate from every standpoint if we fail to grasp this opportunity; for such failure will probably mean increasing revolutionary violence in Santo Domingo, and very possibly embarrassing foreign complications in addition. This protocol affords a practical test of the efficiency of the United States Government in maintaining the Monroe doctrine."

Message of President Roosevelt to the Senate, Feb. 15, 1905, Confid. Exec. V, 58 Cong. 3 sess.; injunction of secrecy removed, Feb. 16, 1905.

See "The San Domingo Question," by Senator Francis G. Newlands, 180 N. Am. Rev. (June, 1905), 885.

Professor Hugo Münsterberg, of Harvard University, in his work on The Americans, impeaches the wisdom and policy of the Monroe doctrine, especially in its application to South America. "The Americans," says Professor Münsterberg, "are too apt to forget that Europe is much nearer to the United States than, for instance, the Argentine Republic. . . . A European power adjoins the United States from the Atlantic to the Pacific Ocean; and the fact that England, at one time their greatest enemy, abuts along this whole border has never threatened the peace of the United States; but it is supposed to be an instant calamity if Italy or England or Holland

gets hold of a piece of land far away in South America, in payment of debts or to ensure the safety of misused colonists. . . . If the Monroe doctrine were to-day to be applied no farther than Central America, and South America were to be exempted, the possibilities of a conflict with European powers would be considerably decreased. . . . It was never doubted that the exclusion of the Old World countries from the new American continents was only the conclusion of a premise, to the effect that the Americans themselves proposed to confine their political interests to their own continent. That was a wise policy in the times of Washington and Monroe; and whether or not it would have been wise in the time of McKinley, it was in any case at that time thrown over. The Americans have united with the European forces to do battle in China; they have extended their own dominion toward Asia; they have sent men-of-war to Europe on political missions; in short, the Americans have for years been extending their political influence around the world, and Secretary Hay has for a long time played an influential part in the European concert of powers. . . . The real interest of the United States with regard to South America is solely that that land shall develop as far as possible, that its enormous treasures shall be exploited, and that out of a prosperous commercial continent important trade advantages shall accrue to the United States. This is possible only by the establishment of order there—the instant termination of anarchy. . . . It would be somewhat different if the United States were to admit, as a consequence of the Monroe doctrine, its own responsibility for the public administration of these countries, for their debts and for whatever crimes they commit; in other words, if the United States were virtually to annex South America." (The Americans, 221–224.)

"It is, nevertheless, indispensable for us to continue to uphold the Monroe doctrine. First, from motives of common humanity; and secondly, from the viewpoint of our own national interests. Can Professor Münsterberg deliberately advocate a reversion to the state of things which existed in the eighteenth century, when the Caribbean was the cockpit of the British, French and Spanish? . . . As for our actual and prospective traffic with Latin America, experience should have taught us that from all that part of it which should fall into German, French or Italian hands our manufacturers and merchants would be barred. Then again, for strategic reasons too obvious to need emphasis, we, as owners of the Panama Canal, could not permit a European power to occupy any part of the coasts of Central America, or of Colombia, Venezuela and Ecuador. . . . The Monroe doctrine was formulated not for a day, but for all time. The American people never will renounce it. Never will they suffer the New World to be made the victim of partition." (Editorial, New York *Sun*, Thursday, April 28, 1904.)

Professor Münsterberg's objection, based on the argument that the position of the United States has tended to confirm and perpetuate disorders in Spanish-American states, appears to be met by the position of President Roosevelt in his foregoing message on Santo Domingo.

13. Republic of Texas.

§ 963.

"I have the honor to acknowledge the receipt of your despatch, No. 2, dated July 31st, and to express my gratification at the result of your conversation with Mr. Guizot, especially that part of it which refers to the rumored protest of the French Government, conjointly with that of Great Britain, against the proposed annexation of Texas to the United States. Such a step, had it been taken by France, must have excited unkind feelings, and given to the United States just cause of complaint. The Government of the United States will confidently rely on the assurances of Mr. Guizot, and it is hoped that, neither separately nor jointly with any other power, will France adopt a course which would seem so little in accordance with her true interests, or the friendly relations which have so long subsisted between the two countries. . . . In regard to Mr. Guizot's inquiry respecting a proposed guaranty of the independence of Texas, your reply was well timed and judicious. The settled policy of the United States has been to avoid entering into such guaranties, except in cases of strong necessity. The present case offers no reasons to warrant a deviation from that policy. On the contrary it presents a strong additional reason why it should be adhered to, as such a guaranty would permanently defeat the proposed measure of annexation which both countries seem anxious to advance. A suggestion of the same purport was made to me, by the British minister here, Mr. Pakenham, during a casual conversation soon after I came into office; and he was promptly informed that the Government of the United States could not accede to such a proposition."

Mr. Calhoun, Sec. of State, to Mr. W. R. King, min. to France, No. 6, Aug. 26, 1844, MS. Inst. France, XV. 24.

14. Venezuela.

(1) Use of good offices.

§ 964.

With reference to an intimation of the Venezuelan Government that it desired the interposition of the United States in a controversy which had arisen with Spain, Mr. Cass stated that it was the established policy of the United States "not to interfere with the relations of foreign nations to each other, and that it would be both improper and impossible for the United States to decide upon the course of conduct towards Venezuela which Spain may think required by her honor and her interests;" but that, if the United States could "by any informal action serve as a means of bringing about the

reconciliation so much to be desired," it would be "a subject of great satisfaction to the President to be instrumental for such a purpose." The note of the Venezuelan minister was therefore transmitted to the American minister at Madrid, with instructions to tender his good offices to the Governments of Spain and Venezuela, if in his discretion he thought the opportunity favorable to an effort for a more friendly understanding between them, and if such offer could be made "without offence to the Spanish Government."

Mr. Cass, Sec. of State, to Gen. Paez, Venezuelan min., Nov. 5, 1860, MS. Notes to Venezuela, I. 68.

See, also, Mr. Cass, Sec. of State, to Mr. Preston, min. to Spain, No. 34, Nov. 5, 1860, MS. Inst. Spain, XV. 251.

(2) AVOIDANCE OF JOINT ACTION.

§ 965.

"Baron Gerolt (the German envoy and minister plenipotentiary) yesterday enquired how the Government of the United States would receive the proposal contained in what he said was a circular addressed by his Government to their Representatives at London, Madrid, Florence, and Copenhagen, proposing a joint and concerted movement to urge on Venezuela a more orderly government, better observance of her engagements, &c., &c. I failed to obtain from the baron any definition of the precise nature of the proposed movement, or of the precise objects to be attained, or of the extent to which it was in contemplation either to advise or to coerce Venezuela, nor whether coercion was really in contemplation, although he made once an allusion to a 'combined fleet' and 'guns.'

"The United States is among the creditors of Venezuela, so are France, Holland, Great Britain, Italy, Denmark, and Spain.

"We are not aware that Germany is among the creditors of Venezuela, or that she has any special cause of complaint against that Government for any injuries to her people or commerce.

"Her movement, therefore, in this direction excites some surprise.

"Baron Gerolt stated that he was directed to make the inquiry 'confidentially,' and that he was not to make the proposal to the United States unless it would be favorably received.

"He was told that we had a vivid recollection of a combined European movement against Mexico a few years since, and that we would wish to know the causes of Germany's complaint, and the precise object and means which they proposed and the limits which they intended to prescribe to their operations. That the United States could not look with indifference upon any combination of European powers against an American state; that if Germany or any other power had just cause of war against Venezuela, this Government could interpose no objection to her resorting thereto.

"If the object of Germany be a united remonstrance to Venezuela against the anarchy and chronic revolutionary condition of that state, or an appeal to honesty in the observance of her engagements, this Government would not object, but would, of itself, make a similar remonstrance and appeal. If, however, the object be a forcible demonstration of coercion by a combination of European states, the United States could not regard it with indifference.

"You will inquire confidentially of Her Majesty's Secretary of State for Foreign Affairs whether any proposal has been made in behalf of the German Government to that of Great Britain on this subject, and ask whether the Government of Her Majesty has it in contemplation to unite therein. You will at the same time, delicately but decidedly, express the anxiety which the suggestion of the proposition has excited in this Government, and may say that the President hopes that the suggested proposal may not be carried to the extent of disturbing the sensibilities which would be aroused by a combination of European powers against one of the Republics of this Continent."

Mr. Fish, Sec. of State, to Gen. Schenck, min. to England, No. 5 (confid.), June 2, 1871, MS. Inst. Gr. Br. XXII. 471. Cited and followed in Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 70 (confid.), Oct. 14, 1886, MS. Inst. Venezuela, III. 540.

"With reference to General Sickles' despatch of the 20th ultimo, No. 360, relating to his conference with Mr. Martos respecting the proposed concerted action of the United States and other powers towards Venezuela, I have to inform you that General Sickles' proceedings as therein reported are approved. The assurances given by Mr. Martos on the subject were highly satisfactory. This Government remains of the opinion heretofore expressed that separate action by each power will be preferable." (Mr. J. C. B. Davis, Act. Sec. of State, to Mr. Adee, chargé at Madrid, No. 3 (confid.), July 11, 1871, MS. Inst. Spain, XVI. 249.)

As to Venezuelan complaints concerning political plots hatched by Venezuelans at the Dutch island of Curaçao, and the desire of Venezuela to annex the island, see Mr. Fish, Sec. of State, to Mr. Russell, min. to Venezuela, Nos. 127 and 128, Jan. 13, 1877, MS. Inst. Venezuela, III. 9, 10.

The minister of the United States at Caracas having, in conversations with the British minister at that capital, reached the conclusion that "great and good results would accrue to both American and English claimants" if the two Governments would make "a joint representation" and employ their "joint cooperation" in securing from Venezuela a settlement of claims, Mr. Bayard replied that the policy of the United States was "distinctly opposed to *joint* action with other powers in the presentation of claims, even when they may arise from an act equally invading the common rights of American citizens and the subjects of another state residing in the country to

whose government complaint is made." The United States, said Mr. Bayard, was ready to secure any advantage which might be derived from "a coincident and even identical representation" with other powers with regard to matters of common concern, but was "averse to joint presentation as the term is strictly understood." A truly joint demand might involve a joint enforcement, and the United States was "indisposed to contemplate such entanglement of its duties and interests with those of another power." It was entirely proper for an American minister so to act "in concert" with his colleagues as to secure the benefit of cooperative action without "the ultimate embarrassments to which *united* action may be liable." When, in 1871, the German Government had proposed to certain European cabinets the adoption of joint measures to urge upon Venezuela a more orderly government and better observance of her obligations, the United States "took occasion to deprecate such a resort on the ground that a combination to present and enforce such demands by the European powers against an American state could only be observed by the United States with the greatest concern."

Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 70 (confid.), Oct. 14, 1886, MS. Inst. Venezuela, III, 540.

(3) TERRITORIAL INTEGRITY.

§ 966.

Boundary with British Guiana.

"I should have been glad to announce some favorable disposition of the boundary dispute between Great Britain and Venezuela, touching the western frontier of British Guiana, but the friendly efforts of the United States in that direction have thus far been unavailing. This Government will continue to express its concern at any appearance of foreign encroachment on territories long under the administrative control of American states. The determination of a disputed boundary is easily attainable by amicable arbitration, where the rights of the respective parties rest, as here, on historic facts, readily ascertainable."

President Harrison, annual message, Dec. 9, 1891, For. Rel. 1891, iv.

See, as to the readiness of the United States to take "an advanced and decisive step" to the end of bringing about a settlement, Mr. Blaine, Sec. of State, to Mr. Scruggs, min. to Venezuela (confid.), Oct. 28, 1891, MS. Inst. Venez. IV, 171.

In 1848, while the question of occupying Yucatan was before the Senate, a report appeared in the press concerning British aggressions in Venezuela. It was stated by a "writer who appeared to be well informed upon the subject," that the British had in 1841 encroached on Spanish Guiana to the extent of twenty thousand square miles, and that they had since extended their possessions to the whole of Spanish Guiana, amounting in all to a hundred and eighty thousand square

miles, or nearly double what they are said now to claim. Mr. Niles, a Senator from Connecticut, brought the subject to the attention of the Senate, as a warning against the responsibilities that might be involved in the views which he understood certain members of the Senate to hold. The advocates of those views do not, however, appear to have referred to the subject, unless there was such a reference by Mr. Cass, when he said:

"The honorable Senator from Connecticut [Mr. Niles] considers the reiteration of the principle by the present Executive, and perhaps its original annunciation by Mr. Monroe, as *the* claim of a right to regulate all the affairs of this continent, so far as respects Europeans. But this, sir, is an entire misconception of the whole subject. It has, however, prevailed somewhat extensively, both here and elsewhere, though it seems to me that the slightest consideration of the messages referred to would have corrected, or rather prevented, this flagrant error. Neither of these Presidents, the past nor the present, assumed to interfere with any existing rights of other nations upon this continent. Neither of them called in question their right to hold and improve the colonies they possessed, at their own pleasure. Such an assumption would have been equally obtrusive and ineffectual; and how the opinion could have prevailed that has been advanced, no one can tell; for, in the documents themselves, the true doctrine is cautiously guarded and existing rights considered as unassailable." (Cong. Globe, 30 Cong. 1 sess. App. 614.)

"I enclose herewith a copy of a joint resolution of Congress approved by the President on the 20th day of February last, by which friendly arbitration is earnestly recommended to the favorable consideration of the Governments of Great Britain and Venezuela as a means of settling the dispute existing between them in relation to the boundary between British Guiana and Venezuela.

"During the last ten years, the Government of the United States has on more than one occasion sought to employ its good offices for the adjustment of this dispute, in a manner just and honorable to both the Governments involved in it, and, while its efforts in that direction have not been successful, it earnestly hopes that the result which it has endeavored to promote may yet be attained.

"In pursuing the course it has taken in this matter, this Government, it is needless to say, has not been actuated by any partial purpose. On the contrary, animated with a spirit of friendliness to both parties, it has refrained from entering into the merits of the controversy. In this spirit it now recommends impartial arbitration as a method which affords equal opportunities to both parties for the establishment of their claims.

"Her Majesty's Government is aware of the interest which the Government and people of the United States feel in matters affecting the peace and welfare of independent states of this hemisphere. While we do not assume to dictate to those states, or to exercise an undue influence over them, as to what their relations with other powers of the world shall be, yet their fortunes have always been an

object of solicitude, and we can not view without anxiety the continuance of disputes in which their peace and happiness are deeply involved."

Mr. Gresham, Sec. of State, to Mr. Bayard, amb. to England, No. 657, April 9, 1895, MS. Inst. Great Britain, XXXI. 110.

The joint resolution, enclosed with the foregoing instruction, read as follows:

"*Resolved*, By the Senate and the House of Representatives, &c., that the President's suggestion, made in his last annual message to this body, namely, that Great Britain and Venezuela refer their dispute as to the boundaries to friendly arbitration, be earnestly recommended to the favorable consideration of both parties in interest.

"Approved, February 20, 1895."

See Mr. Uhl, Act. Sec. of State, to Mr. Andrade, Venez. min., No. 8, May 25, 1895, MS. Notes to Venezuela, I. 525, urging the restoration of diplomatic relations by Venezuela with Great Britain.

Mr. Olney's instructions, July 20, 1895.

"I am directed by the President to communicate to you his views upon a subject to which he has given much anxious thought and respecting which he has not reached a conclusion without a lively sense of its great importance as well as of the serious responsibility involved in any action now to be taken.

"It is not proposed, and for present purposes is not necessary, to enter into any detailed account of the controversy between Great Britain and Venezuela respecting the western frontier of the colony of British Guiana. The dispute is of ancient date and began at least as early as the time when Great Britain acquired by the treaty with the Netherlands of 1814 'the establishments of Demerara, Essequibo, and Berbice.' From that time to the present the dividing line between these 'establishments' (now called British Guiana) and Venezuela has never ceased to be a subject of contention. The claims of both parties, it must be conceded, are of a somewhat indefinite nature. On the one hand Venezuela, in every constitution of government since she became an independent state, has declared her territorial limits to be those of the captaincy-general of Venezuela in 1810. Yet, out of 'moderation and prudence,' it is said, she has contented herself with claiming the Essequibo line—the line of the Essequibo River, that is—to be the true boundary between Venezuela and British Guiana. On the other hand, at least an equal degree of indefiniteness distinguishes the claim of Great Britain.

"It does not seem to be asserted, for instance, that in 1814 the 'establishments' then acquired by Great Britain had any clearly defined western limits which can now be identified and which are either the limits insisted upon to-day, or, being the original limits, have been the basis of legitimate territorial extensions. On the contrary, having the actual possession of a district called the Pomaron district, she

apparently remained indifferent as to the exact area of the colony until 1840, when she commissioned an engineer, Sir Robert Schomburgk, to examine and lay down its boundaries. The result was the Schomburgk line which was fixed by metes and bounds, was delineated on maps, and was at first indicated on the face of the country itself by posts, monograms, and other like symbols. If it was expected that Venezuela would acquiesce in this line, the expectation was doomed to speedy disappointment. Venezuela at once protested and with such vigor and to such purpose that the line was explained to be only tentative—part of a general boundary scheme concerning Brazil and the Netherlands as well as Venezuela—and the monuments of the line set up by Schomburgk were removed by the express order of Lord Aberdeen. Under these circumstances, it seems impossible to treat the Schomburgk line as being the boundary claimed by Great Britain as matter of right, or as anything but a line originating in considerations of convenience and expediency. Since 1840 various other boundary lines have from time to time been indicated by Great Britain, but all as conventional lines—lines to which Venezuela's assent has been desired but which in no instance, it is believed, have been demanded as matter of right. Thus neither of the parties is to-day standing for the boundary line predicated upon strict legal right—Great Britain having formulated no such claim at all, while Venezuela insists upon the Essequibo line only as a liberal concession to her antagonist.

"Several other features of the situation remain to be briefly noticed—the continuous growth of the undefined British claim, the fate of the various attempts at arbitration of the controversy, and the part in the matter heretofore taken by the United States. As already seen, the exploitation of the Schomburgk line in 1840 was at once followed by the protest of Venezuela and by proceedings on the part of Great Britain which could fairly be interpreted only as a disavowal of that line. Indeed—in addition to the facts already noticed—Lord Aberdeen himself in 1844 proposed a line beginning at the River Moroco, a distinct abandonment of the Schomburgk line. Notwithstanding this, however, every change in the British claim since that time has moved the frontier of British Guiana farther and farther to the westward of the line thus proposed. The Granville line of 1881 placed the starting point at a distance of twenty-nine miles from the Moroco in the direction of Punta Barima. The Rosebery line of 1886 placed it west of the Guiama River, and about that time, if the British authority known as the Statesman's Year Book is to be relied upon, the area of British Guiana was suddenly enlarged by some 33,000 square miles—being stated as 76,000 square miles in 1885 and 109,000 square miles in 1887. The Salisbury line of 1890 fixed the starting point of the line in the mouth of the Amacuro west

of the Punta Barima on the Orinoco. And finally, in 1893, a second Rosebery line carried the boundary from a point to the west of the Amacuro as far as the source of the Cumano River and the Sierra of Usupamo. Nor have the various claims thus enumerated been claims on paper merely. An exercise of jurisdiction corresponding more or less to such claims has accompanied or followed closely upon each and has been the more irritating and unjustifiable if, as is alleged, an agreement made in the year 1850 bound both parties to refrain from such occupation pending the settlement of the dispute.

"While the British claim has been developing in the manner above described, Venezuela has made earnest and repeated efforts to have the question of boundary settled. Indeed, allowance being made for the distractions of a war of independence and for frequent internal revolutions, it may be fairly said that Venezuela has never ceased to strive for its adjustment. It could, of course, do so only through peaceful methods, any resort to force as against its powerful adversary being out of the question. Accordingly, shortly after the drawing of the Schomburgk line, an effort was made to settle the boundary by treaty and was apparently progressing towards a successful issue when the negotiations were brought to an end in 1844 by the death of the Venezuelan plenipotentiary.

"In 1848 Venezuela entered upon a period of civil commotions which lasted for more than a quarter of a century, and the negotiations thus interrupted in 1844 were not resumed until 1876. In that year Venezuela offered to close the dispute by accepting the Moroco line proposed by Lord Aberdeen. But, without giving reasons for his refusal, Lord Granville rejected the proposal and suggested a new line comprehending a large tract of territory all pretension to which seemed to have been abandoned by the previous action of Lord Aberdeen. Venezuela refused to assent to it, and negotiations dragged along without result until 1882, when Venezuela concluded that the only course open to her was arbitration of the controversy. Before she had made any definite proposition, however, Great Britain took the initiative by suggesting the making of a treaty which should determine various other questions as well as that of the disputed boundary. The result was that a treaty was practically agreed upon with the Gladstone government in 1886 containing a general arbitration clause under which the parties might have submitted the boundary dispute to the decision of a third power or of several powers in amity with both.

"Before the actual signing of the treaty, however, the administration of Mr. Gladstone was superseded by that of Lord Salisbury, which declined to accede to the arbitration clause of the treaty notwithstanding the reasonable expectations of Venezuela to the contrary based upon the premier's emphatic declaration in the House of

Lords that no serious government would think of not respecting the engagements of its predecessor. Since then Venezuela on the one side has been offering and calling for arbitration, while Great Britain on the other has responded by insisting upon the condition that any arbitration should relate only to such of the disputed territory as lies west of a line designated by herself. As this condition seemed inadmissible to Venezuela and as, while the negotiations were pending, new appropriations of what is claimed to be Venezuelan territory continued to be made, Venezuela in 1887 suspended diplomatic relations with Great Britain, protesting 'before Her British Majesty's Government, before all civilized nations and before the world in general, against the acts of spoliation committed to her detriment by the Government of Great Britain, which she at no time and on no account will recognize as capable of altering in the least the rights which she has inherited from Spain and respecting which she will ever be willing to submit to the decision of a third power.'

"Diplomatic relations have not since been restored, though what is claimed to be new and flagrant British aggressions forced Venezuela to resume negotiations on the boundary question—in 1890, through its minister in Paris and a special envoy on that subject—and in 1893, through a confidential agent, Señor Michelena. These negotiations, however, met with the fate of other like previous negotiations—Great Britain refusing to arbitrate except as to territory west of an arbitrary line drawn by herself. All attempts in that direction definitely terminated in October, 1893, when Señor Michelena filed with the foreign office the following declaration:

"'I perform a most strict duty in raising again in the name of the Government of Venezuela a most solemn protest against the proceedings of the colony of British Guiana, constituting encroachments upon the territory of the Republic, and against the declaration contained in your excellency's communication that Her Britannic Majesty's Government considers that part of the territory as pertaining to British Guiana and admits no claim to it on the part of Venezuela. In support of this protest I reproduce all the arguments presented to your excellency in my note of 29 of last September and those which have been exhibited by the Government of Venezuela on the various occasions they have raised the same protest.

"'I lay on Her Britannic Majesty's Government the entire responsibility of the incidents that may arise in the future from the necessity to which Venezuela has been driven to oppose by all possible means the dispossession of a part of her territory, for by disregarding her just representation to put an end to this violent state of affairs through the decision of arbiters, Her Majesty's Government ignores her rights and imposes upon her the painful though peremptory duty of providing for her own legitimate defense.'

"To the territorial controversy between Great Britain and the Republic of Venezuela, thus briefly outlined, the United States has not been and, indeed, in view of its traditional policy, could not be indifferent. The note to the British foreign office by which Venezuela opened negotiations in 1876 was at once communicated to this Government. In January, 1881, a letter of the Venezuelan minister at Washington, respecting certain alleged demonstrations at the mouth of the Orinoco, was thus answered by Mr. Evarts, then Secretary of State:

"'In reply I have to inform you that in view of the deep interest which the Government of the United States takes in all transactions tending to attempted encroachments of foreign powers upon the territory of any of the republics of this continent, this Government could not look with indifference to the forcible acquisition of such territory by England if the mission of the vessels now at the mouth of the Orinoco should be found to be for that end. This Government awaits, therefore, with natural concern the more particular statements promised by the Government of Venezuela, which it hopes will not be long delayed.'

"In the February following, Mr. Evarts wrote again on the same subject as follows:

"'Referring to your note of the 21st of December last, touching the operations of certain British war vessels in and near the mouth of the Orinoco River and to my reply thereto of the 31st ultimo as well as to the recent occasions in which the subject has been mentioned in our conferences concerning the business of your mission, I take it to be fitting now at the close of my incumbency of the office I hold to advert to the interest with which the Government of the United States cannot fail to regard any such purpose with respect to the control of American territory as is stated to be contemplated by the Government of Great Britain and to express my regret that the further information promised in your note with regard to such designs had not reached me in season to receive the attention which, notwithstanding the severe pressure of public business at the end of an administrative term, I should have taken pleasure in bestowing upon it. I doubt not, however, that your representations in fulfillment of the awaited additional orders of your Government will have like earnest and solicitous consideration at the hands of my successor.'

"In November, 1882, the then state of negotiations with Great Britain together with a copy of an intended note suggesting recourse to arbitration was communicated to the Secretary of State by the President of Venezuela with the expression of the hope that the United States would give him its opinion and advice and such support as it deemed possible to offer Venezuela in order that justice should be done her. Mr. Frelinghuysen replied in a dispatch to the United States minister at Caracas as follows:

"'This Government has already expressed its view that arbitration of such disputes is a convenient resort in the case of failure to come to a mutual understanding, and intimated its willingness, if Venezuela should so desire, to propose to Great Britain such a mode of settlement. It is felt that the tender of good offices would not be so profitable if the United States were to approach Great Britain as the advocate of any prejudged solution in favor of Venezuela. So far as the United States can counsel and assist Venezuela it believes it best to confine its reply to the renewal of the suggestion of arbitration and the offer of all its good offices in that direction. This suggestion is the more easily made, since it appears, from the instruction sent by Señor Seijas to the Venezuelan minister in London on the same 15th of July, 1882, that the President of Venezuela proposed to the British Government the submission of the dispute to arbitration by a third power.

"'You will take an early occasion to present the foregoing considerations to Señor Seijas, saying to him that, while trusting that the direct proposal for arbitration already made to Great Britain may bear good fruit (if, indeed, it has not already done so by its acceptance in principle), the Government of the United States will cheerfully lend any needful aid to press upon Great Britain in a friendly way the proposition so made, and at the same time you will say to Señor Seijas (in personal conference, and not with the formality of a written communication) that the United States, while advocating strongly the recourse of arbitration for the adjustment of international disputes affecting the States of America, does not seek to put itself forward as their arbiter; that, viewing all such questions impartially and with no intent or desire to prejudge their merits, the United States will not refuse its arbitration if asked by both parties, and that, regarding all such questions as essentially and distinctively American, the United States would always prefer to see such contentions adjusted through the arbitrament of an American rather than an European power.'[a]

"In 1884 General Guzman Blanco, the Venezuelan minister to England appointed with special reference to pending negotiations for a general treaty with Great Britain, visited Washington on his way to London and, after several conferences with the Secretary of State respecting the objects of his mission, was thus commended to the good offices of Mr. Lowell, our minister at St. James':

"'It will necessarily be somewhat within your discretion how far your good offices may be profitably employed with Her Majesty's

[a] Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 203, Jan. 31, 1883, MS. Inst. Venez. III. 280.

See, as to a vague proposal of alliance by President Guzman Blanco, same to same, No. 326, July 25, 1884, id. 390.

Government to these ends, and at any rate you may take proper occasion to let Lord Granville know that we are not without concern as to whatever may effect the interests of a sister republic of the American continent and its position in the family of nations.

"'If General Guzman should apply to you for advice or assistance in realizing the purposes of his mission you will show him proper consideration, and without committing the United States to any determinate political solution you will endeavor to carry out the views of this instruction.'

"The progress of Gen. Guzman's negotiations did not fail to be observed by this Government and in December, 1886, with a view to preventing the rupture of diplomatic relations—which actually took place in February following—the then Secretary of State, Mr. Bayard, instructed our minister to Great Britain to tender the arbitration of the United States, in the following terms:

"'It does not appear that at any time heretofore the good offices of this Government have been actually tendered to avert a rupture between Great Britain and Venezuela. As intimated in my No. 58, our inaction in this regard would seem to be due to the reluctance of Venezuela to have the Government of the United States take any steps having relation to the action of the British Government which might, in appearance even, prejudice the resort to further arbitration or mediation which Venezuela desired. Nevertheless, the records abundantly testify our friendly concern in the adjustment of the dispute; and the intelligence now received warrants me in tendering through you to Her Majesty's Government the good offices of the United States to promote an amicable settlement of the respective claims of Great Britain and Venezuela in the premises.

"'As proof of the impartiality with which we view the question, we offer our arbitration, if acceptable to both countries. We do this with the less hesitancy as the dispute turns upon simple and readily ascertainable historical facts.

"'Her Majesty's Government will readily understand that this attitude of friendly neutrality and entire impartiality touching the merits of the controversy, consisting wholly in a difference of facts between our friends and neighbors, is entirely consistent and compatible with the sense of responsibility that rests upon the United States in relation to the South American Republics. The doctrines we announced two generations ago, at the instance and with the moral support and approval of the British Government, have lost none of their force or importance in the progress of time and the Governments of Great Britain and the United States are equally interested in conserving a status, the wisdom of which has been demonstrated by the experience of more than half a century.

"'It is proper, therefore, that you should convey to Lord Iddesleigh, in such sufficiently guarded terms as your discretion may dictate, the satisfaction that would be felt by the Government of the United States in perceiving that its wishes in this regard were permitted to have influence with Her Majesty's Government.'

"This offer of mediation was declined by Great Britain, with the statement that a similar offer had already been received from another quarter, and that the Queen's Government were still not without hope of a settlement by direct diplomatic negotiations. In February, 1888, having been informed that the governor of British Guiana had by formal decree laid claim to the territory traversed by the route of a proposed railway from Ciudad Bolivar to Guacipati, Mr. Bayard addressed a note to our minister to England, from which the following extracts are taken:

"'The claim now stated to have been put forth by the authorities of British Guiana necessarily gives rise to grave disquietude, and creates an apprehension that the territorial claim does not follow historical traditions or evidence, but is apparently indefinite. At no time hitherto does it appear that the district, of which Guacipati is the center, has been claimed as British territory or that such jurisdiction has ever been asserted over its inhabitants, and if the reported decree of the governor of British Guiana be indeed genuine it is not apparent how any line of railway from Ciudad Bolivar to Guacipati could enter or traverse territory within the control of Great Britain.

"'It is true that the line claimed by Great Britain as the western boundary of British Guiana is uncertain and vague. It is only necessary to examine the British colonial office list for a few years back to perceive this. In the issue for 1877, for instance, the line runs nearly southwardly from the mouth of the Amacuro to the junction of the Cotinga and Takutu rivers. In the issue of 1887, ten years later, it makes a wide detour to the westward, following the Yurnari. Guacipati lies considerably to the westward of the line officially claimed in 1887, and it may perhaps be instructive to compare with it the map which doubtless will be found in the colonial office list for the present year.

"'It may be well for you to express anew to Lord Salisbury the great gratification it would afford this Government to see the Venezuelan dispute amicably and honorably settled by arbitration or otherwise and our readiness to do anything we properly can to assist to that end.

"'In the course of your conversation you may refer to the publication in the *London Financier* of January 24 (a copy of which you can procure and exhibit to Lord Salisbury) and express apprehension lest the widening pretensions of British Guiana to possess territory over which Venezuela's jurisdiction has never heretofore been disputed may not diminish the chances for a practical settlement.

"'If, indeed, it should appear that there is no fixed limit to the British boundary claim, our good disposition to aid in a settlement might not only be defeated, but be obliged to give place to a feeling of grave concern.'[a]

"In 1889, information having been received that Barima, at the mouth of the Orinoco, had been declared a British port, Mr. Blaine, then Secretary of State, authorized Mr. White to confer with Lord Salisbury for the reestablishment of diplomatic relations between Great Britain and Venezuela on the basis of a temporary restoration of the *status quo*, and May 1 and May 6, 1890, sent the following telegrams to our minister to England, Mr. Lincoln (May 1, 1890):

"'Mr. Lincoln is instructed to use his good offices with Lord Salisbury to bring about the resumption of diplomatic intercourse between Great Britain and Venezuela as a preliminary step towards the settlement of the boundary dispute by arbitration. The joint proposals of Great Britain and the United States towards Portugal which have just been brought about would seem to make the present time propitious for submitting this question to an international arbitration. He is requested to propose to Lord Salisbury, with a view to an accommodation, that an informal conference be had in Washington or in London of representatives of the three powers. In such conference the position of the United States is one solely of impartial friendship toward both litigants.

"'(May 6, 1890)—

"'It is nevertheless desired that you shall do all you can consistently with our attitude of impartial friendship to induce some accord between the contestants by which the merits of the controversy may be fairly ascertained and the rights of each party justly confirmed. The neutral position of this Government does not comport with any expression of opinion on the part of this Department as to what these rights are, but it is confident that the shifting footing on which the British boundary question has rested for several years past is an obstacle to such a correct appreciation of the nature and grounds of her claim as would alone warrant the formation of any opinion.'

"In the course of the same year, 1890, Venezuela sent to London a special envoy to bring about the resumption of diplomatic relations with Great Britain through the good offices of the United States minister.[b] But the mission failed because a condition of such resumption, steadily adhered to by Venezuela, was the reference of the boundary dispute to arbitration. Since the close of the negotiations initiated by Señor Michelena in 1893, Venezuela has repeatedly brought the

[a] See Mr. Bayard, Sec. of State, to Mr. Phelps, min. to England, No. 956 (confid.), Aug. 28, 1888, MS. Inst. Gr. Br. XXVIII. 586, expressing the readiness of the United States to use its good offices.

[b] See correspondence in For. Rel. 1890, 776, 778, 781, 782, 785, 788.

controversy to the notice of the United States, has insisted upon its importance to the United States as well as to Venezuela, has represented it to have reached an acute stage—making definite action by the United States imperative—and has not ceased to solicit the services and support of the United States in aid of its final adjustment. These appeals have not been received with indifference and our ambassador to Great Britain has been uniformly instructed to exert all his influence in the direction of the reestablishment of diplomatic relations between Great Britain and Venezuela and in favor of arbitration of the boundary controversy. The Secretary of State in a communication to Mr. Bayard, bearing date July 13, 1894, used the following language:

"'The President is inspired by a desire for a peaceable and honorable settlement of the existing difficulties between an American state and a powerful trans-Atlantic nation, and would be glad to see the reestablishment of such diplomatic relations between them as would promote that end.

"'I can discern but two equitable solutions of the present controversy. One is the arbitral determination of the rights of the disputants as the respective successors to the historical rights of Holland and Spain over the region in question. The other is to create a new boundary line in accordance with the dictates of mutual expediency and consideration. The two Governments having so far been unable to agree on a conventional line, the consistent and conspicuous advocacy by the United States and England of the principle of arbitration and their recourse thereto in settlement of important questions arising between them, makes such a mode of adjustment especially appropriate in the present instance, and this Government will gladly do what it can to further a determination in that sense.'[a]

"Subsequent communications to Mr. Bayard direct him to ascertain whether a minister from Venezuela would be received by Great Britain. In the annual message to Congress of December 3d last, the President used the following language:

"'The boundary of British Guiana still remains in dispute between Great Britain and Venezuela. Believing that its early settlement, on some just basis alike honorable to both parties, is in the line of our established policy to remove from this hemisphere all causes of difference with powers beyond the sea, I shall renew the efforts heretofore made to bring about a restoration of diplomatic relations between the disputants and to induce a reference to arbitration, a resort which Great Britain so conspicuously favors in principle and respects in practice and which is earnestly sought by her weaker adversary.'[b]

[a] For. Rel. 1894, 250–252. See, also, Venezuelan statements id. 803–846.

[b] President Cleveland, annual message, Dec. 3, 1894. See, also, annual message of Dec. 4, 1893.

"And February 22, 1895, a joint resolution of Congress declared—

"'That the President's suggestion . . . that Great Britain and Venezuela refer their dispute as to boundaries to friendly arbitration be earnestly recommended to the favorable consideration of both parties in interest.'

"The important features of the existing situation, as shown by the foregoing recital, may be briefly stated.

"1. The title to territory of indefinite but confessedly very large extent is in dispute between Great Britain on the one hand and the South American Republic of Venezuela on the other.

"2. The disparity in the strength of the claimants is such that Venezuela can hope to establish her claim only through peaceful methods—through an agreement with her adversary either upon the subject itself or upon an arbitration.

"3. The controversy, with varying claims on the part of Great Britain, has existed for more than half a century, during which period many earnest and persistent efforts of Venezuela to establish a boundary by agreement have proved unsuccessful.

"4. The futility of the endeavor to obtain a conventional line being recognized, Venezuela for a quarter of a century has asked and striven for arbitration.

"5. Great Britain, however, has always and continuously refused to arbitrate, except upon the condition of a renunciation of a large part of the Venezuelan claim and of a concession to herself of a large share of the territory in controversy.

"6. By the frequent interposition of its good offices at the instance of Venezuela, by constantly urging and promoting the restoration of diplomatic relations between the two countries, by pressing for arbitration of the disputed boundary, by offering to act as arbitrator, by expressing its grave concern whenever new alleged instances of British aggression upon Venezuelan territory have been brought to its notice, the Government of the United States has made it clear to Great Britain and to the world that the controversy is one in which both its honor and its interests are involved and the continuance of which it can not regard with indifference.

"The accuracy of the foregoing analysis of the existing status can not, it is believed, be challenged. It shows that status to be such that those charged with the interests of the United States are now forced to determine exactly what those interests are and what course of action they require. It compels them to decide to what extent, if any, the United States may and should intervene in a controversy between and primarily concerning only Great Britain and Venezuela and to decide how far it is bound to see that the integrity of Venezuelan territory is not impaired by the pretensions of its powerful antagonist. Are any such right and duty devolved upon the United

States? If not, the United States has already done all, if not more than all, that a purely sentimental interest in the affairs of the two countries justifies, and to push its interposition further would be unbecoming and undignified and might well subject it to the charge of impertinent intermeddling with affairs with which it has no rightful concern. On the other hand, if any such right and duty exist, their due exercise and discharge will not permit of any action that shall not be efficient and that, if the power of the United States is adequate, shall not result in the accomplishment of the end in view. The question thus presented, as matter of principle and regard being had to the settled national policy, does not seem difficult of solution. Yet the momentous practical consequences dependent upon its determination require that it should be carefully considered and that the grounds of the conclusion arrived at should be fully and frankly stated.

"That there are circumstances under which a nation may justly interpose in a controversy to which two or more other nations are the direct and immediate parties is an admitted canon of international law. The doctrine is ordinarily expressed in terms of the most general character and is perhaps incapable of more specific statement. It is declared in substance that a nation may avail itself of this right whenever what is done or proposed by any of the parties primarily concerned is a serious and direct menace to its own integrity, tranquillity, or welfare. The propriety of the rule when applied in good faith will not be questioned in any quarter. On the other hand, it is an inevitable though unfortunate consequence of the wide scope of the rule that it has only too often been made a cloak for schemes of wanton spoliation and aggrandizement. We are concerned at this time, however, not so much with the general rule as with a form of it which is peculiarly and distinctively American. Washington, in the solemn admonitions of the Farewell Address, explicitly warned his countrymen against entanglements with the politics or the controversies of European powers.

"'Europe [he said] has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships or enmities. Our detached and distant situation invites and enables us to pursue a different course.'

"During the Administration of President Monroe this doctrine of the Farewell Address was first considered in all its aspects and with a view to all its practical consequences. The Farewell Address, while it took America out of the field of European politics, was silent as

to the part Europe might be permitted to play in America. Doubtless it was thought the latest addition to the family of nations should not make haste to prescribe rules for the guidance of its older members, and the expediency and propriety of serving the powers of Europe with notice of a complete and distinctive American policy excluding them from interference with American political affairs might well seem dubious to a generation to whom the French alliance, with its manifold advantages to the cause of American independence, was fresh in mind.

"Twenty years later, however, the situation had changed. The lately born nation had greatly increased in power and resources, had demonstrated its strength on land and sea and as well in the conflicts of arms as in the pursuits of peace, and had begun to realize the commanding position on this continent which the character of its people, their free institutions, and their remoteness from the chief scene of European contentions combined to give to it. The Monroe Administration therefore did not hesitate to accept and apply the logic of the Farewell Address by declaring in effect that American nonintervention in European affairs necessarily implied and meant European nonintervention in American affairs. Conceiving unquestionably that complete European noninterference in American concerns would be cheaply purchased by complete American noninterference in European concerns, President Monroe, in the celebrated message of December 2, 1823, used the following language:

"'In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy to do so. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparations for our defense. With the movements in this hemisphere, we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety.

"'With the existing colonies or dependencies of any European power, we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on

just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States. . . . Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting, in all instances, the just claims of every power, submitting to injuries from none. But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition, in any form, with indifference.'

"The Monroe administration, however, did not content itself with formulating a correct rule for the regulation of the relations between Europe and America. It aimed at also securing the practical benefits to result from the application of the rule. Hence the message just quoted declared that the American continents were fully occupied and were not the subjects for future colonization by European powers. To this spirit and this purpose, also, are to be attributed the passages of the same message which treat any infringement of the rule against interference in American affairs on the part of the powers of Europe as an act of unfriendliness to the United States. It was realized that it was futile to lay down such a rule unless its observance could be enforced. It was manifest that the United States was the only power in this hemisphere capable of enforcing it. It was therefore courageously declared not merely that Europe ought not to interfere in American affairs, but that any European power doing so would be regarded as antagonizing the interests and inviting the opposition of the United States.

"That America is in no part open to colonization, though the proposition was not universally admitted at the time of its first enunciation, has long been universally conceded. We are now concerned, therefore, only with that other practical application of the Monroe doctrine the disregard of which by an European power is to be deemed an act of unfriendliness towards the United States. The precise scope and limitations of this rule can not be too clearly apprehended. It does not establish any general protectorate by the United States over other American states. It does not relieve any American

state from its obligations as fixed by international law nor prevent any European power directly interested from enforcing such obligations or from inflicting merited punishment for the breach of them. It does not contemplate any interference in the internal affairs of any American state or in the relations between it and other American states. It does not justify any attempt on our part to change the established form of government of any American state or to prevent the people of such state from altering that form according to their own will and pleasure. The rule in question has but a single purpose and object. It is that no European power or combination of European powers shall forcibly deprive an American state of the right and power of self-government and of shaping for itself its own political fortunes and destinies.

"That the rule thus defined has been the accepted public law of this country ever since its promulgation can not fairly be denied. Its pronouncement by the Monroe administration at that particular time was unquestionably due to the inspiration of Great Britain, who at once gave to it an open and unqualified adhesion which has never been withdrawn. But the rule was decided upon and formulated by the Monroe administration as a distinctively American doctrine of great import to the safety and welfare of the United States after the most careful consideration by a Cabinet which numbered among its members John Quincy Adams, Calhoun, Crawford, and Wirt, and which before acting took both Jefferson and Madison into its counsels. Its promulgation was received with acclaim by the entire people of the country irrespective of party. Three years after, Webster declared that the doctrine involved the honor of the country. 'I look upon it,' he said, 'as part of its treasures of reputation, and for one I intend to guard it,' and he added,

"'I look on the message of December, 1823, as forming a bright page in our history. I will help neither to erase it nor to tear it out; nor shall it be by any act of mine blurred or blotted. It did honor to the sagacity of the Government, and I will not diminish that honor.'

"Though the rule thus highly eulogized by Webster has never been formally affirmed by Congress, the House in 1864 declared against the Mexican monarchy sought to be set up by the French as not in accord with the policy of the United States, and in 1889 the Senate expressed its disapproval of the connection of any European power with a canal across the Isthmus of Darien or Central America. It is manifest that, if a rule has been openly and uniformly declared and acted upon by the executive branch of the Government for more than seventy years without express repudiation by Congress, it must be conclusively presumed to have its sanction. Yet it is certainly no more than the exact truth to say that every administration since President Monroe's has had occasion, and sometimes more occasions than one, to examine and

consider the Monroe doctrine and has in each instance given it emphatic endorsement. Presidents have dwelt upon it in messages to Congress and Secretaries of State have time after time made it the theme of diplomatic representation. Nor, if the practical results of the rule be sought for, is the record either meager or obscure. Its first and immediate effect was indeed most momentous and far-reaching. It was the controlling factor in the emancipation of South America and to it the independent states which now divide that region between them are largely indebted for their very existence. Since then the most striking single achievement to be credited to the rule is the evacuation of Mexico by the French upon the termination of the civil war. But we are also indebted to it for the provisions of the Clayton-Bulwer treaty, which both neutralized any interoceanic canal across Central America and expressly excluded Great Britain from occupying or exercising any dominion over any part of Central America. It has been used in the case of Cuba as if justifying the position that, while the sovereignty of Spain will be respected, the island will not be permitted to become the possession of any other European power. It has been influential in bringing about the definite relinquishment of any supposed protectorate by Great Britain over the Mosquito coast.

"President Polk, in the case of Yucatan and the proposed voluntary transfer of that country to Great Britain or Spain, relied upon the Monroe doctrine, though perhaps erroneously, when he declared in a special message to Congress on the subject that the United States could not consent to any such transfer. Yet, in somewhat the same spirit, Secretary Fish affirmed in 1870 that President Grant had but followed 'the teachings of all our history' in declaring in his annual message of that year that existing dependencies were no longer regarded as subject to transfer from one European power to another, and that when the present relation of colonies ceases they are to become independent powers. Another development of the rule, though apparently not necessarily required by either its letter or its spirit, is found in the objection to arbitration of South American controversies by an European power. American questions, it is said, are for American decision, and on that ground the United States went so far as to refuse to mediate in the war between Chili and Peru jointly with Great Britain and France. Finally, on the ground, among others, that the authority of the Monroe doctrine and the prestige of the United States as its exponent and sponsor would be seriously impaired, Secretary Bayard strenuously resisted the enforcement of the Pelletier claim against Hayti.

"'The United States [he said] has proclaimed herself the protector of this western world, in which she is by far the stronger power, from the intrusion of European sovereignties. She can point with

proud satisfaction to the fact that over and over again has she 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 those 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."[a]

"The foregoing enumeration not only shows the many instances wherein the rule in question has been affirmed and applied, but also demonstrates that the Venezuelan boundary controversy is in any view far within the scope and spirit of the rule as uniformly accepted and acted upon. A doctrine of American public law thus long and firmly established and supported could not easily be ignored in a proper case for its application, even were the considerations upon which it is founded obscure or questionable. No such objection can be made, however, to the Monroe doctrine understood and defined in the manner already stated. It rests, on the contrary, upon facts and principles that are both intelligible and incontrovertible. That distance and three thousand miles of intervening ocean make any permanent political union between an European and an American state unnatural and inexpedient will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe, as Washington observed, has a set of primary interests which are peculiar to herself. America is not interested in them and ought not to be vexed or complicated with them. Each great European power, for instance, to-day maintains enormous armies and fleets in self-defense and for protection against any other European power or powers. What have the states of America to do with that condition of things, or why should they be impoverished by wars or preparations for wars with whose causes or results they can have no direct concern? If all Europe were to suddenly fly to arms over the fate of Turkey, would it not be preposterous that any American state should find itself inextricably involved in the miseries

[a] Report of Mr. Bayard, Sec. of State, to the President, Jan. 20, 1887, S. Ex. Doc. 64, 49 Cong. 2 sess.

and burdens of the contest? If it were, it would prove to be a partnership in the cost and losses of the struggle but not in any ensuing benefits.

"What is true of the material, is no less true of what may be termed the moral interests involved. Those pertaining to Europe are peculiar to her and are entirely diverse from those pertaining and peculiar to America. Europe as a whole is monarchical, and, with the single important exception of the Republic of France, is committed to the monarchical principle. America, on the other hand, is devoted to the exactly opposite principle—to the idea that every people has an inalienable right of self-government—and, in the United States of America, has furnished to the world the most conspicuous and conclusive example and proof of the excellence of free institutions, whether from the standpoint of national greatness or of individual happiness. It can not be necessary, however, to enlarge upon this phase of the subject—whether moral or material interests be considered, it can not but be universally conceded that those of Europe are irreconcilably diverse from those of America, and that any European control of the latter is necessarily both incongruous and injurious. If, however, for the reasons stated the forcible intrusion of European powers into American polities is to be deprecated—if, as it is to be deprecated, it should be resisted and prevented—such resistance and prevention must come from the United States. They would come from it, of course, were it made the point of attack. But, if they come at all, they must also come from it when any other American state is attacked, since only the United States has the strength adequate to the exigency.

"Is it true, then, that the safety and welfare of the United States are so concerned with the maintenance of the independence of every American state as against any European power as to justify and require the interposition of the United States whenever that independence is endangered? The question can be candidly answered in but one way. The States of America, South as well as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions, are friends and allies, commercially and politically of the United States. To allow the subjugation of any them by an European power is, of course, to completely reverse that situation and signifies the loss of all the advantages incident to their natural relations to us. But that is not all. The people of the United States have a vital interest in the cause of popular self-government. They have secured the right for themselves and their posterity at the cost of infinite blood and treasure. They have realized and exemplified its beneficent operation by a career unexampled in point of natural greatness or individual felicity. They believe it to be for the healing of all nations, and that civilization must either advance or retrograde accordingly as its supremacy is extended or

curtailed. Imbued with these sentiments, the people of the United States might not impossibly be wrought up to an active propaganda in favor of a cause so highly valued both for themselves and for mankind. But the age of the Crusades has passed, and they are content with such assertion and defense of the right of popular self-government as their own security and welfare demand. It is in that view more than in any other that they believe it not to be tolerated that the political control of an American state shall be forcibly assumed by an European power.

"The mischiefs apprehended from such a source are none the less real because not immediately imminent in any specific case, and are none the less to be guarded against because the combination of circumstances that will bring them upon us can not be predicted. The civilized states of Christendom deal with each other on substantially the same principles that regulate the conduct of individuals. The greater its enlightenment, the more surely every state perceives that its permanent interests require it to be governed by the immutable principles of right and justice. Each, nevertheless, is only too liable to succumb to the temptations offered by seeming special opportunities for its own aggrandizement, and each would rashly imperil its own safety were it not to remember that for the regard and respect of other states it must be largely dependent upon its own strength and power. To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition. Why? It is not because of the pure friendship or good will felt for it. It is not simply by reason of its high character as a civilized state, nor because wisdom and justice and equity are the invariable characteristics of the dealings of the United States. It is because, in addition to all other grounds, its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers.

"All the advantages of this superiority are at once imperiled if the principle be admitted that European powers may convert American states into colonies or provinces of their own. The principle would be eagerly availed of, and every power doing so would immediately acquire a base of military operations against us. What one power was permitted to do could not be denied to another, and it is not inconceivable that the struggle now going on for the acquisition of Africa might be transferred to South America. If it were, the weaker countries would unquestionably be soon absorbed, while the ultimate result might be the partition of all South America between the various European powers. The disastrous consequences to the United States of such a condition of things are obvious. The loss of prestige, of authority, and of weight in the councils of the family of nations, would be among the least of them. Our only real rivals in peace as

well as enemies in war would be found located at our very doors. Thus far in our history we have been spared the burdens and evils of immense standing armies and all the other accessories of huge warlike establishments, and the exemption has largely contributed to our national greatness and wealth as well as to the happiness of every citizen. But, with the powers of Europe permanently encamped on American soil, the ideal conditions we have thus far enjoyed can not be expected to continue. We too must be armed to the teeth; we too must convert the flower of our male population into soldiers and sailors, and by withdrawing them from the various pursuits of peaceful industry, we too must practically annihilate a large share of the productive energy of the nation.

"How a greater calamity than this could overtake us it is difficult to see. Nor are our just apprehensions to be allayed by suggestions of the friendliness of European powers—of their good will toward us—of their disposition, should they be our neighbors, to dwell with us in peace and harmony. The people of the United States have learned in the school of experience to what extent the relations of states to each other depend not upon sentiment nor principle, but upon selfish interest. They will not soon forget that, in their hour of distress, all their anxieties and burdens were aggravated by the possibility of demonstrations against their national life on the part of powers with whom they had long maintained the most harmonious relations. They have yet in mind that France seized upon the apparent opportunity of our civil war to set up a monarchy in the adjoining state of Mexico. They realize that had France and Great Britain held important South American possessions to work from and to benefit, the temptation to destroy the predominance of the Great Republic in this hemisphere by furthering its dismemberment might have been irresistible. From that grave peril they have been saved in the past and may be saved again in the future through the operation of the sure but silent force of the doctrine proclaimed by President Monroe. To abandon it, on the other hand, disregarding both the logic of the situation and the facts of our past experience, would be to renounce a policy which has proved both an easy defense against foreign aggression and a prolific source of internal progress and prosperity.

"There is, then, a doctrine of American public law, well founded in principle and abundantly sanctioned by precedent, which entitles and requires the United States to treat as an injury to itself the forcible assumption by an European power of political control over an American state. The application of the doctrine to the boundary dispute between Great Britain and Venezuela remains to be made and presents no real difficulty. Though the dispute relates to a boundary line, yet, as it is between states, it necessarily imports political control

to be lost by one party and gained by the other. The political control at stake, too, is of no mean importance, but concerns a domain of great extent—the British claim, it will be remembered, apparently expanded in two years some 33,000 square miles—and, if it also directly involves the command of the mouth of the Orinoco, is of immense consequence in connection with the whole river navigation of the interior of South America. It has been intimated, indeed, that in respect of these South American possessions Great Britain is herself an American state like any other, so that a controversy between her and Venezuela is to be settled between themselves as if it were between Venezuela and Brazil or between Venezuela and Colombia, and does not call for or justify United States intervention. If this view be tenable at all, the logical sequence is plain.

"Great Britain as a South American state is to be entirely differentiated from Great Britain generally, and if the boundary question can not be settled otherwise than by force, British Guiana, with her own independent resources and not those of the British Empire, should be left to settle the matter with Venezuela—an arrangement which very possibly Venezuela might not object to. But the proposition that an European power with an American dependency is for the purposes of the Monroe doctrine to be classed not as an European but as an American state will not admit of serious discussion. If it were to be adopted, the Monroe doctrine would be too valueless to be worth asserting. Not only would every European power now having a South American colony be enabled to extend its possessions on this continent indefinitely, but any other European power might also do the same by first taking pains to procure a fraction of South American soil by voluntary cession.

"The declaration of the Monroe message—that existing colonies or dependencies of an European power would not be interfered with by the United States—means colonies or dependencies then existing, with their limits as then existing. So it has been invariably construed, and so it must continue to be construed unless it is to be deprived of all vital force. Great Britain can not be deemed a South American state within the purview of the Monroe doctrine, nor, if she is appropriating Venezuelan territory, is it material that she does so by advancing the frontier of an old colony instead of by the planting of a new colony. The difference is matter of form and not of substance, and the doctrine if pertinent in the one case must be in the other also. It is not admitted, however, and therefore can not be assumed, that Great Britain is in fact usurping dominion over Venezuelan territory. While Venezuela charges such usurpation, Great Britain denies it, and the United States, until the merits are authoritatively ascertained, can take sides with neither. But while this is so—while the United States may not, under existing circumstances at least, take

upon itself to say which of the two parties is right and which wrong—it is certainly within its right to demand that the truth shall be ascertained. Being entitled to resent and resist any sequestration of Venezuelan soil by Great Britain, it is necessarily entitled to know whether such sequestration has occurred or is now going on. Otherwise, if the United States is without the right to know and have it determined whether there is or is not British aggression upon Venezuelan territory, its right to protest against or repel such aggression may be dismissed from consideration.

"The right to act upon a fact, the existence of which there is no right to have ascertained, is simply illusory. It being clear, therefore, that the United States may legitimately insist upon the merits of the boundary question being determined, it is equally clear that there is but one feasible mode of determining them, viz, peaceful arbitration. The impracticability of any conventional adjustment has been often and thoroughly demonstrated. Even more impossible of consideration is an appeal to arms—a mode of settling national pretensions unhappily not yet wholly obsolete. If, however, it were not condemnable as a relic of barbarism and a crime in itself, so one-sided a contest could not be invited nor even accepted by Great Britain without distinct disparagement to her character as a civilized state. Great Britain, however, assumes no such attitude. On the contrary, she both admits that there is a controversy and that arbitration should be resorted to for its adjustment. But, while up to that point her attitude leaves nothing to be desired, its practical effect is completely nullified by her insistence that the submission shall cover but a part of the controversy—that, as a condition of arbitrating her right to a part of the disputed territory, the remainder shall be turned over to her. If it were possible to point to a boundary which both parties had ever agreed or assumed to be such, either expressly or tacitly, the demand that territory conceded by such line to British Guiana should be held not to be in dispute might rest upon a reasonable basis. But there is no such line. The territory which Great Britain insists shall be ceded to her as a condition of arbitrating her claim to other territory has never been admitted to belong to her. It has always and consistently been claimed by Venezuela.

"Upon what principle—except her feebleness as a nation—is she to be denied the right of having the claim heard and passed upon by an impartial tribunal? No reason nor shadow of reason appears in all the voluminous literature of the subject. 'It is to be so because I will it to be so' seems to be the only justification Great Britain offers. It is, indeed, intimated that the British claim to this particular territory rests upon an occupation, which, whether acquiesced in or not, has ripened into a perfect title by long continuance. But what prescription affecting territorial rights can be said to exist as between

sovereign states? Or, if there is any, what is the legitimate consequence? It is not that all arbitration should be denied, but only that the submission should embrace an additional topic, namely, the validity of the asserted prescriptive title either in point of law or in point of fact. No different result follows from the contention that as matter of principle Great Britain can not be asked to submit and ought not to submit to arbitration her political and sovereign rights over territory. This contention, if applied to the whole or to a vital part of the possessions of a sovereign state, need not be controverted. To hold otherwise might be equivalent to holding that a sovereign state was bound to arbitrate its very existence.

"But Great Britain has herself shown in various instances that the principle has no pertinency when either the interests or the territorial area involved are not of controlling magnitude and her loss of them as the result of an arbitration can not appreciably affect her honor or her power. Thus, she has arbitrated the extent of her colonial possessions twice with the United States, twice with Portugal, and once with Germany, and perhaps in other instances. The Northwest Water Boundary arbitration of 1872 between her and this country is an example in point and well illustrates both the effect to be given to long-continued use and enjoyment and the fact that a truly great power sacrifices neither prestige nor dignity by reconsidering the most emphatic rejection of a proposition when satisfied of the obvious and intrinsic justice of the case. By the award of the Emperor of Germany, the arbitrator in that case, the United States acquired San Juan and a number of smaller islands near the coast of Vancouver as a consequence of the decision that the term 'the channel which separates the continent from Vancouver's Island,' as used in the treaty of Washington of 1846, meant the Haro channel and not the Rosario channel. Yet a leading contention of Great Britain before the arbitrator was that equity required a judgment in her favor because a decision in favor of the United States would deprive British subjects of rights of navigation of which they had had the habitual enjoyment from the time when the Rosario Strait was first explored and surveyed in 1798. So, though by virtue of the award, the United States acquired San Juan and the other islands of the group to which it belongs, the British foreign secretary had in 1859 instructed the British minister at Washington as follows:

"'Her Majesty's Government must, therefore, under any circumstances, maintain the right of the British Crown to the island of San Juan. The interests at stake in connection with the retention of that island are too important to admit of compromise, and your lordship will consequently bear in mind that, whatever arrangement as to the boundary line is finally arrived at, no settlement of the question will be accepted by Her Majesty's Government which does not pro-

vide for the island of San Juan being reserved to the British Crown.'

"Thus, as already intimated, the British demand that her right to a portion of the disputed territory shall be acknowledged before she will consent to an arbitration as to the rest seems to stand upon nothing but her own *ipse dixit*. She says to Venezuela, in substance: 'You can get none of the debatable land by force, because you are not strong enough; you can get none by treaty, because I will not agree; and you can take your chance of getting a portion by arbitration, only if you first agree to abandon to me such other portion as I may designate.' It is not perceived how such an attitude can be defended nor how it is reconcilable with that love of justice and fair play so eminently characteristic of the English race. It in effect deprives Venezuela of her free agency and puts her under virtual duress. Territory acquired by reason of it will be as much wrested from her by the strong hand as if occupied by British troops or covered by British fleets. It seems therefore quite impossible that this position of Great Britain should be assented to by the United States, or that, if such position be adhered to with the result of enlarging the bounds of British Guiana, it should not be regarded as amounting, in substance, to an invasion and conquest of Venezuelan territory.

"In these circumstances, the duty of the President appears to him unmistakable and imperative. Great Britain's assertion of title to the disputed territory combined with her refusal to have that title investigated being a substantial appropriation of the territory to her own use, not to protest and give warning that the transaction will be regarded as injurious to the interests of the people of the United States as well as oppressive in itself would be to ignore an established policy with which the honor and welfare of this country are closely identified. While the measures necessary or proper for the vindication of that policy are to be determined by another branch of the Government, it is clearly for the Executive to leave nothing undone which may tend to render such determination unnecessary.

"You are instructed, therefore, to present the foregoing views to Lord Salisbury by reading to him this communication (leaving with him a copy should he so desire), and to reinforce them by such pertinent considerations as will doubtless occur to you. They call for a definite decision upon the point whether Great Britain will consent or will decline to submit the Venezuelan boundary question in its entirety to impartial arbitration. It is the earnest hope of the President that the conclusion will be on the side of arbitration, and that Great Britain will add one more to the conspicuous precedents she has already furnished in favor of that wise and just mode of adjusting international disputes. If he is to be disappointed in that hope, however—a result not to be anticipated and in his judgment calculated to greatly embarrass the future relations between this country

and Great Britain—it is his wish to be made acquainted with the fact at such early date as will enable him to lay the whole subject before Congress in his next annual message."

Mr. Olney, Sec. of State, to Mr. Bayard, amb. to England, July 20, 1895, For. Rel. 1895, I. 545; S. Ex. Doc. 31, 54 Cong. 1 sess. 4.

"In Mr. Olney's Instruction No. 804, of the 20th instant, in relation to the Anglo-Venezuelan boundary dispute, you will note a reference to the sudden increase of the area claimed for British Guiana, amounting to 33,000 square miles, between 1884 and 1886. This statement is made on the authority of the British publication entitled the Statesman's Year Book.

"I add for your better information that the same statement is found in the British Colonial Office List, a government publication.

"In the issue for 1885 the following passage occurs, on page 24, under the head of British Guiana:

"'It is impossible to specify the exact area of the colony, as its precise boundaries between Venezuela and Brazil respectively are undetermined, but it has been computed to be 76,000 square miles.'

"In the issue of the same List for 1886, the same statement occurs, on page 33, with the change of area to 'about 109,000 square miles.'

"The official maps in the two volumes mentioned are identical, so that the increase of 33,000 square miles claimed for British Guiana is not thereby explained, but later Colonial Office List maps show a varying sweep of the boundary westward into what previously figured as Venezuelan territory, while no change is noted on the Brazilian frontier." (Mr. Adee, Act. Sec. of State, to Mr. Bayard, July 24, 1895, For. Rel. 1895, I. 562.)

Lord Salisbury's responses, Nov. 26, 1895.

"On the 7th August I transmitted to Lord Gough a copy of the despatch from Mr. Olney which Mr. Bayard had left with me that day, and of which he had read portions to me. I informed him at the time that it could not be answered until it had been carefully considered by the Law Officers of the Crown. I have therefore deferred replying to it till after the recess.

"I will not now deal with those portions of it which are concerned exclusively with the controversy that has for some time past existed between the Republic of Venezuela and Her Majesty's Government in regard to the boundary which separates their dominions. I take a very different view from Mr. Olney of various matters upon which he touches in that part of the despatch; but I will defer for the present all observations upon it, as it concerns matters which are not in themselves of first-rate importance, and do not directly concern the relations between Great Britain and the United States.

"The latter part however of the despatch, turning from the question of the frontiers of Venezuela, proceeds to deal with principles of a far wider character, and to advance doctrines of international law which are of considerable interest to all the nations whose dominions include any portion of the western hemisphere.

"The contentions set forth by Mr. Olney in this part of his despatch are represented by him as being an application of the political maxims which are well known in American discussion under the name of the Monroe doctrine. As far as I am aware, this doctrine has never been before advanced on behalf of the United States in any written communication addressed to the Government of another nation; but it has been generally adopted and assumed as true by many eminent writers and politicians in the United States. It is said to have largely influenced the Government of that country in the conduct of its foreign affairs: though Mr. Clayton, who was Secretary of State under President Taylor, expressly stated that that Administration had in no way adopted it. But during the period that has elapsed since the message of President Monroe was delivered in 1823, the doctrine has undergone a very notable development, and the aspect which it now presents in the hands of Mr. Olney differs widely from its character when it first issued from the pen of its author. The two propositions which in effect President Monroe laid down were, first, that America was no longer to be looked upon as a field for European colonization; and, secondly, that Europe must not attempt to extend its political system to America, or to control the political condition of any of the American communities who had recently declared their independence.

"The dangers against which President Monroe thought it right to guard were not as imaginary as they would seem at the present day. The formation of the Holy Alliance; the congresses of Laybach and Verona; the invasion of Spain by France for the purpose of forcing upon the Spanish people a form of government which seemed likely to disappear, unless it was sustained by external aid, were incidents fresh in the mind of President Monroe when he penned his celebrated message. The system of which he speaks, and of which he so resolutely deprecates the application to the American Continent, was the system then adopted by certain powerful States upon the Continent of Europe of combining to prevent by force of arms the adoption in other countries of political institutions which they disliked, and to uphold by external pressure those which they approved. Various portions of South America had recently declared their independence, and that independence had not been recognized by the Governments of Spain and Portugal, to which, with small exception, the whole of Central and South America were nominally subject. It was not an imaginary danger that he foresaw, if he feared that the same spirit which had dictated the French expedition into Spain might inspire the more powerful governments of Europe with the idea of imposing, by the force of European arms, upon the South American communities the form of government and the political connection which they had thrown off. In declaring that the United States would resist any

such enterprise if it was contemplated, President Monroe adopted a policy which received the entire sympathy of the English Government of that date.

"The dangers which were apprehended by President Monroe have no relation to the state of things in which we live at the present day. There is no danger of any Holy Alliance imposing its system upon any portion of the American Continent, and there is no danger of any European State treating any part of the American Continent as a fit object for European colonization. It is intelligible that Mr. Olney should invoke, in defence of the views on which he is now insisting, an authority which enjoys so high a popularity with his own fellow-countrymen. But the circumstances with which President Monroe was dealing, and those to which the present American Government is addressing itself, have very few features in common. Great Britain is imposing no 'system' upon Venezuela, and is not concerning herself in any way with the nature of the political institutions under which the Venezuelans may prefer to live. But the British Empire and the Republic of Venezuela are neighbours, and they have differed for some time past, and continue to differ, as to the line by which their dominions are separated. It is a controversy with which the United States have no apparent practical concern. It is difficult, indeed, to see how it can materially affect any State or community outside those primarily interested, except perhaps other parts of Her Majesty's dominions, such as Trinidad. The disputed frontier of Venezuela has nothing to do with any of the questions dealt with by President Monroe. It is not a question of the colonization by a European power of any portion of America. It is not a question of the imposition upon the communities of South America of any system of government devised in Europe. It is simply the determination of the frontier of a British possession which belonged to the Throne of England long before the Republic of Venezuela came into existence. But even if the interests of Venezuela were so far linked to those of the United States as to give to the latter a *locus standi* in this controversy, their Government apparently have not formed, and certainly do not express, any opinion upon the actual merits of the dispute. The Government of the United States do not say that Great Britain, or that Venezuela, is in the right in the matters that are in issue. But they lay down that the doctrine of President Monroe, when he opposed the imposition of European systems, or the renewal of European colonization, confers upon them the right of demanding that when a European Power has a frontier difference with a South American community, the European Power shall consent to refer that controversy to arbitration; and Mr. Olney states that unless Her Majesty's Government accede to this demand, it will 'greatly embarrass the future relations between Great Britain and the United States.'

"Whatever may be the authority of the doctrine laid down by President Monroe, there is nothing in his language to show that he ever thought of claiming this novel prerogative for the United States. It is admitted that he did not seek to assert a protectorate over Mexico, or the States of Central and South America. Such a claim would have imposed upon the United States the duty of answering for the conduct of these States, and consequently the responsibility of controlling it. His sagacious foresight would have led him energetically to deprecate the addition of so serious a burden to those which the rulers of the United States have to bear. It follows of necessity that if the Government of the United States will not control the conduct of these communities, neither can it undertake to protect them from the consequences attaching to any misconduct of which they may be guilty towards other nations. If they violate in any way the rights of another State, or of its subjects, it is not alleged that the Monroe doctrine will assure them the assistance of the United States in escaping from any reparation which they may be bound by international law to give. Mr. Olney expressly disclaims such an inference from the principles he lays down.

"But the claim which he founds upon them is that, if any independent American State advances a demand for territory of which its neighbour claims to be the owner, and that neighbour is the colony of a European State, the United States have a right to insist that the European State shall submit the demand, and its own impugned rights to arbitration.

"I will not now enter into a discussion of the merits of this method of terminating international differences. It has proved itself valuable in many cases: but it is not free from defects, which often operate as a serious drawback on its value. It is not always easy to find an arbitrator who is competent, and who, at the same time, is wholly free from bias; and the task of insuring compliance with the award when it is made is not exempt from difficulty. It is a mode of settlement of which the value varies much according to the nature of the controversy to which it is applied, and the character of the litigants who appeal to it. Whether, in any particular case, it is a suitable method of procedure is generally a delicate and difficult question. The only parties who are competent to decide that question are the two parties whose rival contentions are in issue. The claim of a third nation, which is unaffected by the controversy, to impose this particular procedure on either of the two others, can not be reasonably justified, and has no foundation in the law of nations.

"In the remarks which I have made, I have argued on the theory that the Monroe doctrine in itself is sound. I must not, however, be understood as expressing any acceptance of it on the part of Her Majesty's Government. It must always be mentioned with respect,

on account of the distinguished statesman to whom it is due, and the great nation who have generally adopted it. But international law is founded on the general consent of nations; and no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before, and which has not since been accepted by the Government of any other country. The United States have a right, like any other nation, to interpose in any controversy by which their own interests are affected; and they are the judge whether those interests are touched, and in what measure they should be sustained. But their rights are in no way strengthened or extended by the fact that the controversy affects some territory which is called American. Mr. Olney quotes the case of the recent Chilean war, in which the United States declined to join with France and England in an effort to bring hostilities to a close, on account of the Monroe doctrine. The United States were entirely in their right in declining to join in an attempt at pacification if they thought fit; but Mr. Olney's principle that 'American questions are for American decision,' even if it receive any countenance from the language of President Monroe (which it does not), can not be sustained by any reasoning drawn from the law of nations.

"The Government of the United States is not entitled to affirm as a universal proposition, with reference to a number of independent States for whose conduct it assumes no responsibility, that its interests are necessarily concerned in whatever may befall those States simply because they are situated in the Western Hemisphere. It may well be that the interests of the United States are affected by something that happens to Chile or to Peru, and that that circumstance may give them the right of interference; but such a contingency may equally happen in the case of China or Japan, and the right of interference is not more extensive or more assured in the one case than in the other.

"Though the language of President Monroe is directed to the attainment of objects which most Englishmen would agree to be salutary, it is impossible to admit that they have been inscribed by any adequate authority in the code of international law; and the danger which such admission would involve is sufficiently exhibited both by the strange development which the doctrine has received at Mr. Olney's hands, and the arguments by which it is supported, in the despatch under reply. In defense of it he says:

"'That distance and 3,000 miles of intervening ocean *make any permanent political union between a European and an American State unnatural and inexpedient* will hardly be denied. But physical and geographical considerations are the least of the objections to such a union. Europe has a set of primary interests which are peculiar

to herself; America is not interested in them, and ought not to be vexed or complicated with them.'

"And again:

"'Thus far in our history we have been spared the burdens and evils of immense standing armies and all the other accessories of huge warlike establishments; and the exemption has highly contributed to our national greatness and wealth, as well as to the happiness of every citizen. But *with the Powers of Europe permanently encamped on American soil*, the ideal conditions we have thus far enjoyed can not be expected to continue.'

"The necessary meaning of these words is that the union between Great Britain and Canada; between Great Britain and Jamaica and Trinidad; between Great Britain and British Honduras or British Guiana are 'inexpedient and unnatural.' President Monroe disclaims any such inference from his doctrine; but in this, as in other respects, Mr. Olney develops it. He lays down that the inexpedient and unnatural character of the union between a European and American State is so obvious that it 'will hardly be denied.' Her Majesty's Government are prepared emphatically to deny it on behalf of both the British and American people who are subject to her Crown. They maintain that the union between Great Britain and her territories in the Western Hemisphere is both natural and expedient. They fully concur with the view which President Monroe apparently entertained, that any disturbance of the existing territorial distribution in that hemisphere by any fresh acquisitions on the part of any European State would be a highly inexpedient change. But they are not prepared to admit that the recognition of that expediency is clothed with the sanction which belongs to a doctrine of international law. They are not prepared to admit that the interests of the United States are necessarily concerned in every frontier dispute which may arise between any two of the States who possess dominion in the Western Hemisphere; and still less can they accept the doctrine that the United States are entitled to claim that the process of arbitration shall be applied to any demand for the surrender of territory which one of those States may make against another.

"I have commented in the above remarks only upon the general aspect of Mr. Olney's doctrines, apart from the special considerations which attach to the controversy between the United Kingdom and Venezuela in its present phase. This controversy has undoubtedly been made more difficult by the inconsiderate action of the Venezuelan Government in breaking off relations with her Majesty's Government, and its settlement has been correspondingly delayed; but her Majesty's Government have not surrendered the hope that it will be adjusted by a reasonable arrangement at an early date.

"I request that you will read the substance of the above despatch to Mr. Olney, and leave him a copy if he desires it."

Lord Salisbury to Sir Julian Pauncefote, Nov. 26, 1895, For. Rel. 1895, I. 563; S. Ex. Doc. 31, 54 Cong. 1 sess. 22.

"In my preceding despatch of to-day's date I have replied only to the latter portion of Mr. Olney's despatch of the 20th July last, which treats of the application of the Monroe doctrine to the question of the boundary dispute between Venezuela and the colony of British Guiana. But it seems desirable, in order to remove some evident misapprehensions as to the main features of the question, that the statement of it contained in the earlier portion of Mr. Olney's despatch should not be left without reply. Such a course will be the more convenient, because, in consequence of the suspension of diplomatic relations, I shall not have the opportunity of setting right misconceptions of this kind in the ordinary way in a despatch addressed to the Venezuelan Government itself.

"Her Majesty's Government, while they have never avoided or declined argument on the subject with the Government of Venezuela, have always held that the question was one which had no direct bearing on the material interests of any other country, and have consequently refrained hitherto from presenting any detailed statement of their case either to the United States or to other foreign governments.

"It is, perhaps, a natural consequence of this circumstance that Mr. Olney's narration of what has passed bears the impress of being mainly, if not entirely, founded on *ex parte* statements emanating from Venezuela, and gives, in the opinion of Her Majesty's Government, an erroneous view of many material facts.

"Mr. Olney commences his observations by remarking that 'the dispute is of ancient date, and began at least as early as the time when Great Britain acquired by the treaty with the Netherlands in 1814 the establishments of Demerara, Essequibo, and Berbice. From that time to the present the dividing line between these establishments, now called British Guiana, and Venezuela has never ceased to be subject of contention.'

"This statement is founded on misconception. The dispute on the subject of the frontier did not, in fact, commence till after the year 1840.

"The title of Great Britain to the territory in question is derived, in the first place, from conquest and military occupation of the Dutch settlements in 1796. Both on this occasion, and at the time of a previous occupation of those settlements in 1781, the British authorities marked the western boundary of their possessions as beginning some distance up the Orinoco beyond Point Barima, in accordance with the limits claimed and actually held by the Dutch, and this has always

since remained the frontier claimed by Great Britain. The definite cession of the Dutch settlements to England was, as Mr. Olney states, placed on record by the treaty of 1814, and although the Spanish Government were parties to the negotiations which led to that treaty, they did not at any stage of them raise objection to the frontiers claimed by Great Britain, though these were perfectly well known to them. At that time the Government of Venezuela had not been recognized even by the United States, though the province was already in revolt against the Spanish Government, and had declared its independence. No question of frontier was raised with Great Britain either by it or by the Government of the United States of Colombia, in which it became merged in 1819. That Government, indeed, on repeated occasions, acknowledged its indebtedness to Great Britain for her friendly attitude. When in 1830 the Republic of Venezuela assumed a separate existence its Government was equally warm in its expressions of gratitude and friendship, and there was not at the time any indication of an intention to raise such claims as have been urged by it during the latter portion of this century.

"It is true, as stated by Mr. Olney, that, in the Venezuelan constitution of 1830, article 5 lays down that 'the territory of Venezuela comprises all that which previously to the political changes of 1810 was denominated the Captaincy-General of Venezuela.' Similar declarations had been made in the fundamental laws promulgated in 1819 and 1821.

"I need not point out that a declaration of this kind made by a newly self-constituted State can have no valid force as against international arrangements previously concluded by the nation from which it has separated itself.

"But the present difficulty would never have arisen if the Government of Venezuela had been content to claim only those territories which could be proved or even reasonably asserted to have been practically in the possession and under the effective jurisdiction of the Captaincy-General of Venezuela.

"There is no authoritative statement by the Spanish Government of those territories, for a decree which the Venezuelan Government alleged to have been issued by the King of Spain in 1768, describing the Province of Guiana as bordered on the south by the Amazon and on the east by the Atlantic, certainly can not be regarded as such. It absolutely ignores the Dutch settlements, which not only existed in fact, but had been formally recognized by the treaty of Munster of 1648, and it would, if now considered valid, transfer to Venezuela the whole of the British, Dutch, and French Guianas, and an enormous tract of territory belonging to Brazil.

"But of the territories claimed and actually occupied by the Dutch, which were those acquired from them by Great Britain, there exist

the most authentic declarations. In 1759, and again in 1769, the States-General of Holland addressed formal remonstrances to the Court of Madrid against the incursions of the Spaniards into their posts and settlements in the basin of the Cuyuni. In these remonstrances they distinctly claimed all the branches of the Essequibo River, and especially, the Cuyuni River, as lying within Dutch territory. They demanded immediate reparation for the proceedings of the Spaniards and reinstatement of the posts said to have been injured by them, and suggested that a proper delineation between the colony of Essequibo and the Rio Orinoco should be laid down by authority.

"To this claim the Spanish Government never attempted to make any reply. But it is evident from the archives which are preserved in Spain, and to which, by the courtesy of the Spanish Government, reference has been made, that the Council of State did not consider that they had the means of rebutting it, and that neither they nor the governor of Cumana were prepared seriously to maintain the claims which were suggested in reports from his subordinate officer, the commandant of Guiana. These reports were characterized by the Spanish ministers as insufficient and unsatisfactory, as 'professing to show the Province of Guiana under too favourable a light,' and finally by the council of state as appearing from other information to be 'very improbable.' They form, however, with a map which accompanied them, the evidence on which the Venezuelan Government appear most to rely, though it may be observed that among other documents which have from time to time been produced or referred to by them in the course of the discussions is a Bull of Pope Alexander VI. in 1493, which, if it is to be considered as having any present validity, would take from the Government of the United States all title to jurisdiction on the continent of North America. The fundamental principle underlying the Venezuelan argument is, in fact, that, inasmuch as Spain was originally entitled of right to the whole of the American continent, any territory on that continent which she can not be shown to have acknowledged in positive and specific terms to have passed to another power can only have been acquired by wrongful usurpation, and if situated to the north of the Amazon and west of the Atlantic must necessarily belong to Venezuela, as her self-constituted inheritor in those regions. It may reasonably be asked whether Mr. Olney would consent to refer to the arbitration of another power pretensions raised by the Government of Mexico on such a foundation to large tracts of territory which had long been comprised in the Federation.

"The circumstances connected with the marking of what is called the 'Schomburgk' line are as follows:

"In 1835 a grant was made by the British Government for the exploration of the interior of the British colony, and Mr. (afterwards

Sir Robert) Schomburgk, who was employed on this service, on his return to the capital of the colony in July, 1839, called the attention of the Government to the necessity for an early demarcation of its boundaries. He was in consequence appointed in November, 1840, special commissioner for provisionally surveying and delimiting the boundaries of British Guiana, and notice of the appointment was given to the governments concerned, including that of Venezuela.

"The intention of Her Majesty's Government at that time was, when the work of the commissioner had been completed, to communicate to the other governments their views as to the true boundary of the British colony, and then to settle any details to which those governments might take objection.

"It is important to notice that Sir R. Schomburgk did not discover or invent any new boundaries. He took particular care to fortify himself with the history of the case. He had further, from actual exploration and information obtained from the Indians, and from the evidence of local remains, as at Barima, and local traditions, as on the Cuyuni, fixed the limits of the Dutch possessions, and the zone from which all trace of Spanish influence was absent. On such data he based his reports.

"At the very outset of his mission he surveyed Point Barima, where the remains of a Dutch fort still existed, and placed there and at the mouth of the Amacura two boundary posts. At the urgent entreaty of the Venezuelan Government these two posts were afterwards removed, as stated by Mr. Olney, but this concession was made on the distinct understanding that Great Britain did not thereby in any way abandon her claim to that position.

"In submitting the maps of his survey, on which he indicated the line which he would propose to Her Majesty's Government for adoption, Sir R. Schomburgk called attention to the fact that Her Majesty's Government might justly claim the whole basin of the Cuyuni and Yuruari on the ground that the natural boundary of the colony included any territory through which flow rivers which fall into the Essequibo. 'Upon this principle,' he wrote, 'the boundary line would run from the sources of the Carumani towards the sources of the Cuyuni proper, and from thence towards its far more northern tributaries, the rivers Iruary (Yuruari) and Iruang (Yuruan), and thus approach the very heart of Venezuelan Guiana.' But, on grounds of complaisance towards Venezuela, he proposed that Great Britain should consent to surrender her claim to a more extended frontier inland in return for the formal recognition of her right to Point Barima. It was on this principle that he drew the boundary line which has since been called by his name.

"Undoubtedly, therefore, Mr. Olney is right when he states that 'it seems impossible to treat the Schomburgk line as being the bound-

ary claimed by Great Britain as matter of right, or as anything but a line originating in considerations of convenience and expediency.' The Schomburgk line was in fact a great reduction of the boundary claimed by Great Britain as matter of right, and its proposal originated in a desire to come to a speedy and friendly arrangement with a weaker power with whom Great Britain was at the time, and desired to remain, in cordial relations.

"The following are the main facts of the discussions that ensued with the Venezuelan Government:

"While Mr. Schomburgk was engaged on his survey the Venezuelan minister in London had urged Her Majesty's Government to enter into a treaty of limits, but received the answer that, if it should be necessary to enter into such a treaty, a survey was, at any rate, the necessary preliminary, and that this was proceeding.

"As soon as Her Majesty's Government were in possession of Mr. Schomburgk's reports, the Venezuelan minister was informed that they were in a position to commence negotiations, and in January, 1844, M. Fortique commenced by stating the claim of his Government.

"This claim, starting from such obsolete grounds as the original discovery by Spain of the American continent, and mainly supported by quotations of a more or less vague character from the writings of travelers and geographers, but adducing no substantial evidence of actual conquest or occupation of the territory claimed, demanded the Essequibo itself as the boundary of Venezuela.

"A reply was returned by Lord Aberdeen, then secretary of state for foreign affairs, pointing out that it would be impossible to arrive at any agreement if both sides brought forward pretensions of so extreme a character, but stating that the British Government would not imitate M. Fortique in putting forward a claim which it could not be intended seriously to maintain. Lord Aberdeen then proceeded to announce the concessions which 'out of friendly regard to Venezuela,' Her Majesty's Government were prepared to make, and proposed a line starting from the mouth of the Moroco to the junction of the River Barama with the Waini, thence up the Barama to the point at which that stream approached nearest to the Acarabisi, and thence following Sir R. Schomburgk's line from the source of the Acarabisi onwards.

"A condition was attached to the proffered cession, viz, that the Venezuelan Government should enter into an engagement that no portion of the territory proposed to be ceded should be alienated at any time to a foreign power, and that the Indian tribes residing in it should be protected from oppression.

"No answer to the note was ever received from the Venezuelan Government, and in 1850 Her Majesty's Government informed Her Majesty's chargé d'affaires at Carácas that as the proposal had re-

mained for more than six years unaccepted, it must be considered as having lapsed, and authorized him to make a communication to the Venezuelan Government to that effect.

"A report having at the time become current in Venezuela that Great Britain intended to seize Venezuelan Guiana, the British Government distinctly disclaimed such an intention, but inasmuch as the Government of Venezuela subsequently permitted projects to be set on foot for the occupation of Point Barima and certain other positions in dispute, the British chargé d'affaires was instructed in June 1850 to call the serious attention of the President and Government of Venezuela to the question, and to declare to them 'that, whilst, on the one hand, Great Britain had no intention to occupy or encroach on the disputed territory, she would not, on the other hand, view with indifference aggressions on that territory by Venezuela.'

"The Venezuelan Government replied in December of the same year that Venezuela had no intention of occupying or encroaching upon any part of the territory the dominion of which was in dispute, and that orders would be issued to the authorities in Guiana to abstain from taking any steps contrary to this engagement.

"This constitutes what has been termed the 'agreement of 1850,' to which the Government of Venezuela have frequently appealed, but which the Venezuelans have repeatedly violated in succeeding years.

"Their first acts of this nature consisted in the occupation of fresh positions to the east of their previous settlements, and the founding in 1858 of the town of Nueva Providencia on the right bank of the Yuruari, all previous settlements being on the left bank. The British Government, however, considering that these settlements were so near positions which they had not wished to claim, considering also the difficulty of controlling the movements of mining populations, overlooked this breach of the agreement.

"The governor of the colony was in 1857 sent to Carácas to negotiate for a settlement of the boundary, but he found the Venezuelan State in so disturbed a condition that it was impossible to commence negotiations, and eventually he came away without having effected anything.

"For the next nineteen years, as stated by Mr. Olney, the civil commotions in Venezuela prevented any resumption of negotiations.

"In 1876 it was reported that the Venezuelan Government had, for the second time, broken 'the agreement of 1850' by granting licences to trade and cut wood in Barima and eastward. Later in the same year that Government once more made an overture for the settlement of the boundary. Various delays interposed before negotiations actually commenced; and it was not till 1879 that Señor Rojas began them with a renewal of the claim to the Essequibo as the eastern boundary of Venezuelan Guiana. At the same time he stated

that his Government wished 'to obtain, by means of a treaty, a definitive settlement of the question, and was disposed to proceed to the demarcation of the divisional line between the two Guianas in a spirit of conciliation and true friendship towards Her Majesty's Government.'

"In reply to this communication, a note was addressed to Señor Rojas on the 10th January, 1880, reminding him that the boundary which Her Majesty's Government claimed, as a matter of strict right on grounds of conquest and concession by treaty, commenced at a point at the mouth of the Orinoco, westward of Point Barima, that it proceeded thence in a southerly direction to the Imataca Mountains, the line of which it followed to the northwest, passing from thence by the high land of Santa Maria just south of the town of Upata, until it struck a range of hills on the eastern bank of the Caroni River, following these southwards until it struck the great backbone of the Guiana district, the Barima Mountains of British Guiana, and thence southwards to the Pacaraima Mountains. On the other hand, the claim which had been put forward on behalf of Venezuela by General Guzman Blanco in his message to the National Congress of the 20th February, 1877, would involve the surrender of a province now inhabited by 40,000 British subjects, and which had been in the uninterrupted possession of Holland and of Great Britain successively for two centuries. The difference between these two claims being so great, it was pointed out to Señor Rojaz that, in order to arrive at a satisfactory arrangement, each party must be prepared to make very considerable concessions to the other, and he was assured that, although the claim of Venezuela to the Essequibo River boundary could not, under any circumstances, be entertained, yet that Her Majesty's Government were anxious to meet the Venezuelan Government in a spirit of conciliation, and would be willing, in the event of a renewal of negotiations for the general settlement of boundaries, to waive a portion of what they considered to be their strict rights if Venezuela were really disposed to make corresponding concessions on her part.

"The Venezuelan minister replied in February, 1881, by proposing a line which commenced on the coast a mile to the north of the Morocco River, and followed certain parallels and meridians inland, bearing a general resemblance to the proposal made by Lord Aberdeen in 1844.

"Señor Rojas's proposal was referred to the lieutenant-governor and attorney-general of British Guiana, who were then in England, and they presented an elaborate report, showing that in the thirty-five years which had elapsed since Lord Aberdeen's proposed concession natives and others had settled in the territory under the belief that they would enjoy the benefits of British rule, and that

it was impossible to assent to any such concessions as Señor Rojas's line would involve. They, however, proposed an alternative line, which involved considerable reductions of that laid down by Sir R. Schomburgk.

This boundary was proposed to the Venezuelan Government by Lord Granville in September, 1881, but no answer was ever returned by that Government to the proposal.

"While, however, the Venezuelan minister constantly stated that the matter was under active consideration, it was found that in the same year a concession had been given by his Government to General Pulgar, which included a large portion of the territory in dispute. This was the third breach by Venezuela of the agreement of 1850.

"Early in 1884 news arrived of a fourth breach by Venezuela of the agreement of 1850, through two different grants which covered the whole of the territory in dispute, and as this was followed by actual attempts to settle on the disputed territory, the British Government could no longer remain inactive.

"Warning was therefore given to the Venezuelan Government and to the concessionnaries, and a British magistrate was sent into the threatened district to assert the British rights.

"Meanwhile, the negotiations for a settlement of the boundary had continued, but the only replies that could be obtained from Señor Guzman Blanco, the Venezuelan minister, were proposals for arbitration in different forms, all of which Her Majesty's Government were compelled to decline as involving a submission to the arbitrator of the claim advanced by Venezuela in 1844 to all territory up to the left bank of the Essequibo.

"As the progress of settlement by British subjects made a decision of some kind absolutely necessary, and as the Venezuelan Government refused to come to any reasonable arrangement, Her Majesty's Government decided not to repeat the offer of concessions which had not been reciprocated, but to assert their undoubted right to the territory within the Schomburgk line, while still consenting to hold open for further negotiation, and even for arbitration, the unsettled lands between that line and what they considered to be the rightful boundary, as stated in the note to Señor Rojaz of the 10th January, 1880.

"The execution of this decision was deferred for a time, owing to the return of Señor Guzman Blanco to London, and the desire of Lord Rosebery, then Secretary of State for Foreign Affairs, to settle all pending questions between the two Governments. Mr. Olney is mistaken in supposing that in 1886 'a Treaty was practically agreed upon containing a general arbitration clause, under which the parties might have submitted the boundary dispute to the decision of a third Power, or of several Powers in amity with both.' It is true that

General Guzman Blanco proposed that the commercial treaty between the two countries should contain a clause of this nature, but it had reference to *future* disputes only. Her Majesty's Government have always insisted on a separate discussion of the frontier question, and have considered its settlement to be a necessary preliminary to other arrangements. Lord Rosebery's proposal, made in July, 1886, was 'that the two Governments should agree to consider the territory lying between the boundary lines respectively proposed in the 8th paragraph of Señor Rojas's note of the 21st February, 1881, and in Lord Granville's note of the 15th September, 1881, as the territory in dispute between the two countries, and that a boundary line within the limits of this territory should be traced either by an Arbitrator or by a Joint Commission on the basis of an equal division of this territory, due regard being had to natural boundaries.'

"Señor Guzman Blanco replied declining the proposal, and repeating that arbitration, on the whole claim of Venezuela, was the only method of solution which he could suggest. This pretension is hardly less exorbitant than would be a refusal by Great Britain to agree to an arbitration on the boundary of British Columbia and Alaska, unless the United States would consent to bring into question one-half of the whole area of the latter territory. He shortly afterwards left England, and as there seemed no hope of arriving at an agreement by further discussions, the Schomburgk line was proclaimed as the irreducible boundary of the colony in October, 1886. It must be borne in mind that in taking this step Her Majesty's Government did not assert anything approaching their extreme claim, but confined themselves within the limits of what had as early as 1840 been suggested as a concession out of friendly regard and complaisance.

"When Señor Guzman Blanco, having returned to Venezuela, announced his intention of erecting a light-house at Point Barima, the British Government expressed their readiness to permit this if he would enter into a formal written agreement that its erection would not be held to prejudice their claim to the site.

"In the meanwhile the Venezuelan Government had sent Commissioners into the territory to the east of the Schomburgk line, and on their return two notes were addressed to the British minister at Carácas, dated, respectively, the 26th and 31st January, 1887, demanding the evacuation of the whole territory held by Great Britain from the mouth of the Orinoco to the Pomeroon River, and adding that should this not be done by the 20th February, and should the evacuation not be accompanied by the acceptance of arbitration as the means of deciding the pending frontier question, diplomatic relations would be broken off. In pursuance of this decision the British Representative at Carácas received his passports, and relations were

declared by the Venezuelan Government to be suspended on the 21st February, 1887.

"In December of that year, as a matter of precaution, and in order that the claims of Great Britain beyond the Schomburgk line might not be considered to have been abandoned, a notice was issued by the governor of British Guiana formally reserving those claims. No steps have, however, at any time been taken by the British authorities to exercise jurisdiction beyond the Schomburgk line, nor to interfere with the proceedings of the Venezuelans in the territory outside of it, although, pending a settlement of the dispute, Great Britain can not recognize those proceedings as valid, or as conferring any legitimate title.

"The question has remained in this position ever since; the bases on which Her Majesty's Government were prepared to negotiate for its settlement were clearly indicated to the Venezuelan Plenipotentiaries who were successively dispatched to London in 1890, 1891, and 1893 to negotiate for a renewal of diplomatic relations, but as on those occasions the only solutions which the Venezuelan Government professed themselves ready to accept would still have involved the submission to arbitration of the Venezuelan claim to a large portion of the British Colony, no progress has yet been made towards a settlement.

"It will be seen from the preceding statement that the Government of Great Britain have from the first held the same view as to the extent of territory which they are entitled to claim as a matter of right. It comprised the coast line up to the River Amacura, and the whole basin of the Essequibo River and its tributaries. A portion of that claim, however, they have always been willing to waive altogether; in regard to another portion, they have been and continue to be perfectly ready to submit the question of their title to arbitration. As regards the rest, that which lies within the so-called Schomburgk line, they do not consider that the rights of Great Britain are open to question. Even within that line they have, on various occasions, offered to Venezuela considerable concessions as a matter of friendship and conciliation, and for the purpose of securing an amicable settlement of the dispute. If, as time has gone on, the concessions thus offered diminished in extent, and have now been withdrawn, this has been the necessary consequence of the gradual spread over the country of British settlements, which Her Majesty's Government can not in justice to the inhabitants offer to surrender to foreign rule, and the justice of such withdrawal is amply borne out by the researches in the national archives of Holland and Spain, which have furnished further and more convincing evidence in support of the British claims.

"The discrepancies in the frontiers assigned to the British colony in various maps published in England, and erroneously assumed to be

founded on official information, are easily accounted for by the circumstances which I have mentioned. Her Majesty's Government can not, of course, be responsible for such publications made without their authority.

"Although the negotiations in 1890, 1891, and 1893 did not lead to any result, Her Majesty's Government have not abandoned the hope that they may be resumed with better success, and that when the internal politics of Venezuela are settled on a more durable basis than has lately appeared to be the case, her Government may be enabled to adopt a more moderate and conciliatory course in regard to this question than that of their predecessors. Her Majesty's Government are sincerely desirous of being on friendly relations with Venezuela, and certainly have no design to seize territory that properly belongs to her, or forcibly to extend sovereignty over any portion of her population.

"They have, on the contrary, repeatedly expressed their readiness to submit to arbitration the conflicting claims of Great Britain and Venezuela to large tracts of territory which from their auriferous nature are known to be of almost untold value. But they can not consent to entertain, or to submit to the arbitration of another power or of foreign jurists, however eminent, claims based on the extravagant pretensions of Spanish officials in the last century, and involving the transfer of large numbers of British subjects, who have for many years enjoyed the settled rule of a British colony, to a nation of different race and language, whose political system is subject to frequent disturbance, and whose institutions as yet too often afford very inadequate protection to life and property. No issue of this description has ever been involved in the questions which Great Britain and the United States have consented to submit to arbitration, and Her Majesty's Government are convinced that in similar circumstances the Government of the United States would be equally firm in declining to entertain proposals of such a nature.

"Your excellency is authorized to state the substance of this dispatch to Mr. Olney, and to leave him a copy of it if he should desire it."

Lord Salisbury to Sir Julian Pauncefote, Nov. 26, 1895, For. Rel. 1895, I. 567; S. Ex. Doc. 31, 54 Cong. 1 sess. 26.

President Cleveland's annual message.

"It being apparent that the boundary dispute between Great Britain and the Republic of Venezuela concerning the limits of British Guiana was approaching an acute stage, a definite statement of the interest and policy of the United States as regards the controversy seemed to be required both on its own account and in view of its relations with the friendly powers directly concerned. In July last, therefore, a dispatch was

addressed to our ambassador at London for communication to the British Government, in which the attitude of the United States was fully and distinctly set forth. The general conclusions therein reached and formulated are in substance that the traditional and established policy of this Government is firmly opposed to a forcible increase by any European power of its territorial possessions on this continent; that this policy is as well founded in principle as it is strongly supported by numerous precedents; that as a consequence the United States is bound to protest against the enlargement of the area of British Guiana in derogation of the rights and against the will of Venezuela; that, considering the disparity in strength of Great Britain and Venezuela, the territorial dispute between them can be reasonably settled only by friendly and impartial arbitration, and that the resort to such arbitration should include the whole controversy, and is not satisfied if one of the powers concerned is permitted to draw an arbitrary line through the territory in debate and to declare that it will submit to arbitration only the portion lying on one side of it. In view of these conclusions, the dispatch in question called upon the British Government for a definite answer to the question whether it would or would not submit the territorial controversy between itself and Venezuela in its entirety to impartial arbitration. The answer of the British Government has not yet been received, but it is expected shortly, when further communication on the subject will probably be made to the congress."

President Cleveland, annual message, Dec. 2, 1895, For. Rel. 1895, I. xxviii.

President Cleveland's special message, Dec. 17, 1895.

"In my annual message addressed to the Congress on the third instant I called attention to the pending boundary controversy between Great Britain and the Republic of Venezuela and recited the substance of a representation made by this Government to her Britannic Majesty's Government suggesting reasons why such dispute should be submitted to arbitration for settlement, and inquiring whether it would be so submitted.

"The answer of the British Government, which was then awaited, has since been received and, together with the dispatch to which it is a reply, is hereto appended.

"Such reply is embodied in two communications addressed by the British Prime Minister to Sir Julian Pauncefote, the British Ambassador at this Capital. It will be seen that one of these communications is devoted exclusively to observations upon the Monroe doctrine, and claims that in the present instance a new and strange extension and development of this doctrine is insisted on by the United States, that the reasons justifying an appeal to the doctrine enunciated by President Monroe are generally inapplicable 'to the state of things

in which we live at the present day,' and especially inapplicable to a controversy involving the boundary line between Great Britain and Venezuela.

"Without attempting extended argument in reply to these positions, it may not be amiss to suggest that the doctrine upon which we stand is strong and sound because its enforcement is important to our peace and safety as a nation, and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government. It was intended to apply to every stage of our national life, and can not become obsolete while our Republic endures. If the balance of power is justly a cause for jealous anxiety among the governments of the Old World, and a subject for our absolute noninterference, none the less is an observance of the Monroe doctrine of vital concern to our people and their Government.

"Assuming, therefore, that we may properly insist upon this doctrine without regard to 'the state of things in which we live,' or any changed conditions here or elsewhere, it is not apparent why its application may not be invoked in the present controversy.

"If a European power, by an extension of its boundaries, takes possession of the territory of one of our neighboring republics against its will and in derogation of its rights, it is difficult to see why to that extent such European power does not thereby attempt to extend its system of government to that portion of this continent which is thus taken. This is the precise action which President Monroe declared to be 'dangerous to our peace and safety,' and it can make no difference whether the European system is extended by an advance of frontier or otherwise.

"It is also suggested in the British reply that we should not seek to apply the Monroe doctrine to the pending dispute because it does not embody any principle of international law which 'is founded on the general consent of nations,' and that 'no statesman, however eminent, and no nation, however powerful, are competent to insert into the code of international law a novel principle which was never recognized before, and which has not since been accepted by the govment of any other country.'

"Practically the principle for which we contend has peculiar if not exclusive relation to the United States. It may not have been admitted in so many words to the code of international law, but since in international councils every nation is entitled to the rights belonging to it, if the enforcement of the Monroe doctrine is something we may justly claim it has its place in the code of international law as certainly and as securely as if it were specifically mentioned, and where the United States is a suitor before the high tribunal that administers international law the question to be determined is whether or not we present claims which the justice of that code of law can find to be right and valid.

"The Monroe doctrine finds its recognition in those principles of international law which are based upon the theory that every nation shall have its rights protected and its just claims enforced.

"Of course this Government is entirely confident that under the sanction of this doctrine we have clear rights and undoubted claims. Nor is this ignored in the British reply. The prime minister, while not admitting that the Monroe doctrine is applicable to present conditions, states: 'In declaring that the United States would resist any such enterprise if it was contemplated, President Monroe adopted a policy which received the entire sympathy of the English Government of that date.' He further declares: 'Though the language of President Monroe is directed to the attainment of objects which most Englishmen would agree to be salutary, it is impossible to admit that they have been inscribed by any adequate authority in the code of international law.' Again he says: 'They (Her Majesty's Government) fully concur with the view which President Monroe apparently entertained, that any disturbance of the existing territorial distribution in the hemisphere by any fresh acquisitions on the part of any European state, would be a highly inexpedient change.'

"In the belief that the doctrine for which we contend was clear and definite, that it was founded upon substantial considerations and involved our safety and welfare, that it was fully applicable to our present conditions and to the state of the world's progress and that it was directly related to the pending controversy and without any conviction as to the final merits of the dispute, but anxious to learn in a satisfactory and conclusive manner whether Great Britain sought, under a claim of boundary, to extend her possessions on this continent without right, or whether she merely sought possession of territory fairly included within her lines of ownership, this Government proposed to the Government of Great Britain a resort to arbitration as the proper means of settling the question to the end that a vexatious boundary dispute between the two contestants might be determined and our exact standing and relation in respect to the controversy might be made clear.

"It will be seen from the correspondence herewith submitted that this proposition has been declined by the British Government, upon grounds which in the circumstances seem to me to be far from satisfactory. It is deeply disappointing that such an appeal actuated by the most friendly feelings towards both nations directly concerned, addressed to the sense of justice and to the magnanimity of one of the great powers of the world and touching its relations to one comparatively weak and small, should have produced no better results.

"The course to be pursued by this Government in view of the present condition does not appear to admit of serious doubt. Having labored faithfully for many years to induce Great Britain to submit

this dispute to impartial arbitration, and having been now finally apprized of her refusal to do so, nothing remains but to accept the situation, to recognize its plain requirements and deal with it accordingly. Great Britain's present proposition has never thus far been regarded as admissible by Venezuela, though any adjustment of the boundary which that country may deem for her advantage and may enter into of her own free will can not of course be objected to by the United States.

"Assuming, however, that the attitude of Venezuela will remain unchanged, the dispute has reached such a stage as to make it now incumbent upon the United States to take measures to determine with sufficient certainty for its justification what is the true divisional line between the Republic of Venezuela and British Guiana. The inquiry to that end should of course be conducted carefully and judicially and due weight should be given to all available evidence records and facts in support of the claims of both parties.

" In order that such an examination should be prosecuted in a thorough and satisfactory manner I suggest that the Congress make an adequate appropriation for the expenses of a commission, to be appointed by the Executive, who shall make the necessary investigation and report upon the matter with the least possible delay. When such report is made and accepted it will in my opinion be the duty of the United States to resist by every means in its power as a willful aggression upon its rights and interests the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which after investigation we have determined of right belongs to Venezuela.

" In making these recommendations I am fully alive to the responsibility incurred, and keenly realize all the consequences that may follow.

" I am nevertheless firm in my conviction that while it is a grievous thing to contemplate the two great English-speaking peoples of the world as being otherwise than friendly competitors in the onward march of civilization, and strenuous and worthy rivals in all the arts of peace, there is no calamity which a great nation can invite which equals that which follows a supine submission to wrong and injustice and the consequent loss of national self-respect and honor beneath which are shielded and defended a people's safety and greatness."

President Cleveland, special message to Congress, Dec. 17, 1895, S. Ex. Doc. 31, 54 Cong. 1 sess.; For. Rel. 1895, I. 542.

Both houses of the Brazilian Congress unanimously adopted a motion of congratulation on President Cleveland's special message of December 17, 1895, on the Venezuelan boundary dispute. (Mr. Mendonca, Brazilian min., to Mr. Olney, Sec. of State, Dec. 20, 1895, For. Rel. 1895, I. 75.)

February 13, 1896, the minister of Costa Rica at Washington informed Mr. Olney that his Government had observed with pleasure the attitude of the United States in the Anglo-Venezuelan controversy, as set forth in the President's message. (Mr. Calvo, Costa Rican min., to Mr. Olney, Sec. of State, Feb. 13, 1896, For. Rel. 1895, I. 204.)

"The manifestations by which Spain distinguished herself has given occasion to a measure, long required, claimed and imposed by the close ties that unite us to the mother country. I refer to the discreet form in which, at public festivals incident to our anniversaries and other solemn celebrations, the national hymn is to be sung, in order not to wound the patriotic susceptibilities of the Spaniards. This measure has been well received, and has retroacted sympathetically, having the best of effect and originating a fresh current of generous sentiments between the two nations." (Message of President Roca to the Argentine Congress, May 1, 1900, For. Rel. 1900, 8, 9.)

The attitude of the United States in the Anglo-Venezuelan dispute is criticised, and the view of the Monroe doctrine prevalent in Europe is set forth, by M. Hector Pétin, in Les États-Unis et La Doctrine de Monroe, chap. ix. 211–237; cited by F. B. Loomis, Some Phases of the Monroe Doctrine, The United States and Latin America, 6–10.

See, also, Maurice de Beaumarchais, La Doctrine de Monroe, 115–144; Reddaway, The Monroe Doctrine, 141 et seq.; Münsterberg's The Americans.

Arbitral settlement.

"The entire correspondence having been laid before Congress by the President with his message of December 17, 1895, that body provided for the appointment of a domestic commission of eminent jurists to examine and report touching the ascertainable facts of the controversy, with a view to enable this Government to determine its further course in the matter. That commission has pursued its labors unremittingly during the present year, its researches being greatly aided by the elaborate statements placed at its disposal by both the interested Governments together with a mass of documentary evidence furnished from the archives of the European countries that shared in the early discoveries and settlement of South America.

"Pending this arduous investigation, however, the Governments of the United States and Great Britain have omitted no endeavor to reach a friendly understanding upon the main issue of principle through diplomatic negotiation, and it is most gratifying to announce that amicable counsels have prevailed to induce a satisfactory result, whereby the boundary question and its associated phases have been at last eliminated as between this country and England. A complete accord has been reached between them, by which the substantial terms of a treaty of arbitration to be concluded by Great Britain and Venezuela have been agreed upon, the provisions of which embrace a full arbitration of the whole controversy upon bases alike just and honorable to both the contestants. It only remains for the two parties directly concerned to complete this equitable arrangement

by signing the proposed formal treaty, and no doubt is entertained that Venezuela, which has so earnestly sought the friendly assistance of the United States toward the settlement of this vexatious contention, and which has so unreservedly confided its interests to the impartial judgment of this Government, will assent to the formal adjustment thus attained, thus forever ending a dispute involving far-reaching consequences to the peace and welfare of the Western Continent.

"Coincidently with the consideration of the Venezuelan boundary question, the two Governments have continued negotiations for a general convention, in the line of the recommendations of the British House of Commons, to which previous messages of the President have adverted, that all differences hereafter arising between the two countries and not amenable to ordinary diplomatic treatment should be referred to arbitration. The United States and Great Britain having given repeated proofs of their acquiescence in the great principle involved, not only by treaties between themselves, but severally by concluding like adjustments with other powers for the adjudication of disputes resting on law and fact, the subject was naturally approached in a benevolent spirit of agreement, and the negotiations have so satisfactorily progressed as to foreshadow a practical agreement at an early date upon the text of a convention to the desired end."

Report of Mr. Olney, Sec. of State, to the President, Dec. 7, 1896, For Rel. 1896, lxxi.

For correspondence leading up to the conclusion of the treaty for the arbitration of the boundary dispute between Great Britain and Venezuela, see For. Rel. 1896, 240 et seq. The treaty was signed at Washington, Feb. 2, 1897. See For. Rel. 1895, II. 1480–1491, for Venezuelan communications.

"The Venezuelan boundary question has ceased to be a matter of difference between Great Britain and the United States, their respective Governments having agreed upon the substantial provisions of a treaty between Great Britain and Venezuela submitting the whole controversy to arbitration. The provisions of the treaty are so eminently just and fair, that the assent of Venezuela thereto may confidently be anticipated." (President Cleveland, annual message, Dec. 7, 1896, For. Rel. 1896, xxxvi.)

For the exact terms of settlement, embodied in the treaty of Feb. 2, 1897, see supra, § 88, I. 296–297.

"The arbitral tribunal appointed under the treaty of February 2, 1897, between Great Britain and Venezuela, to determine the boundary line between the latter and the colony of British Guiana, is to convene at Paris during the present month. It is a source of much gratification to this Government to see the friendly resort of arbitration applied to the settlement of this controversy, not alone because of the earnest part we have had in bringing about the result, but also because the two members named on behalf of Venezuela, Mr. Chief Justice Fuller and Mr. Justice Brewer, chosen from our high-

est court, appropriately testify the continuing interest we feel in the definitive adjustment of the question according to the strictest rules of justice. The British members, Lord Herschell and Sir Richard Collins, are jurists of no less exalted repute, while the fifth member and president of the tribunal, M. F. de Martens, has earned a world-wide reputation as an authority upon international law." (President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, lxxxiii.)

"I have the honor to acknowledge the receipt through the Venezuelan minister at this capital of a copy of your instruction of January 15th last, stating that the Government of Venezuela proposes to request all the nations of North, Central and South America to form an effective agreement in order that the Guiana boundary question may speedily reach the honorable and peaceful end which justice and reason demand; also to call a Congress which shall categorically define the rights of those nations and devise such means as may be necessary to prevent their political existence from being menaced by the dangers which frequently grow out of international demands.

"In reply, I have the honor to say that the contents of this instruction have been read with great interest, and that when the proposed invitation to the United States is received, it will have that careful attention which the great importance of the subject deserves."

Mr. Olney, Sec. of State, to Señor Rojas, Venezuelan minister of foreign affairs, March 18, 1896, MS. Notes to Venezuela, I. 553.

"The Commission appointed by the President of the United States 'to investigate and report upon the true divisional line between the Republic of Venezuela and British Guiana' has organized by the election of the Hon. David J. Brewer, justice of the Supreme Court of the United States, as its president, and is entering upon the immediate discharge of its duties.

"Since its organization I have received a letter from the president of the Commission, in which, while pointing out that it is in no view an arbitral tribunal, he nevertheless suggests that Great Britain and Venezuela, the parties immediately interested in the subject-matter of the Commission's inquiry, may both, or either of them, desire or see fit to aid the labors of the Commission and facilitate their reaching a correct conclusion by giving it the benefit of such documentary proof, historical narrative, unpublished archives, or other evidence as either may possess or control.

"Justice Brewer adds:

"'It is scarcely necessary to say that if either should deem it proper to designate an agent or attorney whose duty it would be to see that no such proofs were omitted or overlooked, the Commission

would be grateful for such evidence of good will, and for the valuable results which would be likely to follow therefrom.'

"Either party responding affirmatively to the Commissioners' invitation would do so of course merely as *amicus curiæ*. As the president of the Commission declares in the concluding sentence of his communication:

"'The purposes of the pending investigation are certainly hostile to none, nor can it be of advantage to any that the machinery devised by the Government of the United States to secure the desired information should fail of its purpose.'

"Requesting you to bring the matter to the attention of the British foreign office at your earliest convenience, I am, etc."

Mr. Olney, Sec. of State, to Mr. Bayard, amb. to England, No. 956, Jan. 18, 1896, For. Rel. 1895, I. 576.

An identic communication was sent on the same day to Mr. Andrade, Venezuelan minister at Washington. (For. Rel. 1895, II. 1489.)

"Lord Salisbury readily places at the disposal of the Government of the United States any information in the hands of Her Majesty's Government relating to Venezuela boundary. Engaged in collecting documents for presentation to Parliament. He will have great pleasure in forwarding advance copies as soon as completed."

Mr. Bayard, amb. to England, to Mr. Olney, Sec. of State, tel., Feb. 9, 1896, For. Rel. 1895, I. 576.

"The International Commission of Arbitration, appointed under the Anglo-Venezuelan treaty of 1897, rendered an award on October 3d last, whereby the boundary line between Venezuela and British Guiana is determined, thus ending a controversy which has existed for the greater part of the century. The award, as to which the arbitrators were unanimous, while not meeting the extreme contention of either party, gives to Great Britain a large share of the interior territory in dispute and to Venezuela the entire mouth of the Orinoco, including Barima Point and the Caribbean littoral for some distance to the eastward. The decision appears to be equally satisfactory to both parties."

President McKinley, annual message, Dec. 5, 1899, For. Rel. 1899, xxxii.

Having in view the long declared and widely known policy of the United States, any attempt on the part of a European power to acquire the Venezuelan coast-island of Margarita "would be a source of concern to this Government, if not tending to the embarrassment of the cordial and frank relations" between the United States and such power.

Mr. Hay, Sec. of State, to Mr. Jackson, chargé at Berlin, No. 1186, April 10, 1901, MS. Inst. Germany, XXI. 283.

(4) CLAIMS.

§ 967.

Discussions of 1880-81.

In 1880 a difficulty arose between France and Venezuela with regard to the failure of the latter Government promptly to pay the instalments due to France on the settlement of claims against Venezuela made in 1864. The Venezuelan Government represented to the United States that there was danger that the French Government would institute a blockade and take possession of custom-houses for the purpose of collecting the money. Under these circumstances Venezuela proposed to deliver certain monthly sums to the Government of the United States, which should distribute the money among the foreign creditors. In a note to the Venezuelan minister at Washington, of February 28, 1881, Mr. Evarts, who was then Secretary of State, indicated that this proposal would receive favorable consideration in case it should be found to be acceptable to all the creditor governments. Consideration of the subject was continued by the Government of the United States after the change of Administration, when Mr. Blaine succeeded Mr. Evarts as Secretary of State. The chief difficulty in dealing with the matter arose out of the fact that France claimed a priority for her debt. With reference to this situation, Mr. Blaine, on May 5, 1881, telegraphed to Mr. Noyes, then American minister in Paris, and instructed him to inform the French Government that Venezuela wanted the United States to receive and disburse, as trustee, the increased monthly payments of the diplomatic debt in a ratio to be adjusted; that, while the United States might consent to receive and pay the monthly instalments for herself and other nations, it would not consent to guarantee any of the debt of Venezuela; and that the United States offered its kind offices to adjust any disagreement between Venezuela and France, and requested France to delay action respecting her debt while the proposition was under consideration. The French Government, while expressing appreciation of this mark of good will, declined to acquiesce in the desire that all action on its part should be temporarily suspended, and intimated that it would be difficult for good offices to be usefully employed unless the Venezuelan Government would make the obligations of existing treaties the point of departure for further propositions.

On July 23, 1881, Mr. Blaine wrote to Mr. Noyes that disquieting rumors were again in circulation to the effect that the French Government intended "taking forcible possession of some of the harbors and a portion of the territory of Venezuela in compensation for debts due to citizens of the French Republic." The United States, said Mr. Blaine, was unwilling to believe that such a design was

entertained by France. Mr. Blaine then reviewed the debt question and repelled France's claim of superiority based on priority of the date of settlement. Continuing, Mr. Blaine said:

"Without attempting to prescribe or dictate, the President suggests that the United States will place an agent in Caracas authorized to receive such amount each month from the Venezuelan Government as may be agreed to be paid—not less than the aggregate now paid—and to distribute said amount *pro rata* to the several creditor nations. Should the Venezuelan Government default for more than three months in the regular instalments, then the agent placed there by the United States and acting as trustee for the creditor nations shall be authorized to take charge of the custom-houses at Laguayra and Puerto Cabello, and reserve from the monthly receipts a sufficient sum to pay the stipulated amounts, with 10 per cent additional, handing over to the authorized agent of the Venezuelan Government all the remainder collected. It is the judgment of the President that an arrangement of this kind would give all reasonable security to each of the creditor nations, and would be an effectual bar against any one obtaining an inequitable advantage over the others.

"Believing that France only desires justice in the premises, and that, in common with the United States, her Government abhors war and will never use force needlessly, the President confidently believes that a peaceful and honorable adjustment will be accepted by all the nations interested. The offer of the United States to intervene was made solely in the interests of peace and justice, and the President will sincerely regret if anything said or intimated herein shall be accepted by France in any other spirit than that of friendly co-operation."

The French Government having declined to accept Mr. Blaine's views on the question of priority, Mr. Blaine returned to the subject in an instruction to Mr. Morton, Mr. Noyes's successor at Paris, of December 16, 1881, and concluded by saying:

"Beyond and above the pecuniary interest involved, either for France or the United States in the matter of the Venezuela claims, there lies a consideration which appeals with equal force to the two leading republics—France and the United States. That consideration is, the fraternity of feeling and the harmony of relations which should be maintained between all the republics of the world. It would, in the opinion of this Government, be a deplorable spectacle to see hostilities against Venezuela initiated by the great European Republic, and it would be an evil to France, for which her share in the Venezuelan debt would afford no compensation whatever. You will remind M. Gambetta that the question at issue is not whether France shall surrender the amount owed her by Venezuela, but whether she will have it paid in installments at the same ratio of the

other creditor nations, or in a larger ratio not acknowledged by the United States to be equitable.

"This Government is convinced that, speaking as its representative, you can readily persuade M. Gambetta that the position of the United States in the controversy is one founded on the principles of justice, and you should further pursuade him that the solicitude of this Government has not been so much for the protection of its pecuniary interests as for the higher object of averting hostilities between two republics, for each of which it feels the most sincere and enduring friendship."

Mr. Evarts, Sec. of State, to Mr. Camacho, Venezuelan min., Feb. 28, 1881, For. Rel. 1881, 1199; Mr. Blaine, Sec. of State, to Mr. Noyes, min. to France, tel., May 5, 1881, id. 1211; Mr. Noyes to Mr. Blaine, No. 467, May 16, 1881, id. 1212; Mr. Blaine, Sec. of State, to Mr. Noyes, No. 402, July 23, 1881, id. 1216; Mr. Morton, min. to France, to Mr. Blaine, No. 37, Sept. 17, 1881, id. 1225; Mr. Blaine to Mr. Morton, No. 74, Dec. 16, 1881, id. 1226. See, also, infra, § 995.

Wharton, in his Int. Law Digest, § 57, I. 295, cites two supposed manuscript instructions of Mr. Blaine to the American minister to France of July 23 and Dec. 16, 1881, as authority for the statement: "The Government of the United States would regard with grave anxiety an attempt on the part of France to force by hostile pressure the payment by Venezuela of her debt to French citizens." There are, however, no instructions of Mr. Blaine to the American minister in Paris of those dates except the two above quoted, both of which are published in extenso in the volume of Foreign Relations for 1881.

Germany, Great Britain, and Italy, 1902–3.

"Against the Venezuelan Government there is a claim pending of the Berlin Company of Discount (Berliner Disconto Gesellschaft) on account of the nonperformance of engagements which the Venezuelan Government has undertaken in connection with the great Venezuelan Railway which has been built by the said Government. Those obligations amount for the time being to fully 6,000,000 bolivares (1 bolivar to be counted as 80 pfennige). The obligations continue to increase, as the interest for the values of the 5 per cent Venezuelan loan of the year 1896, which was emitted to the amount of 33,000,000 bolivares and which have been transmitted to the company as a guaranty for the payment of interest of the capital spent in building, has not been paid regularly since seven years, nor has the payment been made regularly to the sinking fund.

"This behavior of the Venezuelan Government could, perhaps, to a certain degree be explained and be excused by the bad situation of the finances of the state; but our further reclamations against Venezuela, which date from the Venezuelan civil wars of the years 1898 until 1900, have taken during those last months a more serious character. Through those wars many German merchants living in Vene-

zuela and many German landowners have been seriously damaged, as partly compulsory loans have been extorted from them, partly requisites of war which have been found in their possession, as especially the cattle necessary for the feeding of the troops have been taken from them without being paid for, partly their houses and grounds have been ransacked or devastated. The amount of these damages comes to fully 2,000,000 bolivares. This amount is to be divided between 35 claimants, who are partly poor people. Several of the damaged have lost nearly all their possessions, and through this their creditors who live in Germany have suffered likewise. Very likely these reclamations will be presently put before the Reichstag.

"Evidently the Venezuelan Government, if we judge it after its behavior in the present, is not willing to fulfill its engagements in compensating these damages. After having first fixed a six-monthly term during which the Government refused to discuss any claims for compensation, the Government issued in January last a decree stating that a commission consisting solely of Venezuelan officials should decide about the claims, which the damaged would have to bring to their knowledge during three months. The proceedings as settled by this decree seem in three articles not to be acceptable. First of all, that all the claims for damage which came from the time before the 23d of May, 1899 (that means before the appointment of the present President of the Republic, Castro), should not be considered, while of course the government of Castro is, as all other governments, responsible for the deeds of its predecessors. Another article said that all diplomatic protestations against decisions of the commission should be excluded and only the appeal to the supreme Venezuelan court of justice should be admitted. The members of this court are entirely pendent on the Government, and have frequently been simply dismissed by the President. Finally, the Government wanted to pay for the claims which should be recognized by the commission only with bonds of a newly to be emitted revolution debt, which would be, after the experiences made, up till present without any value.

"The behavior of the Venezuelan Government must therefore be considered as a frivolous attempt to avoid just obligations. As was to be expected, several of the few German claims put before the commission have been simply rejected and others have been reduced in a decidedly malicious way. So, by example, a German cattle breeder, from whom fully 3,800 head of cattle, to the value of more than 600,000 bolivares, had been forcibly taken away, got only 15,000 bolivares adjudicated. But the Government has not paid for the claims recognized as just by the commission, but has told the damaged that a bill in their interest would be submitted to the next Congress.

"The German Government has first tried to induce the Government of Caracas to change their decree in the mentioned three articles.

After this expedient had been rejected, it has been by order of the Imperial Government firmly declared to the Venezuelan Government that we are forced under the present circumstances to refuse altogether our acknowledgment of the decree. Similar declarations have been delivered by the predominant majority of the other interested powers, especially of the United States of America, whose reclamations from the Venezuelan civil wars come to fully 1,000,000 bolivares. The Venezuelan Government claims against those declarations that it is not able to treat the foreigners in a different way from the Venezuelan citizens, and that the Government regarded, therefore, the settlement of the reclamations in question as an internal affair of the country in which no foreign power could meddle without injuring the sovereignty of the country. Another attempt to change the mind of the Government has been likewise unsuccessful. The Government has declared in its reply that it had to repel all diplomatic interference in this matter and that the claimants, as the term fixed in the decree had meanwhile passed, had to be exclusively referred to the supreme Venezuelan court of justice.

"Under these circumstances the Imperial Government believes that further negotiations with Venezuela on the present base are hopeless. The Imperial Government proposes therefore to submit the reclamations in question, which have been carefully studied and have been considered as well founded, directly to the Venezuelan Government and to ask for their settlement. If the Venezuelan Government continues to decline as before, it would have to be considered what measures of coercion should be used against it.

"But we consider it of importance to let first of all the Government of the United States know about our purposes so that we can prove that we have nothing else in view than to help those of our citizens who have suffered damages, and we shall first take into consideration only the claims of those German citizens who have suffered in the civil war.

"We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory. If the Venezuelan Government should force us to the application of measures of coercion, we should have to consider furthermore if at this occasion we should ask likewise for a greater security for the fulfillment of the claims of the Company of Discount of Berlin.

"After the posing of an ultimatum, first of all the blockade of the more important Venezuelan harbors—that is, principally the harbors of La Guayra and Porto Cabello—would have to be considered as an appropriate measure of coercion, as the levying of duties for import and export being nearly the only source of income of Venezuela would in this way be made impossible. Likewise it would be difficult

in this way to provide the country, which depends on the import of corn, with food. If this measure does not seem efficient, we would have to consider the temporary occupation on our part of different Venezuelan harbor places and the levying of duties in those places."

Promemoria of the Imperial German Embassy at Washington, Dec. 11, 1901, For. Rel. 1901, 192.

The German claims were more fully stated in a memorandum of the German foreign office of Dec. 8, 1902, in relation to the ultimatum just then addressed to Venezuela. With reference to the Venezuelan laws or decrees forbidding the diplomatic adjustment of war claims (supra, § 919), the memorandum said: "She [Venezuela] has established the principle that a diplomatic intervention could be excluded by municipal law. This principle is contrary to the law of nations, as the question whether such a resort is admissible is to be determined not by municipal law, but by the principles of international law." The memorandum also complained that the correspondence was conducted on the part of the Venezuelan Government "in an almost insulting tone;" that confidential communications were published by that Government without asking the consent of the Imperial Government; and that during the war Germans were treated with especial animosity, as when the Government troops at the plundering of Barquisemeto directed their violence mainly against German houses. The Imperial Government had, therefore, on the 7th of December demanded the immediate recognition of the claims growing out of the civil wars from 1898 to 1900, to the amount of 1,700,000 bolivars ($325,000). There were also other claims, one of which grew out of the building by Germans of a slaughterhouse at Caracas under a contract made in 1896 with the Venezuelan Government. The building was completed, but the Venezuelan Government had stopped the stipulated weekly payments and was indebted to the contractors to the amount of 820,000 bolivars. Again, a German company had from 1888 to 1894 built a railroad from Caracas to Valencia, under a concession by which the Venezuelan Government had guaranteed 7% interest on a capital of 77,000,000 bolivars. This obligation, which became due on February 1, 1894, was not met; and in 1896 the Venezuelan Government had obtained a release from the guarantee by paying 33,000,000 bolivars in the certificates of a 5% loan, the payment of interest and sinking fund of which was suspended in 1898, so that the sum due had reached 7,500,000 bolivars and was constantly increasing. "The British claims," said the memorandum, "are partly for the unlawful seizure or destruction of English merchant ships, and in part those of English railroads in Venezuela for the destruction of the roads of the line and nonfulfillment of contractual obligations, some being claims of the holders of the English loan of 1881, on which, as on the German loan, no regular percentage or amortization has been paid for a long period, since 1881." (Memorandum of the claims of Germany against the United States of Venezuela, Dec. 8, 1902, For. Rel. 1903, 429–431.)

"The President in his message of the 3d of December, 1901, used the following language: 'The Monroe doctrine is a declaration that

there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil. It is in no wise intended as hostile to any nation in the Old World.' The President further said: 'This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. . . . We do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.'

"His excellency the German ambassador, on his recent return from Berlin, conveyed personally to the President the assurance of the German Emperor that His Majesty's Government had no purpose or intention to make even the smallest acquisition of territory on the South American Continent or the islands adjacent. This voluntary and friendly declaration was afterwards repeated to the Secretary of State, and was received by the President and the people of the United States in the frank and cordial spirit in which it was offered. In the memorandum of the 11th of December, his excellency the German ambassador repeats these assurances as follows: 'We declare especially that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory.'

"In the said memorandum of the 11th of December, the German Government informs that of the United States that it has certain just claims for money and for damages wrongfully withheld from German subjects by the Government of Venezuela, and that it proposes to take certain coercive measures described in the memorandum to enforce the payment of these just claims.

"The President of the United States, appreciating the courtesy of the German Government in making him acquainted with the state of affairs referred to, and not regarding himself as called upon to enter into the consideration of the claims in question, believes that no measures will be taken in this matter by the agents of the German Government which are not in accordance with the well-known purpose, above set forth, of His Majesty the German Emperor."

Memorandum, communicated by Mr. Hay, Sec. of State, to the Imperial German Embassy, Dec. 16, 1901, in reply to the embassy's promemoria of Dec. 11, 1901. For. Rel. 1901, 195.

Dec. 12, 1902, Mr. Hay instructed the American ambassadors at London and Berlin to say that Venezuela had requested the United States to convey a proposal of arbitration; and on Dec. 18 he advised them that Venezuela had conferred full powers on the American minister at Caracas. The British and German Governments accepted arbitration in principle, and invited the President of the United States to act as arbitrator; but the German Government reserved the demand for $325,000 on account of civil war claims (1898–1900), of which it required immediate recognition, while the British Government re-

served the claims, small in amount, for the seizure and plundering of British vessels and outrages on their crews and the maltreatment and false imprisonment of British subjects, and required that, in cases where a claim was made for injury to or wrongful seizure of property, the arbitrators should be empowered to determine only (1) whether the injury took place and whether the seizure was wrongful; and (2) if so, the amount of compensation due. The President of the United States declined the invitation to himself to act as arbitrator, in favor of a reference to The Hague, which it was found that all the interested powers would accept. In the end only the question of the admissibility of the demand of the blockading powers for the preferential payment of all their claims was submitted to The Hague, under protocols signed at Washington, May 7, 1903. The examination of the claims of the various powers against Venezuela, subject to the reservations made by the British and German Governments, was committed to mixed commissions at Caracas under protocols signed at Washington, Feb. 17, 1903. (For. Rel. 1903, 420, 453, 423, 427, 462, 437, 439, 473–474, 475–477, 788–808.)

As stated in For. Rel. 1904, 871, the total awards of the Caracas commissions were as follows:

Claimant.	Amount of awards.
	Bolivars.
Great Britain	9,401,267.86
Germany	2,091,908.75
France	2,667,079.51
Spain	1,974,818.41
Belgium	10,898,643.86
Sweden and Norway	174,359.08
The Netherlands	544,301.47
The United States of America	2,313,711.37
Mexico	2,577,328.10
Italy	5,785,962.19
	38,428,580.60
Paid to the allied powers (Germany, Great Britain, and Italy) up to June 30, 1904	6,880,450.00
Remaining to be paid	31,548,130.60
To said allied powers	10,398,688.80
To the other claimants	21,149,441.80
	31,548,130.60

See, as to the negotiation of the protocols, a pamphlet entitled "Correspondence and Cablegrams Relating to the Venezuelan Protocols. By Herbert W. Bowen. Washington, 1903."

The Hague tribunal, by an award rendered on February 22, 1904, decided in favor of the claim of Germany, Great Britain, and Italy for preferential payment. (The Venezuelan Arbitration before The Hague Tribunal, 1903; Proceedings of the Tribunal under the Protocols between Venezuela and Great Britain, Germany, Italy, United States, Belgium, France, Mexico, the Netherlands, Spain, Sweden and Norway, signed at Washington, May 7, 1903. Final Report of the Hon. William L. Penfield, Agent of the United States. Washington, 1905.)

As to the proceedings of the mixed commissions which sat at Caracas, see Report of J. H. Ralston, umpire of the Italian-Venezuelan Commission, S. Doc. 316, 58 Cong. 2 sess., and Report of Robert C. Morris, agent of the United States before the United States and Venezuelan Commission, Washington, 1904.

See also For. Rel. 1904, 863.

For correspondence between Great Britain and Venezuela concerning claims, see Parliamentary Paper, Venezuela, No. 1 (1902).

As to the reestablishment of diplomatic relations between Italy and Venezuela, see For. Rel. 1904, 226.

"I communicated to Mr. Hay this morning the substance of your lordship's telegram of the 11th instant. His Excellency stated in reply, that the United States Government, although they regretted that European powers should use force against Central and South American countries, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated."

Sir Michael Herbert, British ambass. at Washington, to Lord Lansdowne, Nov. 13, 1902, quoted by President Roosevelt in a speech at Chicago on April 2, 1903, Presidential Addresses and State Papers (Statesman ed.), I. 263.

In the same speech President Roosevelt said: "We hold that our interests in this hemisphere are greater than those of any European power possibly can be, and that our duty to ourselves and to the weaker republics who are our neighbors requires us to see that none of the great military powers from across the seas shall encroach upon the territory of the American republics or acquire control thereover." (Id. 257.)

Argentine propositions.

Dec. 29, 1902, the Argentine minister at Washington was instructed to present to the United States certain views with reference to the proceedings of Germany and Great Britain against Venezuela, and especially with reference to the forcible collection of public debts. The following positions were taken: (1) That, while a capitalist who lends his money to a foreign state always takes into account "the resources of the country and the probability, greater or less," of repayment, it is also true that "it is an inherent qualification of all sovereignty that no proceedings for the execution of a judgment may be instituted or carried out against it:" (2) that, while it was not intended to defend "bad faith, disorder, and deliberate and voluntary insolvency," yet the state should not "be deprived of the right to choose the manner and the time of payment;" (3) that, as states continue to exist, their situation changes, "resources increase, common aspirations of equity and justice prevail, and the most neglected promises are kept;" (4) that alarm had been felt because the failure of Venezuela to meet the payments of its public debt had been given as "one of the determining causes" of the proceedings of the allies; (5) that, as the collection of loans by military means implied "territorial occupation to make them effective," a situation would be created at variance with President Monroe's pronouncement against the acquisition of new colonies

by European powers, and that this feature of the case was specially important in view of the tendency among European publicists to regard America as a suitable field for future territorial expansion; (6) that it was not pretended, however, that South American nations were "exempt from the responsibilities of all sorts" which "violations of international law impose on civilized peoples," or that European powers had not the right to protect their subjects as fully there as elsewhere against "the persecutions and injustices" of which they might be the victims; (7) that the principle which the Argentine Republic wished to see put forth, with the authority and prestige of the United States, was "the principle, already accepted, that there can be no territorial expansion in America on the part of Europe, nor any oppression of the people of this continent, because an unfortunate financial situation may compel some one of them to postpone the fulfillment of its promises," or, in other words, the principle "that the public debt can not occasion armed intervention nor even the actual occupation of the territory of American nations by a European power;" (8) that of the needlessness of armed intervention in such cases there might be cited the example of the Argentine Republic itself, which spontaneously resumed payment of the English debt of 1824 after a suspension of thirty years occasioned by the anarchy and disturbances which afflicted the country during that period—a result which would not have been obtained if the creditors had violently intervened during the critical financial period; (9) that the Argentine Republic harbored no hostility to European nations; that it knew that "where England goes civilization accompanies her, and the benefits of political and civil liberty are extended;" but that this did not mean that it could adhere with equal sympathy to her policy "in the improbable case of her attempting to oppress the nationalities of this continent which are struggling for their own progress, which have already overcome the greatest difficulties and will surely triumph—to the honor of democratic institutions."

Señor Luis M. Drago, Argentine min. of for. rel., to Señor Mérou, Argentine min. to United States, Dec. 29, 1902, For. Rel. 1903, 1–5.

See reference to this note in the message of the President of the Argentine Republic to the Argentine Congress, May 4, 1903, For. Rel. 1903, 7, 8.

For a severe criticism of the course of the Argentine Government in the *Correio da Manha* of Rio de Janeiro, March 30, 1903, see For. Rel. 1903, 24.

"Without expressing assent to or dissent from the propositions ably set forth in the note of the Argentine minister of foreign relations dated December 29, 1902, the general position of the Government of the United States in the matter is indicated in recent messages of the President.

"The President declared in his message to Congress, December 3, 1901, that by the Monroe doctrine 'we do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.'

"In harmony with the foregoing language, the President announced in his message of December 2, 1902:

"'No independent nation in America need have the slightest fear of aggression from the United States. It behooves each one to maintain order within its own borders and to discharge its just obligations to foreigners. When this is done they can rest assured that, be they strong or weak, they have nothing to dread from outside interference.'

"Advocating and adhering in practice in questions concerning itself to the resort of international arbitration in settlement of controversies not adjustable by the orderly treatment of diplomatic negotiation, the Government of the United States would always be glad to see the questions of the justice of claims by one state against another growing out of individual wrongs or national obligations, as well as the guarantees for the execution of whatever award may be made, left to the decision of an impartial arbitral tribunal before which the litigant nations, weak and strong alike, may stand as equals in the eye of international law and mutual duty."

Memorandum of Mr. Hay, Sec. of State, to Señor Mérou, Argentine min., Feb. 17, 1903, For. Rel. 1903, 5.

X. *GENERAL EXPOSITIONS.*

§ 968.

The Hague declaration.

On July 25, 1899, the American delegation at the Peace Conference at The Hague, referring to the convention for the peaceful adjustment of international differences, which was then pending before the conference, made in full session the following declaration:

"Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign state; nor shall anything contained in the said convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions."

It was under this reserve that the American delegates signed the convention on July 29, 1899.

Report of the United States Commission, July 31, 1899, Holls's Peace Conference at The Hague, 477, 531.

President Roosevelt's annual message, 1901.

"This same peace conference [at The Hague] acquiesced in our statement of the Monroe doctrine as compatible with the purposes and aims of the conference.

"The Monroe doctrine should be the cardinal feature of the foreign policy of all the nations of the two Americas, as it is of the United States. Just seventy-eight years have passed since President Monroe in his annual message announced that 'the American continents are henceforth not to be considered as subjects for future colonization by any European power.' In other words, the Monroe doctrine is a declaration that there must be no territorial aggrandizement by any non-American power at the expense of any American power or American soil. It is in no wise intended as hostile to any nation in the Old World. Still less is it intended to give cover to any aggression by one New World power at the expense of any other. It is simply a step, and a long step, toward assuring the universal peace of the world by securing the possibility of permanent peace on this hemisphere.

"During the past century other influences have established the permanence and independence of the smaller states of Europe. Through the Monroe doctrine we hope to be able to safeguard like independence and secure like permanence for the lesser among the New World nations.

"This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. In other words, it is really a guaranty of the commercial independence of the Americas. We do not ask under this doctrine for any exclusive commercial dealings with any other American state. We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power.

"Our attitude in Cuba is a sufficient guaranty of our own good faith. We have not the slightest desire to secure any territory at the expense of any of our neighbors. We wish to work with them hand in hand, so that all of us may be uplifted together, and we rejoice over the good fortune of any of them, we gladly hail their material prosperity and political stability, and are concerned and alarmed if any of them fall into industrial or political chaos. We do not wish to see any Old World military power grow up on this continent, or to be compelled to become a military power ourselves. The peoples of the Americas can prosper best if left to work out their own salvation in their own way. . . .

"Our people intend to abide by the Monroe doctrine and to insist upon it as the one sure means of securing the peace of the Western Hemisphere. The Navy offers us the only means of making our

insistence upon the Monroe doctrine anything but a subject of derision to whatever nation chooses to disregard it. We desire the peace which comes as of right to the just man armed; not the peace granted on terms of ignominy to the craven and the weakling."

President Roosevelt, annual message, Dec. 3, 1901, For. Rel. 1901, xxxvi.

With reference to President Roosevelt's statement that "we do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power," the fact may be adverted to that, in 1842 and again in 1844, Great Britain blockaded the port of San Juan de Nicaragua. In 1851 the same power laid an embargo on traffic at the port of La Union, in Salvador, and blockaded the whole coast of that country. In 1862 and 1863 the same power seized Brazilian vessels in Brazilian waters in reprisal for the plundering of the bark *Prince of Wales* on the Brazilian coast. In 1838 France blockaded the ports of Mexico as an act of redress for unsatisfied demands. From 1865 till some scarcely defined date Spain was at war with the republics on the west coast of South America. The bombardment of Valparaiso by a Spanish fleet was a prominent incident of the conflict. It was in respect of this conflict that Mr. Seward declared in an instruction to the American minister at Santiago, June 2, 1866, that the United States did not intervene in wars between European and American states "if they are not pushed, like the French war in Mexico, to the political point." In 1846 the United States itself went to war with Mexico. In 1854, the commander of an American man-of-war, failing to obtain an indemnity of $24,000 for the seizure and destruction of property and an apology for an affront to the American minister by some of the inhabitants of the place, bombarded and destroyed Greytown. In 1859 an expedition was sent to Paraguay. In 1890 Congress passed an act to authorize the President to use force to settle the claim of the Venezuela Steam Transportation Company against Venezuela. In April, 1895, the British Government resorted to force to bring about an adjustment of certain demands against Nicaragua.

President Roosevelt, annual message, 1904.

"It is not true that the United States feels any land hunger or entertains any projects as regards the other nations of the Western Hemisphere save such as are for their welfare. All that this country desires is to see the neighboring countries stable, orderly, and prosperous. Any country whose people conduct themselves well can count upon our hearty friendship. If a nation shows that it knows how to act with reasonable efficiency and decency in social and political matters, if it keeps order and pays its obligations, it need fear no interference from the United States. Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impo-

tence, to the exercise of an international police power. If every country washed by the Caribbean Sea would show the progress in stable and just civilization which with the aid of the Platt amendment Cuba has shown since our troops left the island, and which so many of the republics in both Americas are constantly and brilliantly showing, all question of interference by this nation with their affairs would be at an end. Our interests and those of our southern neighbors are in reality identical. They have great natural riches, and if within their borders the reign of law and justice obtains, prosperity is sure to come to them. While they thus obey the primary laws of civilized society they may rest assured that they will be treated by us in a spirit of cordial and helpful sympathy. We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations. It is a mere truism to say that every nation, whether in America or anywhere else, which desires to maintain its freedom, its independence, must ultimately realize that the right of such independence can not be separated from the responsibility of making good use of it."

President Roosevelt, annual message, Dec. 6, 1904, For. Rel. 1904, xli.

Comments of publicists.

Dana, in a note to his edition of Wheaton, in 1866, summarizing the history of the Monroe doctrine up to that time, said that the following positions might be "safely taken:"

"I. The declarations upon which Mr. Monroe consulted Mr. Jefferson and his own Cabinet related to the interposition of European powers in the affairs of American states.

"II. The kind of interposition declared against was that which may be made for the purpose of controlling their political affairs, or of extending to this hemisphere the system in operation upon the continent of Europe, by which the great powers exercise a control over the affairs of other European states.

"III. The declarations do not intimate any course of conduct to be pursued in case of such interpositions, but merely say that they would be 'considered as dangerous to our peace and safety,' and as 'the manifestation of an unfriendly disposition toward the United States,' which it would be impossible for us to 'behold with indifference;' thus leaving the nation to act at all times as its opinion of its policy or duty might require.

"IV. The declarations are only the opinion of the Administration of 1823, and have acquired no legal force or sanction.

"V. The United States has never made any alliance with, or pledge to, any other American state on the subject covered by the declarations.

"VI. The declaration respecting non-colonization was on a subject distinct from European intervention with American states, and related to the acquisition of sovereign title by any European power, by new and original occupation or colonization thereafter. Whatever were the political motives for resisting such colonization, the principle of public law upon which it was placed was, that the continent must be considered as already within the occupation and jurisdiction of independent civilized nations."

Dana's note, Dana's Wheaton, § 67, note 36.

The position that Mr. Monroe's declaration "was intended as a caveat to the designs of the allies, and as an earnest protest against the extension to this continent of 'the political system' on which they were based" is supported at length in 82 N. Am. Rev. 488 (April, 1856). See 103, id. 471 (Oct. 1866).

Wharton, in his International Law Digest, § 57, Vol. I., p. 295, cites Mr. Frelinghuysen, as Secretary of State, to the effect that, on the ground that "the decision of American questions pertains to America itself," the Department of State "will not sanction an arbitration by European states of South American difficulties, even with the consent of the parties." The instructions of Mr. Frelinghuysen, cited by the learned author, are given elsewhere in the present work, together with other documents relating to the same subject-matter. They do not appear to bear out the summary given of them.

See correspondence above cited, in § 343, in relation to the arbitration of the boundary dispute between Colombia and Costa Rica.

"From the foregoing historical review I think it may be fairly deduced that the principle or policy of the Government of the United States, known as the Monroe Doctrine, declares affirmatively:

"First. That no European power, or combination of powers, can intervene in the affairs of this hemisphere for the purpose, or with the effect, of forcibly changing the form of government of the nations, or controlling the free will of their people.

"Second. That no such power or powers can permanently acquire or hold any new territory or dominion on this hemisphere.

"Third. That the colonies or territories now held by them can not be enlarged by encroachment on neighboring territory, nor be transferred to any other European power; and while the United States does not propose to interfere with existing colonies, 'it looks hopefully to the time when . . . America shall be wholly American.'

"Fourth. That any interoceanic canal across the isthmus of Central America must be free from the control of European powers.

"While each of the foregoing declarations has been officially recognized as a proper application of the Monroe doctrine, the Government of the United States reserves to decide, as each case arises, the time and manner of its interposition, and the extent and character of the same, whether moral or material, or both.

"The Monroe doctrine, as negatively declared, may be stated as follows:

"First. That the United States does not contemplate a permanent alliance with any other American power to enforce the doctrine, as it determines its action solely by its view of its own peace and safety; but it welcomes the concurrence and coöperation of the other in its enforcement, in the way that to the latter may seem best.

"Second. That the United States does not insist upon the exclusive sway of republican government, but while favoring that system, it recognizes the right of the people of every country on this hemisphere to determine for themselves their form of government.

"Third. That the United States does not deny the right of European governments to enforce their just demands against American nations, within the limits above indicated.

"Fourth. That the United States does not contemplate a protectorate over any other American nation, seek to control the latter's conduct in relation to other nations, nor become responsible for its acts."

Foster, Century of American Diplomacy, 475–477.

See Hart's Foundations of American Foreign Policy, ch. vii. 211–234; Henderson's American Diplomatic Questions, ch. iv. 289–448; Snow's Treaties and Topics of American Diplomacy, 237–294; Moore, American Diplomacy, ch. vi.

XI. *INTERNATIONAL AMERICAN CONFERENCES.*

§ 969.

By an act approved May 24, 1888, the Congress of the United States authorized the President to invite the Governments of the Republics of Mexico, Central and South America, Hayti, Santo Domingo, and the Empire of Brazil to join the United States in a conference to be held at Washington, in 1889. In extending the invitations, the President was to set forth that the conference was called to consider (1) measures tending to preserve the peace and promote the prosperity of the South American States; (2) measures looking to the formation of an American customs union; (3) the establishment of regular and frequent communication between the various countries; (4) the establishment of a uniform system of customs

regulations, invoices, sanitation of ships, and quarantine; (5) the adoption of a uniform system of weights and measures, and of laws to protect patent rights, copyrights and trade-marks, and for the extradition of criminals; (6) the adoption of a common silver coin; (7) the adoption of a definite plan of arbitration of all questions, disputes, and differences, and (8) such other subjects relating to the welfare of the several States as might be presented by any of them.

In pursuance of this act, an invitation was sent out by Mr. Bayard, as Secretary of State, on July 13, 1888, and a special commissioner was afterwards sent out to confer with the various governments upon the invitation.

The conference assembled in Washington on October 2, 1889, the following countries being represented: Bolivia, Brazil, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Peru, Salvador, the United States, Uruguay, and Venezuela. Presently delegates also appeared from the Argentine Republic, Chile, Ecuador, Hayti, and Paraguay. By a joint resolution approved March 17, 1890, the King of the Hawaiian Islands was invited to send a delegate, but, before an appointment could be made, the conference, on April 19, 1890, adjourned.

The conference adopted (1) a plan of arbitration for the settlement of differences between the American nations; (2) a recommendation of the conclusion of reciprocal commercial treaties; (3) a recommendation of a survey for an intercontinental railway, to connect North America and South America; (4) a report on postal and cable communication; (5) a report on sanitary regulations; (6) a report on customs regulations; (7) a report concerning an international monetary union; (8) a report on patents and trade-marks; (9) a report on weights and measures; (10) a report on a uniform system of port dues; (11) a report concerning a uniform code of civil and commercial law; (12) a report on uniform treaties for the extradition of criminals; (13) a report concerning an international American bank.

The report on customs regulations embraced a recommendation for the establishment at Washington of an International Bureau of Information. This bureau was duly established, and is still in existence under the title of the Bureau of the American Republics. In 1899, by virtue of the accession of Chile, all the republics of Central and South America became represented in the bureau. The convention under which the bureau was organized provided that the union should continue for ten years, and that no country becoming a member of it should cease to be so during that period; and that, unless twelve months before the expiration of the period in question, a majority of the members had given to the United States official notice of their wish to terminate the union at the end of its first period it

should continue to be maintained for another ten years, and thereafter under the same conditions for successive periods of ten years each. The period of notification expired on July 14, 1899, without any of the members having given the necessary notice of withdrawal, and the maintenance of the bureau was therefore assured for another ten years.

The Proceedings and Minutes of the International American Conference were published at Washington in five volumes.

The reports of the conference may elsewhere be found as follows: (1) Plan of arbitration, S. Ex. Doc. 224, 51 Cong. 1 sess.; (2) report on reciprocal commercial treaties, S. Ex. Doc. 158, 51 Cong. 1 sess.; (3) report on an intercontinental railway, message of the President, May 19, 1890; (4) report on postal and cable communication, S. Ex. Doc. 174, 51 Cong. 1 sess.; (5) report on international sanitary regulations, S. Ex. Doc. 176, 51 Cong. 1 sess.; (6) report on customs regulations and bureau of information, S. Ex. Doc. 135, 51 Cong. 1 sess.; (7) report recommending establishment of an international American monetary union, S. Ex. Doc. 180, 51 Cong. 1 sess.; (8) report on patents and trade-marks and copyrights, S. Ex. Doc. 177, 51 Cong. 1 sess.; (9) report on weights and measures, S. Ex. Doc. 181, 51 Cong. 1 sess.; (10) report on port dues and consular fees, S. Ex. Doc. 182, 51 Cong. 1 sess.; (11) report on civil and commercial law and on claims and diplomatic intervention, S. Ex. Doc. 183, 51 Cong. 1 sess.; (12) report on extradition treaties, S. Ex. Doc. 187, 51 Cong. 1 sess.; (13) report recommending the establishment of an international American bank, S. Ex. Doc. 129, 51 Cong. 1 sess.; (14) a resolution for the erection of a memorial tablet, S. Ex. Doc. 188, 51 Cong. 1 sess.; (15) a resolution recommending the celebration of the fourth centennial anniversary of the discovery of America, S. Ex. Doc. 173, 51 Cong. 1 sess.

The report of the intercontinental railway commission, under the presidency of A. J. Cassatt, was published in Washington in 1888.

Light as to the origin of the projects with regard to civil and commercial law, extradition, etc., may be found in Actas de las Sesiones del Congreso Sud-Americano de Derecho Internacional Privado: Buenos Aires, 1889.

President Harrison, in his annual message of December 3, 1889, referred to the meeting of the International American Conference, particularly in its bearing on improved trade relations and the maintenance of peace among all American nations. In the same message he recommended that the missions to Bolivia, Paraguay, and Uruguay be raised to the rank of envoy extraordinary and minister plenipotentiary. He also recommended that provision be made for extending an invitation to Hawaii to be represented in the conference.

In his annual message of December 1, 1890, President Harrison spoke of the conference as marking "a most interesting and influential epoch in the history of the Western Hemisphere." He also adverted to the fact that Brazil, which had as an empire sent delegates to the conference, had afterwards shared as a republic in its deliberations.

In his annual message of December 9, 1891, President Harrison said: "Surveys for the connecting links of the projected intercontinental railway are in progress, not only in Mexico, but at various points

along the course mapped out. Three surveying parties are now in the field under the direction of the Commission. Nearly 1,000 miles of the proposed road have been surveyed, including the most difficult part, that through Ecuador and the southern part of Colombia. The reports of the engineers are very satisfactory and show that no insurmountable obstacles have been met with." (For. Rel. 1891, xi.)

As to the Bureau of American Republics, see President McKinley's annual message, Dec. 5, 1899; also his annual message of Dec. 3, 1900.

In the summer of 1896 an attempt was made to hold an international American congress in the City of Mexico. The congress was convoked for the 10th of August. On that day there appeared the representatives of only seven of the American states, including one from Mexico, one from Venezuela, and five from the Central American states. The American minister was instructed by telegraph, on the 12th of August, to attend the congress, but, owing to its evident failure, he did not attend. It was stated in an article in the Mexican *Herald*, August 16, 1896, that one of the principal objects in calling the congress was to discuss the scope and meaning of the Monroe Doctrine.

Mr. Ransom, min. to Mexico, to Mr. Olney, Sec. of State, No. 186, Aug. 18, 1896, MS. Desp. from Mexico.

President McKinley, in his annual message of December 5, 1899, after referring to the numerous questions of general interest which were considered by the First International American Conference but not finally settled and to others which had since grown in importance, observed that it seemed to be expedient "that the various republics constituting the International Union of American Republics should be invited to hold at an early date another conference in the capital of one of the countries other than the United States, which has already enjoyed this honor." A circular embodying this passage was sent out by the Department of State, with an expression of the hope that the President's recommendation might meet with approval.

Mr. Hay, Sec. of State, to Mr. Bridgman, min. to Bolivia, circular, Feb. 8, 1900, MS. Inst. Bolivia, II. 138.

As the result of this initiative, a Second International Conference of American States was held at the City of Mexico, from October 22, 1901, to January 22, 1902. All the American republics were represented. The invitation to the conference was sent out by the Government of Mexico. The conference formulated a protocol of adhesion of the American republics to the convention for the pacific settlement of international disputes signed at The Hague, July 22, 1899; a treaty of compulsory arbitration, signed by ten delegations, and a treaty for the arbitration of pecuniary claims. Resolutions were adopted in relation to the construction of the Pan-American Railway, and in

relation to customs duties, international commerce, and quarantine and sanitation. A resolution was adopted for the reorganization of the International Bureau of the American Republics, and for the collection and publication of fuller information regarding the sources of information and statistics of the American republics. Resolutions were also adopted on various subjects.

Report of the Delegates of the United States to the Second International Conference of American States, S. Doc. 330, 57 Cong. 1 sess.

For message of the President, April 16, 1900, recommending an appropriation for the expenses of the United States delegates to the conference, see S. Doc. 294, 56 Cong. 1 sess.

The acts and proceedings of the conference were published in the City of Mexico in 1902, in two folio volumes.

"Referring to the unsigned and undated memorandum you left with me about the first of May last, in relation to the questions which have been mooted between Chile on the one hand and Peru and Bolivia on the other, growing out of the occupation of Tacna and Arica, and in deference to your expressed wish that the impartial and friendly attitude of the Government of the United States, in that regard, which has been heretofore orally expressed to you on several appropriate occasions, should be restated in more permanent form, especially with respect to the views of this Government should the suggestions, which have been put forth touching a possible resort to arbitration of the question, take tangible shape, I have the pleasure to confirm what I have previously said to you.

"As respects controversies between the states of this hemisphere, the attitude of the United States has been repeatedly made clear. We wish to maintain equally friendly and close relations with all. We deplore any dissidences among them which may embarrass their common advancement. Our precept and example are before them to induce harmony and good will in all their mutual relations, but always in the line of the most absolute impartiality. While our good offices are at any time cheerfully at the disposal of our fellow republics to aid in composing their disputes, we hold that it is not our province to interfere in the adjustment of any questions involving their sovereign rights in their relations to one another. Although we may and do deeply regret whatever causes of division may arise between them, we abstain from forming a judgment on the merits of the difference, or espousing the cause of any one state against another, for to do so would impair the frank impartiality with which we stand ready to lend our friendly assistance toward a settlement whenever we have assurance that our counsels or our services will be acceptable to the parties concerned.

"The Government of the United States has on many occasions expressed its strong desire that peace and harmony shall prevail

among the countries with which it holds friendly relations, and especially among the republics of the American continents whose systems of government rest upon a common basis, and whose material interests are intimate and interdependent. It has taken several favorable opportunities to advocate the resort to arbitration in settlement of difficulties not adjustable in the ordinary channels of intercourse, and has itself set an example by recurring to this humane and intelligent international forum. In one notable instance its counsels and offices were lent to bring about the arbitration of a boundary dispute between a Spanish-American state and a European power, doing so in furtherance of the national policy announced nearly eighty years ago."

Mr. Hay, Sec. of State, to Mr. Vicuna, Chilean min., No. 40, Jan. 3, 1901, MS. Notes to Chile, VII. 79.

See, to the same effect, Mr. Hay, Sec. of State, to Mr. Guachalla, Bolivian min., Dec. 11, 1900, MS. Notes to Bolivia, I. 208.

CHAPTER XXI.

CLAIMS.

I. *MODE OF PRESENTATION.*

1. Against the United States.

§ 970.

A citizen of one nation, wronged by the conduct of another nation, must seek redress through his own government. His government must assume the responsibility of presenting his claim, or it need not be considered.

United States *v.* Diekelman, 92 U. S. 520.

The claim of an alien, when presented to the Department of State, must come through the diplomatic representative of the country to which he belongs.

Mr. Seward, Sec. of State, to Mr. Fentenheim, Sept. 23, 1868, 79 MS. Dom. Let. 348; Mr. Fish, Sec. of State, to Messrs. Coudert Bros., April 21, 1869, 81 MS. Dom. Let. 5; Mr. Frelinghuysen, Sec. of State, to Mr. Sypher, April 3, 1883, 146 MS. Dom. Let. 326; Mr. Frelinghuysen, Sec. of State, to Mr. Hildrup, July 2, 1884, 151 MS. Dom. Let. 559.

"In reply to your telegram stating that claims are presented by French citizens and other aliens through Congress to the Committee

on War Claims, I have to remark that such presentation is entirely inconsistent with usage, which requires that aliens must address this Government only through the diplomatic representatives of their own governments.

"This Department refuses to entertain applications or to receive claims from aliens except through a responsible presentation by the regularly accredited representative of their government.

"I have also been under the impression that Congress refused to receive petitions or claims from aliens. Such I am advised was at one time the rule of the House of Representatives, and such is the rule at present in the Senate, as I am informed. The propriety of the refusal to allow an alien to intrude his claims upon Congress can not be questioned."

Mr. Fish, Sec. of State, to Mr. Lawrence, M. C., April 22, 1874, Magoon's Reports, 340.

Aliens asserting claims for unliquidated damages against the United States must present them to the Department of State through the diplomatic channel, Congress having adopted in 1874 the rule that it would not consider alien claims unless presented through that Department.

Mr. Magoon, law officer, division of insular affairs, War Dept., Feb. 6, 1901, Magoon's Repts. 338, citing Report No. 498, Committee on War Claims, May 2, 1874, 43 Cong. 1 sess.

The Italian minister having enclosed to the Department of State certain papers relating to a claim which it was said an Italian subject desired to bring against the United States, the Department of State said: "The weight of your high commendation of the claim is most cheerfully recognized; yet, in view of the practice of the Department, I shall necessarily be constrained to defer its consideration, until presented in the name of His Majesty's Government, as is usual in the case of international claims, and now enclose the papers to your address accordingly."

Mr. Frelinghuysen, Sec. of State, to Baron de Fava, June 21, 1884, MS. Notes to Italy, VIII, 83.

In a subsequent communication, the Department of State explained that claims against the Government could be presented only in one of two ways: (1) Either by the claimant's availing himself directly of such judicial or administrative remedy as the domestic law might prescribe; or (2) in the absence of such remedy, if the claimant was an alien, by his government "formally presenting the claim as an international demand to be adjusted through the diplomatic channel." Baron Fava's note, it was said, merely purported to be a personal introduction and commendation of the claimant, leaving him to present his claim himself, and the Department of State added: "I do not see that the case would be altered if your introduction of Mr.

Piazza were viewed as the official act of your Government, so long as the effect is to leave Mr. Piazza to present his claim himself and to receive the reply of this Government through your good offices." (Mr. John Davis, Act. Sec. of State, to Baron de Fava, July 9, 1884, MS. Notes to Italy, VIII. 92.)

A report from Mr. Fish, Secretary of State, of December 12, 1874, giving returns from a series of foreign ministers on the subject of claims against governments, is in House Report 134, 43 Cong. 2 sess. 26. In the same report is given an argument on behalf of the bill for reference of international claims by the Secretary of State to the Court of Claims.

See the Hon. William Lawrence's "The Law of Claims against Governments, including the mode of adjusting them and the procedure adopted in their investigation," Feb. 10, 1875, H. Rept. 134, 43 Cong. 2 sess.

2. Against Foreign Governments.

§ 971.

In order that a claim of a citizen of the United States for redress or indemnity may be diplomatically presented to a foreign Government, there must be presented to the Secretary of State a petition, accompanied by a sworn statement in detail of the injury sustained, together with such other proof as may be obtained sustaining the allegations of the petition.

Mr. Marcy, Sec. of State, to Mr. Crain, Feb. 24, 1854, 42 MS. Dom. Let. 244; Mr. Buchanan, Sec. of State, to Mr. Eliot, May 20, 1847, 36 MS. Dom. Let. 255; Mr. Uhl, Acting Sec. of State, to Attorney-General, June 23, 1894, 197 MS. Dom. Let. 449.

Where the claim is founded in contract a diplomatic representative of the United States must not interfere without specific instructions. Where it is founded in tort, he will likewise await instructions, unless the person of the claimant be assailed or there be pressing necessity for action before the Department of State can be consulted; in which event he will communicate in full the reasons for his interference.

Instructions to Diplomatic Officers (1897), § 174, p. 68.
See, to the same effect, Mr. Marcy, Sec. of State, to Mr. Bowlin, min. to Colombia, No. 16, Jan. 12, 1856, MS. Inst. Colombia, XV. 212.

While there is no objection to a citizen of the United States collecting his claim against a foreign government by suit in the local courts or by direct appeal to the administrative government, provided he does so by private instrumentality, yet it is "a positive violation of international comity," and of the regulations prescribed by the De-

partment of State, for a diplomatic representative of the United States to undertake to collect a claim "which has not first been submitted to the Department of State, and by it approved and sent to him with special instructions. You are therefore directed," continued the Department, "to withdraw absolutely your connection with any claims of citizens of the United States against the Government of Hayti which have not been approved by this Department and directed to be presented to that Government for payment."

Mr. Olney, Sec. of State, to Mr. Smythe, min. to Haytl, No. 136, March 20, 1896, MS. Inst. Hayti, III. 479.

See, also, Mr. Gresham, Sec. of State, to Mr. Smythe, tel., March 21, 1895, MS. Inst. Hayti, III. 439.

"No diplomatic agent of this Government is authorized, without instructions to that effect, to use any other means than respectful argument or persuasion, orally or in writing, for the purpose of inducing a foreign government to adjust claims of citizens of the United States; nor is he authorized to use threatening language for such a purpose without express instructions."

Mr. Marcy, Sec. of State, to Mr. Clay, min. to Peru, May 24, 1855, MS. Inst. Peru, XV. 159.

3. Petition and Proof.

§ 972.

"Citizens of the United States having claims against foreign governments, not founded on contract, in the prosecution of which they may desire the assistance of the Department of State, should forward to the Department statements of the same, under oath, accompanied by the proper proof.

"The following rules, which are substantially those which have been adopted by commissions organized under conventions between the United States and foreign governments, for the adjustment of claims are published for the information of citizens of the United States having claims against foreign governments of the character indicated in the above notification; and they are advised to conform as nearly as possible to these rules in preparing and forwarding their papers to the Department of State.

"Each claimant should file a memorial, *in triplicate*, properly dated, setting forth minutely and particularly the facts and circumstances from which the right to prefer such claim is derived by the claimant. This memorial should be verified by his or her oath or affirmation.

"All subsequent communications to the Department in the nature of statements of fact, arguments, or briefs should likewise be furnished *in triplicate*.

"The memorial and all the accompanying papers should have a margin of at least one inch on each side of the page, so as to admit of their being bound in volumes for preservation and convenient reference; and the pages should succeed each other, like those of a book, and be readable without inverting them.

"When any of the papers mentioned in rule 11 are known to have been already furnished to the Department by other claimants, it will be unnecessary to repeat them in a subsequent memorial. A particular description, with a reference to the date under which they were previously transmitted, is sufficient.

"Nor is it necessary, when it is alleged that several vessels have been captured by the same cruiser, to repeat in each memorial the circumstances in respect to the equipment, arming, manning, flag, etc., of such cruiser, which are relied upon as the evidence of the responsibility of a foreign government for its alleged tortious acts. A simple reference to and adoption of one memorial in which such facts have been fully stated will suffice.

"It is proper that the interposition of this Government with the foreign government against which the claim is presented should be requested in express terms, to avoid a possible objection to the jurisdiction of a future commission on the ground of the generality of the claim.

"Claims of citizens against the Government of the United States are not generally under the cognizance of this Department. They are usually subjects for the consideration of some other Department, or of the Court of Claims, or for an appeal to Congress.

"RULES.

"In every memorial should be set forth—

"1. The amount of the claim; the time when and place where it arose; the kind or kinds and amount of property lost or injured; the facts and circumstances attending the loss or injury out of which the claim arises; the principles and causes which lie at the foundation of the claim.

"2. For and in behalf of whom the claim is preferred, giving Christian name and surname of each in full.

"3. Whether the claimant is now a citizen of the United States, and, if so, whether he is a native or naturalized citizen and where is now his domicile; and, if he claims in his own right, then whether he was a citizen when the claim had its origin and where was then his domicile; and, if he claims in the right of another, then whether such other was a citizen when the claim had its origin and where was then and where is now his domicile; and if, in either case, the domicile of the claimant at the time the claim had its origin was in any

foreign country, then whether such claimant was then a subject of the government of such country or had taken any oath of allegiance thereto.

"4. Whether the entire amount of the claim does now, and did at the time when it had its origin, belong solely and absolutely to the claimant; and, if any other person is or has been interested therein, or in any part thereof, then who is such other person and what is or was the nature and extent of his interest; and how, when, and by what means and for what considerations the transfer of rights or interests, if any such was made, took place between the parties.

"5. Whether the claimant, or any other who may at any time have been entitled to the amount claimed, or any part thereof, has ever received any, and, if any, what, sum of money or other equivalent or indemnification for the whole or any part of the loss or injury upon which the claim is founded; and, if so, when and from whom the same was received.

"6. All testimony should be in writing, and upon oath or affirmation, duly administered according to the laws of the place where the same is taken, by a magistrate or other person competent by such laws to take depositions, having no interest in the claim to which the testimony relates and not being the agent or attorney of any person having such interest, and it must be certified by him that such is the case. The credibility of the affiant or deponent, if known to such magistrate or other person authorized to take such testimony, should be certified by him; and, if not known, should be certified on the same paper upon oath by some other person known to such magistrate, having no interest in such claim and not being the agent or attorney of any person having such interest, whose credibility must be certified by such magistrate. The deposition should be reduced to writing by the person taking the same, or by some person in his presence having no interest, and not being the agent or attorney of any person having an interest, in the claim, and should be carefully read to the deponent by the magistrate before being signed by him, and this should be certified.

"7. Depositions taken in any city, port, or place without the limits of the United States may be taken before any consul or other public civil officer of the United States resident in such city, port, or place, having no interest, and not being agent or attorney of any person having an interest, in the claim to which the testimony so taken relates. In all other cases, whether in the United States or in any foreign place, the right of the person taking the deposition to administer oaths by the laws of the place must be verified.

"8. Every affiant or deponent should state in his deposition his age, place of birth, residence, and occupation, and where was his residence and what was his occupation at the time the events took place in

regard to which he deposes; and must also state if he have any, and, if any, what, interest in the claim to support which his testimony is taken; and, if he have any contingent interest in the same, to what extent, and upon the happening of what event, he will be entitled to receive any part of the sum which may be awarded. He should also state whether he be the agent or attorney of the claimant or of any person having an interest in the claim.

"9. Original papers exhibited in proof should be verified as originals by the oath of a witness, whose credibility must be certified as required in the sixth of these rules; but, when the fact is within the exclusive knowledge of the claimant, it may be verified by his own oath or affirmation. Papers in the handwriting of anyone who is deceased or whose residence is unknown to the claimant may be verified by proof of such handwriting and of the death of the party or his removal to places unknown.

"10. All testimony taken in any foreign language and all papers and documents in any foreign language which may be exhibited in proof should be accompanied by a translation of the same into the English language.

"11. When the claim arises from the seizure or loss of any ship or vessel, or the cargo of any ship or vessel, a certified copy of the enrollment or registry of such ship or vessel should be produced, together with the original clearance, manifests, and all other papers and documents required by the laws of the United States which she possessed on her last voyage from the United States, when the same are in the possession of the claimant or can be obtained by him; and, when not, certified copies of the same should be produced, together with his oath or affirmation that the originals are not in his possession and can not be obtained by him.

"12. In all cases where property of any description for the seizure or loss of which a claim has been presented was insured at the time of such seizure or loss, the original policy of insurance, or a certified copy thereof, should be produced.

"13. If the claimant be a naturalized citizen of the United States, a copy of the record of his naturalization, duly certified, should be produced.

"14. Documentary proof should be authenticated by proper certificates or by the oath of a witness.

"15. If the claimant shall have employed counsel, the name of such counsel should, with his address, be signed to the memorial and entered upon the record, so that all necessary notices may be addressed to such counsel or agent respecting the case."

Circular relating to Claims against Foreign Governments, Department of State, March 5, 1906.

See Mr. Evarts, Sec. of State, to Mr. Ketcham, Feb. 23, 1881, 136 MS. Dom. Let. 346.

"It is not the province of the Department to designate the nature of the evidence on which claimants should substantiate their claim; it is to be presumed, of course, that the same care will be taken to obtain the most positive proof of which the case is susceptible as if the claims were to be subjected to the scrutiny of a court of justice."

Mr. Marcy, Sec. of State, to Mr. Sanford, Mar. 22, 1856, 45 MS. Dom. Let. 160.

"The Executive Government is not furnished with the means of instituting and pursuing methods of investigation which can coerce the production of evidence or compel the examination of parties and witnesses. The authority for such an investigation must proceed from Congress."

Mr. Seward, Acting Sec. of State, to Mr. Zamacona, Aug. 20, 1879, MS. Notes to Mex. VIII. 156.

As to the power of officers of the United States, where it is made their duty to settle claims against the United States, see Williams, At. Gen., 1874, 14 Op. 419.

"You are right in asserting that this Department requires, as a condition precedent for the presentation of a claim to a foreign government simply a *prima facie* case such as would authorize a chancellor to issue *ex parte* process, and that the case is not exhaustively examined on the merits until these merits are contested by the Government to whom the claim is presented. You are right, also, in assuming that unless the claimant's papers present such a *prima facie* case, the Department will decline to present the claim. Ordinarily, it should be observed, it is a prerequisite to the presentation of such a claim by the Department, that it should be verified by affidavit or adequate documentary proof, but this condition is not insisted on when, on the facts set forth on the claimant's petition, it appears that, no matter how completely these facts are verified, he has not a *prima facie* case."

Mr. Bayard, Sec. of State, to Mr. Denby, Feb. 5, 1886, MS. Inst. China, IV. 118.

See, also, Mr. Bayard, Sec. of State, to Mr. Cox, min. to Turkey, No. 69, Jan. 9, 1886, MS. Inst. Turkey, IV. 366.

Communications between high civil and military officers of the Confederate States, preserved in the Confederate archives office of the War Department of the United States, or copies duly certified from that office, are competent evidence upon the question whether possession of a steamer belonging to a citizen of the United States was obtained by capture or by purchase.

Oakes *v.* United States (1897), 174 U. S. 778, 795.

The records of an executive department need not be produced in evidence in court, but their contents may be shown by authenticated copies.

Nock's Case, 2 Ct. Cl. 451.

"The practice of this Department is to require affidavits as *prima facie* proof of a claim before making any representations to the government alleged to be in default. So far, by the general practice of nations, the proceedings are *ex parte*. But if, after the claim has been presented, a commission is agreed upon for its adjudication, testimony in the usual form may be taken, both parties having an opportunity to be present and to examine and cross-examine witnesses. It is not usual, nor, in fact, would it be practicable, to give a foreign government notice that at a particular time depositions would be taken to sustain a claim to be made against it."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 33, Oct. 27, 1885, For. Rel. 1885, 625.

II. *PROSECUTION.*

1. Discretion as to Presentation.

§ 973.

In acknowledging the receipt of a letter of Sept. 12, 1854, setting forth "the origin of Col. Dennis' claim against Buenos Ayres," which claim had been commended by the Department of State to the "favorable attention" of the American minister, Mr. Marcy said: "You may not be aware that the Government of the United States does not feel called upon to interpose in behalf of every just claim held by its citizens against foreign nations. When individuals see proper to entrust their property to the safe-keeping of another government, it is to be supposed that they have satisfied themselves of the ability and intention of that government to restore that which may have been confided to it, and the deposit is accordingly made upon personal risk. This case, it is conceived, falls within the class of claims just described. From the statement and evidence submitted it is doubtless a meritorious one, but still wanting those elements which would entitle it to the official interposition of the representative of the United States."

Mr. Marcy, Sec. of State, to Mr. Egbert, Nov. 15, 1854, 43 MS. Dom. Let. 219.

The Department will not present to a foreign government claims for damages which, though based on a wrong actually done, are speculative and exorbitant in amount.

Mr. Marcy, Sec. of State, to Mr. Munro, Jan. 10, 1856, 45 MS. Dom. Let. 45.

"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."

Mr. Frelinghuysen, Sec. of State, to Mr. Suydam, Sept. 25, 1882, cited in report of Mr. Bayard, Sec. of State, to the President, on the case of Antonio Pelletier, Jan. 20, 1887, For. Rel. 1887, 606.

"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 citizens for diplomatic redress are as against his own, not the foreign government."

Mr. Frelinghuysen, Sec. of State, to Messrs. Mullan & King, Feb. 11, 1884, quoted in the report of Mr. Bayard, Sec. of State, to the President, on the case of Antonio Pelletier, Jan. 20, 1887, For. Rel. 1887, 607.

Where a citizen applies to his government to press his claim against a foreign power, he does so subject to the wise and judicious discretion which a nation has a right to exercise in determining its duty to itself, the citizen, and the foreign power.

United States *v.* La Abra Silver Min. Co., 29 Ct. Cl. 432.
To the same effect, see Black, At. Gen., 1859, 9 Op. 338.

Although it may have been a rule of an executive department to construe an act of Congress relating to claims in a particular manner, yet when Congress has afterwards expressed an opinion in conflict with that of the Department, such action of Congress has been consid-

ered as in the nature of a legislative interpretation, which becoming courtesy to the legislative department requires the Executive to observe.

Johnson, At. Gen., 1849, 5 Op. 83.

2. Obstacles to Presentation.

(1) Objections based on public policy.

§ 974.

Diplomatic aid will not be rendered to press on a foreign government a claim which is based on an act against public policy.

Mr. Seward, Sec. of State, to Mr. Whitney, July 24, 1868, 79 MS. Dom. Let. 119.

In February, 1880, James C. Jewett, a citizen of the United States, filed with the Department of State a claim against the Government of Brazil, based upon alleged discoveries of phosphate deposits on the islands of Fernando de Noronha, belonging to Brazil. With the claim there were submitted copies of certain correspondence of Mr. Jewett with officials of the Brazilian Government, which correspondence was averred by Mr. Jewett to constitute a concession to him of a right to excavate and remove the mineral deposits in question. It appeared that on December 15, 1879, the Brazilian legation at Washington formally notified the Department of State that Mr. Jewett had no concession and protested against any claim which he might make in that regard. November 3, 1880, the examiner of claims of the Department of State reported adversely upon Mr. Jewett's claim. February 9, 1881, he made a second adverse report; and on the 5th of the following month Mr. Evarts informed Mr. Jewett that his claim was not considered to be of an international character, and could not be officially prosecuted. On August 8, 1881, instructions of a different tenor were sent by Mr. Blaine to the American minister at Rio de Janeiro, but the claim does not appear to have been pressed by Mr. Frelinghuysen, Mr. Blaine's successor. In April, 1886, Mr. Jewett sought to revive his case, but on June 24 Mr. Bayard, who was then Secretary of State, wrote him as follows: "With every desire to protect the interests and promote the just claims of American citizens in foreign lands, I do not feel justified in lending the countenance or aid of the United States officials to such demands as are set forth in your statement of claims against the Government of Brazil. . . . This claim is asserted for the egregious sum of $50,525,000, and when its alleged basis is examined in the ex parte statements, affidavits, and letters presented by you and on your behalf, the disproportion between any possible loss incurred by you and the

amount claimed by you from Brazil is enormous. Such a claim so stated shocks the moral sense, and can not be held to be within the domain of reason or justice. It would be an act of international unfriendliness for the United States to lend themselves in any way or to any degree in urging, much less enforcing, such a demand upon a country with whom they are or desire to remain on terms of amity." Mr. Bayard sent a copy of this letter to the American minister at Rio de Janeiro with an instruction of September 6, 1886, in the course of which he said: "The entire alleged expenses incurred by Mr. Jewett including outfit of his two vessels, in 'exploring' for phosphate, counsel fees, agencies, charges, and incidentals, were stated by himself at $27,330.27," and "upon this narrow basis consequential, remote, and highly speculative damages were built up to upward of $50,000,000, and for a claim so exorbitant the favorable action of this Department was asked. . . . It is my desire that absolute confidence in the honorable friendship of the United States should exist in the minds of all nations, and I know of no better proof that can be given than of an intention to protect them from unjust demands at the hands of our own citizens. . . . You are instructed to make known the purport of this dispatch to the minister of foreign affairs of Brazil."

Mr. Bayard, Sec. of State, to Mr. Jewett, June 24, 1886, For. Rel. 1886, 44; Mr. Bayard, Sec. of State, to Mr. Jarvis, min. to Brazil, No. 40, Sept. 6, 1886, id. 42.

Mr. Bayard's instructions were duly communicated to the Government of Brazil, which stated in reply that, although a final judgment had been rendered against Mr. Jewett by the competent Brazilian authorities, the conclusion reached by Mr. Bayard was nothing less than was to be expected from the spirit of justice and impartiality that had on other occasions characterized the Department of which Mr. Bayard was the head. (For. Rel. 1886, 46.)

A claim was sought to be made against the Government of Japan on account of certain alleged injuries done to the American steamer *Monitor*, or *Fee Pang*, by hostile daimios. The claim was supposed by the United States minister at Tokio to be covered by the treaty of October 22, 1864, between the United States, Great Britain, France, and the Netherlands on the one part and a representative of the Tycoon on the other, providing for the payment of an indemnity for the aggressions of the Prince of Nagato; and after the indemnity was paid it was brought to the attention of Congress. By the act of February 22, 1883, however, the President was directed to return to Japan the United States' share of the indemnity, after deducting an amount for the payment of certain claims which did not comprise that of the *Monitor*. The attorney for the claimants sought to explain this circumstance by saying that the Japanese minister at Wash-

ington requested him to call at the legation and there assured him that if he would not further prosecute the claim before Congress or the Department of State it would be paid promptly and "liberally" by Japan immediately upon the passage of the bill for the return of the indemnity. The attorney declared that, relying upon these assurances, he took no further steps in the matter. The Japanese legation denied that any such promise was made either by itself or by anyone authorized to speak for it. This denial was controverted by the affidavit of the claimant's attorney and of two other persons, who were understood to have been employed at times by the legation. Without discussing these contradictions, the Department of State instructed the American minister in Japan, in July, 1885, to lay the case before the Japanese Government, in order that it might have an opportunity to consider its equities, and suggested that the whole matter might be referred to an arbitration on the merits. The Japanese Government declined the suggestion, and the United States, after a reexamination of the case, decided that it should not be further pressed. The claim appearing to be defective on the merits, the Department of State held that no new ground of claim could be derived from conversations with the Japanese minister or with any of his alleged agents. "At the time these conversations are alleged to have taken place, the Japanese indemnity fund was," said the Department of State, "in the possession of this Government, and its disposition was then subject to the action of Congress. This being so, it was the duty of citizens of the United States to present their claims before that body, and any withdrawal, such as has been alleged, of a claim from its consideration, thus forestalling its action, would, if encouraged or approved, be highly detrimental to the public interest. An agreement between a foreign minister and a citizen of the United States, under such circumstances, and for the purpose of influencing Congressional action, would not be one which, even if evidenced in writing, could be recognized by this Government. Under reversed conditions this Government could not for a moment entertain the proposition that it was in any way bound by such a transaction. Such an agreement, made in the hope of terms more 'liberal' than could be regularly obtained, can not be made the basis of an international claim. Nor can evidence of such an agreement be admitted to overcome the act of Congress directing the return of the indemnity fund, and not providing for the payment of the *Monitor* claim. It is a rule of law universally recognized and enforced that evidence of extrinsic facts (not rules of law or acts of legislation) occurring prior to the passage of a bill can not be resorted to to prove intention of the legislature or to explain its action."

Mr. Bayard, Sec. of State, to Mr. Cowie, April 13, 1888, For. Rel. 1888, II. 1069, 1072.

"The good offices of the Department, which constitute the form of its intervention in cases of contract, are not granted in such cases as a matter of course. Their employment is conceded in the exercise of a sound discretion, and only when the claim in behalf of which they are invoked is of so meritorious a character as to warrant the Department in giving its approval. Clearly, therefore, this Department is precluded from pressing in any manner upon the attention of a foreign government a claim growing out of transactions obnoxious to the laws of the United States, or possessing other features that forbid its approval and promotion by the official representative of this Government."

Mr. Bayard, Sec. of State, to Messrs. Morris and Fillette, July 28, 1888, 169 MS. Dom. Let. 263.

The Department of State was asked to support the claim of a citizen of the United States for services rendered, as he alleged, under a contract with President Guzman Blanco in order to secure a revision of the awards of the mixed commission under the treaty between the United States and Venezuela of 1866. The Department replied: "The Government of the United States can not recognize a contract alleged to have been entered into by a citizen of the United States with the executive or agent of another government for the purpose of securing the setting aside of a treaty between this and such other government. The services which you claim to have performed related chiefly to the procurement of action on the part of Congress, these services being performed for the Government of Venezuela. Under the Constitution of the United States, the only organ of communication between this and foreign governments is the President. This Department can not look with anything but disapprobation upon a foreign government seeking to approach a branch of the Government of the United States through another channel. It may be stated as a fact, although it is not material, that at the very time at which you allege that your employment began, this Department was demanding of the Government of Venezuela the execution of the treaty of 1866." The Department declined to take any action whatever towards pressing the claim against the Government of Venezuela.

Mr. Blaine, Sec. of State, to Mr. Matchett, March 19, 1891, 181 MS. Dom. Let. 273.

See, to the same effect, Mr. Bayard, Sec. of State, to Mr. Cowie, April 13, 1888, For. Rel. 1888, II. 1069, 1072.

No nation gives herself a claim to call upon other nations for a strict observance of their law who does not observe it strictly upon her part, not only in the particular class of cases in which she makes the call, but throughout the whole system of that law.

Wirt, At. Gen., 1821, 1 Op. 509, 511.

(2) LOSS OF RIGHT TO NATIONAL PROTECTION.

§ 975.

An individual may, without forfeiting his citizenship, so conduct himself as to lose to a certain extent the right to national protection. This subject is fully discussed elsewhere.

See supra, §§ 474–483; also, Moore, Int. Arbitrations, III. 2729 et seq.

"Lord Castlereagh distinctly said that the grounds on which these two subjects [Arbuthnot and Ambrister] had been considered by the Cabinet as having forfeited the rights of protection from their Government were, that they had identified themselves, in part at least, with the Indians, by going amongst them with other purposes than those of innocent trade; by sharing in their sympathies too actively when they were upon the eve of hostilities with the United States; by feeding their complaints; by imparting to them counsel; by heightening their resentments, and thus at all events increasing the predispositions which they found existing to the war, if they did not originally provoke it."

Mr. Rush, minister at London, to Mr. Adams, Sec. of State, Jan. 25, 1819, MS. Desp. from England.

An inquiry having been made by the United States consul at Alexandria, Egypt, as to whether the protection of the consulate could be claimed by citizens of the United States in the service of the Khedive of Egypt, who, although they were graduates of the Military Academy at West Point, or the Naval Academy at Annapolis, "were in the service of the insurgents during the late civil war" in the United States, the Department of State replied: "It is conceived to be the duty of this Government impartially to protect all citizens abroad in conformity with treaties and the public law. No exception can properly be made in regard to persons belonging to the classes to which you refer, unless that exception shall be required by some constitutional provision or statutory enactment. It is believed there is none applicable in this instance."

Mr. Fish, Sec. of State, to Mr. Butler, Oct. 5, 1871, MS. Inst. Barbary Powers, XV. 62.

Mr. Fish went on to say, however, that, as it was represented that the persons in question had by their contract with the Khedive renounced the privilege of appealing to their own Government, there would be "no ground for interference" in their behalf, whatever might have been their antecedents.

In the case of the claim of William J. Hale against the Argentine Republic, a claim that was ultimately settled, it was at one time alleged that the claimant, who went from New Orleans to the Argentine Republic in 1865, had been "an outspoken disunionist and rebel." (H. Ex. Doc. 168, 48 Cong. 1 sess. 6, 7–8, 21.)

"Congress has not seen fit to enact legislation to put an end to the holding of slave property in foreign countries, or withdrawing the protection of the United States therefrom.

"It is quite true also that citizens of the United States might in most cases do better for their own country by living in it, but the same freedom and liberality which welcomes strangers permits our own citizens to go elsewhere, when climate, adventure, or the expectation of profit offer advantages in their eyes; and I know of no authority or practice by which the executive officers of the United States are at liberty to distinguish among our citizens resident or temporarily abroad, and to deny to some, and to grant to others, the protection of their Government."

Mr. Fish, Sec. of State, to Mr. Cushing, min. to Spain, May 22, 1876, MS. Inst. Spain, XVII. 528.

(3) CENSURABLE CONDUCT OF CLAIMANT.

§ 976.

"To international claims the rules of general jurisprudence in this relation apply as follows: A party to a malicious wrong cannot recover from another for damages therefrom resulting to himself. A person whose negligence is the immediate cause of a negligent injury to himself cannot recover from another damages for such injury."

Wharton, Int. Law Digest, § 243, II. 700.

"Nations can not afford to have the intercourse which the interests of their citizens require to be kept open, subjected to the annoyances and risks which would result from the admission of fraud or duplicity into such intercourse. It has therefore become a usage, having the authority of a principle, in the correspondence between enlightened governments, in relation to the claims of citizens or subjects, that any deception practiced by a claimant upon his own government in regard to a controversy with a foreign government, for the purpose of enhancing his claim, or influencing the proceedings of his government, forfeits all title of the party attempting such deception to the protection and aid of his government in the controversy in question, because an honorable government cannot consent to complicate itself in a matter in which it has itself been made or attempted to be made the victim of a fraud, for the benefit of the dishonest party."

Mr. Seward, Sec. of State, to Lord Lyons, British min., May 30, 1862, MS. Notes to Gr. Brit. IX. 187.

"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."

Report of Mr. Bayard, Sec. of State, to the President, Jan. 20, 1887, For. Rel. 1887, 592, 607; S. Ex. Doc. 64, 49 Cong. 2 sess.; Moore, Int. Arbitrations, II. 1793–1800.

(4) QUESTION OF UNNEUTRAL TRANSACTION.

§ 977.

With reference to a steamer and a steam tug chartered by a citizen of the United States to the Haytian Government "as auxiliaries to military and naval operations for the suppression of an insurrection against its authority," Mr. Fish said: "A vessel of the United States voluntarily entering into the service of a foreign power in aid of military or naval operations must be regarded as relying exclusively upon the protection of that power and as renouncing while such employment continues any claim to the protection of the United States."

Mr. Fish, Sec. of State, to Mr. Murray, Dec. 7, 1869, 82 MS. Dom. Let. 453.

The allowing a vessel bearing the flag of the United States to take part in warlike operations against a government with which the United States is at peace is a violation of the spirit of our neutrality statutes.

Mr. Fish, Sec. of State, to Mr. Marsh, Jan. 29, 1877, MS. Inst. Italy, II. 11.

The Department of State will not present to a foreign government a claim based on transactions involving a violation of the neutrality of the United States.

Mr. Bayard, Sec. of State, to Messrs. Morris and Fillette, July 28, 1888, 169 MS. Dom. Let. 263.

With reference to a claim sought to be made against the Government of Hayti by a citizen of the United States for military services rendered to the Légitime government in March and April, 1889, under a contract with the Haytian minister in the United States, in the contest between the Légitime government and the forces of General Hyppolite, who afterwards became President of Hayti, the Department of State said: "The Government of the United States maintains a neutral position between the two contestants, favoring neither the one nor the other. It would clearly be a departure from that policy to ask the Government established by the successful party and now recognized as the Government of Hayti to pay the debts contracted by the adversary in employing military or naval officers to help him in maintaining the conflict."

Mr. Blaine, Sec. of State, to Mr. Patterson, April 7, 1890, 177 MS. Dom. Let. 180.

April 17, 1897, Mr. Rodriguez, minister of the Greater Republic of Central America, requested that the consuls of the United States at Ceiba and Trujillo, or at any other place along the coast, put no obstacles in the way of his government's chartering American vessels to transport troops and war materials from one port to another of the Confederation, in the interest of the reestablishment of order.

Mr. Sherman, Secretary of State, April 20, 1897, replied that if the proposed chartering of American vessels contemplated a regular contract with their owners or agents, not compulsory, but voluntary on their part, it was not perceived how the United States consuls "could interpose any valid objections to a legitimate transaction which the representatives of the American owners may be legally competent to effect." He also stated that a copy of the correspondence would be sent to the proper diplomatic and consular officers for their information.

In an instruction of April 21, 1897, to Mr. Coxe, United States minister to Guatemala and Honduras, Mr. Sherman, besides repeating what he had said to Mr. Rodriguez and observing that, if there should be any appearance of coercion on the part of the contracting Government the intervention of the consul would be justified, added: "The owners of the vessel should also understand that they can not expect the United States to intervene in their behalf should the employing Government fail to pay them for their services; for while the United States would not interfere to prevent an American vessel from voluntarily carrying arms and troops in the service of a government trying to put down an insurrection, it would leave the vessel and its crews so voluntarily entering into such service to the consequences of establishing such a relation. Should a seaman employed for other

services desire to be discharged, he ought not to be compelled to serve in the transportation of arms and troops."

Mr. Sherman, Sec. of State, to Mr. Rodriguez, min. of the Greater Republic of Central America, No. 14, April 20, 1897, For. Rel. 1897, 331; Mr. Sherman, Sec. of State, to Mr. Coxe, min. to Guatemala and Honduras, No. 71, April 21, 1897, id. 332.

A foreigner, domiciled during the year 1864 in Texas, who, in order to obtain permission of the Confederate Government to export his cotton, sold at a nominal price and delivered to its agents or officers for its use an equal amount of other cotton, which he subsequently redeemed by paying a stipulated sum therefor, directly contributed to the support of the enemy, and gave him aid and comfort. Out of such a transaction no demand against such agents or officers can arise which will be enforced in the courts of the United States.

Radich *v.* Hutchins, 95 U. S. 210.

Adopted in Mr. Bayard, Sec. of State, to Mr. Muruaga, Spanish min., Dec. 3, 1886, For. Rel. 1887, 1015–1021.

During the civil war in the United States, C., a nonresident alien, was engaged under a contract, first with the State of North Carolina and then with the Confederate States, in running out cotton and running in arms and munitions of war through the blockade of the Confederate ports. After the war he brought suit against the United States, under the Abandoned and Captured Property Act, for the recovery of some cotton seized and sold by the Federal forces. By that act the claimant was required to show that he had never given "aid or comfort to the . . . rebellion." Held, that he was excluded by these words, the court saying: "The words 'aid or comfort' are used in this statute in the same sense they are in the clause of the Constitution defining treason (art. 3, sect. 3), that is to say, in their hostile sense. The acts of aid and comfort which will defeat a suit must be of the same general character with those necessary to convict of treason, where the offense consists in giving aid and comfort to the enemies of the United States. But there may be aid and comfort without treason; for 'treason is a breach of allegiance, and can be committed by him only who owes allegiance, either perpetual or temporary.' United States *v.* Wiltberger, 5 Wheat. 96. . . . A claimant to be excluded need not have been a traitor: it is sufficient if he has done that which would have made him a traitor if he had owed allegiance to the United States."

Young *v.* United States (1897), 97 U. S. 39, 62.

Cited and followed, in principle, in Mr. Bayard, Sec. of State, to Mr. Muruaga, Span. min., Dec. 3, 1886, For. Rel. 1887, 1015, 1016.

See, also, Watson *v.* United States, 25 Ct. Cl. 116; Osborne *v.* United States, 24 Ct. Cl. 416; Kirtley *v.* United States, 27 Ct. Cl. 348; Burnham *v.* United States, 32 Ct. Cl. 388; Fletcher *v.* United States, 32 Ct. Cl. 36; United States *v.* Quigley, 103 U. S. 595; Sprott *v.* United States, 20 Wall. 459.

A citizen of the United States stated that a demand for $800,000 had been made on his company by the Cuban insurgents, who had threatened to destroy the company's property in Cuba unless the money was paid by a certain date. The complaint was sent to the American legation at Madrid, with instructions to request the Spanish authorities to give complete protection to the property in question against any attempt to carry out the threat of destruction. The Department of State added: "With reference to your proposed written reply to the insurgents' demand, it is not within the province of this Department to give any advice, and though earnestly desirous of affording every assistance to American citizens in their efforts to protect their properties abroad from destruction or damage, the question as to whether or not a reply should be sent to the insurgents' demand is so clearly one of business expediency, or for reference to private counsel, that I am unwilling to give any opinion thereon."

Mr. Olney, Sec. of State, to Mr. Rand, Dec. 3, 1896, 214 MS. Dom. Let. 283.

A claim having been made by a citizen of the United States against the Government of Peru for live stock forcibly taken from him by the Peruvian Government in 1885, that Government set up the defense that the animals were taken during the civil war as a reprisal for hostile acts of the claimant, who had "joined a party," and as a commander in the "Urban Guard" had committed outrages and extortions of a criminal character against the Government. The claimant, when called on by the United States to answer this charge, presented a statement showing the nature of the so-called "Urban Guard" and his connection with it. "From this statement," said the Department of State, "it appears that the power and efficiency of the Peruvian Government to protect life and property were completely paralyzed in the locality where Mr. Backus resided; that the Indians and other lawless inhabitants of the community were murdering and robbing without any restraint or any effort on the part of the constituted authorities to protect either natives or foreigners. In such an emergency every man became under the law of nature his own protector, and the foreign residents in the unprotected localities were compelled to unite for self-protection, forming what was called the 'Urban Guard,' a temporary committee of safety which confined its efforts to safeguarding life and property, and avoiding taking either side in the civil strife which then divided the republic. If his statement

is true, it would seem that Mr. Backus's conduct during this period of anarchy was in no way reprehensible or hostile to the Government of Peru. He and the foreigners associated with him simply undertook for the time to perform as voluntary agents for the Government of Peru important police functions which that Government was unable at the time to perform for itself by its regular officers. The inauguration and action of the 'Urban Guard' was simply in the interest of law and order, and not in support of any faction."

Mr. Olney, Sec. of State, to Mr. Neill, chargé, No. 209, Dec. 22, 1896, MS. Inst. Peru, XVIII. 11.

3. Discretion as to Time and Manner of Pressure.

§ 978.

Where a government takes up the claim of one of its citizens against another government it necessarily possesses and exercises the power to decide for itself when and to what extent it will press the claim, as well as the means which it will employ for that purpose.

A claim against the United States, which the claimant has elected to present to Congress, will not, while before Congress, be entertained by the Department of State.

Mr. Fish, Sec. of State, to Mr. Schlözer, German min., Sept. 14, 1874, MS. Notes to German Leg., IX. 44.

"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."

Mr. J. C. B. Davis, Act. Sec. of State, to Messrs. Bartley et al., Sept. 26, 1871, For. Rel. 1887, 594.

When one department of the government has lawfully assumed jurisdiction of a particular case, any other coordinate department should decline to interfere with or assume to control its legitimate action. Hence when the courts have acquired jurisdiction of a case of maritime capture, the political department of the government should postpone the consideration of questions concerning reclamation and indemnities until the judiciary has finally performed its functions in those cases.

Bates, At. Gen., 1864, 11 Op. 117.

"Much delay (consequent upon accusations of fraud in some of the awards) has occurred in respect to the distribution of the limited amounts received from Venezuela under the treaty of April 25, 1866,

applicable to the awards of the joint commission created by that treaty. So long as these matters are pending in Congress the Executive can not assume either to pass upon the questions presented, or to distribute the fund received. It is eminently desirable that definite legislative action should be taken, either affirming the awards to be final, or providing some method for re-examination of the claims."

President Hayes, annual message, 1877, For. Rel. 1877, xiii.

III. *CONDITIONS OF INTERVENTION.*

1. Citizenship, as a Rule, Essential.

§ 979.

As to the special case of seamen, see supra, § 484; and as to protection in oriental countries, see supra, §§ 287–290.

Where a person requested the interposition of the United States in respect of outrages upon him alleged to have been committed in Mexico, the Department of State said: "The fact which you state, that, although long a resident of this country, you have not been naturalized as a citizen of the United States, is an insuperable bar to any interference of this Government in your behalf."

Mr. Forsyth, Sec. of State, to Mr. Champly, April 15, 1837, 29 MS. Dom. Let. 71.

See, also, Mr. Marcy, Sec. of State, to Mr. Selding, March 3, 1856, 45 MS. Dom. Let. 123.

L. F. Foucher, Marquis de Circé, a citizen of France, owned a plantation in Louisiana, which was occupied in 1862 by the Federal troops. An award of compensation was made to him by a military commission, but the claim was not paid, and he died in 1869, leaving his widow as universal legatee. In 1877 the widow died, leaving as joint universal legatees her nephews and nieces. Both estates were settled up, but no money was received on the war claim and no mention was made of it in the distribution. When the mixed commission was installed under the convention between the United States and France of January 15, 1880, the claim was revived. The successions of Mr. and Mrs. Foucher were opened, and a representative, named Denis, was appointed, who filed a memorial with the commission, in which he presented the claim in the right of L. F. Foucher, deceased, and joined with him all parties interested in both successions. All these parties were American citizens except two, who were citizens of France and who subsequently filed a separate memorial in person. The commission awarded on the claim presented by Denis a lump sum, with interest. Of this sum the two French lega-

tees claimed the whole. The supreme court of Louisiana, Fenner, J., dissenting, held that the money should be distributed among all the legatees without regard to their nationality. This judgment was reversed by the Supreme Court of the United States, which held that, independently of the provisions of the treaty, which provided for the adjudication of the claims of the citizens of the one country against the government of the other, an award could not be held to inure to the benefit of citizens of the United States.

Barthe *v.* Denis (1890), 133 U. S. 514, 10 Sup. Ct. Rep. 335, reversing Succession of de Circé, 41 La. An. 506.

See Moore, Int. Arbitrations, II. 1154, for a discussion, in this relation, of Comegys *v.* Vasse, 1 Pet. 193, and Campbell *v.* Mullet, 2 Swanston, 551.

Where the requirement of citizenship is personal and jurisdictional, the courts regard it as analogous to the requirement of loyalty in the act of March 12, 1863, 12 Stat. 820, and follow the decision of the court in Burn's Case, 12 Wall. 246, where a claimant was allowed to maintain his several action for a half interest. (Rhine *v.* United States, 33 Ct. Cl. 481.)

Where, in a French spoliation case, neither the American registry of the vessel nor the American citizenship of the owners is established, the claim can not be allowed.

The Vandeput (1902), 37 Ct. Cl. 396.

The register of an American vessel in the eighteenth century was conclusive evidence in French prize courts of her American character and of the nationality of her owners. (The Conrad, 37 Ct. Cl. 459.)

Jean Prevot, a citizen of France, had a claim against the United States for cotton taken from him during the civil war, and the United States admitted its liability to him to the amount of $2,425.15. Subsequently Prevot died, leaving a widow and three children. His widow qualified as administratrix, and as such prosecuted the claim before the mixed commission under the convention between the United States and France of January 15, 1880. The commission allowed $2,020.94, with interest. This sum, as the commission stated, was for the value of the cotton, less one-sixth, which represented the interest of a child, a Mrs. Bodemüller, whose husband had been naturalized as a citizen of the United States. The commission disallowed her interest on the ground that the nationality of the wife followed that of the husband. Subsequently, Mrs. Bodemüller, having become a widow, brought suit against the United States under the act of March 3, 1887 (24 Stat. 505), providing for suits against the Government in certain cases. The court expressed the opinion that the deduction made by the commission was improper, but dismissed the suit on technical grounds.

Bodemüller v. United States (1889), 39 Fed. Rep. 437.

I am advised by counsel that a suit subsequently instituted against the United States in such form as to meet the technical objection failed on a plea of the statute of limitations. (Mr. Alexander Porter Morse, of counsel, to Mr. Moore, Feb. 9, 1897.)

See Moore, Int. Arbitrations, II. 1150.

In the case of the claim against the Dominican Republic, growing out of transactions with the French firm of J. Sala & Co., the widow of one of the claimants sought, in the character of a citizen of the United States, the good offices of that Government. Her request was granted, the Department of State saying: "While, in the opinion of the Department, a citizen of the United States is not entitled to invoke the assistance of this Government in respect of a claim against another Government acquired from a foreigner by marriage and assignment (by partnership arrangement or otherwise), yet it is believed that where such claim comes to the wife by succession, upon the death of her husband, as in this case, the offices of this Government should be extended to her."

Mr. Hill, Assist. Sec. of State, to Messrs. Coudert Brothers, June 9, 1900, 245 MS. Dom. Let. 484.

By the convention between the United States, Germany, and Great Britain, signed at Washington Nov. 7, 1899, for the submission to the King of Sweden and Norway, as arbitrator, of any claims of the citizens or subjects of the contracting parties growing out of alleged unwarranted military action of American, German, or British officers in Samoa between Jan. 1, 1899, and May 13, 1899, it was agreed that either government might, with the consent of the others, submit to the arbitrator similar claims of other persons (not Samoan natives) who were under its "protection."

For. Rel. 1899, 671.

See, as to the protection of seamen, supra, § 484.

As to special rules of protection under extraterritorial jurisdiction, see supra, Chap. VII.

With reference to a request for the protection of an American missionary in Turkey, in which mention was made of the fact that several native instructors and students in a school kept by him had been imprisoned, the Department of State said: "It is not clear whether you mean that the protection of the United States should be extended to the imprisoned persons or to Mr. Christie. If the former, I have to inform you that they are all understood to be Ottoman subjects, and to remind you that the mere fact of their connection with an American school does not exempt them from Turkish jurisdiction or from liability for violation of Turkish law. Our min-

ister at Constantinople has, however, been instructed to exert his influence to secure their release, and permission for them to return to their duties at the school."

Mr. Gresham, Sec. of State, to Mr. Lodge, April 17, 1895, 201 MS. Dom. Let. 534.

In reply to a request for interposition made in behalf of nuns of a religious order in Ecuador, the Department of State said: "It has been generally understood that all religious associations in Ecuador belong to the established church and are supported by taxation of the Ecuadorian people, and the Department has not been advised that any monasteries or convents have been instituted in Ecuador by American capital, their property being owned by the parent organization in this country and their operations being conducted at the expense of American citizens. If there be any such institution, the facts should be clearly shown before a collective claim on the part of the parent organization in the United States could be satisfactorily made out; otherwise, the claim for indemnity would have to be individual on the part of each sufferer, and based on the fact of American citizenship and lawful residence and occupation in Ecuador."

Mr. Adee, Act. Sec. of State, to Sister M. Genevieve, September 10, 1895, 204 MS. Dom. Let. 532.

In response to an inquiry whether certain native Cubans, not naturalized in the United States, who had then recently enlisted in the American Army, were entitled to the protection of the United States for the recovery of claims against the Spanish Government for property destroyed in Cuba, the Department of State said: "The Department can answer your inquiry, which is general in its character, only by general statements, and by assuming that the acts of destruction to which you refer took place before the outbreak of the war between the United States and Spain, and were not belligerent acts against enemies, such as are not the subject of diplomatic claims for indemnity. This being so, the rule that this Government can not undertake to prosecute claims for indemnity against foreign governments unless the claimants are citizens of the United States would be applicable to the present case, since the claimants, not being citizens of the United States, doubtless were, at the time of the injuries complained of, subjects of Spain or of some other government. . . . The acquisition of a title to a government's protection does not operate retroactively."

Mr. Moore, Assist. Sec. of State, to Mr. Eustis, July 26, 1898, 230 MS. Dom. Let. 378.

In the case of the killing and wounding of seamen of the U. S. S. *Baltimore* by a mob at Valparaiso, in 1891, the United States ex-

pressed the belief that the Chilean Government, which had made known its desire to make a prompt and friendly settlement of the claims, would "be ready to make a liberal indemnity to the families" of the men who were killed and to the wounded survivors.

Mr. Foster, Sec. of State, to Mr. Egan, min. at Santiago, tel., July 1, 1892, MS. Inst. Chile, XVII. 416. See also same to same, two tels., July 5, 1892, id. 417, 418. The sum of $75,000 was subsequently paid by Chile.

"The legation guards killed or wounded during the siege [of the foreign legations in Peking in 1900] should be on the same footing as civilians killed or wounded for whom indemnity is claimed."

Mr. Hay, Sec. of State, to Mr. Conger, min. to China, tel., Feb. 19, 1901, For. Rel. 1901, App. 362.

A seaman injured by the explosion which destroyed the United States battle ship *Maine* in the harbor of Havana, Cuba, February 15, 1898, had no individual claim against Spain, even if that Government was responsible to the United States for the explosion; and therefore such a seaman is not entitled to an award in his favor from the Spanish Treaty Claims Commission organized by the act of Congress of March 2, 1901, to adjudicate all individual claims of citizens of the United States against Spain which the United States released to Spain and agreed to pay by the treaty of peace of Dec. 10, 1898.

This decision, which was announced by the president of the Commission, Mr. Chandler, was concurred in by Commissioners Diekema, Wood, and Maury, and proceeded on the ground that individual claims do not arise in favor of officers and seamen of a ship of war who receive, in the line of duty, injuries to their persons for which a foreign government is responsible.

Mr. Maury, however, delivered a separate opinion, in which he besides maintained that Art. VII. of the treaty of peace extinguished the claims, if any, viewed as international demands

Commissioner Chambers dissented.

Harry S. McCann *v.* The United States, No. 30, Spanish Treaty Claims Commission, Art. VII. Treaty with Spain, Dec. 10, 1898, and act of Congress, March 2, 1901.

2. Declaration of Intention Insufficient.

§ 980.

As to the declaration of intention, see, further, supra, §§ 385–387.

Where a person made a declaration of intention to become a citizen of the United States, and his property in Cuba was seized six months

later, the Department of State said that, as such a declaration did not constitute citizenship, and as the act of the Spanish Government preceded the naturalization of the claimant, his case presented "no ground for the favorable action of the Department."

Mr. Frelinghuysen, Sec. of State, to Mr. Alfonso, Nov. 13, 1884, 153 MS. Dom. Let. 194.

See, to the same effect, Mr. Frelinghuysen, Sec. of State, to Mr. Varona, Jan. 7, 1885, 153 MS. Dom. Let. 596.

In 1886 Mr. Hall, United States minister in Central America, was instructed to request from the government of Nicaragua an explanation concerning a claim made by G. A. K. Morris, as a citizen of the United States, on account of injuries growing out of the alleged violation by Nicaragua of the rules of civilized warfare. Mr. Hall replied that the claim had previously been submitted to the German Government by Mr. Morris, who as late as 1884 represented himself as a German subject, and produced proofs of German nationality, which were authenticated by the United States consul at La Union, Salvador. Counsel for the claimant, on being advised of the circumstances, stated that, when his property was pillaged at Amapala, in 1863, he was a subject of Hanover, and entitled to the protection of Prussia; that Prussia at first espoused his cause, and sent out a corvette, which she was obliged to recall on account of the war with Austria; that in 1877 claimant made in New York, where his wife and daughter had for some years resided, a declaration of intention to become a citizen of the United States, and subsequently served as consular agent and consul of the United States in Central America; that the German Government, by reason of the declaration of intention, declined longer to exercise its good offices in his behalf, and that he consequently should receive the protection of the United States. Counsel cited in this relation the Kostza case (Lawrence's Wheaton, 176, note) and the case of Landreau, and suggested besides that the acts complained of were such as might properly have been prevented by any Christian power.

The Department of State said:

"You urge that the denial of justice by Nicaragua in refusing to consider his claim is a continuous act from which injuries are continually accruing to him. . . . I feel constrained to say that the view you thus advocate can not be admitted by this Department, it being conceded that the injury which the claimant sets up was sustained and consummated during the period when he was a German subject, and before he became a citizen of the United States. If denial of justice subsequent to the acquisition of citizenship takes the case out of the rule that a claim maturing before citizenship can not be the subject of diplomatic intervention, then the rule would itself

be abrogated, since there is no litigated case in which such denial could not be set up. . . . As regards the case of J. C. Landreau, . . . it was finally decided by this Department not to press the claim on the ground, among others, that Landreau was not a citizen of the United States when it accrued. The case against Mr. Morris is strengthened by the fact that no evidence is offered that his attainment of American citizenship extended further than a declaration of intention to ask for it some ten years ago."

Mr. Porter, Act. Sec. of State, to Messrs. Kennedy & Shellaberger, Jan. 4, 1887, S. Doc. 287, 57 Cong. 1 sess.

July 22, 1899, Count Vinci, Italian chargé, communicated with the Department of State concerning the lynching during the preceding night of five Italians by a mob at Tallulah, La. Mr. Hay, as Secretary of State, immediately telegraphed to the governor of Louisiana, stating that the Italian chargé asked protection for any Italian subjects who might be in danger, and inquiring whether the persons lynched were "Italian subjects or naturalized Americans." Regret was expressed to the Italian chargé for the occurrence, and an assurance was given that the United States would take all legal steps which the facts might warrant to secure justice. An assurance was also given by the governor of Louisiana that every effort would be made to bring the perpetrators of the outrage to justice.

The names of the victims were Giovanni Cirano, of Tusa; Francesco, Carlo, and Guiseppe Difatta, of Cefalo; and Rosario Fiducia, also of Cefalo. The outrage originated in a quarrel concerning a goat which belonged to one of the Difatta brothers, who carried on the grocery business at Tallulah. It seems that the goat was in the habit of climbing on the balcony of the house of a Dr. Hodge, who, becoming annoyed at it, shot it. The next day Carlo Difatta accosted Dr. Hodge in the street and struck him a blow with his fist. The doctor then shot him, and when he fell put his foot upon him, apparently intending to fire again. Giuseppe Difatta then shot at the doctor from a gun loaded with bird shot. A rumor having spread that Dr. Hodge had been killed, a mob quickly collected and went in search of Carlo and Giuseppe Difatta, who had succeeded in getting away and concealing themselves, while the sheriff arrested Francesco Difatta, Rosario Fiducia, and Giovanni Cirano and lodged them in jail. It was stated that Cirano and Fiducia had taken no part in the affray. Giuseppe and Carlo Difatta were found by the mob and were hanged, and the mob then went to the jail and took Francesco Difatta, Giovanni Cirano, and Rosario Fiducia and hanged them also.

In August, 1899, the governor of Louisiana transmitted to the Department of State certificates of the naturalization of "Charles

Defatta," dated June 28, 1899; Syha Deferach, dated June 28, 1899, and "Frank Defata," dated November 8, 1895. It was at first supposed that the person who was naturalized as Syha Deferach was Giuseppe Difatta, and that the real name of Carlo Difatta was Pasquale Difatta. Moreover, some of the evidence tended to show that Frank Defatta had, at the time of his naturalization, been in the United States only about a year and a half, and Charles Defatta [a] only about two years; and on this ground the Italian embassy made the point that, as the certificates of naturalization did not expressly recite that the persons mentioned in them had previously made a declaration of intention, they must be considered only as first papers, or, if intended as final papers, must be considered as irregular and void. The Department of State, however, maintained that no recital of the declaration of intention was necessary, and that the papers were not defective in form as certificates of naturalization.

September 14, 1899, Governor Foster transmitted to the Department of State the official report of the sheriff of Madison Parish on the lynching. According to this report, the affray began by Charles Defatta striking at Dr. Hodge with a knife as the doctor was on his way home in the evening. The doctor drew his pistol and struck his assailant over the head, and in the struggle fired a shot which did not take effect. At this point Joseph Defatta emptied both barrels of a shotgun into the doctor at close range, the shots taking effect in his stomach, arms, and hands. On hearing the shots the sheriff proceeded to the scene of the shooting and found Frank Defatta, Syha Defferach (Giuseppe Defatta), and John Cyrano, one armed with a shotgun and the other two with pistols, running toward the scene of the disturbance. With the assistance of some citizens, the sheriff disarmed these three men, and after some resistance lodged them in jail. Meanwhile Charles Defatta had barricaded himself in his shop and defied arrest. The sheriff summoned a posse, broke in, and arrested him. Joe Defatta, who had concealed himself in an adjoining house, was discovered and arrested, but the sheriff, while taking them to jail, was overpowered by a mob, who took the prisoners and hung them. The mob then overpowered the jailer, secured the keys, and took the other three men from the jail and hung them. This was done in spite of a protest of the sheriff and officers of the court. It was stated that the reputation of the Sicilians was very bad. Joe Define, a relative and associate of the victims, who had left since the lynching, had assassinated a man, but had escaped punishment. Frank Defatta had killed a negro and had also escaped punishment. The circumstances indicated that a conspiracy had been formed to

[a] It will be observed that Defatta is only the Anglicised form of the Italian Difatta.

murder Dr. Hodge, and that Charles Defatta was selected to do the deed. This was the popular view of the matter, which, coupled with the fact that the victims were all taken with arms in their hands, led to the lynching. The night of the lynching was cloudy and dark, and the sheriff stated that he was unable to identify any of the perpetrators.

September 20, 1899, the Department of State advised the Italian embassy that the grand jury had been unable to find an indictment on the facts before it, and that the matter would be submitted anew to the grand jury at the next term of court. As the report of the sheriff differed from the accounts previously received, it was stated that a special agent would be sent to make the necessary investigations on the spot.

For. Rel. 1899, 440–441, 444, 447–448, 453, 457, 458, 459, 461–463. See, also, For. Rel. 1900, 715–731.

By the act of March 3, 1901, Congress appropriated the sum of $4,000, to be paid, "out of humane consideration, without reference to the question of liability therefor, to the Italian Government as full indemnity to the heirs of Joseph Defatta and John Cyrano, Italian citizens who were lynched at Tallulah, Louisiana, on July 20, 1899." (31 Stat., 1010.)

Two reports were made by the agent of the Department of Justice. By these reports it appears that the person naturalized as "Syha Deferach" was in reality Rosario Fiducia, and that Joseph (Giuseppe) Defatta had not been naturalized. (Mr. Griggs, At. Gen., to Sec. of State, March 23, 1901, MS. Misc. Let.)

As to the claim of Giuseppe Defina, in connection with the Tallulah lynching, see S. Doc. 95, 57 Cong. 1 sess.

3. Naturalization not Retroactive.

§ 981.

See supra, §§ 401–407.

In declining to present a diplomatic claim to the Government of Austria, Mr. Marcy said: "The wrong you complain of was done more than six years before you were a citizen of the United States, and while you were a subject of the Emperor of Austria. The application you make seems to require this Government to interpose in a matter between the Austrian Government and one of its subjects. That was the practical relation when the act complained of took place. . . . It can not, therefore, be said to be an injury done to one of our citizens, but only to a person who several years afterwards became a citizen of the United States."

Mr. Marcy, Sec. of State, to Mr. Ujhazi, Aug. 26, 1856, 45 MS. Dom. Let. 468.

"By adopting a foreigner, under any form of naturalization, as a citizen, this government does not undertake the patronage of a claim

which he may have upon the country of his original allegiance or upon any other government. To admit that he can charge it with this burden would allow him to call upon a dozen governments in succession, to each of which he might transfer his allegiance, to urge his claim. Under such a rule the government supposed to be indebted could never know when the discussion of a claim would cease. All governments are, therefore, interested in resisting such pretensions."

Mr. Fish, Sec. of State, to Mr. Miller, May 16, 1871, 89 MS. Dom. Let. 348.

Where a person, who was naturalized in the United States in 1874, asked for diplomatic intervention in order to obtain the restoration of his property which was embargoed in Cuba in 1871, the Department of State said: "When your alleged injuries took place you were not a citizen of the United States, and therefore, under well-established canons of international law, it is not within the province of this Government to inquire whether your property was wrongfully or rightfully taken. . . . It would be a monstrous doctrine, which this Government would not tolerate for a moment, that a citizen of the United States who might deem himself injured by the authorities of the United States or of any State, could, by transferring his allegiance to another power, confer upon these powers the right to inquire into the legality of the proceedings by which he may have been injured while a citizen."

Mr. Fish, Sec. of State, to Mr. Bachiller, April 8, 1874, 102 MS. Dom. Let. 43.

See, to the same effect, Mr. Fish, Sec. of State, to Messrs. Condert Brothers, June 3, 1869, 81 MS. Dom. Let. 204; Mr. Fish, Sec. of State, to Mr. Cone, Oct. 11, 1871, 91 id. 88; Mr. Cadwalader, Act. Sec. of State, to Mr. Sayler, May 12, 1876, 113 MS. Dom. Let. 368.

"Subsequent naturalization does not alter the international status of a claim which accrued before naturalization."

Mr. Bayard, Sec. of State, to Mr. Golding, Apr. 30, 1886, 160 MS. Dom. Let. 75.

See, also, Mr. Porter, Act. Sec. of State, to Messrs. Kennedy & Shellabarger, Jan. 4, 1887, 162 MS. Dom. Let. 478.

"The position that the claimant is not entitled to redress, because, though the confiscation and appropriation of the proceeds of the estate took place after he became a citizen of the United States, the embargo was laid before that citizenship was perfected, cannot be maintained. Both by the Roman and the English common law, it is an established principle (as is more fully illustrated in the report of the solicitor, of which I inclose a copy) that where an injurious procedure is put in motion in such a way as to have a continuous

effect, liability for the effect is not barred by the circumstance that when the procedure was started no liability could be maintained. But in this case, while the original embargo was laid before the claimant's citizenship was perfected, it is otherwise with the confiscation and subsequent enormous appropriation of the revenues of the estates. These were subsequent to the perfection of Mr. Mora's citizenship and aside from the point above given the Spanish Government is liable for them, as for distinct acts of injury."

Mr. Bayard, Sec. of State, to Mr. Curry, Jan. 22, 1886, MS. Inst. Spain, XX. 156.

"It is true that Mr. Acosta's naturalization, the validity of which was admitted by the advocate for Spain, on the 30th October, 1882, was subsequent to the executive order of sequestration of his property by about five months. But while for losses accruing prior to his naturalization he can not claim such interposition, it is otherwise as to losses accruing subsequent to his naturalization. The case may be likened to a series of continuous injuries sustained by a person before and after reaching full age. The disabilities attaching to him as a minor, however much they might prevent him by the *lex fori* from suing when a minor, would not preclude him from suing when of full age in his own name, at least for damages sustained subsequent to his majority. Hence the claimant in the present case, as to matters not barred by the decision of the arbitrators, is entitled to the intervention of this Department, at least for injuries sustained by him subsequent to his naturalization."

Mr. Bayard, Sec. of State, to Mr. Curry, Apr. 9, 1886, MS. Inst. Spain, XX. 183.

To a person who sought to make, as a citizen of the United States, a diplomatic claim against Mexico, the Department of State said: "Your certificate of naturalization in the United States is dated August 18, 1893, while the seizure of your property occurred in 1891, so that even if the case which you present were otherwise a proper one for intervention, which appears very doubtful, this Department could not act in the matter."

Mr. Gresham, Sec. of State, to Mr. Bentaing, Feb. 21, 1894, 195 MS. Dom. Let. 529.

See, also, Mr. Olney, Sec. of State, to Mr. Struller, June 30, 1896, 211 MS. Dom. Let. 168.

4. Right of Interposition not Assignable.

§ 982.

"An assignment of a claim by a foreigner, or another government, to a citizen of the United States, even if such claim be founded in

tort, is not conceived to impose on this government any obligation to interfere in behalf of such citizen, in respect of the government against which the complaint is made. This rule, however, is especially applicable in matters of contract between a foreigner and another government, or where a citizen of the United States becomes the assignee of the contract."

Mr. Evarts, Sec. of State, to Mr. Hodgskin, Oct. 25, 1877, 120 MS. Dom. Let. 238. See same to same, Dec. 27, 1877, 121 MS. Dom. Let. 146.

The principle that the right of intervention can not be transferred by the assignment of a claim by the citizen of one country to the citizen of another is altogether independent of the assignability of diplomatic claims as between citizens of the same country, where nothing but the private interest passes. (Judson *v.* Corcoran, 17 How., 612.)

"It is a settled rule in this Department that a claim which the Department can not take cognizance of in its inception because of the alienage of the creditor, is not brought within the cognizance of the Department by its assignment to a citizen of the United States."

Mr. Bayard, Sec. of State, to Mr. Denby, min. to China, No. 42, Feb. 5, 1886, MS. Inst. China, IV. 118.

To the same effect is Mr. Strobel, Third Assist. Sec. of State, to Mr. Cravath, Feb. 27, 1894, 195 MS. Dom. Let. 593.

See, also, Moore, Int. Arbitrations, II. 1267.

"This Government will never recognize an assignment of a claim against a foreign country made by a citizen or subject of that country to a citizen of this for the purpose of invoking diplomatic aid in the recovery thereof. Still less will it undertake to aid in the recovery of claims against subjects of foreign countries which originally accrued in favor of their fellow-subjects and have been assigned by the latter to American citizens."

Mr. Gresham, Sec. of State, to Mr. McDonald, min. to Persia, Nov. 11, 1893. For. Rel. 1894, 485, referring to a communication of the Persian minister of foreign affairs, declaring null and void the transfers of claims by Persian subjects to foreigners "until, according to international engagements, the papers or documents have the indubitable seal of the foreign office, and on the faith of that security the legation legalizes them."

Although, in order to justify the intervention of the United States, a claim must *when it accrued* have been that of an American citizen, yet, if a foreigner obtains from his government a concession which is capable of transfer, and afterwards transfers it to an American, the latter, upon violation by the foreign government of his rights under the concession, would be entitled to the aid of the United States, since the wrong in such case would be done to an American.

Mr. Hay, Sec. of State, to Mr. Powell, min. to Hayti, No. 291, Dec. 23, 1898, MS. Inst. Hayti, IV. 103.

Mr. Hay added that claims arising out of concessions were "generally contractual in their origin," and that the United States in such cases only used its good offices in adjusting them. (Ibid.)

5. NOR DERIVABLE FROM PARTNERSHIP ASSOCIATIONS.

§ 983.

Stephen Zacharie, Francis Coopman, and John Vochez were in 1793 partners in mercantile business at Baltimore, Zacharie and Vochez residing in Baltimore and Coopman in St. Domingo. In 1793, in consequence of the capture of their ships by British and French cruisers, they failed. In 1794 the firm executed a power of attorney to Vochez to recover all moneys due to them. In 1795 he arrived in England, and in 1798 he gave a power of attorney to two persons named Mullett and Evans to act as agents for himself and his partners, and also for himself on his own private account. Mullett and Evans presented claims to the commissioners under Article VII. of the Jay treaty. On July 8, 1803, the commissioners awarded them seven sums of money for Zacharie and Vochez, and a certain sum for Vochez individually. The commissioners withheld any relief from Coopman on the ground that he "resided at St. Domingo as a French citizen," and was therefore "an alien enemy." Part of the money was obtained by Mullett and Evans from the British Government and a part was withheld.

In 1798 Campbell and certain other persons were appointed trustees of Zacharie's estate. These trustees, in 1803, appointed one Heathcote an attorney to demand from Mullett and Evans, and from any other persons liable, all sums received or to be received on the awards on Zacharie's account. The bill was filed by Campbell and the other trustees to require Mullett and Evans to pay to Heathcote Zacharie's share of the money received, and to restrain them from receiving, and Allcock, of the revenue department, from paying, the money still in his hands.

On the first hearing the Master of the Rolls, Sir Thomas Plumer, said that the question whether the money involved was partnership property had not been argued.

On the reargument the Master of the Rolls, March 19, 1819, said that whether the captures were legal or illegal was immaterial; that the court knew only that the capture and condemnation took place, and that two shares in the ship belonged to Americans, and the third to a French subject resident at St. Domingo. The property was lost and gone by the adjudication of a competent tribunal, and "it was not in the power of individuals to recover it, and reverse the sentence of condemnation." Whatever was obtained from the commissioners was not recovered on "the ground of right." "Right"

is that which may be "enforced in a court of justice." The treaty gave a "bounty" as a "compensation for losses." The grant of this bounty was made to Zacharie and Vochez alone. No claim against the partners could reach it.

Campbell *v.* Mullett (1818), 2 Swanston, 551.

The board of commissioners, under the treaty of Guadalupe Hidalgo, allowed two-thirds of a claim to Louis L. Hargous, a citizen of the United States, and disallowed the other third, which belonged to Hargous's partner, Emilio Voss, a German. Subsequently Voss assigned his interest to Hargous, who presented it as an American claim to the mixed commission under the treaty between the United States and Mexico of July 4, 1868. The umpire, Sir Edward Thornton, rejected it on the ground that a government can not properly take up a claim acquired by one of its citizens by purchase or assignment from the citizen of another country. The Department of State refused to take further action in the matter.

Mr. Blaine, Sec. of State, to Mr. Hargous, June 14, 1890, 178 MS. Dom. Let. 38.

For the opinion of Sir Edward Thornton, see Moore, Int. Arbitrations, III. 2327.

"The right to the protection of this Government may be acquired by birth, by naturalization, or in some cases and for some purposes by domicil in the United States. No other mode occurs to me, nor do I now perceive the authority of an officer of this Government, except in virtue of a treaty, or other positive legislation to bring a new subject within the sphere of its obligations. Least of all can I discern any faculty in a private citizen to spread the protection of his Government over a third person by adopting him as partner in a commercial establishment in foreign parts." (Mr. Fish, Sec. of State, to Mr. De Long, Sept. 19, 1871, MS. Inst. Japan, I. 472.)

6. Corporations.

(1) Interposition in behalf of the corporation.

§ 984.

It is well settled that a government may intervene in behalf of a company incorporated under its laws, or under the laws of a constituent state or province. In such case the act of incorporation is considered as clothing the artificial person thereby created with the nationality of its creator, without regard to the citizenship of the individuals by whom the securities of the company may be owned. Hence we find in general claims conventions that the submission or settlement uniformly embraces "all claims on the part of corporations, companies, or private individuals, citizens of the United States," or of some other government, as the case may be. In other

words, the corporation is recognized as having, for purposes of diplomatic protection, the citizenship of the country in which it is created.

See, also, as to the citizenship of corporations, supra, § 485.

The Government of the United States having in 1886 protested against the suspension by military order of the Panama *Star and Herald*, a newspaper published by an American corporation, and having in 1887 presented in behalf of the corporation a claim for damages against the Colombian Government, Señor Holguin, Colombian minister for foreign affairs, raised in 1896, the claim being still unsettled, the defense that there had ceased to be anyone possessing legal authority to represent it as an American claim, and in 1898 the further defense that the person then owning the newspaper had made a declaration before the United States consul at Panama that neither he nor the *Star and Herald* had any valid claim against Colombia, and that he renounced the claim that had been made. It was alleged by Señor Holguin, in this relation, that the Star and Herald Publishing Company, a corporation formed in 1884, under the laws of the State of New York, not having paid taxes to that State since 1890 or 1891, had lost all right to the protection of the United States; that the president of the company, Mr. Spies, a commission merchant in New York, failed in 1893 and committed suicide; that the vice-president of the company, Mr. Boyd, was "a native and resident of Panama, consequently a citizen of Colombia," as was also his brother, who was manager of the company on the Isthmus till 1892; that in June, 1893, the enterprise having failed, all its goods in Panama, as well as the right to publish the newspaper, were sold by order of court, and were bought by Mr. Gabriel Duque, the present owner; and that the power of attorney given by Mr. Spies to Mr. L. Myers, a lawyer of Philadelphia, to represent in the United States the claim against the Colombian Government, had by Mr. Spies's death become null and void.

Of this defense Mr. Olney, Secretary of State, in an instruction to Mr. Sleeper, minister to Colombia, February 24, 1897, said:

"After almost eleven years' delay, the idea is suggested by Minister Holguin that the *Star and Herald* was not an American enterprise nor entitled to remedy as such for the wrongs inflicted upon it. . . . This new evasion seems to be an effort to further trifle with the subject.

"Colombia was originally officially notified by instruction of this Department of May 15, 1886, a copy of which was delivered to that Government by Mr. Jacobs, and again on January 31, 1890, through its minister at Washington, that the Panama *Star and Herald* was a company of American citizens, incorporated under the laws of the

State of New York, and as such entitled to our protection. It was scarcely necessary to give this notice, as the charter was recorded both at Panama and Bogota, and the Colombian Government had accorded it the privileges authorized by law to such foreign corporations for the term of fifty years. Still further, the Colombian Congress, by resolution, had publicly thanked the *Star and Herald* as an American paper for its friendly conduct. President Nuñez even exempted it on September 15, 1885, from an order applying to other newspapers in the Republic, 'principally as a demonstration of appreciation of the United States.' Throughout the diplomatic correspondence in this claim until now the American nationality of the owners of the *Star and Herald* was admitted by Colombia, the only defense set up being that under our treaty the consequences of what Minister Hurtado termed the unjust suspension of this paper should rest and be allowed 'to fall heavily on its responsible author.' . . . The *Star and Herald* corporation is a legal 'person' in contemplation of law, and is not to be deprived of its just compensation and damages by technicalities unknown to the law."

In November, 1898, a bill passed the Colombian Congress, against "strong opposition," authorizing the Government to pay the claim. It was definitively adjusted in January, 1899, by an arrangement for the payment of $30,000 U. S. gold ($91,000 being the amount originally demanded), Señor Marquez, the minister for foreign affairs, having previously filed a protest against the demand, embracing the arguments previously employed against it.

Mr. Olney, Sec. of State, to Mr. Sleeper, min. to Colombia, Feb. 24, 1897, For. Rel. 1899, 228.

See, also, For. Rel. 1899, 219, 230–231, 228, 239–241.

In a letter to Mr. Blaine of May 17, 1889, Mr. Barlow, of counsel for the Panama Railroad Company, in answer to an inquiry made at a recent interview in Washington, enclosed a letter of Messrs. Coudert Brothers of May 16, 1889, in relation to the ownership of the stock of the Panama Railroad Company. The Messrs. Coudert say in their letter that although the Panama Canal Company had acquired by purchase a large amount of the stock of the Panama Railroad Company, a "material portion" of it had always "remained in American hands;" that the Company was incorporated under the laws of New York; that an appeal for protection to the French Government would undoubtedly be met with that conclusive objection; that if an appeal for protection to Washington was unheeded the company would become an outlaw; that if the nationality of stockholders was to be taken into account an investor in an American company would have no security, since without the will or assent of the company the shares might be transferred by purchase in open market the next day to for-

eigners. Mr. Barlow, in the same relation, referred to four railroad corporations—the New York Central, the Erie, the Pennsylvania, and the Reading—and said it would not infrequently be found, as he was informed, that a large majority of the stock of each of those companies was for the time being owned abroad.

This correspondence is printed in S. Doc. 264, 57 Cong. 1 sess. 232–233.

(2) INTERPOSITION IN BEHALF OF SECURITY HOLDERS.

§ 985.

In 1865 a local official in Colombia, whose action was afterwards ratified by the Colombian Government, seized the steamer *Antioquia*, belonging to the "Compañia Unida de Navegación por vapor en el Rio Magdalena." The origin and constitution of this company were not stated, but it appeared that less than half of a majority of the stock was held by American citizens, the rest being owned by British subjects, citizens of Hamburg, and citizens of Colombia. Next to the amount held by Americans, the largest was owned by British subjects. The grounds of the seizure were (1) that the steamer had violated an order prohibiting the transportation of political suspects, and (2) that military necessity required the pressing of the steamer into the public service for the transportation of troops. The President of Colombia offered to return the vessel and make compensation for her use, but, as an agreement on this point could not be reached, directed that the necessary documents be collected and submitted to the legal tribunals. To this course the owners objected, and the American shareholders appealed to their Government. Mr. Seward intimated that they should not object to going to the courts; but he then went on to say that a more general question seemed to be involved in the case. It was argued, said Mr. Seward, that, when an American citizen went abroad and invested his money in the shares of an artificial body, which held the general title to the property concerned and gave to the associates shares assignable at pleasure, the shares of the American citizen were in such case a species of property not partaking of his national character, and in respect of which, whatever might befall the property of the association, he had no valid claim for the intervention of his Government. If his individual shares, specifically as the property of an American, should be unjustifiably confiscated, a different question would be raised; but as a corporator he had no individual property in the chattels or credits of the corporation. The Supreme Court of the United States had, said Mr. Seward, recently decided that a tax on an individual's shares in a national bank was not a tax on the capital of the bank, and in so

deciding had declared that the corporation was the legal owner of all the property of the bank, real and personal, and within its corporate powers could deal with such property as absolutely as a private individual could deal with his own. Still more pertinent, said Mr. Seward, was the case of Queen *v.* Arnold, 9 Adolph. & Ellis, N. S. 806, in which the Pacific Steam Navigation Company, a British corporation, on applying for a British register for one of its ships, met with a refusal on the ground that the British statute of 8 & 9 Vict., chap. 9, prohibited foreigners from being entitled to be owners, in whole or in part, directly or indirectly, of any vessel requiring to be registered, and made it a condition that the vessel should belong wholly to British subjects, while a portion of the stock of the Pacific Steam Navigation Company was owned by citizens and residents of Mexico. The court, however, commanded the issuance of the register, Lord Denman, who delivered the opinion, observing that the British corporation was, as such, "the sole owner of the ship, and a British subject, . . . notwithstanding some foreigners may individually have shares in the company, and such individual owners are not entitled, in whole or in part, directly or indirectly, to be owners of the vessel." Applying this doctrine, said Mr. Seward, to the company owning the *Antioquia*, the association as an entity was "to be assimilated to a citizen of Colombia. If it has sustained a wrong, is it not for it to pursue such remedy as it may have in the same manner as a private Colombian would be obliged to do, without the aid of any government external to Colombia?

"It may well be that subjects of Great Britain, France, and Russia, are stockholders in our national banks. Such persons may own all the shares except a few necessary to qualify the directors whom they select. Is it to be thought of that each of those powers shall intervene when their subjects consider the bank aggrieved by the operations of this Government? If it were tolerated, suppose England to agree to one mode of adjustment, or one measure of damages, while France should insist upon another, what end is conceivable to the complications that might ensue?

"It is argued that there is no wise policy which requires us to encourage the employment of American capital abroad by extending to it any protection beyond what is due the strictest obligation. There is no wise policy in enlarging the capacity of our citizens domiciled abroad for purposes of mere pleasure, ease, or profit, to involve this Government in controversy with foreign powers. The tendency of things, it is urged, is to an increase year by year of just such companies in the South American States as that which presents the claim under consideration, while no very proximate period can

be foreseen at which we may expect their exposure to the hazards of intestine commotion to be sensibly diminished.

"We are sufficiently impressed by these considerations to pause for further information, especially as the affair seems to be in a way of an adjustment, unless the claimants impede it, to which there is great difficulty in objecting. Any further evidence, however, or arguments which the American claimants may deem pertinent to a just disposition of their case, on the part of this Government, will be attentively considered."

Mr. Seward, Sec. of State, to Mr. Burton, min. to Colombia, April 27, 1866, Dip. Cor. 1866, III. 522.
See, also, id., 454, 478, 480.

By a law of 1875 the Peruvian Government was authorized to expropriate the nitrate establishments of Tarapacá, giving in provisional payment therefor certificates or bonds bearing interest and guaranteed by a pledge of the nitrate property. In order to carry out the transaction, the Peruvian Government placed these certificates or bonds with a Peruvian company, called the "Compañia Salitrera del Peru." In this company a large interest was held by the "Banco Nacional del Peru," the shareholders of which thus became indirectly shareholders in the company. Certain American citizens who were shareholders both of the company and of the bank afterwards sought the intervention of the United States as against the Government of Chile, on the ground that the company had been despoiled of its rights by the Chilean authorities. The request for intervention was denied on the following grounds: That the rights and privileges held by the company were in every sense Peruvian; that they could not be enjoyed without acting in a corporate capacity; that the American shareholders were not entitled to any advantages over the other shareholders; that the existing interest of the American shareholders was reduced to an equitable right to their distributive share of the funds of the corporation; that the rights of the corporation were involved, and not the individual rights of the shareholders, and that, even if all the individual members of the corporation were duly qualified American citizens, they could not present their complaint in their individual names as owners, but must present them as belonging wholly to the corporation as owner. It was added that the corporation must of necessity be made a party to any complaint that might be presented, since otherwise no cause of complaint would appear, and that an individual shareholder could not prosecute a corporate cause of action because the corporation failed or refused to do so. Finally, it was stated that the "good offices" of the United States might with propriety be exercised in behalf of the American claimants when the claims of the company were properly presented to

Chile, but that the request that prompt and efficient diplomatic steps be taken in support of their individual interest as shareholders was out of the question.

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, Dec. 6, 1884, MS. Inst. Peru, XVII. 101.

As being in harmony with the foregoing instruction, see the opinion of Commander Beatinatti, in the case of the Accessory Transit Company, Moore, Int. Arbitrations, II. 1562.

See, as to the citizenship of corporations, supra, § 485.

The Portuguese Government in 1883 granted to Edward MacMurdo, a citizen of the United States, a concession for the construction of a railway from the port of Lourenço Marques, on Delagoa Bay, to the Transvaal frontier. For this purpose the concession stipulated that MacMurdo should form a company under the laws of Portugal, and such a company was accordingly organized under the name of Lourenço Marques and Transvaal Railway Company. In May, 1884, MacMurdo assigned his concession to this company, receiving therefor 498,940 out of 500,000 shares of the company's stock. By the same instrument MacMurdo agreed to construct the railway, in consideration of the transfer to him of all the company's debenture bonds. These bonds MacMurdo unsuccessfully endeavored to float; and, after the company had obtained several extensions of time for the completion of the road, he obtained, in 1887, the assistance of English capitalists. These capitalists, however, insisted that their interests should be represented by the bonds and shares of a company to be incorporated under the laws of England. The Delagoa Bay and East African Railway Company was therefore formed in England, with a share capital of £500,000. To this English company MacMurdo assigned his shares and bonds of the Portuguese company, and also the benefit of his contract with that company, of May, 1884, the English company undertaking to indemnify him in respect of the contract, to pay him £115,000, and to give him its entire issue of stock. The English company then issued bonds to pay MacMurdo and to raise money to build the road. MacMurdo's course in securing the formation of the English company was approved by the Portuguese Government, the only reservation made in regard thereto being that the concession should not be transferred to it. In July, 1887, the Portuguese Government intimated that it would require an extension of the lines beyond the point at which the company alleged that the road was to end. A discussion ensued, and meanwhile the road was completed in accordance with the original plans and was accepted by the Portuguese Government, with a reservation of the question as to the extension. In the midst of controversies over this question the Portuguese Government, in June, 1889, seized the railway. Against this action both the United States and Great Britain pro-

tested. The Portuguese Government, however, took the ground that it could deal only with the Portuguese company, through which the rights of the American and British investors must be asserted. With reference to this contention, the Marquis of Salisbury, in an instruction to the British minister at Lisbon, September 10, 1889, said:

"Her Majesty's Government are of opinion that the Portuguese Government had no right to cancel the concession, nor to forfeit the line already constructed.

"They hold the action of the Portuguese Government to have been wrongful, and to have violated the clear rights and injured the interests of the British [construction] company, which was powerless to prevent it, and which, as the Portuguese company is practically defunct, has no remedy except through the intervention of its own Government.

"In their judgment, the British investors have suffered a grievous wrong in consequence of the forcible confiscation by the Portuguese Government of the line and the materials belonging to the British company, and of the security on which the debentures of the British company had been advanced; and that for that wrong Her Majesty's Government are bound to ask for compensation from the Government of Portugal."[a]

Mr. Blaine, in instructions to Mr. Loring, American minister at Lisbon, November 8, 1889, said:

"Upon full consideration of the circumstances of the case, this Government is forced to the conclusion that the violent seizure of the railway by the Portuguese Government was an act of confiscation which renders it the duty of the Government of the United States to ask that compensation should be made to such citizens of this country as may be involved. With respect to the case of Colonel MacMurdo, who is now represented by his widow, Katherine A. MacMurdo, his sole executrix and legatee, it is to be observed that by the terms of the concession the company which he was required to form was to include himself and that his personal liability was not merged in that of the company. But in any case, the Portuguese company, being without remedy and having now practically ceased to exist, the only recourse of those whose property has been confiscated is the intervention of their respective governments.

"In this relation it is proper to advert to the note of Senhor Barros Gomes of the 22d of June last, above referred to, in which he stated that there were two ways in which an arrangement could then be made with the Portuguese company which would protect the interests of the share and bondholders. One of these ways was the acceptance by the company of the tariff of rates proposed by the Government of the Transvaal; the other, a radical alteration of the concession, which

[a] Parl. Pap., Cd. 5903, p. 58.

would produce the same result. These statements have the effect of admitting the rights of the company, and of admitting at the same time that the reason for sacrificing them was the desire of the Portuguese Government to effect certain arrangements with the Government of the Transvaal. No offer was made to arbitrate with the company, as the concession required. No proposition of arrangement was held out, except such as involved a virtual annulment of the concession. And it was in fact annulled and the property acquired under it confiscated, because the company which Colonel MacMurdo organized under the concession was unable to perform an impossible condition subsequently imposed without the consent and against the protests of that company."

By a protocol between the Governments of the United States, Great Britain, and Portugal, signed at Berne June 13, 1891, the three governments agreed to refer to a tribunal of arbitration, composed of three Swiss jurists, the determination of "the amount of the compensation due by the Portuguese Government to the claimants of the other two countries, in consequence of the rescission of the concession of the Lourenço Marques Railroad and the taking possession of that railroad by the Portuguese Government."

An award of damages was made by the tribunal in 1899, and was duly paid by the Portuguese Government.

Moore, Int. Arbitrations, II. 1865–1899.
See, also, For. Rel. 1902, 848–852.

In 1894 two contesting petitions were presented to the Government of Salvador for a concession for a term of years of the exclusive right to establish steam navigation in the port of El Triunfo, in Salvador. One of the petitions was presented by three citizens of Salvador; the other, by two citizens of the United States and two citizens of Salvador. The concession was granted on the latter petition, with the requirement that the grantees should form a corporation to take and operate it. October 25, 1894, a corporation was formed for that purpose under the laws of Salvador, called El Triunfo Company, Limited. The president and secretary of this company were citizens of the United States, and a majority of its shares was owned by the Salvador Commercial Company, a corporation under the laws of the State of California, which corporation was the moving projector and spirit in the enterprise of developing the port of El Triunfo under the concession. El Triunfo Company proceeded to the execution of the concession, and the port was duly opened and the development of traffic soon exceeded what had been expected. At the annual meeting of the shareholders of El Triunfo Company, in June 1898, a full board of directors was as usual elected. This board included, however, one of the competitors for

the concession in 1894, who was at the same time elected vice-president of the company. At a subsequent meeting of the shareholders one of the Salvadorean directors resigned as director and secretary, and his place was filled by the other competitor of 1894. In September, 1898, while the president of the company was away on business, the vice-president usurped the office of president and called a meeting of directors at his own house. This meeting was attended by the vice-president and two other Salvadorean directors, who adopted a resolution removing the president and certain other officials and appointing themselves, respectively, president, secretary, and treasurer. Subsequently they had the company declared bankrupt and had a receiver appointed, who possessed himself of the books and papers of the company and withheld them from the American investors and their representatives. The Salvador Commercial Company and other American investors endeavored to have the bankruptcy proceedings against El Triunfo Company set aside and the former lawfully elected directorate reinstated in the management. To this end they called a meeting of the shareholders, but on the day following the call the President of Salvador issued a decree closing the port of El Triunfo against all importations. The Salvador Commercial Company presented to the Salvadorean Government a protest against this decree; but the Government disregarded it and granted to other persons, citizens of Salvador, a concession of the franchise covered by the concession of 1894. The owners of the American interests again protested, but their protest was not heeded, and they then appealed to the Government of the United States for protection. The Government of the United States intervened and demanded that the claim be submitted to arbitration. In reply to the Salvadorean contention that the case, as one affecting a Salvadorean corporation, was exclusively for the Salvadorean courts, the United States took the ground that the American citizens, who were the substantial owners of the enterprise, were proceeding by judicial methods when the President of Salvador issued his decree, and that this act of the President, whatever its motive, was indefensible from the standpoint of justice and private right, as well as of international law; and justified and would require, if the controversy was not otherwise satisfactorily adjusted between the parties, the intervention of the United States "and the payment of an adequate indemnity to the American stockholders." By a protocol concluded at Washington, December 19, 1901, the case was submitted to arbitration. A majority of the arbitrators, consisting of Sir Henry Strong, Chief Justice of Canada, and the Honorable Don M. Dickinson, concurred in an award of damages. In an accompanying opinion they declared that the bankruptcy proceedings were the result of a conspiracy, and were fraudulent. In the same

opinion they said: "We have not discussed the question of the right of the United States under international law to make reclamation for these shareholders in El Triunfo Company, a domestic corporation of Salvador, for the reason that the question of such right is fully settled by the conclusions reached in the frequently cited and well-understood Delagoa Bay Railway arbitration."

For. Rel. 1902, 859–873.

For a full exposition of the grounds on which the United States intervened in this case, see For. Rel. 1902, 838–852.

At page 846 Judge Penfield, Solicitor of the Department of State, in a report to Mr. Hay, Secretary of State, says: "While the Department does not dispute the contention that intervention by the Government of the United States would not be in entire accord with certain dicta expressed in the case of the *Antioquia* in respect of intervention in behalf of American stockholders in a foreign corporation, it is consistent with the actual grounds of that decision. But if all the reasons stated in that case against the right of intervention were to be accepted, even if intervention had been refused solely on the academic reasons given, the decision of this case would be controlled by the later decision of the Department in the case of the Delagoa Bay Railway."

IV. *GROUNDS OF INTERVENTION.*

1. Denial of Justice.

§ 986.

The ground of diplomatic intervention in behalf of individuals, for injuries in person or in property, is a denial of justice. Such a denial may proceed either from the act of the government itself or from the act of one of its agencies.

"A sovereign can not be sued in his own courts without his consent. His own dignity, as well as the dignity of the nation he represents, prevents his appearance to answer a suit against him in the courts of another sovereignty. . . . Hence, a citizen of one nation, *wronged* by the conduct of another nation, must seek redress through his own Government. His sovereign must assume the responsibility of presenting his claim, or it need not be considered."

United States *v.* Diekelman, 92 U. S., 520, 524; cited by Mr. Bayard, Sec. of State, to Mr. McLane, min. to France, No. 134, June 23, 1886, MS. Inst. France, XXI. 330.

"The rule by which all governments conduct themselves in cases where injury has been done by individuals of one to individuals of the other government is to leave the injured party to seek redress in the

courts of the other. If that redress be finally denied, after due application to the courts, it then becomes a subject of national complaint."

Mr. Jefferson, Sec. of State, to Mr. King, Dec. 7, 1793, 5 MS. Dom. Let. 388.

When diplomatic intervention is asked to press payment for an injury sustained by a foreigner in this country, it is first to be considered "whether the party complaining has duly pursued the ordinary remedies provided by the laws, as was incumbent on him, before he would be entitled to appeal to the nation; and if he has, whether that degree of gross and palpable negligence has been done him by the national tribunals which would render the nation itself responsible for their conduct." (Mr. Jefferson, Sec. of State, to the At. Gen., Mar. 13, 1793, 5 MS. Dom. Let. 70.)

"The courts of justice exercise the sovereignty of this country in judiciary matters; are supreme in these, and liable neither to control nor to opposition from any other branch of the government." (Mr. Jefferson, Sec. of State, to Mr. Genet, Sept. 9, 1793, 4 Jefferson's Works, 68; Am. State Papers, For. Rel. I. 175.)

A nation ought not to interfere in the causes of its citizens brought before foreign tribunals, except in a case of refusal of justice or of palpable injustice.

Bradford, At. Gen., 1794, 1 Op. 53.

See, to the same effect, Black, At. Gen., 1859, 9 Op. 374.

"It is not necessary to affirm that a government is not responsible in any case to a foreign government for an alleged erroneous judicial decision rendered to the prejudice of a subject of said foreign government. But it may be safely asserted that this responsibility can only arise in a proceeding where the foreigner, being duly notified, shall have made a full and *bona fide*, though unavailing, defense, and, if necessary, shall have carried his case to the tribunal of last resort. If, after having made such defense and prosecuted such appeal, he shall have been unable to obtain justice, then, and then only, can a demand be with propriety made upon the government."

Mr. Clay, Sec. of State, to Mr. Tacon, Feb. 5, 1828, MS. Notes to For. Leg. III. 423.

"The general rule is that foreigners are bound to apply to the tribunals of justice, if they are open, for redress of any grievance before they appeal for it to the government of those tribunals;" and hence there can be no claim against the government of the United States for injuries inflicted on the coast of Florida on two wrecked French vessels and their crews, unless the remedy of recourse to the civil tribunals has been exhausted. (Mr. Clay, Sec. of State, to Mr. de Mahenil, Mar. 28, 1827, MS. Notes to For. Legs. III. 342. See, also, Mr. Clay, Sec. of State, to Mr. Salazar, Dec. 22, 1827, MS. Notes to For. Legs. III. 408.)

Captain George Barker, of the American ship *Panther*, was arrested at Halifax, Nova Scotia, about the 26th of August and kept in

jail till the 8th or 9th of November, 1837, in a judicial prosecution instituted against him by some of the passengers of his vessel, in the vice-admiralty court, for breach of marine contract and for refusing to pay for marine services, and for an alleged violation of the imperial statute 5 and 6 William IV., relating to passengers. Captain Barker was released on a writ of habeas corpus issued by the colonial supreme court, and a writ of prohibition was issued by the same tribunal forbidding the vice-admiralty court to carry the proceedings further because of a want of jurisdiction. With reference to this transaction, the Department of State said: "This Government can not admit the right of any foreign court to take cognizance of acts done on board of American vessels at sea, but the ground upon which the jurisdiction of the vice-admiralty court of Halifax in this case was denied by the counsel of Capt. Barker was, not that the contract was made or broken at sea, under the flag of the United States, but that it was made upon land, and within the body of a county, thereby impliedly admitting the right of jurisdiction of a British court of a different character. But, even if the facts were such as to exclude the judicial cognizance of any foreign tribunal, the case presented would be that of an inferior court assuming an unlawful jurisdiction in a civil suit, in which it was overruled and checked by a superior court, without any appearance of unusual vexation or delay. The detention which Capt. Barker unfortunately experienced would seem to have been such only as one of the subjects of Great Britain might have been subjected to, under the same circumstances, by the operation of the laws within the influence of which he was brought, and, however unjust it may have been, as a fair investigation appears to have been allowed, which resulted in his discharge, the injury he is represented to have sustained is not thought to constitute a proper application from this Government to that of Great Britain for redress."

Mr. Forsyth, Sec. of State, to Mr. Davee, Feb. 7, 1838, 29 MS. Dom. Let. 330.

Personal injuries inflicted on citizens of the United States when in Great Britain can be redressed only by appeal to the local courts; nor can the Government of the United States complain of failure of justice in this respect if the trials were fair and the due course of justice was pursued. (Mr. Monroe, Sec. of State, to Mr. J. Q. Adams, Nov. 16, 1815, MS. Inst. U. States Ministers, VIII. 3.)

January 5, 1851, the Peruvian barque *Eliza* was stranded in San Francisco Bay through the unskillfulness or carelessness, as was alleged, of a pilot, who was a member of an incorporated association of pilots under the laws of the State of California. The owners of the barque sued the association in the United States district court and recovered judgment against it. Execution was issued and a levy made on the association's boat, but the writ was returned unsatisfied

owing to the fact that, because the judgment-creditor refused to indemnify the marshal, the latter did not sell the vessel. No further effort appears to have been made to collect the judgment. The Peruvian minister at Washington, however, solicited the aid of the United States to recover the amount of the judgment from the State of California, on the theory that the State was liable for the acts of the pilots who carried on their operations under its laws. On June 15, 1852, Mr. Webster, as Secretary of State, sent the papers to the governor of California, with a letter, in which he said: "If . . . the Association of Pilots of San Francisco has been established under a law of the State of California, that State must be considered as responsible for those acts of negligence or ignorance of the association for which the means of its members, jointly or severally, may be inadequate to make reparation. I therefore commend this case to the favorable consideration of your excellency, and trust that provision will be made by the State of California for the payment of the claim." The governor communicated the papers, with a special message, to the legislature. The legislature repelled the theory of responsibility on the part of the State, and the Peruvian Government then preferred a claim against the United States. In 1855 the case was referred by Mr. Marcy, Secretary of State, to Mr. Cushing, who, in an opinion of May 27, 1855, held that neither the State of California nor the United States was responsible to the owners of the barque for her loss through the carelessness of the pilot. Mr. Cushing observed that foreigners sojourning in a country were subject to its laws, and that wherever this rule had been departed from it was an exceptional case. Such exceptions had, he said, grown up chiefly in Spanish America in consequence of the unsettled conditions there. Public officers, said Mr. Cushing, were of two classes, (1) those employed in the collection of the revenue and the care of the public property, who represented the proprietary interest of the Government, and (2) those who were appointed by the Government only in its capacity of *parens patriæ*. For the acts of the former the Government in many cases held itself responsible, because their acts were performed in the interest of the Government; but for the acts of the latter the Government did not hold itself pecuniarily responsible, but provided the means to make them personally responsible or to punish them for malfeasance in office, and, in so doing, did all that was required of it.

The United States having on these grounds refused to entertain the claim, it was subsequently presented to the mixed commission under the convention between the United States and Peru of January 12, 1863. The umpire of this commission, General Herran, held that there was a valid claim against the United States, both because of the

neglect of the United States marshal properly to execute the judgment of the district court and because the government of California had failed to discharge the obligations which it had assumed under its pilotage laws. As to the contention that the foreigner must exhaust judicial remedies before soliciting diplomatic intervention, General Herran said that this rule ought to be understood in a "rational" sense, so that it would "not make delusive the right of the foreigner." In this relation he said: "After Montano had obtained a definite sentence that a sum of money should be paid him, which the court determined as a just indemnification for his damages and losses which he had suffered through the fault of a pilot accredited by the laws of California, who for the payment of that sum had furnished sureties in fulfillment of a law of the State, one ought to believe that the claimant had only to put the writ in execution to pay the cost. But such was not the case. What Montano gained by the sentence was the right to bring forward another complaint; and I believe that he then found himself obliged to seek from his Government its interference in his behalf."

For the letter of Mr. Webster to the governor of California, see Mr. Webster, Sec. of State, to Gov. Bigler, June 15, 1852, 40 MS. Dom. Let. 190. See, also, Mr. Osma, chargé d'affaires of Peru, to Sec. of State of United States, June 2, 1852, and enclosures, MS. Notes from Peru.

For the opinion of Mr. Cushing, At. Gen. 1855, see 7 Op. 229, 237, 238.

For the decision of General Herran, see Moore, Int. Arbitrations, II. 1630, 1634–1638.

"Should it, however, be established to your satisfaction that Dr. Belcredi is an American citizen, the right of this Government to interfere in his case would be very questionable. As such citizen, he is subject to the laws, civil and criminal, of the country within which he is domiciled or resides, and the United States could not make the proceedings against him a ground of complaint unless those laws were contrary to treaty stipulations or were used in bad faith or oppressively to inflict injuries upon him."

Mr. Marcy, Sec. of State, to Mr. Fay, Nov. 16, 1855, MS. Inst. Switz. I. 39.

See, to the same effect, Mr. Marcy, Sec. of State, to Mr. Clay, min. to Peru, No. 41, Feb. 8, 1856, MS. Inst. Peru, XV. 182.

"The rule of the law of nations is that the Government which refuses to repair the damage committed by its citizens or subjects, to punish the guilty parties or to give them up for that purpose, may be regarded as virtually a sharer in the injury and as responsible therefor."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 21, Aug. 15, 1873, MS. Inst. Mex. XIX. 18, citing Calvo, Droit Int. II. 397.

Conviction and punishment of a citizen of the United States in a foreign country, in a trial conducted with palpable injustice and in violation of settled principles of law, will be the basis of a claim for redress from such country by the Government of the United States.

Mr. Evarts, Sec. of State, to Mr. Langston, min. to Hayti, No. 23, April 12, 1878, MS. Inst. Hayti, II. 136; same to same, No. 50, Dec. 23, 1878, id. 160; Mr. Davis, Act. Sec. of State, to Mr. Langston, No. 187, Aug. 27, 1882, id. 299.

Obstruction by Spanish officials of a citizen of the United States in Spain in his attempts to obtain judicial redress for injuries there inflicted on him is the subject of international complaint.

Mr. Evarts, Sec. of State, to Mr. Fairchild, min. to Spain, Jan. 17, 1881, MS. Inst. Spain, XVIII. 591.

In 1889 Dr. M. A. Cheek, a citizen of the United States residing in Siam, entered into a contract with the Siamese Government for the working of the teak forests. Subsequently differences arose between the parties, and the Siamese Government laid an embargo on Cheek's property, destroyed his business, and ruined him financially. It was contended by Cheek that this was done in violation of Siamese law and also of the treaty between the United States and Siam. It was eventually agreed to refer the case to Sir Nicholas Hannen, governor of the Straits Settlement, as arbitrator. The arbitrator found that the seizure of Cheek's property was not warranted by the laws of Siam, and also constituted a violation of the treaty, and awarded the claimant 706,721 ticals, the equivalent of $187,987.78 in gold, with release of the Cheek estate from mortgage claims.

Moore, Int. Arbitrations, II. 1899–1908; For. Rel. 1897, 461–480; S. Doc. 180, 54 Cong., 2 sess.; President McKinley, annual message, Dec. 5, 1898.

"I have endeavored in every way to assure our sister republics of Central and South America that the United States Government and its people have only the most friendly disposition toward them all. . . . I have believed, however, while holding these sentiments in the greatest sincerity, that we must insist upon a just responsibility for any injuries inflicted upon our official representatives or upon our citizens. This insistence, kindly and justly but firmly made, will, I believe, promote peace and mutual respect."

President Harrison, annual message, Dec. 6, 1892, For. Rel. 1892, XIV.

2. Local Remedies Must, as a Rule, be Exhausted.

§ 987.

"There is no principle of international law which makes it the duty of one nation to assume the collection of the claims of its citi-

zens against another nation if the citizens themselves have ample means of redress without the intervention of their government."

Ch. Jus. Waite, in New Hampshire *v.* Louisiana, 108 U. S. 76, 90, citing Phillimore, Int. Law, 2 ed., vol. 2, p. 12. Cited in Mr. Bayard, Sec. of State, to Mr. West, Brit. min., June 1, 1885, For. Rel. 1885, 458.

Sovereigns do not interfere with the regular course of the administration of justice where a foreigner is a party, until he shall have gone to the court of last resort with his case.

Randolph, At. Gen., 1792, 1 Op. 25.

For the recovery of their property in Florida and for redress of injuries done them, our citizens must apply to the tribunals of that province.

Lee, At. Gen., 1797, 1 Op. 68.

The United States are not bound to make compensation to parties who have neglected to prosecute their cases in the courts having jurisdiction of their complaints.

Lincoln, At. Gen., 1803, 5 Op. (App.) 692.
See, to the same effect, Akerman, At. Gen., 1871, 13 Op. 547.

The courts of the United States in every State are at all times open to the subjects of a friendly foreign power.

Rush, At. Gen., 1816, 1 Op. 192.

The Executive will not interfere with the judiciary while it is in the regular course of giving construction to the acts of Congress by directing a *nolle prosequi* of a proceeding against British vessels for a breach of the navigation act of April 18, 1818, after the district court has condemned her to forfeiture.

Wirt, At. Gen., 1820, 1 Op. 366.

Where aliens suffer violence from citizens of the United States in their persons or property, they must appeal to the courts for redress; to the State courts if the offense be a criminal one, and to the State or Federal courts for redress by a civil action.

Butler, At. Gen., 1837, 3 Op. 254.

An American steamer was seized in the port of Granada by a party or armed men, under an order of a judicial officer of the port, and after a detention of a few hours was released, pursuant to an order of the same judge. The seizure seemed to have been made at the instance of the consignees of the vessel, as a mode of enforcing a supposed legal right. *Advised*, that, as the tribunals of Nicaragua

would presumably afford redress, this Government should not at the time interfere.

Ackerman, At. Gen., 1872, 13 Op. 554.

"Although a government is bound to protect its citizens, and see that their injuries are redressed where justice is plainly refused them by a foreign nation, yet this obligation always presupposes a resort, in the first instance, to the ordinary means of defense or reparation which are afforded by the laws of the country in which their rights are infringed, to which laws they have voluntarily subjected themselves by entering within the sphere of their operation, and by which they must consent to abide. It would be an unreasonable and oppressive burden upon the intercourse between nations that they should be compelled to investigate and determine, in the first instance, every personal offense committed by the citizens of the one against the other." (A case of a tort committed on the claimant by a mob in Cuba.)

Mr. McLane, Sec. of State, to Mr. B. J. Shain, May 28, 1834, 26 MS. Dom. Let. 263.

"In a note to Mr. Hunter of the 23d of July last, the Brazilian minister of foreign affairs positively declined entering into a diplomatic agreement in the case of the *John S. Bryan*, upon the ground that the claimants had a remedy at law, of which they had not availed themselves. This remedy is understood to be in the nature of an execution against the imperial treasury itself. By a letter to Mr. Hunter from the Department of the 4th of March last, he was instructed to endeavor in a confidential conversation with the minister to induce him to retract his decision. If, however, the minister should adhere to it, Mr. Hunter was to inform the agent of the claimants that the course indicated by the minister must, at all hazards, be pursued before further diplomatic interference on the part of this Government could be exercised."

Mr. Forsyth, Sec. of State, to Mr. Saltonstall, June 13, 1840, 31 MS. Dom. Let. 106.

That this case, however, was afterwards diplomatically settled, see Moore, International Arbitrations, V. 4613.

A citizen of the United States, residing in Canada, whose property there situate has "been destroyed and pillaged by British troops," must first seek redress from the "tribunals of the country under whose laws he had settled;" and until this remedy has been exhausted he is not entitled to the intervention of the Department of State in his behalf.

Mr. Buchanan, Sec. of State, to Mr. Larrabee, Mar. 9, 1846, 35 MS. Dom. Let. 426.

Where an agent of the land office of the province of Canada was arrested and imprisoned in Michigan by the authorities of that State, and required to give bail, in an action growing out of his seizure, as the property of the province of Canada, of timber cut on an island which was afterwards acknowledged to belong to Great Britain, the United States, referring to a claim for indemnity, said that the agent, though "doubtless injured both in his person and his feelings," could "obtain redress from the courts of justice in Michigan. If the complaints of the people of the two nations against each other along the Canada frontier, properly cognizable in the courts of justice of either, were in the first instance to become subjects of international interposition, there would be no end of the difficulties and embarassments which must result from such a practice. Besides, so far as I have learned, a resort of this kind is not necessary to obtain justice. Courts and juries on both sides of the line have heretofore, I believe, generally done their duty in such cases."

Mr. Buchanan, Sec. of State, to Mr. Pakenham, Brit. min., Dec. 26, 1846, MS. Notes to Great Britain, VII. 149.

"The natives of the foreign country seek redress for wrongs through the judicial tribunals or in the form of petitions to the executive or legislative authorities. Foreigners are bound to pursue the same course, unless there should be a positive and unequivocal treaty stipulation imparting to them privileges superior to those enjoyed by the natives of the country. It is only when the judicial tribunals are not accessible, or act corruptly, or are used as instruments to oppress our citizens, or deprive them of their rights of property, that cases are presented for the interference of this Government in their behalf."

Mr. Marcy, Sec. of State, to Mr. Clay, min. to Peru, No. 30, May 24, 1855, MS. Inst. Peru, XV. 159.

Complaint having been made that the marine court of the city of New York had exceeded its jurisdiction in assuming to try and sentence the master of a Sardinian vessel for an alleged assault and battery committed on two of his seamen on the high seas, the Department of State replied that a government could not be held responsible for the mistakes of its courts, "and certainly should not be when the party complaining has not exhausted all the means placed within his reach of correcting the errors that may have been committed. This is required of every citizen when dissatisfied with the judgments of inferior courts, and the same mode of pursuing their rights is open to and expected of the subjects of foreign governments visiting this country. Captain Bontemps should not only have objected to the jurisdiction of the marine court, but should have carried the

cause to a higher court, or if need be to the court of last resort. Having failed to do this, neither the State nor the National Government have any means of averting from him the consequences of his neglect."

Mr. Marcy, Sec. of State to Chevalier Bertinatti, Sardinian min., Dec. 1, 1856, MS. Notes to Italy, VI. 178.

The Department of State can not take cognizance of claims which are cognizable by the judicial tribunals of the United States.

Mr. Seward, Sec. of State, to Lord Lyons, Jan. 12, 1863, MS. Notes to Gr. Brit. IX. 402.

"We are unfortunately too familiar with complaints of the delay and inefficiency of the courts in the South American republics. We must, however, continue to repose confidence in their independence and integrity, or we must take the broad ground that those states are like those of oriental semi-civilized countries—outside the pale within which the law of nations, as generally accepted by Christendom, is understood to govern. The people who go to these regions and encounter great risks in the hope of great rewards, must be regarded as taking all the circumstances into consideration, and can not with reason ask their government to complain that they stand on a common footing with native subjects in respect to the alleged wants of an able, prompt, and conscientious judiciary. We can not undertake to supervise the arrangements of the whole world for litigation, because American citizens voluntarily expose themselves to be concerned in their deficiencies."

Mr. Seward, Sec. of State, to Mr. Burton, min. to Colombia, No. 137, April 27, 1866, Dip. Cor. 1866, III. 522, 523.

A claim against a foreign government, based on misconduct of its domestic officials, must be presented to the judicial department of such government when such a department is fairly organized and has jurisdiction of the case.

Mr. Fish, Sec. of State, to Mr. Ruger, Oct. 21, 1869, 82 MS. Dom. Let. 224.

See, to the same effect, the ruling of Mr. Fish in the case of the schooner *White Fawn*, seized in Canada for illegal fishing, the charge not being sustained. The Dominion statute of May 22, 1868, under which the right to seize the vessel was claimed, contemplated an action against the captor and regulated the proceedings therein. (Mr. Fish, Sec. of State, to Messrs. Geo. Friend, Jr., & Co., May 31, 1871, 89 MS. Dom. Let. 149.)

Mr. Fish's ruling in the case of the *White Fawn* was affirmed in Mr. Evarts, Sec. of State, to Mr. Somes, May 13 and June 12, 1879, 128 MS. Dom. Let. 115, 422.

A claimant must exhaust his remedy before the local tribunals, when there are such, and when he is admitted to equal privileges in them, before he can claim diplomatic intervention.

Mr. Davis, Act. Sec. of State, to Mr. Taylor, Oct. 20, 1871, 91 MS. Dom. Let. 154.

Mr. Fish, Sec. of State, to Messrs. Austin Baldwin & Co., March 28, 1872, 93 MS. Dom. Let. 290; Mr. Fish, Sec. of State, to Mr. Becker, May 3, 1871, 89 MS. Dom. Let. 250; Mr. Fish, Sec. of State, to Mr. Wreden, April 18, 1871, 89 MS. Dom. Let. 158.

"When the matter is properly within the jurisdiction of the courts of a foreign government, the Government of the United States does not interfere, except when, after a diligent prosecution of all the remedies which the law of the country affords, it turns out that there has been a denial of justice to the party invoking its aid."

Mr. Davis, Assist. Sec. of State, to Mr. Moseby, June 23, 1873, 99 MS. Dom. Let. 260.

"It appears to have been unfortunate that the time for your visit to Ireland was one when much excitement existed there, and when, the habeas corpus act having been suspended, every stranger was more or less liable to suspicion. This may in part, at least, account for your having been treated with apparently unmerited and it is believed unnecessary harshness by the authorities. For this you are entitled to at least cordial sympathy. It is understood, however, that when a person in that quarter suffers from what may be regarded as false imprisonment, he has his remedy at law against the offenders. If, therefore, application for redress in your case were to be made through the diplomatic channel, this would probably be the answer, which could not easily be gainsaid, as it would undoubtedly be the same here if the cases were reversed. Moreover, it is believed to be a general rule with all governments to abstain from a direct application for amends in a case of injury to a citizen or subject, which injury is capable of redress through the ordinary process of law, at least until reparation shall have been sought through the judicial tribunals."

Mr. Fish, Sec. of State, to John Warren, Feb. 26, 1875, 107 MS. Dom. Let. 7.

See, also, Mr. Fish, Sec. of State, to Mrs. de Jove, March 17, 1870, 83 MS. Dom. Let. 507.

Questions properly belonging to the judiciary of a country on whom a claim is made should be submitted to such judiciary, and should not be made the subject of diplomatic interference, unless it should appear that the judicial remedy was refused or perverted.

Mr. Fish, Sec. of State, to Mr. Pratt, Mar. 20, 1875, 107 MS. Dom. Let. 209.
Mr. Fish to Mr. Warren, Feb. 26, 1875, 107 MS. Dom. Let. 7.
See, to the same effect, Mr. Cass, Sec. of State, to Mr. Baxter, Oct. 24, 1857, 47 MS. Dom. Let. 441; Mr. Clayton, Sec. of State, to Mr. Poole, May 25, 1850, 38 MS. Dom. Let. 46.

A party of border thieves from the Mexican side of the Rio Grande had collected twelve small boats at a point in that river and were using them in transporting to Mexico cattle which they had stolen in Texas, when various residents of Texas from whom the cattle had been stolen collected in force and attacked the thieves. They destroyed all the boats on the Texas bank of the river except one, belonging to a Mexican named Uresti, in which the marauders made their escape to the Mexican shore. A Texan then swam the river, and seizing the boat on the Mexican side, pulled it out into the stream and scuttled it. This act, which was complained of as a violation of Mexican jurisdiction, was justified by the United States as a spontaneous effort of private citizens of Texas in defense of their property, in which no officer of the United States, either Federal or State, had any part. The United States took the ground that the complainants, if they desired redress, should seek it through the judicial tribunals against the private individuals concerned in the transaction.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, No. 574, May 19, 1884, MS. Inst. Mexico, XXI. 82.

Tunstall's case.

A claim was made against the United States by the British Government for indemnity for the killing of John H. Tunstall, a British subject, in the Territory of New Mexico, in 1878. It appeared that Tunstall, who owned a ranch, had as a partner one McSween, against whose property an attachment was issued in a local suit. Under this attachment the sheriff of Lincoln County, N. Mex., sent his deputy, named Matthews, to Tunstall's ranch to levy on certain live stock. Tunstall admitted service of the writ, and informed the deputy that he could attach the stock and leave a person in charge of it till the courts should adjudicate the question of ownership as between himself and McSween. The deputy, however, went away and gathered a posse, and returned to the ranch; but Tunstall had meanwhile collected the stock and set out for the county seat. The deputy sheriff then deputized one Morton, with eighteen men of the posse, to follow Tunstall and seize the stock. After a pursuit of some 30 miles they overtook him and opened fire. Tunstall sought to escape, but was shot down and killed. Only three persons saw the shooting, and two of these afterwards met a violent death. The third, named Evans, was not brought to justice, and his whereabouts was unknown. The members of the pursuing party were at personal enmity with Tunstall,

and it was claimed by the British Government that the sheriff of Lincoln County, acting through his deputy and the posse, was accountable for the murder committed in the execution of legal process; and that the father of Tunstall, having a pecuniary interest in the life of his son, based on the business operations carried on by him, had a right to recover indemnity from the United States, whose agent the sheriff was asserted to have been. In presenting this claim, Sir Edward Thornton, in a note of June 23, 1880, said that the father had it not in his power to recover damages from the Territory of New Mexico, by legal proceedings or otherwise; that a citizen of the United States would in a similar case probably appeal to Congress, but that this remedy was not open to an alien; and that it was consequently necessary to look to the United States for compensation. With reference to this claim Mr. Evarts said:

"The laws of the various States and Territories of the Union for the punishment of crimes committed within those several jurisdictions are administered and executed in these several independent jurisdictions by their respective local tribunals and officers free from any control or interference of the Federal Government. My colleague, the Attorney-General, as I have already done myself the honor to inform you, has spared no reasonable effort of his own or the officers under his control to secure the apprehension and trial of Evans, who is alleged and believed to be the perpetrator of the murder, and, should the efforts still being made for his arrest yet prove successful, I can give you the assurance with confidence that no pains will be spared by this Government to bring him to justice. Were an American citizen so unfortunate as to meet his death under similar circumstances in one of Her Majesty's colonies this Government would not conceive for a moment that such facts would constitute a just foundation for a claim against the Government of Great Britain for compensation to the kindred or legal representatives of such citizen. Sympathizing, as I do most fully, with the father of the deceased in his bereavement, I would be happy to be able to see a way in which this Government might, in consideration of his affliction and loss, make him some suitable compensation in the nature of a pecuniary gratuity; but upon this point also I regret to be obliged to inform you that there is no fund under the control of the Executive Government from which such a gratuity could, in accordance with the law or proper authority, be paid."

Mr. Evarts, Sec. of State, to Sir E. Thornton, British min., March 7, 1881, MS. Notes to Great Britain, XVIII. 461.

January 30, 1882, Mr. Frelinghuysen, as Secretary of State, suggested that the claim be referred, under authorization of Congress, to the Court of Claims or other judicial tribunal. This suggestion

the British Government declined, unless the proposed adjudication should be based on a prior admission of the liability of the United States.

Here the discussion rested till April 28, 1885, when the British minister at Washington requested a reexamination of the case. To this request a full response was made by Mr. Bayard on the 1st of the following June. In this reply Mr. Bayard took the following grounds:

1. That the allegation of personal malice against Tunstall, on the part of his slayers, gave no support to the claim against the United States, since the personal motive which might "prompt an agent to do an unlawful act not within the scope of his agency, and entirely collateral to it," could in no wise affect the responsibility of the principal for the agent's acts, unless it could be shown "that the principal shared in the criminal motive and constituted his agent to the end of its accomplishment," an allegation which it was not imagined could be made against the Territorial Government of New Mexico or the Government of the United States. "Killing, in personal malice, by an officer, of a defendant in a civil process in such officer's hands, such killing being subsequent to the execution of the writ, is as collateral to the official action of the officer as would be the commission of arson against the dwelling, or rape of a member of the family, of the party [defendant] by such an officer after the civil process has been served."

2. That it had more than once been held by the courts in the United States that the Federal Government was not liable for the debts or torts of officers of a territory organized under congressional legislation. In this relation Mr. Bayard referred to the decision of the mixed commission under the claims convention of February 8, 1853, that the Government of the United States was not liable for the payment of bonds issued by the Territorial Government of Florida. The contention of the British Government in the present case would, said Mr. Bayard, make that Government liable, not only for colonial debts, but also for the misconduct of local officials in Canada, India, Australia, South Africa, and Egypt. Mr. Bayard added, however, that he did not wish to rest his resistance to the claim exclusively on this position.

3. That, "in countries subject to the English common law, where there is the opportunity given of a prompt trial by a jury of the vicinage, damages inflicted on foreigners on the soil of such countries must be redressed through the instrumentality of courts of justice, and are not the subject of diplomatic intervention by the sovereign of the injured party." This position, said Mr. Bayard, found many illustrations in the diplomatic relations of Great Britain and the

United States. When an injury " was inflicted upon the high seas, or in foreign uncivilized lands, and especially if inflicted by the armed military or naval power directly emanating from the sovereign executive, then it was properly regarded as the subject of diplomatic intervention;" but a careful search of the records of the Department of State disclosed " no diplomatic appeal for pecuniary compensation for injuries claimed to have been inflicted on American citizens when on the soil of Great Britain." In this relation Mr. Bayard, after citing and discussing the case of the arrest of Henry George, in Ireland, in which no pecuniary redress was demanded, stated that the reason why, in countries subject to the English common law, the question of compensation to foreigners was left to the courts of justice, was (1) that the injured party had " the advantage by that law, of a prompt trial by an impartial jury drawn from the vicinage, under the supervision of judges whose integrity, whether it be in England or in the United States, has, viewing them as a body, never been impeached, and who are subject to established and impartial rules," and (2) that, " by the English common law, foreigners, when appealing to courts of justice, have equal rights with subjects." In this relation Mr. Bayard referred to the position maintained by Mr. Evarts and Mr. Blaine, in notes of Dec. 30, 1880, and March 25, 1881, as to injuries inflicted by a mob on Chinese in Colorado in November, 1880 (For. Rel. 1881, 319, 335); to the note of Mr. Webster to the Spanish minister of Nov. 13, 1851, in the case of the New Orleans riot; to the opinion of Attorney-General Butler, of July 5, 1837, 3 Op., 253; to the anti-Catholic riots in England, of 1780; to the case of General Haynau, when mobbed in London, in 1850 (42 British & Foreign State Papers, 389); and to the case of the Pittsburgh riot, of 1878. Mr. Bayard also cited 2 Phillimore, Int. Law, 4, to the effect that " the State must be satisfied that its citizen has exhausted the means of legal redress offered by the tribunals of the country in which he has been injured. If these tribunals are unable or unwilling to entertain and adjudicate upon his grievance the ground for interference is fairly laid. But it behooves the interfering State to take the utmost care, first, that the commission of the wrong be clearly established; secondly, that the denial of the local tribunals to decide the question at issue be no less clearly established." Also, the statement of Chief Justice Waite, in New Hampshire *v.* Louisiana, 108 U. S., 90, as follows: " There is no principle of international law which makes it the duty of one nation to assume the collection of the claims of its citizens against another nation, if the citizens themselves have ample means of redress without the intervention of their Government. Indeed, Sir Robert Phillimore says, in his Commentaries on International Law, vol. 2 (2d ed.), p. 12: 'As a general rule, the proposi-

tion of Martens seems to be correct, that the foreigner can only claim to be put on the same footing as the native creditor of the State.'"

4. That great practical inconvenience would result from the payment of the claim, by the confusion of the boundaries between judicial and executive action, and by opening the door to the bringing of a vast mass of claims by each Government against the other. In this relation it was observed that Tunstall, by reason of his apparent "domicil" in New Mexico, "was not even, so far as concerns the administration of the judicial function there, a foreigner."

Mr. Bayard, Sec. of State, to Mr. West, British min., June 1, 1885, For. Rel. 1885, 450.

For the Florida bond cases, cited above, see Moore, Int. Arbitrations, IV. 3594.

The decision in Tunstall's case was followed by Mr. Bayard in the case of Lunx Way, a British subject, who claimed damages for his expulsion by popular violence from Washington Territory. (Mr. Bayard, Sec. of State, to Mr. West, Brit. min., April 10, 1886, MS. Notes to Gr. Br. XX. 226.)

See, also, Mr. Bayard, Sec. of State, to Mr. Gebhard, Sept. 9, 1885, 157 MS. Dom. Let. 88; Mr. Bayard, Sec. of State, to Mr. Langston, Jan. 15, 1886, 158 MS. Dom. Let. 455.

Where the courts of a country are open alike to citizens and to foreigners a foreigner who complains of an assault by a customs official should pursue his remedy by a suit at law against his assailant.

Mr. Bayard, Sec. of State, to Mr. Morgan, min. to Mexico, March 23, 1885, MS. Inst. Mexico, XXI. 259.

See, also, Mr. Olney, Sec. of State, to Mr. Kotzebue, May 23, 1896, MS. Notes to Russia, VIII. 127.

Case of the "Rebecca."

"The *Rebecca*, an American schooner, cleared at Morgan City, La., on the 30th January, 1884, with a cargo of lumber for Tampico, Mexico, and having also on board six cases of merchandise to be left on the way at Brazos Santiago, Tex., and which were not on the manifest of the cargo for Tampico. While on her voyage, and off the bar at Brazos, a storm arose, which increased in violence until the vessel, which was then awaiting a favorable opportunity to enter the port of Brazos, was driven a considerable distance to the southward and so seriously damaged by the storm that the captain, deeming it unsafe to attempt to return to Brazos Santiago, made for the port of Tampico, which he entered, with his vessel in a leaking and seriously disabled condition.

"When the *Rebecca* began to leak at sea the 6 cases of merchandise intended to be landed at Brazos Santiago, and which had been reached by the water, were broken open and the packages, 30 in number, contained in the cases, were so stored as to be protected from damage by the sea. On the arrival of the vessel at Tampico, the master imme-

diately noted a protest of distress with the United States consul. On the following day the Mexican customs officials seized the 30 packages in question, which were not on the manifest of cargo for Tampico, on the ground that they had been brought into port in violation of the Mexican law requiring all goods entered in a Mexican port from a foreign country to be manifested, and arrested the master of the vessel on the charge of attempting to smuggle. This charge was not sustained, and the master was released; but he was subsequently arrested and required to give bond to answer the charge of bringing goods into a Mexican port without proper papers. In due time this charge was heard before the district court for the south and center of Tamaulipas, sitting at Tampico, and it was adjudged by the court that the goods should pay triple duty. The master refused to comply with this sentence, and thereupon the goods and vessel were sold by order of the court.

"This Department has taken the ground that as the *Rebecca* was driven by stress of weather from her intended course and entered the port of Tampico in distress, making no attempt to conceal the unmanifested merchandise, and without any intention on the part of the master or owners to violate the port regulations or tariff laws of Mexico, the vessel was not liable to penal prosecution either for 'smuggling' or for 'bringing goods into port without proper papers;' and that the seizure and sale of the vessel, under the circumstances above stated, was a gross breach of comity and hospitality peculiarly unreasonable and unjust.

"The Mexican Government, while denying that the entrance of the *Rebecca* into Tampico was enforced by stress of weather, has taken the position that the judgment of its courts, ordering the sale of the vessel, is final and conclusive, especially as the master and owners failed to take an appeal from the judgment so rendered to another court, as it is contended might have been done.

"This Department has contested and denied the doctrine that a government may set up the judgment of one of its own courts as a bar to an international claim, when such judgment is shown to have been unjust or in violation of the principles of international law; and has further maintained that, under the circumstances of the case and in view of the fact that the prior proceedings had been so palpably arbitrary and unjust, the master and owner were not bound to attempt further judicial remedies in the local tribunals.

"The correspondence in the case of the *Rebecca* is still open and proceeding, and it is not believed that its publication at present would be compatible with the public interest."

Report of Mr. Bayard, Sec. of State, to the President, Feb. 26, 1887, S. Ex. Doc. 109, 49 Cong. 2 sess.

The case of the *Rebecca* was first brought to the attention of the Mexican Government under an instruction of Mr. Frelinghuysen to the American minister at Mexico of April 7, 1884, in which Mr. Frelinghuysen declared that the treatment of the vessel was contrary to the spirit of comity which usually governed the treatment of vessels in distress. The Mexican Government, in reply, raised a question as to the inability of the vessel to enter Brazos Santiago, Texas, and besides alleged that there was nothing in her regular papers to show that she carried cargo for that place. The United States, however, pointed out that the papers of the vessel were regular, and that it was not necessary for the goods which were to be left at Brazos Santiago to be entered on the Mexican manifest. But the Mexican Government strongly insisted upon the principle that justice could not be said to be denied till the claimants had used the remedies which the laws of the country allowed. This position was amplified by Mr. Mariscal, in a note of April 2, 1886, in which he said: "A foreigner is obliged, in the country to which voluntarily or on account of business he has gone, to follow his controversies before the judicial or administrative officials, and to observe the forms required there even before the highest authority allowed by law. Otherwise the government of the country where the controversy takes place can not be made responsible for the result." Mr. Bayard, on April 27, 1886, said that, while he did not contest this general principle, he must offer the qualification that the claimant's government must determine for itself whether a denial of justice was sufficiently flagrant to justify a suspension of intercourse or reprisals, and that, while he did not consider that this could be predicated of the action of the Mexican tribunals in the *Rebecca* case, yet it was a source of regret and disappointment that the Mexican Government did not recognize that its course in the matter had been harsh and oppressive and hasten to make prompt and satisfactory amends.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, No. 536, April 7, 1884, II. Ex. Doc. 328, 51 Cong. 1 sess.; Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, No. 102, Dec. 5, 1885, id. 33; Mr. Mariscal, Mexican min. of for. aff., to Mr. Morgan, min. to Mexico, April 2, 1886, id. 41; Mr. Bayard to Mr. Morgan, No. 167, April 27, 1886, id. 47.

Mr. Mariscal cited the case of Jennings, Laughland & Co. *v.* Mexico, decided by the claims commission under the treaty between the United States and Mexico of July 4, 1868, for which see Moore, Int. Arbitrations, III, 3135.

Case of the "Bridgewater."

In 1887 the American ship *Bridgewater*, having sprung a leak, entered the port of Shelburne, Nova Scotia, for repairs. After a survey, she was sold and was bought in by the original owner, who proceeded to repair her. The repairs were nearly completed, when, on July 27, 1887, the

collector of customs seized her on a claim of duty, which the owner declined to pay. The collector detained the ship till Oct. 15, 1887, a period of 81 days, when she was unconditionally released. The case was brought to the attention of the Department of State, which at first declined to interfere, on the ground that the owner should seek redress in the colonial courts. Subsequently, however, on being advised that the owner had not only failed to secure the recognition of his claim for damages by the Government at Ottawa, but that he had also been informed by the minister of customs, on the strength of an opinion of the minister of justice, that he had no redress in the courts against any officer of the Crown, the Department presented the claim to the British Government. It subsequently appeared that, before the Department's intervention, the owner had begun a suit against the collector in the supreme court of Nova Scotia, which suit was still pending, though it was subject to dismissal for want of prosecution and for failure to give security for costs, and that, immediately after the issuance of the adverse opinion of the minister of justice, the owner was informed that it had been withdrawn as having been based solely on an erroneous statement of the date of beginning his suit and not upon the merits of the case. The Department then declined further to interfere till it should appear that the owner had used his judicial remedies and that justice had been denied.

Message of the President to the Senate, Feb. 8, 1889, S. Ex. Doc. 103, 50 Cong. 2 sess.; For. Rel. 1888, I. 467, 811; For. Rel. 1889, 424–427, 453, 467; Mr. Blaine, Sec. of State, to Mr. Hoar, U. S. S., Oct. 11, 1889, 174 MS. Dom. Let. 647.

"It is a well-settled principle that where a citizen of one state deems himself wronged by the action of the courts of another state, he can not call upon his own government for diplomatic intervention until he has exhausted all means of redress, by appeal or otherwise, in the courts of the state complained of, and then he can only invoke the aid of his government in case of a manifest denial or failure of justice. Where the appeal results in the reversal of the judgment by which the wrong is deemed to have been done, this reversal is usually the only rectification of the wrong that can be expected of the foreign government."

Mr. Gresham, Sec. of State, to Mr. Osborn, May 17, 1893, 192 MS. Dom. Let. 37, in relation to the loss of the whaleship *Mary Frazier*.

The position "that claims of aliens cognizable by the courts of a foreign country can not be made the subject of diplomatic intervention unless there has been a palpable failure of justice after all local judicial remedies have been exhausted, is one upon which this Government has often insisted and of which it has often availed itself."

Mr. Olney, Sec. of State, to the President, Feb. 5, 1896, For. Rel. 1895, I. 251, 259; H. Doc. 225, 54 Cong. 1 sess.

See, to the same effect, Mr. Uhl, Acting Sec. of State, to the Seeger & Guernsey Co., April 26, 1895, 201 MS. Dom. Let. 665.

The fact that a person who claims to have been wrongfully arrested in England is without pecuniary means civilly to prosecute the persons concerned in the affair is no reason for preferring a diplomatic claim against the British Government.

Mr. Olney, Sec. of State, to Mr. Dossaw, Nov. 19, 1896, 214 MS. Dom. Let. 66.

Oberlander and Messenger case.

In the cases of Charles Oberlander and Barbara M. Messenger, in which diplomatic claims were brought against the Government of Mexico for unlawful arrest and other ill usage of the claimants by Mexican police officers in the United States as well as in Mexico, it was held that, as the claimants had failed to avail themselves of the criminal and civil actions which they had a right to bring against the alleged wrongdoers before the Mexican courts, they were not entitled to redress through the diplomatic channel. The principal authority cited for this view was the message of President Cleveland to Congress May 6, 1886, in the case of the killing and maltreatment of the Chinese at Rock Springs, in Wyoming Territory.

Award of Señor Don Vicente G. Quesada, Argentine min. at Madrid, Nov. 19, 1897, protocol between the United States and Mexico, March 2, 1897, For. Rel. 1897, 382, 387, 388.

Waller's case.

"In the case of John L. Waller against the Republic of France, Waller claimed, first, that he had been illegally tried and condemned to imprisonment by a French court in Madagascar; second, that he was ill treated and injured by the French Government on his deportation from Madagascar to France.

"Minister Eustis reported to Secretary Olney that in the opinion of M. Clunet, an eminent French lawyer, Mr. Waller had the same rights and remedies as a Frenchman, including the right to sue the French Government, as well as individuals, for damages.

"Mr. Olney decided that, 'even if the complaint should prove to be well founded, this Government could not entertain any claim of damages for Waller preferred by the United States, because the French tribunals were open to him and he could pursue his remedies there either against the Government or private individuals in the same manner and with the same effect as could any French citizen under the like circumstances. This position of the French Government, that claims of aliens cognizable by the courts of a foreign country can not be made the subject of diplomatic intervention unless

there has been a palpable failure of justice after all local judicial remedies have been exhausted, is one upon which this Government has often insisted and of which it has often availed itself. Its applicability to the case of Waller was confirmed by the opinion of the eminent French lawyer already referred to, by whom it was pointed out that in respect to remedies in the French tribunals, an alien was in all respects on the same footing as a Frenchman, except that the alien must furnish security for costs.' "

Mr. Day, Act. Sec. of State, to Messrs. Lauterbach, Dittenhoefer & Limburger, April 6, 1898, 227 MS. Dom. Let. 228.

See, to the same effect, as to the resort to judicial remedies, Mr. Bayard, Sec. of State, to Mr. Cox, min. to Turkey, No. 90, Feb. 27, 1886, MS. Inst. Turkey, IV. 390; Mr. Sherman, Sec. of State, to Mr. Smythe, min. to Hayti, No. 192, March 18, 1897, MS. Inst. Hayti, III. 528; Mr. Adee, Second Assist. Sec. of State, to Mr. Rooney, Feb. 1, 1898, 225 MS. Dom. Let. 121; Mr. Day, Assist. Sec. of State, to Messrs. Sutphen and Lefferts (case of Miguel de Magalliães), April 5, 1898, 227 MS. Dom. Let. 201; Mr. Hay, Sec. of State, to Mr. Cowherd, M. C., Dec. 28, 1900, 250 MS. Dom. Let. 4; Mr. Hay, Sec. of State, to Messrs. Austin & Austin (case of John Paul Prescott), Dec. 28, 1900, 250 MS. Dom. Let. 1.

For a full statement of Waller's case, see supra, § 196.

With reference to a claim preferred by an individual for a number of assaults and arrests to which he alleged that he was subjected by public officials and private individuals in Honolulu, during 1897, the Department of State said: "The Department can not take cognizance of claims of this description where it is not shown that the claimant has appealed to the local tribunals and exhausted all the ordinary remedies for redress afforded by them."

Mr. Hay, Sec. of State, to Mr. Lombard, Oct. 3, 1898, 232 MS. Dom. Let. 56.

A citizen of the United States who, while walking in the streets of Santo Domingo at night, fell into an excavation and broke an arm, desired to bring a claim against the Dominican Government for damages for $5,000. The Department of State held that the facts did not constitute a basis for a diplomatic claim, the remedy of the claimant being by suit in the Dominican courts against the municipality.

Mr. Hill, Assist. Sec. of State, to Mr. Shear, June 9, 1900, 245 MS. Dom. Let. 489.

"While your despatches would seem to indicate a disposition on the part of the Venezuelan Government to lend support by merely executive action to the parties claiming the asphalt mine in opposition to the New York and Bermudez Company, and while in reliance upon the facts as reported in your despatches, that the New York and Bermudez Company has been in possession of the property under

a claim of title during the last twelve years, and that their dispossession was contemplated by arbitrary executive action, the Government of the United States has protested against such arbitrary determination of the rights of the parties, it has never been its purpose to interfere for the purpose of preventing the parties from resort to the local courts for the judicial determination of their rights. On the contrary, the attitude of the Department has been and is that inasmuch as the controversy involved the title to land, including a disputed boundary question, the courts are the only proper forum for the decision of the questions involved. The Government of the United States can not attempt to decide those essentially juridical questions by an executive decision, and it would regret to witness any such attempted determination of the questions by the executive of Venezuela. . . . It was strongly represented to this Government that the New York and Bermudez Company has been in possession of the property in controversy under claim of title during the past twelve years; that it has expended large sums of money in constructing a plant, refineries, docks, warehouses, a railroad, etc.; and that it was threatened with forcible dispossession by mere executive action and without judicial determination of the rights of the parties. If the facts were as represented, the Government of the United States felt and still holds that the company in possession was entitled to protection against such arbitrary action. But the Department is happy to be assured . . . that no such action is contemplated, and to know that both Governments agree in the opinion that the questions in issue between the adverse parties are for the determination of the local courts in the first instance."

Mr. Hay, Sec. of State, to Mr. Loomis, min. to Venezuela, No. 387, Jan. 28, 1901, MS. Inst. Venezuela, V. 45.

See, also, Mr. Hill, Act. Sec. of State, to Mr. Loomis, No. 390, Feb. 8, 1901, MS. Inst. Venezuela, V. 50.

Ferrara's case.

"I have the honor to acknowledge the receipt of your note of the 16th instant presenting for the consideration of this Government the complaint of the Italian subject, Mrs. Fenice Ferrara, that she has been denied justice in the district court of Pueblo, Colo.

"In reply, I have the honor to say that it appears from the transcript of the record of judicial proceedings transmitted by you that Pietro Ferrara, an Italian subject, an employee of the Auric Mining Company, a corporation of the State of Colorado, while working in a mine belonging to said company near Henson, Colo., on June 26, 1897, was injured by the falling of a large rock from the roof of the mine, and died shortly thereafter. The widow of the deceased brought an action against the mining company in the district court of the county

of Hinsdale, to recover damages for the death of her husband, on the ground that the same was due to the negligence of the company. She claimed damages in the sum of $5,000. By agreement of the parties a change of venue was had to the district court of the county of Pueblo. In the course of the proceedings a motion was made by the defendant that the case be dismissed on the ground that the plaintiff was a nonresident alien and not entitled to prosecute the action in any of the courts of Colorado. The court granted this motion and rendered judgment dismissing the case on May 6 last. The plaintiff, through her attorney, excepted and gave notice of an appeal to the court of appeals (supreme court) of Colorado. The appeal was granted upon condition that the plaintiff files an appeal bond. It appears that the plaintiff did not perfect the appeal, however, but instead, on May 11, filed a motion for a new trial in the same court, one of the grounds of such motion being that the judgment was in violation of the treaty of 1871 between the United States and Italy, the pertinent portions of which are as follows:

" 'ARTICLE III. The citizens of each of the high contracting parties shall receive, in the States and Territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives on their submitting themselves to the conditions imposed upon the natives. . . .

" 'ARTICLE XXIII. The citizens of either party shall have free access to the courts of justice in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives; they shall, therefore, be free to employ, in defense of their rights, such advocates, solicitors, notaries, agents, and factors, as they may judge proper in all their trials at law; and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals in all cases which may concern them; and likewise at the taking of all examinations and evidences which may be exhibited in the said trials.'

" On June 29 last the court denied the plaintiff's motion for a new trial.

" The plaintiff, through her attorneys, appeals to the Italian Government to make demand upon the Government of the United States for the sum of $5,000, ' for which ' they allege, ' she was deprived the right of litigation in violation of the said treaty between the two countries, and such other or further sum as may be just and equitable for the affront and indignity which she received by being thus discriminated against.'

" You submit the matter to this Department for such measures as the Federal Government may see fit to take.

"In the opinion of the Department the case, in its present stage, is not one for diplomatic intervention, for the reason that the plaintiff has not exhausted her judicial remedy. It frequently happens that litigants are denied rights by the decisions of inferior courts and are obliged, in order to establish such rights, to carry the case to the courts of last resort.

"The plaintiff in the present case should pursue the judicial remedy afforded by our laws, perfecting her appeal to the court of appeals (the supreme court) of Colorado, and, if necessary thereafter, by appropriate proceedings, bring the case before the Supreme Court of the United States.

"Furthermore, under the laws of the United States, the circuit courts of the United States have original jurisdiction of civil suits like the present one to which an alien is a party. It is suggested for the consideration of the attorneys of the plaintiff whether an original suit should not be brought in the circuit court of the United States for the district of Colorado.

"Until the remedy of recourse to the civil tribunals has been exhausted by the plaintiff and justice is finally denied her, there appears to be no ground for the presentation of a diplomatic claim."

Mr. Hay, Sec. of State, to Signor Carignani, Italian chargé, Aug. 24, 1901, For. Rel. 1901, 308.

"I have the honor to acknowledge the receipt of your note of the 3d instant, with inclosed letter from M. J. Galligan, attorney for Mrs. Fenice Ferrara, relative to her complaint that she had been denied justice in the district court of Pueblo, Colo.

"The Department has given careful consideration both to your note and its inclosure, but without being led thereby to alter the conclusion expressed in its note of August 24 that Mrs. Ferrara had not exhausted her judicial remedies and hence that there was no ground for the presentation of a diplomatic claim in her behalf.

"Mr. Galligan states that when Mrs. Ferrara was denied the right to prosecute her action in the district court of the State her judicial remedy was practically exhausted; and he asserts, also, that she was, by her poverty, practically prevented from taking further proceedings.

"The Department's note of August 24 points out the particulars in which the plaintiff failed to avail herself of the judicial remedy afforded her when the district court denied the motion for a new trial.

"The poverty of the plaintiff, which, it is alleged, prevented her from taking the necessary legal proceedings to establish her rights, affords no basis for a claim of a denial of justice.

"It is a rule practiced not only by many American courts, but also by those of other civilized states, that the plaintiff shall, as a condition

to the prosecution of his case, give a bond to secure the costs (caution judicatum solvi) he may thereby occasion. Such requirement can not be treated as a denial of free access to the courts, nor as a denial of justice giving ground for diplomatic intervention. Nor in any case could this Government be expected to perform the function of parens patriæ by providing even a meritorious foreign claimant with pecuniary aid which his own government might decline to afford. Much less could the United States be expected to pay outright this claim, considering that the Government was not in the remotest degree connected with the transaction out of which the claim arose, and that justice has not been judicially denied.

"'The stranger, in all countries, is subject to the local law, as respects either the prosecution or defense of his case. In both aspects, he stands upon the same footing as the natives, save la caution judicatum solvi, very frequently imposed upon the alien plaintiff.' (2 Calvo, Int. Law, sec. 865.)

"'Though the plaintiff foreigner be thus allowed to bring his suit, he is, by the laws of the States, compelled to give bail (fournir caution) for costs and damages.' (4 Phillimore, Int. Law, p. 643.)

"While the Department has before enunciated its views in this case, it has been at pains to set forth fully in this note the grounds of its decision, which is so fully sustained by reason and authority, that it should be considered as final."

Mr. Adee, Acting Sec. of State, to Signor Carignani, Italian chargé, Oct. 10, 1901, For. Rel. 1901, 310.

Case of a boycott.

By a note of July 6, 1901, the Chinese minister at Washington presented the claims of several hundred Chinese subjects, resident at Butte, State of Montana, for $500,000 damages for injuries suffered since 1886 by reason of a boycott against them by various labor organizations of that city. It appeared that the Federal courts, on being applied to, had issued a decree enjoining the defendants from the commission of the acts complained of; but it was alleged that the conspirators were still seeking to execute their design by clandestine means, that the persons who inflicted the damages were insolvent, and that no remedy could be obtained by proceedings against the city or county authorities.

"Neither of these allegations," said the Department of State, "seems to the Department to warrant the exercise of diplomatic intervention.

"The damages suffered could have been averted by a prompt appeal to the court; and the facts that the complainants have suffered damages through their laches in making the appeal does not justify a departure for the ordinary rule that diplomatic intervention is improper in any case where ample judicial remedies exist. If the complainants

had promptly availed themselves of their remedial rights, the injuries complained of could have been prevented. Their failure and neglect to do so does not make the United States culpable and responsible for the damages resulting.

"The statement that the conspirators are still seeking to execute their conspiracy by clandestine means is one which, to justify action, should be sustained by proofs, on the submission of which to the court it is not doubted that the penalties for disobeying the injunction will be applied.

"The statement that no remedy could be found against the unlawful action of the city or county authorities in aid of the conspirators, the Department is unable to accept as correct in point of law.

"The Department is glad to be able to assure you that while the action of the Federal court is sufficient proof that the rights of the subjects of the Empire of China domiciled in the city of Butte will be protected and enforced by the judiciary, it may yet add that the Executive will not fail, should the case arise justifying its interposition, to use all its power to secure to them all the rights, privileges, immunities, and exemptions guaranteed by the United States Constitution and by treaty between the Governments of the United States and China."

Mr. Hay, Sec. of State, to Mr. Wu, Chinese min., Dec. 4, 1901, For. Rel. 1901, 127. See, for another case of boycott, infra, § 1019.

By section 1068 of the Revised Statutes (being part of the statute organizing the Court of Claims) "aliens, who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction." Under the act of 27th July, 1868, from which this section is taken, there being proof of provision in Turkey for the prosecution of suits against the Government by citizens of the United States, the remedy of a Turkish subject for injuries alleged to have been inflicted on him by Government officials in Texas is in the Court of Claims.

Mr. Fish, Sec. of State, to Baltazzi Effendi, Feb. 8, 1871, MS. Notes to Turkey, I. 55.

British subjects may sue in the Court of Claims of the United States. This is a privilege granted only to the citizens or subjects of such foreign Governments as submit to suits by citizens of the United States. The British Government accords this privilege to citizens of the United States by a petition of right. (United States, *v.* O'Keefe, 11 Wall., 178; Carlisle *v.* United States, 16 id. 147.)

For a citation of the United States *v.* O'Keefe, supra, see Mr. Bayard, Sec. of State, to Mr. Muruaga, Span. min., Dec. 3, 1886, For. Rel. 1877, 1015, 1022.

In the Russian empire foreigners enjoy the same rights at law, whether as plaintiffs or defendants, as Russian subjects; and as Russian subjects have the right to bring suits against their Government, personally or through an attorney, it follows that foreigners have the same privilege. The foreigner, however, is required to make a deposit as a guarantee for the payment of costs, and, in the absence of such a deposit, judgment may be taken by default.

Mr. Smith, min. to Russia, to Mr. Blaine, No. 71, Jan. 19, 1891, MS. Desp. from Russia, transmitting the opinion of Mr. S. V. Lewies, an attorney of St. Petersburg, with citations of the Russian law.

3. Local Remedies need not be Exhausted.

(1) where justice is wanting.

§ 988.

"It may be said that the claimants, according to the ordinary practice of the British courts, had a right of appeal to the lords of appeal, and that as they did not avail themselves of that right they must be presumed to have acquiesced in the decision of the admiralty court." . . . [To this] "it may be answered that the claimants had incurred great expense in the prosecution of their rights before the admiralty court and had not the means for carrying the case further in the form in which it was there presented."

Mr. Webster, Sec. of State, to Mr. Lawrence, Jan. 13, 1851, MS. Inst. Gr. Brit. XVI. 106.

Nor does this limitation apply when the point in issue has already been decided by the appellate court adversely to the claimant. (Ibid.)

The treaties between the United States and Mexico stipulate "for the protection of the property and persons of the citizens of the two countries. This, however, is to be done through the courts of law. A stipulation of this character is notoriously inoperative in quarters remote from the seat of government, where the latter is virtually without authority. Any pecuniary compensation which you may claim from the Mexican Government for injuries by persons in the service of that Government may be presented to a future commission, which, sooner or later, must be organized for the consideration of such cases."

Mr. Fish, Sec. of State, to Mr. Halpin, March 13, 1873, 98 MS. Dom. Let. 122.

A claimant in a foreign state is not required to exhaust justice in such state when there is no justice to exhaust.

Mr. Fish, Sec. of State, to Mr. Pile, min. to Venezuela, May 29, 1873, MS. Inst. Venez. II. 228.

See Mr. F. W. Seward, Act. Sec. of State, to Mr. Gibbs, min. to Peru, No. 133, Feb. 10, 1879, MS. Inst. Peru, XVI. 381.

The stipulation of Article XIV. of the treaty between the United States and Mexico of 1831 for the protection of the persons and property of the citizens of the one country within the jurisdiction of the other, is "unreserved, except that, as may be supposed, redress is to be sought through the courts. This may be sufficient in time of peace, but when the courts themselves are closed by arms, and, even when peace may be restored, the authors of the injuries are notoriously incapable of making amends, even if sought through the judicial channel, the Government itself must be held to be directly accountable."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 21, Aug. 15, 1873, MS. Inst. Mexico, XIX. 18.

The foregoing instruction related to the case of Messrs. Ulrich and Langstroth, who made a claim against the Mexican Government for losses inflicted and forced loans imposed by insurgents at Monterey. In a subsequent instruction in the same case Mr. Fish said: "It can not be acknowledged, as Mr. Lafragua maintains, that diplomatic interference in such cases necessarily annihilates or trenches upon the peculiar functions of the judiciary of a country. In cases of a denial of justice the right of intervention through the diplomatic channel is allowed, and justice may as much be denied when, as in this case, it would be absurd to attempt to seek it by judicial process, as if it were denied after having been so sought."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 54, Dec. 16, 1873, MS. Inst. Mexico, XIX. 48. For the full text of this instruction, see infra, § 1046.

"Mr. Lafragua . . . seems to be confident that, as the victims of the forced loans have made no application to the judicial authorities for relief, as is required by the treaty, the Government here is not warranted in asking compensation for them. It is not denied that, if the loan had been a voluntary one, the lenders should not have expected diplomatic interposition in their behalf, at least until they had exhausted all means of obtaining redress through the courts. When, however, money is wrested by threats or violence from a confiding foreigner by an insurgent chieftain, the victim cannot be expected to look for redress to the ordinary tribunals. It never could have been the intention of the treaty that, in such a case, he must seek reparation by such means. If so, justice and indemnity to the injured would so certainly be denied, that a recourse to diplomatic intervention, which according to public law would then be regular, might as well be adopted at once. No party would have any substantial interest put in jeopardy by such a step."

Mr. Cadwalader, Act. Sec. of State, to Mr. Foster, min. to Mexico, No. 141, Sept. 22, 1874, MS. Inst. Mexico, XIX. 121.

In respect of the sinking of the American schooner *Daylight* near Tampico, Mexico, by the Mexican gunboat *Independencia*, in 1882, the Mexican Government took the ground that a diplomatic claim would not lie because the owners of the vessel had not submitted the case to the Department of War and Marine, and, if need be, referred it to the courts. The United States repelled this contention, saying: "The owners of the *Daylight* were never residents of Mexico, either permanent or temporary. They are not known to have ever been in that country. The master of the vessel was not a resident of Mexico, either permanent or temporary, and was never in the country beyond the port at which his vessel might touch. At the time of the occurrence which gave rise to the claim the vessel could scarcely be said, with strict propriety, to have been in Mexican waters. She was anchored outside the bar, near the harbor of Tampico, in an exceptionally rough sea, at the close of a severe storm, which rendered it unsafe for her to attempt to cross the bar or enter the harbor. To insist that those claimants shall go from Maine to Tampico to seek redress in the Mexican tribunals for a grievous wrong suffered at the hand of a high officer of the navy of that Republic . . . would, in the estimation of this Government, be a practical denial of justice." The Mexican Government adhered to its position.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, No. 570, May 17, 1884, For. Rel. 1884, 358.

See, also, For. Rel. 1884, 340, 343, 345, 362, 370.

A claim was made by the United States against the Government of Mexico for the detention of the American schooner *E. D. Sidbury*, at Tampico, in 1883. It appeared that the vessel when ready to sail was seized, and after a trial of forty days before the judicial authorities was ordered to be released, the court declaring that even if all the facts alleged were true they afforded no ground whatever for the seizure and detention of the vessel. The collector of customs refused to obey the order of restoration, as well as a second order to the same effect, and it was necessary to obtain a third order from the court, containing an intimation that if it were not complied with force would be used, before the vessel was released. The Mexican Government took the ground that any claim for damages in the case should be prosecuted through the local tribunals and not through diplomatic channels. The United States, however, endeavored to press the claim diplomatically.

Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, May 19, 1884, No. 574, MS. Inst. Mexico, XXI. 82.

To the effect that the oppression of a citizen of the United States by a Mexican custom officer is a subject for diplomatic intervention, and that such citizen is not restricted to a judicial remedy, see, also, Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, No. 25, July 20, 1885, MS. Inst. Mexico, XXI. 337.

"The position that a sovereign is internationally liable for rulings of his courts, in violation of international law, was taken by us early in the wars growing out of the French Revolution, and was finally acceded to by the British Government against whom it was advanced. It was also accepted by us, as respondents, after the late civil war, when, the relations of the parties being reversed, we agreed that we could not set up as a bar to a British claim for damages for illegal seizure, a decision of our courts that the seizure was legal. It is impossible for us to yield to Mexico a principle that we successfully maintained against Great Britain when she was belligerent and which we yielded to her when she was neutral.

"The question, then, in the present case, is whether the ruling of the Mexican court sustaining the seizure in question was right by international law. And I have no hesitation in instructing you that the seizure was wrong by that law, since it was virtually an execution issued in a suit in which not only was a hearing refused to the defendant, but in which an offer on his part to produce testimony which would have exculpated him was followed by an order of court directing his arrest. Such action was in itself a gross violation of those rules of justice which, in order to give judgments international validity, require that the parties should have full opportunity to be heard. If so, such judicial action is no more a defense to the Government of Mexico than would be an order for the same seizure if issued wrongfully by the executive department of that Government. As a foreign sovereignty we can not inquire by what municipal agency of Mexico the wrong was done. To us the Government of Mexico is a unit, and responsible for whatever wrongs either of its several departments may inflict upon us.

"It may be said that the position here taken is inconsistent with the rule frequently declared by this Department, that when a Government opens its courts to alien suitors in claims against itself or its officers, the judicial remedy must be exhausted by aliens who feel themselves aggrieved before they can rightfully apply to their own sovereigns to intervene. But the two positions are not only consistent, but one supplements the other. In the present case, for instance, it was the duty of the claimant, if possible, to exhaust his remedy in the Mexican courts before he came to this Department for its intervention. But when he was precluded from so doing by the adverse proceedings instituted against him by the Mexican authorities, by which he was prevented from making out his case, we must hold that justice was not only denied him, but denied in violation of settled principles of international law. It then becomes the duty of this Department to intervene in his behalf and to press his claim on Mexico as a debt which Mexico is bound to pay."

Mr. Bayard, Sec. of State, to Mr. Jackson, min. to Mexico, Sept. 7, 1886, MS. Inst. Mexico, XXI. 574.

As to the case of the American schr. *Rebecca*, see H. Ex. Doc. 328, 51 Cong. 1 sess., and supra, § 987.

"If our subjects abroad have complaints against individuals, or against the government of a foreign country, if the courts of law of that country can afford them redress, then, no doubt, to those courts of justice the British subject ought in the first instance to apply; and it is only on a denial of justice, or upon decisions manifestly unjust, that the British Government should be called upon to interfere. But there may be cases in which no confidence can be placed in the tribunals, those tribunals being, from their composition and nature, not of a character to inspire any hope of obtaining justice from them. It has been said, 'We do not apply this rule to countries whose governments are arbitrary or despotic, because there the tribunals are under the control of the government, and justice can not be had; and, moreover, it is not meant to be applied to nominally constitutional governments, where the tribunals are corrupt.' But who is to be the judge in such a case, whether the tribunals are corrupt or not? The British Government, or the government of the state from which you demand justice? . . . I will take a case which happened in Sicily, where not long ago a decree was passed, that any man who was found with concealed arms in his possession should be brought before a court-martial, and, if found guilty, should be shot. Now, this happened. An innkeeper of Catania was brought before a court-martial, accused under this law by some police officers, who stated that they had discovered in an open bin, in an open stable in his inn-yard, a knife, which they denounced as a concealed weapon. Witnesses having been examined, the counsel for the prosecution stated that he gave up the case, as it was evident there was no proof that the knife belonged to the man, or that he was aware it was in the place where it was found. The counsel for the defendant said, that such being the opinion of the counsel for the prosecution, it was unnecessary for him to go into the defense, and he left his client in the hands of the court. The court, however, nevertheless pronounced the man guilty of the charge brought against him, and the next morning the man was shot.

"Now, what would the English people have said if this had been done to a British subject? And yet everything done was the result of the law, and the man was found guilty of an offense by a tribunal of the country.

"I say, then, that our doctrine is, that, in the first instance, redress should be sought from the law courts of the country; but that in cases where redress can not be so had—and those cases are many—to confine a British subject to that remedy only, would be to deprive him of the protection which he is entitled to receive. . . .

"We shall be told, perhaps, as we have already been told, that if the people of the country are liable to have heavy stones placed upon their breasts, and police officers to dance upon them; if they are liable to have their heads tied to their knees, and to be left for hours in that state; or to be swung like a pendulum, and to be bastinadoed as they swing, foreigners have no right to be better treated than the natives, and have no business to complain if the same things are practiced upon them. We may be told this, but that is not my opinion, nor do I believe it is the opinion of any reasonable man."

Lord Palmerston, in the House of Commons, June 25, 1850, on the case of Don Pacifico. (Hansard, Parl. Debates, CXII. 382–387.)

(2) WHERE THEY HAVE BEEN SUPERSEDED.

§ 989.

The rule that an alien must, before seeking the aid of his government, endeavor to obtain redress in the courts, does not apply where the offending government has, by the acts of its proper organ, relieved the party complaining from appealing to the courts.

Akerman, At. Gen., 1871, 13 Op. 547.

Case of Consul at San Salvador.

During the revolutionary disturbances at San Salvador in July, 1890, the consulate of the United States was violated by Government troops and the flag torn down and insulted, while the property and archives of the United States and the personal property of Mr. Myers, the consul, were destroyed or carried away and the consul himself subjected to personal indignities and hardships. The Salvadorean authorities immediately agreed to pay an indemnity for the destruction of the property of the United States and of the consul; and a claim was in due time also preferred for reparation for the consul's personal injuries. In the course of the subsequent discussions Señor Gallegos, the Salvadorean minister for foreign affairs, said:

"My Government believes that the claim presented by Mr. Myers for the indemnization of the losses which he declares were suffered in his property and in that of the American Government, as a result of the events of July, 1890, can not be limited for the present to the mere fixing of a sum of money so as to demand its simple reimbursement without there being first held in due form those proceedings which the laws of the country prescribe and require as indispensable, before the tribunals established by the laws for proving and appraising of damages sustained, which indemnization, in like manner, is to be regulated according to general provisions."

To this Mr. Blaine, as Secretary of State, replied:

"If any question as to whether an indemnity is due were not precluded by the terms of the agreement, I should be in doubt whether Señor Gallegos did not contend that that question should be remitted to the courts of his country. As such a question is precluded, I assume that what he means is that this Government is bound to prosecute before the Salvadorean courts the assessment of the damages due to itself for the destruction of its property and that of its consul.

"It is unnecessary to discuss what the proper course would be if during the occurrences in question the property of an ordinary resident alien had been destroyed, for such is not the present case. Mr. Myers was the consul of this Government. He had no business and no interest in San Salvador separate from and independent of its business and its interests. His property which was destroyed was properly and necessarily in the American consulate, which by the terms of the treaty was declared to be inviolable. This Government only furnishes to its consuls a part of the equipment which is necessary for the conduct of its business and for their convenience. It matters not, however, whether the property in question belonged, under our consular system, partly to the United States and partly to its consul, or exclusively to the former. It was all necessarily connected with the conduct of the business of this Government and the injury done to it was as if done to the United States.

"No government can be more jealous than this in preserving for its tribunals the settlement of every question properly subject to their jurisdiction. The present incident, however, in none of its phases was ever a matter within the jurisdiction of the courts of Salvador, and the less so after the two Governments 'recognizing the principles of justice' governing the case, had entered into an agreement with respect thereto. It is not within the province of the courts of any country to pass upon an agreement between two governments. It would ill become the dignity of the Government of the United States, nor will it consent to submit the agreement which it has made with the Government of Salvador to any tribunal other than one of their joint making. But irrespective of the agreement, it could not consent to go itself nor to send one of its officers, whose injuries arose out of the performance of his official duties, into the courts of Salvador to determine what damage has been done.

"This Government disclaims any pretense of a right to alone determine that question. . . . This Government has no other desire, however, than to arrive at the actual damage, and it is content to make any review of Mr. Myers's statements of the same which may seem to be required. It believes that the determination of that matter ought to be arrived at without difficulty, between Señor Gallegos and

yourself. Whether as an aid to its consideration you may prefer to each appoint a person to jointly examine it and report to you the result of their findings, is a mere matter of detail.

"Referring now to the matter of reparation for the personal injuries which Mr. Myers suffered, although that question is not covered by the agreement, still upon general principles it is regarded as one likewise to be determined solely by the agreement of the two Governments. As it appears by Señor Gallegos's note that he awaits such suggestions as you may care to offer with respect thereto, you may inform him that you are authorized on behalf of this Government to agree upon the amount of indemnity to be paid. You may also say to him that in the opinion of this Government it can be best settled at the same time and in the same manner that the amount of damage for the property destroyed is agreed upon."

Mr. Blaine, Sec. of State, to Mr. Shannon, min. to Cent. Am., April 6, 1892, For. Rel. 1892, 34–36.

In a note of May 26, 1892, Señor Gallegos, while recognizing "the principles of justice upon which rests the right to an indemnity for all the damage caused to the American consulate," continued to maintain that the claims for loss of property should be referred to the Salvadorean tribunals, and proposed, specifically, their submission to the tribunal of public credit "to decide regarding the indemnity to be paid, fixing the amount and mode of payment." The question of reparation for the consul's personal injuries he offered to arbitrate. (For. Rel. 1892, 40.)

Mr. Foster, who had succeeded Mr. Blaine as Secretary of State, rejected the specific proposal as to the property claims as "in no wise different in principle" from the previous general one. If, said Mr. Foster, the Salvadorean Government desired to take the advice of its tribunal of credit as to the amount of damage which was done, the United States would accept the sum recommended by that tribunal if it should be reasonably sufficient, but not otherwise. As to the claim for reparation for personal injury to the consul, it was considered a "minor and incidental question," which should be disposed of informally. (For. Rel. 1892, 49–51. See, also, Mr. Shannon, min. to Salvador, to Mr. Foster, Sec. of State, Dec. 15, 1892, For. Rel. 1893, 174.)

At the end of Dec., 1892, Salvador agreed to pay, and the United States accepted, $2,500 American gold, "as a compensation in full for the loss of the property of the United States Government, and of the private property of its consul, as well as for the personal sufferings" of the consul. (For. Rel. 1893, 176, 179, 181, 182, 184.)

Bluefields incident.

The Nicaraguan Government, having demanded the second payment by American merchants of certain duties which the latter had been obliged to pay to de facto revolutionary authorities in possession of Bluefields, in February, 1899, the moneys were, pursuant to an agreement signed April 29, 1899, by Mr. Merry, the American minister to Nicaragua, and Mr. Sanson, the Nicaraguan minister of foreign affairs, deposited

with the British consul at San Juan del Norte, pending a settlement of the question, which was, if possible, to be reached within four months between the two governments.

August 14, 1899, Mr. Merry communicated to Mr. Sanson a copy of an instruction, dated July 26, 1899, in which the Government of the United States, after reviewing the facts and the law, requested the assent of Nicaragua to the return of the fund to the American merchants.[a]

This request Mr. Sanson declared to be "premature," since the matter had been placed before the judicial authorities, by whom it was to be ventilated, and the various questions of fact and of law examined.[b]

Mr. Merry replied that the agreement of April 29 stipulated that the settlement should be made between the parties to "whom it may appertain," meaning the two governments and the merchants; that the agreement in fact withdrew the case from the decision of a court-martial, which had investigated it; that the idea of a second submission to a court never was suggested, and that he could only report the situation to his Government.[c]

In so doing Mr. Merry observed that the newly appointed magistrate at Bluefields, Judge Roman, might summon the merchants to give testimony as to their alleged participation in the Bluefields revolt, and he therefore inquired whether they should attend in person and give their evidence, and whether copies of affidavits sent to the Department of State at Washington, testifying to the neutrality of the merchants, should be presented to the court.[d]

The Department of State, replying to this dispatch, said:

"In refutation of the position assumed by the Nicaraguan Government on the subject, I have to say that the question of the double payment of customs dues by the American merchants is a diplomatic one.

"The facts that the controversy, and the agreement made April 29, 1899, for its adjustment, are of a diplomatic character imply that the discussion, consideration, and determination of the question are to be governed by the diplomatic procedure, in the absence of any express stipulation to the contrary. There is no stipulation in the agreement, on the part of this Government, to waive at any stage of the controversy the diplomatic jurisdiction it has thus far exercised, or to remit the question to the Nicaraguan authorities for their determination.

"The Government of the United States does not admit the competency of any Nicaraguan court or tribunal to determine the rights of American citizens in Nicaragua when they have appealed to their Government for protection, and when it has taken up and made their

[a] For. Rel. 1900, 803–806.
[b] For. Rel. 1900, 806.
[c] For. Rel. 1900, 807–808.
[d] For. Rel. 1900, 805.

cause its own; and the contention that it has agreed or consented to submit to the assumption and exercise of jurisdiction over such cause by any local Nicaraguan court or tribunal is so extraordinary that it can not be considered or discussed. If, in the face of the said agreement, the Government of Nicaragua persists in its indicated purpose to submit the question at any stage or in any form to its own tribunals for determination as between the two Governments, the Government of the United States will not only ignore the proceedings, but will deem it a sufficient reason for it to proceed to determine the question in the proper way, and to use the necessary measures to enforce its decision.

"Neither you nor any American consul will furnish any evidence whatever from the files of the legation or of any consulate for the use of the Nicaraguan authorities. All such evidence, whether in the form of affidavits or in whatever other form it has been taken in relation to the controversy, has been taken by the authority of this Government to enable it to discuss the question with the Government of Nicaragua; and the use to be made of that evidence rests exclusively in the discretion of the Government of the United States.

"No evidence will be considered by this Government unless presented through the ordinary diplomatic channels.

"You may furnish the Nicaraguan Government a copy of this instruction."[a]

In a personal letter to Mr. Merry of Oct. 27, 1899, Mr. Sanson, who was just retiring from the ministry of foreign affairs, stated that there was good reason to expect that Judge Roman, before whom suits had then been begun against the merchants, would absolve them and order the return of the money, thus putting an end to the diplomatic discussion.[b]

Dec. 15, 1899, the Department of State, on learning that the United State consular agent at Bluefields had advised American merchants to refuse to comply with summonses to appear and give testimony in the proceeding before Judge Roman, sent Mr. Merry the following instruction:

"If the American merchants are summoned as witnesses before Judge Roman they must obey and testify as to the facts. The Nicaraguan Government has a right to investigate the facts connected with the Reyes movement and to ascertain whether the merchants participated in and aided the movement. While the Government of the United States protects its citizens in the enjoyment of their lawful

[a] Mr. Hill, Act. Sec. of State, to Mr. Merry, min. to Nicaragua, Sept. 29, 1900, For. Rel. 1900, 809.

[b] For. Rel. 1900, 812.

rights it does not protect them in the prosecution of unlawful acts and enterprises.

"The Government of the United States is disposed to respect the dignity of the Government of Nicaragua, which maintains that controversies over the payment of customs duties are ordinarily to be determined in the first instance by the local tribunals. The Government of the United States is not inclined to dispute the general principle; but in the present case, having taken diplomatic jurisdiction, it is constrained to adhere to its position. But I am happy to say that the controversy over the claims of the Bluefields merchants . . . is in course of satisfactory adjustment, which will be favorable to those merchants not shown to be in complicity with the Reyes movement.

"The anticipated satisfactory solution of these controversies is due in large measure to the ability, skill, and courtesy displayed by Dr. Corea, the Nicaraguan minister, who has manifested a just disposition toward all, while at the same time tenaciously upholding the rights and dignity of his own Government, and who has deepened the respect already entertained by this Government for the ability, integrity, and high character of President Zelaya.

"You will congratulate the Nicaraguan Government on the happy solution of these controversies already negotiated and arranged between Dr. Corea and the Department of State, and you will furnish it a copy of this instruction."[a]

This communication, together with a personal assurance of the secretary and subsecretary of foreign affairs that Judge Roman had been instructed to consent to the repayment of the fund to the merchants, led Mr. Merry to consider the case as practically ended.[b]

May 30, 1900, however, he was advised by the British consul that Judge Roman had decided against the merchants and condemned them in costs. The consul added that he did not presume that the decision affected him, as the money was deposited with him as the representative of the United States and Nicaragua, and therefore was, in his opinion, to be paid out only at the joint request of the two governments.[c] An officer was sent by Judge Roman to each of the merchants to obtain from them a formal "acceptance" of the sentence, but they declined to sign it.[c]

Mr. Merry, in reporting these incidents, suggested that if the Nicaraguan Government, heedless of the agreement of April, 1899, should demand the deposit without reference to the United States,

[a] Mr. Hay, Sec. of State, to Mr. Merry, min. to Nicaragua, Dec. 15, 1899, For. Rel. 1900, 813.

[b] For. Rel. 1900, 815.

[c] For. Rel. 1900, 816, 817.

"a decisive note, regarding which there can be no misunderstanding, will become necessary."[a] His suggestion was approved, and he was instructed to say to the Nicaraguan Government, as he did in a note of July 28, 1900, that "only a straightforward disposition of this matter, in accordance with the understanding heretofore existing and reported by you, would be acceptable to the Government of the United States."[b] August 2, 1900, he was further instructed as follows:

"The Department concurs in your view of the matter. The United States Government has not forgotten the understanding between the two Governments with reference to the repayment of the customs dues deposited with the British consul. It expects that understanding to be carried out without delay by the repayment to the American merchants of the moneys deposited by them with the British consul pending the settlement of the controversy. You will, if necessary, now demand of that Government the return of said moneys and notify it that the judgments rendered by Judge Roman, and which he has notified the merchants to pay, are simply null and void and will receive no consideration or respect from the Government of the United States.

"This Government has been anxious from the outset to afford a friendly solution to the controversy, in accordance with the principles of plain good faith and honest dealing between government and government, and in so doing has constantly sought to bring about the result which could be least injurious to the Government of Nicaragua. It can not conceive that the Government of Nicaragua is in its turn inspired by any less high and honorable purposes, and it can not therefore admit, even by way of conjecture, that the Government of Nicaragua is privy to the action attempted by Judge Roman. Nevertheless, the course of the proceedings in this matter, in painfully marked contrast with the professions of the Nicaraguan Government, can not pass unnoticed, and the controversy has reached the stage where it can be settled only by action in accordance with the just expectation of the United States.

"The interested merchants should be advised that in the event of a renewal of any attempt to enforce the judgment they should still refuse to pay."[c]

Prior to the receipt of this dispatch by Mr. Merry the Nicaraguan Government requested the British consul to return the deposit to the merchants, which was done.[d]

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[a] For. Rel. 1900, 814–815.

[b] For. Rel. 1900, 816, 819.

[c] Mr. Hay, Sec. of State, to Mr. Merry, min. to Nicaragua, Aug. 2, 1900, For. Rel. 1900, 820.

[d] For. Rel. 1900, 821–823. See supra, § 21.

Metzger's case.

A dispute arose between John D. Metzger & Co., an American firm, and the municipality of Port au Prince, owing to the failure of the latter to carry out a contract to furnish the firm with a supply of water for running a mill. Metzger & Co. brought the dispute to the attention of the United States, and in an interview with the solicitor of the Department of State at Washington, which was confirmed by a note of the following day, the Haytian minister stated that he had informed his Government of Mr. Metzger's grievances and that the minister of foreign affairs had written that the matter had been settled. The report of a settlement proved to be an error. It was held that the arrangement to settle Metzger & Co.'s grievances, which was promptly accepted by the Haytian minister of foreign affairs, whose assurance in that regard was conveyed to the United States through the Haytian minister at Washington, "constituted a diplomatic agreement between the two countries which, upon settled principles of international law, should have been carried into effect." It was claimed indeed, on the part of the Haytian Government, that the arrangement amounted only to an agreement that that Government would use its good offices with the municipality of Port au Prince. It was held, however, that the arrangement amounted to much more than that. When the grievance was called to the attention of the Haytian minister at Washington and reported by him to the minister of foreign affairs, no claim was made that the municipality alone was responsible and no attempt was made to limit the authority or responsibility of the Government. "On the contrary, the [Haytian] minister and secretary [of foreign affairs] promptly assumed responsibility for the grievance and assured the Government at Washington that it had been rectified. It can not be that good faith is less obligatory upon nations than upon individuals in carrying out agreements. It is now strenuously urged that the Government of Hayti had no authority over the commune of Port au Prince, and must, in its relations with the commune, have limited its interference to friendly advice and suggestions. I do not understand that the limitations upon official authority, undisclosed at the time to the other Government, prevent the enforcement of diplomatic agreements. The question came before the Chilean claims commission created by the convention of August 7, 1892, between the United States and Chile, in which a claim was made upon a contract entered into by the United States minister in Chile, in making which the Government of the United States claimed the minister had no authority and denied responsibility, claiming further that the agreement was in violation of the statutes of the United States, and that the plaintiff had a remedy in the United States courts. The commission decided unanimously that it was immaterial whether the minister had exceeded his authority or not, as he had made the promise as the representative of the

United States in the name of his Government, which, according to the rules of responsibility of governments for acts performed by their agents in foreign countries, can not be repudiated. In the present case there is no claim that the minister was unauthorized to make the diplomatic representations stated. On the contrary, he was only carrying into effect the instructions of his Government. The learned commission referred, in support of their decision, to Calvo Dictionaire de Droit International, Volume II., page 170, and Calvo Dictionaire International, Volume I., section 417; Moore's Digest International Arbitration, volume 4 pages 3569–3571. Nor is there any more avail in the argument that the remedy of Metzger & Co. is to be sought in the courts of Hayti against the commune. Even had Metzger & Co. such a right, this would not affect the right to arbitrate the claim as has been done in this case. By the terms of the protocol the arbitrator is competent to take jurisdiction of the claim so far as the liability of the Government of Hayti is concerned (4 Moore International Arbitrations, p. 3571). This view of the case renders it unnecessary to determine whether, as is claimed in argument, the communal authorities are merely the agents of Hayti or whether, as contended by the minister of Hayti, the Government of Hayti had entirely made over the waterworks to Port au Prince, which alone received the revenues and managed its affairs. A diplomatic arrangement fairly and honorably entered into should, in my judgment, be carried into effect. I have already stated what, in my opinion, were the rights of Metzger & Co. under the arrangements made with the commune to supply them with water. This is the arrangement which should have been carried in to effect. It should have been carried out by the Government of Hayti upon the responsibility assumed by it. Because of the failure to give them an adequate supply of water Metzger & Co.'s mill was compelled to remain idle, partially for a time and afterwards to entirely suspend operations. Much of the claim for alleged damages on behalf of complainant can not be allowed. The items showing remote and speculative damages do not directly result from the breach of the agreement. The claimants are entitled to compensation for loss of the use of the mill in whole or in part during the time in which they were unable to operate it by reason of the failure to furnish water and its impaired usefulness when an inadequate supply was furnished to them. I am of opinion that damages fairly recoverable in a case of this kind will be compensated by the payment to Metzger & Co. by the Government of Hayti of the sum of $15,000."

Award of the Honorable William R. Day, arbitrator, in the matter of the claims of John D. Metzger & Co. *v.* The Republic of Hayti, protocol of Oct. 18, 1899, For. Rel. 1901, 262, 269, 270, 271–272.

(3). WHERE THEY ARE INSUFFICIENT.

§ 990.

With reference to certain claimants who omitted to avail themselves of the opportunity afforded to persons having claims against the United States growing out of the civil war, to prosecute their demands in the Court of Claims within the term limited by the statute, Mr. Bayard said: "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."

Mr. Bayard, Sec. of State, to Mr. Muruaga, Spanish min., Dec. 3, 1886, For. Rel. 1887, 1015, 1022.

With reference to a decree of the Peruvian Government in 1895, which provided for the appointment of a board of Peruvians to examine claims which had been presented to the minister of foreign affairs arising out of the then recent civil war in that country, the Department of State said that it was inferred that the Peruvian Government proposed merely to take the advice of the board on the question of the position which that Government should take in respect to the claims, and that on this supposition the United States had, of course, no right to object; but that, if it was contemplated that the claims of American citizens should be finally disposed of and the claimants bound by the decisions of this ex parte tribunal, the United States could not admit that an adverse decision of the commission would preclude diplomatic intervention.

Mr. Adee, Act. Sec. of State, to Mr. McKenzie, min. to Peru, July 9, 1895, MS. Inst. Peru, XVII. 650; Mr. Adee, Acting Sec. of State, to Mr. Neill, chargé, No. 128, Aug. 29, 1895, id. 655.

The Peruvian Government stated that the action of the claims commission was limited to examining claims brought against Peru by the citizens or subjects of foreign powers and reporting on them to the Government. (Mr. Olney, Sec. of State, to Mr. Neill, chargé, No. 136, Nov. 4, 1895, MS. Inst. Peru, XVII. 660. See, also, Mr. Olney to Mr. McKenzie, min. to Peru, No. 163, April 27, 1896, id. 676, referring to a resolution of the Peruvian Government limiting the period for the filing of claims growing out of the then late civil war to thirty days from March 25, 1896.)

The German minister at Caracas having been instructed by his Government to ignore all Venezuelan decrees creating tribunals to hear claims of foreigners, and to press claims of Germans only diplomatically, the American minister at Caracas was instructed to advise the Venezuelan Government that the United States would "likewise treat the claims of American citizens only diplomatically."

Mr. Hay, Sec. of State, to Mr. Russell, chargé, No. 408, April 8, 1901, MS. Inst. Venezuela, V. 62.

"I have to acknowledge the receipt of your No. 637, of the 30th ultimo, reporting that the commission appointed to examine and pass upon claims for damages arising from the revolution which placed General Castro in power has completed its work and closed its sessions.

"It is not in accordance with the policy of this Government to act in concert with foreign governments in protesting against the barring of the claims of its citizens, but it reserves entire freedom of action, as regards the right to intervene in support of any of its citizens."

Mr. Hay, Sec. of State, to Mr. Russell, chargé at Caracas, July 17, 1901, For. Rel. 1901, 551.

Mr. Russell, in the dispatch thus acknowledged, after summarizing the work of the commission, said:

"In this connection I would state that several of the foreign ministers have approached me lately and suggested that there should be some combined action in regard to claims. In accordance with instructions the Venezuelan Government has been informed several times that our Government could see no reason for departing from its practice of treating the claims of its nationals only on a diplomatic basis, and the only answer to these representations was in the case of the claim of Ford Dix, which was forwarded to the Department.

"In case a meeting of the diplomatic corps is called for concerted action I will cable for specific instructions." (For. Rel. 1901, 550.)

In a subsequent dispatch, of July 14, 1901, he stated: "The Government has issued a decree in reference to the claims allowed by the late claims commission. The decree states that as the Government is at present short of cash . . . the matter is referred to the next Congress which will decide as to how the claims shall be paid.

"In the list I inclosed in a former dispatch you will notice that the largest number of claims passed on by the commission were from Italians. Italy has a clause in her treaty with Venezuela by which claims against Venezuela from Italians must be submitted to the Venezuelan tribunals, and this would appear as the reason why so many Italian claims were presented to the commission. 'La Voce d' Italia,' an important Italian journal of this city, published an article last week stating that, although Italian claims had been presented to the commission, it had been done with the understanding that the Italian Government was not bound by the decision of the commission, and that there could always be an appeal to the legation. Whether this was an authorized statement is not known, but the Government organ here, commenting upon the article of 'La Voce d'Italia,' made it the occasion for a violent attack on all foreigners, stating that they were here for no other purpose than to rifle the national treasury." (For. Rel. 1901, 550–551.)

The German Government complained that during the civil wars in Venezuela from 1898 to 1900 many German subjects in that country had been seriously damaged by the extortion of forced loans, by the taking of cattle and other supplies for the troops without payment, and by the ransacking and devastation of the buildings and grounds.

The Venezuelan Government, after having at first refused to discuss during a period of six months any claims for compensation, issued in January, 1901, a decree appointing a commission of Venezuelan officials, to whom such claims were required to be submitted within three months. By this decree it was provided (1) that claims arising prior to May 23, 1899, i. e., before the accession of President Castro, should not be considered; (2) that all diplomatic protest against the decisions of the commission was excluded, an appeal being allowed to the Venezuelan supreme court; and (3) that the claims recognized by the commission should be paid with bonds of a revolutionary debt, to be newly emitted. To these provisions the German Government objected (1) that the Castro government, like all other governments, was responsible for the acts of its predecessors; (2) that the members of the Venezuelan supreme court were "entirely dependent on the Government" and had "frequently been simply dismissed by the President;" and (3) that the new revolutionary bonds would, judging by experience, be worthless. The course of the Venezuelan Government was therefore considered "as a frivolous attempt to avoid just obligations;" and, as was expected, several of the few German claims put before the commission had been rejected, while others had been "reduced in a decidedly malicious way." The German Government had at first sought to induce the Government to change its decree in the three particulars mentioned, but, failing in that, had been forced to declare its refusal to acknowledge the decree, the majority of the powers having similar claims, and especially the United States, making similar declarations.

To these declarations the Venezuelan Government replied that foreigners could not be treated in a different way from citizens of the country; that the settlement of the claims in question was a domestic matter, any interference in which by a foreign power would constitute an injury to the national sovereignty; and that, all diplomatic action being repelled, the claimants, after the term of three months mentioned in the decree, must resort exclusively to the supreme court.

The German Government, believing further negotiations on that basis to be hopeless, had therefore decided to submit the claims directly to the Venezuelan Government and ask for their settlement, and, if that Government should continue to adhere to its previous position, would be obliged to consider what measures of coercion should be employed.

Promemoria of the German Embassy at Washington, Dec. 11, 1901, For. Rel. 1901, 192.

4. Unjust Judgments not Internationally Binding.

§ 991.

"Grotius states that a judicial sentence, plainly against right, (*in re minimè dubiâ*,) to the prejudice of a foreigner, entitles his nation to obtain reparation by reprisals: 'For the authority of the judge,' says he, 'is not of the same force against strangers as against subjects. Here is the difference: Subjects are bound up and concluded by the sentence of the judge, though it be unjust, so that they can not lawfully oppose its execution, nor by force recover their own right, on account of the controlling efficacy of that authority under which they live. But strangers have coercive power, (that is, of reprisals, of which the author is treating,) though it be not lawful to use it so long as they can obtain their right in the ordinary course of justice.'

"So, also, Bynkershoek, in treating the same subject, puts an unjust judgment upon the same footing with naked violence, in authorizing reprisals on the part of the state whose subjects have been thus injured by the tribunals of another state. And Vattal, in enumerating the different modes in which justice may be refused, so as to authorize reprisals, mentions 'a judgment manifestly unjust and partial;' and though he states what is undeniable, that the judgments of the ordinary tribunals ought not to be called in question upon frivolous or doubtful grounds, yet he is manifestly far from attributing to them that sanctity which would absolutely preclude foreigners from seeking redress against them."

Wheaton, Lawrence's edition (1863), 673–674, citing grotius, de Jur. Bel. ac Pac. lib. iii. cap. 2, § 5, No. 1; Bynkershoek, Quæst. Jur. Pub. lib. i. cap. 24; Vattel, Droit des Gens, liv. ii. ch. 18, § 350.

See a discussion of this principle in Mr. Mariscal, Mexican min. of for. aff., to Mr. Morgan, min. to Mexico, April 2, 1886, H. Ex. Doc. 328, 51 Cong. 1 sess. 41, 43–45; Mr. Bayard, Sec. of State, to Mr. Morgan, No. 167, April 27, 1886, id. 47.

"The defense of *res adjudicata* does not apply to cases where the judgment set up is in violation of international law."

Wharton, Int. Law Digest, II. 671.

"The executive and the judicial departments of the Government being co-ordinate powers, it follows that judicial decisions on questions of international law, while entitled to great respect, do not bind the Department as would rulings of a superior tribunal. In addition to other reasons for this position (see considerations stated in Whart. Com. Am. Law, § 391), the very fact that the judiciary applies municipal law, while the Department of State is bound to

consider not merely municipal law, but the relations of the United States to foreign powers irrespective of municipal legislation or adjudication, makes it necessary for the executive to act, in matters of international law, as a power independent of the judiciary. In accordance with this view the supremacy of the political departments of the Government has been acknowledged by the judiciary in respect to territorial boundaries and to recognition of foreign governments. The executive also is regarded by the judiciary as the final tribunal by whom is to be determined the question of the pressure of claims by citizens of the United States on foreign sovereigns. A construction of a treaty, also, by the courts of one of the contracting sovereigns can only have municipal operation; nor can such construction be set up, even by the sovereign by whose courts it is pronounced, as an authority when conducting negotiations with the other sovereign as to the meaning of the treaty. That meaning is a matter of international settlement. If the parties cannot agree in reference to it, it must be referred to arbitration or, as the last resort, to war. Nor can the judiciary control the actions of the executive in either the construction or the application of a treaty.

"That a sovereign cannot protect himself by a decision of one of his prize courts, when such decision is in conflict with sound principles of international law, will be hereafter seen. It is important to keep in mind in this connection the striking summary of Mr Cushing, given April 11, 1866, to the Secretary of the Treasury, as indorsed by Sir T. Twiss in his pamphlet on Continuous Voyages, that 'whilst the political department of the American Government was engaged in the early part of the present century in combating the overstrained construction of the laws of maritime war, set up by the courts and publicists of England, not a few of the most exceptionable of these constructions were at the same time being transported, one by one, into the jurisprudence of the United States by the judicial department of its Government, *with a prevailing tendency to exaggerate the rights* of prize in the interests of the captors.' Sir T. Twiss adds 'that it would ill become an English jurist not to admit that the prize tribunals of the United States had ample justification, in the early part of the present century, in reciprocating the rigorous rules which Lord Stowall applied to the trade of neutrals during the wars of the French revolution, and which were traditions from the wars of the previous century.' As a further illustration of this tendency may be cited the Springbok case. On this subject see, in general, Judge Cooper's opinion 'on the effect of a sentence of a foreign court of admiralty;' edited and approved by Mr. A. J. Dallas, Philadelphia, 1810."

Note of Dr. Francis Wharton, Wharton's Int. Law Digest, § 238, II. 672.

Where the determination of a claim belonged of right to the judicial tribunals of the country in which it was made, "their decision could not justly be disputed by this Government, in behalf of one of its citizens, except when palpable injustice had been done, or a manifest violation had been committed of the rules and forms of proceeding. To arraign the judgment of a foreign court of competent authority regularly pronounced in a controversy respecting which opinions might reasonably differ, would be a denial of the jurisdiction of the court and a violation of the law of nations."

Mr. Forsyth, Sec. of State, to Mr. Welsh, March 14, 1835, 27 MS. Dom. Let. 261.

Where a claimant on a foreign country has, by the law of such country, "the choice of either the judicial or the administrative branch of the Government through which to seek relief," and selects the latter, this does not make the arbitrary decision of the latter against him final and conclusive.

Mr. Fish, Sec. of State, to Mr. Nelson, min. to Mexico, Jan. 2, 1873, MS. Inst. Mex. XVIII. 357.

A collusive or irregular judgment by a foreign court is no bar to diplomatic proceedings by the sovereign of the plaintiff against the sovereign of the court rendering the judgment.

Mr. Evarts, Sec. of State, to Mr. Foster, min. to Mexico, April 19, 1879, MS. Inst. Mex., XIX. 570.

The treaty with Colombia of 1850 having empowered the consuls of the contracting parties to sell the "movable property" of deceased citizens of their respective nations, a question arose as to whether certain property which the United States consul at Colon had assumed to sell under this stipulation was to be considered under the laws of Colombia as movable or as immovable property. On this question the two Governments, after taking the advice of Colombian counsel, differed. Finally, the Colombian courts decided that the property in question was not movable property, and that the sale by the consul was therefore void. "The local courts undoubtedly had jurisdiction to pass upon this question and, in view of the difference of legal opinion entertained concerning it, it cannot be said that the decision amounted to a denial of justice." Hence there appeared to be no ground for presenting to the Colombian Government a claim for indemnity for the purchase money originally paid to the consul.

Mr. Gresham, Sec. of State, to Messrs. Hunter & Popham, Jan. 5, 1894, 195 MS. Dom. Let. 48. As to the case of Mrs. Smith, here referred to, see supra, § 722.

"An international reclamation, the rejection of which may justify reprisals or even be treated as a *casus belli*, ought not to rest on pure

technicalities when the facts and evidence are against the claim. It should be founded upon something more than the mere nonobservance of legal formalities—upon something more than irregularities originating in ignorance or inadvertence rather than in intention, and not necessarily nor actually working any substantial wrong or injustice."

Report of Mr. Olney, Sec. of State, to the President, Feb. 5, 1896, in relation to the case of John L. Waller, H. Doc. 225, 54 Cong. 1 sess. 7; For. Rel. 1895, I. 257–258.

A question arose before the mixed commission under Art. VII. of the Jay treaty, as to the power of the board to award compensation in cases in which the sentences of condemnation of the English prize courts had been affirmed by the lords commissioners of appeal, who constituted the court of last resort in prize cases. By the advocate of the British Government, the position was maintained that the judgments of the lords commissioners of appeal were final, and that for this reason the mixed commission could but acquiesce in them; while, on the part of the United States, it was contended that the judgments in question might be examined, in order to ascertain whether they were in conformity with the law of nations, and that if they should be found not to be so damages should be awarded to the claimants. As the mixed commission was prevented by the action of the British commissioners, who withdrew and destroyed a quorum, from rendering a decision on the point, the question was brought by Rufus King, the minister of the United States in London, to the attention of Lord Grenville. His lordship referred it to the Lord Chancellor, Loughborough, who held that although the mixed commission did not constitute a "court of appeals" above the lords commissioners, yet it was competent to examine questions decided by the latter, and to give redress, "not by reversing the decrees already passed and restoring the identical property, but by awarding compensation."

Awards were afterwards regularly made by the mixed commission in favor of claimants wherever the condemnations appeared to be unjust.

Moore, Int. Arbitrations, I. 324–327.

See the opinions of the members of the mixed commission on the question of finality, Moore, Int. Arbitrations, III. 3160 et seq., and especially the great demonstration of Pinkney, in the case of the *Betsey*, id. 3180.

See, also, Wheaton's Life of Pinkney, Appendix.

"Those acts [of a sovereign], however binding upon his own subjects, if they are not conformable to the public law of the world, can not be considered as binding upon the subjects of other states. A wrong done to them, forms an equally just subject of complaint on the part of their government, whether it proceed from the direct agency of the sovereign himself, or is inflicted by the instrumentality of his tribunals."

Mr. Wheaton, min. to Denmark, to the Danish commissioners, Nov. 24, 1829, H. Doc. 249, 22 Cong. 1 sess. 22, 26.

This statement was made by Mr. Wheaton in his memorable discussion with the Danish Government concerning the claims of citizens of the United States for indemnity for the condemnation of their vessels by the Danish prize courts, particularly under the Danish privateering instructions of March 28, 1810. The Danish Government sought to maintain the finality of the decisions of its prize courts; Mr. Wheaton denied it, and successfully maintained his contention. (Moore, Int. Arbitrations, V. 4549 et seq.)

"A sentence of condemnation pronounced by a court having jurisdiction is generally regarded as *prima facie* valid, and acts as a bar to a diplomatic claim on account of the transaction judicially determined, until it shall be shown that the court proceeded in such a manner, or was governed by such rules, as to make its action subversive of justice." (Mr. Porter, Asst. Sec. of State, to Mr. King, Feb. 27, 1886, 159 MS. Dom. Let. 184.)

"It is obvious enough that when we ask redress from a government and not from their tribunals for injuries arising from flagrant violations of the law of nations, it is preposterous to refuse it because the injury has been consummated, the capture, trial, and condemnation under unlawful decrees being all parts of the same system, to which the final process and decision can give no sanction."

Mr. Gallatin to Mr. Price, Feb. 11, 1824, 2 Gallatin's Writings, 275, 278.

5. Unjust Discriminations.

§ 992.

"If indeed Mr. Thrasher, in his arrest and trial, did not enjoy the benefits which native-born Spanish subjects enjoy in like cases, but was more harshly treated, or more severely punished, for the reason that he was a native-born citizen of the United States, it would be a clear case of the violation of treaty obligations, and would demand the interposition of the Government. There exists in this Department no proof of any such extraordinary treatment of Mr. Thrasher."

Report on Thrasher's case by Mr. Webster, Sec. of State, to the President, Dec. 23, 1851, 6 Webster's Works, 530.

For the case of Thrasher, see Moore, Int. Arbitrations, III. 2701.

See, also, supra, § 489.

Unjust discrimination against a citizen of the United States in a foreign country, by which he is subjected to peculiarly harsh imprisonment and other injuries, forms a basis of a claim for damages against the government of such foreign state.

Mr. Fish, Sec. of State, to Mr. White, Jan. 7, 1874, MS. Inst. Arg. Rep. XVI. 57.

Where there was a prima facie case to sustain arrest, a claim for damages will not lie. (Mr. Hale, Acting Sec. of State, to W. J. Hale, July 15, 1872, 94 MS. Dom. Let. 552.)

See, also, Mr. Davis, Act. Sec. of State, to Messrs. N. S. Lazarus & Co., April 2, 1873, 98 MS. Dom. Let. 304.

"The position accepted as a rule of international law is that where there is established in the domain of the state of the alleged offence a competent judiciary, in which the procedure is fair, and to which the same access is given to foreigners as is given to subjects, then the complaint for pecuniary redress must be made to such judiciary. It is only where there is no such judiciary, or where there is practically an undue discrimination against foreigners, that diplomatic intervention is granted."

Opinion of Dr. Francis Wharton, Solicitor of the Dept. of State, in the case of William A. Davis *v.* Great Britain, 1885, cited in Mr. Day, Act. Sec. of State, to Messrs. Lauterbach, Dittenhoefer & Limburger, April 6, 1898, 227 MS. Dom. Let. 228.

"By the principles of international law, accepted by both Mexico and ourselves, we can no more permit ourselves to seek redress for injuries inflicted by private individuals in Mexico on one of our citizens, than we could permit Mexico to intervene to seek redress for injuries inflicted on Mexicans by private individuals in the United States. The rule is that, where the judiciary is recognized in a country coordinate with the executive, having committed to it all suits for redress of injuries inflicted on aliens as well as on citizens, then the judiciary and not the executive must be appealed to for redress. There are, it is true, two exceptions recognized to this rule: First, when there is undue discrimination against the party injured on account of his nationality; secondly, where the local tribunals are appealed to, but justice was denied in violation of those common principles of equity which are part of the law of nations."

Mr. Bayard, Sec. of State, to Mr. Copeland, Feb. 23, 1886, 159 MS. Dom. Let. 138, declining to present the claim of the petitioner for the murder of his father in Mexico.

"No government can guarantee immunity from individual violence or private malice." (Mr. Bayard, Sec. of State, to Mr. Rodriguez, March 5, 1887, 163 MS. Dom. Let. 306.)

Van Bokkelen's Case.

In 1872 or 1873, Charles Adrian Van Bokkelen, a citizen of the United States, went to Hayti and established himself in business at Port au Prince, where he afterwards married and became the head of a family. On February 15, 1883, having been unfortunate in business, he filed a schedule of his assets and liabilities in the civil court of Port au

Prince, preparatory to applying for the benefit of a judicial assignment, under which, in Hayti, where imprisonment for debt had not then been abolished, an honest but unfortunate debtor might surrender all his property for the benefit of his creditors and become entitled to discharge from imprisonment, if he had been arrested, and to freedom from arrest thereafter on account of his existing indebtedness. When Van Bokkelen filed his schedule in the civil court at Port au Prince, a judgment which he was unable to pay had been rendered against him, and other judgments were subsequently rendered, in which various terms for imprisonment were fixed. On March 5, 1884, Van Bokkelen was arrested on one of these judgments and confined in the common jail of Port au Prince. It was judicially determined that this arrest was illegal, but, before Van Bokkelen was discharged from it, other creditors took measures to have him detained in jail. Van Bokkelen thereupon, through his counsel, applied to the civil court of Port au Prince for the benefit of judicial assignment. The creditors opposed his discharge, chiefly on the strength of article 794 of the code of civil procedure and article 569 of the code of commerce, which expressly exclude foreigners from the benefit of judicial assignment. In answer to this contention, Van Bokkelen invoked Articles VI. and IX. of the treaty between the United States and Hayti of 1864. By Article VI., citizens of the contracting parties were to have free access to the tribunals of justice on the same terms as "native citizens, furnishing security in the cases required;" while by Article IX., the citizens of each party were to have, within the jurisdiction of the other, full power "to dispose of their personal property by sale, donation, testament, or otherwise." The civil court at Port au Prince denied Van Bokkelen's contention, and he then took an appeal to the court of cassation, by which the judgment of the civil court was, on February 26, 1885, almost a year from the time when Van Bokkelen was first imprisoned, affirmed. On March 21 and March 28, 1885, the American minister at Port au Prince was instructed to demand Van Bokkelen's release. The Department of State maintained not only that Van Bokkelen was, under Article VI. of the treaty of 1864, entitled to the same rights in the tribunals of justice in Hayti as native citizens of that country, but also that under Article IX. he was entitled to dispose of his goods by means of a general assignment for the benefit of his creditors. The Department of State also affirmed "that continuous imprisonment for debt, when there is no criminal offense imputed, is contrary to what are now generally recognized principles of international law." At one time Van Bokkelen was transferred, because of his feeble health, to the military hospital, but he was afterwards sent back to the common jail. The American minister at Port au

Prince, acting under his instructions, continued to insist upon his release, and on May 27, 1885, Van Bokkelen was conducted to the American legation by an attorney of the Haytian Government and put at liberty. The Haytian Government, however, subsequently officially declared that his release was "due doubtless to some arrangement made with his creditors," without interference of the executive power, and that his imprisonment had been altogether legal. On October 2, 1885, the American minister at Port au Prince was instructed to present to the Haytian Government a claim for Van Bokkelen's wrongful imprisonment. Van Bokkelen died on November 1, 1888, but the claim for his wrongful imprisonment was duly entered for $113,000. By a protocol between the United States and Hayti, signed May 24, 1888, it was agreed that the questions with regard to his imprisonment should be referred to the decision of a person to be agreed upon by the two Governments. Under this agreement, Alexander Porter Morse, esq., of Washington, D. C., was chosen as arbitrator. December 4, 1888, he rendered an award in favor of the United States for the sum of $60,000. He held (1) that the imprisonment of Van Bokkelen was "in derogation of the rights to which he was entitled as a citizen of the United States under stipulations contained in the treaty between the United States and Hayti," and (2) that the record failed to disclose any extenuating circumstances or sufficient justification for the harsh treatment and protracted imprisonment of the claimant by the authorities of the Haytian Republic, in opposition to the earnest and repeated protests of the representatives of the United States.

Moore, Int. Arbitrations, II. 1807–1853.

For a full statement of the position of the United States, see Mr. Bayard, Sec. of State, to Mr. Langston, min. to Hayti, No. 343, March 28, 1885, For. Rel. 1885, 507; Mr. Bayard, Sec. of State, to Mr. Thompson, min. to Hayti, No. 3, May 21, 1885, id. 517.

6. Claims to Land.

(1) titles exclusively determinable by lex rei sitæ.

§ 993.

"The rule is universal that every question involving title to real estate, whether by descent or purchase, must be determined by the law of the country wherein such real estate is situated, and all remedies for injuries in respect thereof must be pursued by the aggrieved party before the duly constituted tribunals of such country."

Mr. Marcy, Sec. of State, to Mr. Selding, March 3, 1856, 45 MS. Dom. Let. 123.

To the same effect, see Mr. Fish, Sec. of State, to Mr. Conkling, April 13, 1869, 80 MS. Dom. Let. 564; Mr. Fish, Sec. of State, to Mr. Wilder, May 6, 1876, 113 MS. Dom. Let. 294; Mr. Evarts, Sec. of State, to Mr. G. F. Seward, May 6, 1878, MS. Inst. China, II. 550; Mr. Frelinghuysen, Sec. of State, to Mr. Hall, min. to Cent. Am., June 18, 1882, MS. Inst. Cent. Am. XVIII. 245; Mr Frelinghuysen, Sec. of State, to Mr. Scruggs, Feb. 19, 1884, MS. Inst. Columbia, XVII. 381; Mr. Porter, Acting Sec. of State, to Mr. Hall, June 9, 1885, MS. Inst. Cent. Am. XVIII. 518; Mr. Bayard, Sec. of State, to same, June 16 and 17, 1885, id. 523, 521.

There is no treaty with Germany that alters this rule. (Mr. Foster, Sec. of State, to Mr. Cockrell, July 2, 1892, 187 MS. Dom. Let. 127.)

The broad distinction between movable property, which by fiction is considered as attending its owner, and immovable property, which under no circumstances can be withdrawn from the jurisdiction, has led to an equally broad discrimination between the right to intervene for redress of injuries to the one kind of property and the other. Thus, Phillimore declares that, where a person has domiciliated himself in another country and purchased land there, "and thus incorporated himself as it were into the territory of a foreign country, he cannot require his native government to interfere on the subject of the operation of municipal laws or the judgment of municipal tribunals upon his rights of immovable property in this foreign land." The policy and law of the Turkish Empire in respect to the acquisition of land by foreigners, and the fact that a person who had purchased land there was at the time, rightfully or wrongfully, regarded by the Ottoman authorities as a Turkish subject, would give increased force to the application of this distinction.

Mr. Fish, Sec. of State, to Mr. Cone, Oct. 10, 1871, 91 MS. Dom. Let. 88, citing 2 Phillimore, 6.

See, also, Mr. Olney, Sec. of State, to Mr. Terrell, March 5, 1897, MS. Inst. Turkey, VII. 45.

See further, as to titles in Turkey, Mr. Bayard, Sec. of State, to Mr. Cox, min. to Turkey, Nov. 28, 1885, For. Rel. 1885, 885, 886.

A Mexican statute discriminating against citizens of the United States and other aliens in respect to the capacity to hold real estate in Mexico is in conflict with the treaty of 1831.

Mr. Evarts, Sec. of State, to Mr. Foster, June 23, 1879, MS. Inst. Mex. XX. 1.

As to rights of foreigners to real estate in Mexico, see Consular Reports on Commercial Relations, 1883, No. 31, 688 et seq.; Mr. Frelinghuysen, Sec. of State, to Mr. Howe, March 15, 1884, 156 MS. Dom. Let. 286.

A question of title to real estate, when one of law and fact, is "to be decided by the *lex rei sitæ*. The case is purely one for the Mexican

judicial tribunals in the first instance, and cannot properly be taken out of their consideration by diplomatic intervention. It can only be removed from the courts by agreement between the parties." A claimant in such case "must first exhaust his rights in the higher courts, and until a decision in the court of last resort shall have been rendered, which decision shall amount to a denial of justice, there is no ground upon which to base a diplomatic complaint."

Mr. Bayard, Sec. of State, to Mr. Jackson, July 17, 1885, MS. Inst. Mex. XX. 329.

The right to succeed to real estate is, however, often secured to aliens by a treaty removing the disability of alienage, but leaving the determination of the succession in other respects to the local law.

Mr. Foster, Sec. of State, to Mr. Tarsney, July 14, 1892, 187 MS. Dom. Let. 253, referring to Articles I. and II. of the treaty with Austria of May 8, 1848.

The Government of the United States is not bound to indemnify a British subject for losses sustained, as a claimant of real estate, by the settlement of the boundary line between New York and New Hampshire. This would be so on general principles; but, besides, by the 9th article of the treaty with Great Britain of 1794 it is expressly stipulated that British subjects who hold lands in the United States shall hold them *in like manner as if they were natives*.

Wirt, At. Gen., 1819, 1 Op. 320.

The laws of the State in which land is situated control exclusively its descent, alienation, and transfer, and the effect and construction of instruments intended to convey it.

Brine *v.* Ins. Co., 96 U. S. 627.

(2) DENIAL OF JUSTICE MAY AFFORD GROUND FOR INTERVENTION.

§ 994.

"That title to land is determinable exclusively by the *lex rei sitæ*, see Wharton, Confl. of Laws, §§ 273 *ff*. But this does not preclude diplomatic intervention when there is undue discrimination or denial of justice by the *judex rei sitæ*."

Wharton, Int. Law Digest, II. 667, editorial note.

See, also, Mr. Porter, Acting Sec. of State, to Mr. Hall, min. to Cent. Am., July 13, 1885, MS. Inst. Cent. Am. XVIII. 534; Mr. John Davis, Act. Sec. of State, to Mr. Hall, Oct. 9, 1882, id. XVIII. 270.

"Trespasses and evictions, when amounting to forcible deprivation of right without recourse to law, are the subjects of diplomatic intervention."

Wharton, Int. Law Digest, II. 667, editorial note.
See, also, report of Dr. Francis Wharton, Solicitor of Department of State, June 13, 1885, For. Rel. 1885, 525.

The Haytian Government is liable for damages wantonly inflicted, by soldiers in its employ, on real estate belonging to citizens of the United States. Nor is it a defense in such cases "that by the Haytian law foreigners can not 'acquire' (acquérir) real estate in Hayti, and that as they had no title to the real estate for injury to which they sue they can not now claim damages for such injury. To this the answer is threefold:

"1. The statute only prohibits 'acquiring,' which is a term convertible with 'purchasing.' It does not cover the case of real estate coming by descent.

"2. By the Roman law, in force in Hayti, an alien's title, even as to 'purchased' real estate, can only be contested by suit brought by the Government itself in the nature of an inquisition. If the Government undertakes to turn the possessor out by violence without a trial, this makes the Government liable for damages in proportion to the violence applied and the damage done. And for such summary outrages on an alien, *as an alien*, the government of such alien has, by international law, a right to interpose and claim redress.

"3. Even supposing that the prohibition extended to the house and lot of the claimants (which, for the present purpose, it did not) it did not preclude the claimants from possessing furniture, or leading lives of quiet, secure from lawless attack. In any view, therefore, the statute before us does not prevent the claimants from recovering damages for the destruction of their furniture, their expulsion from their homes, and the peril to which their lives were subjected."

Mr. Bayard, Sec. of State, to Mr. Thompson, Mar. 9, 1886, MS. Inst. Hayti, II. 511.

"It has been generally accepted that aboriginal inhabitants in a savage state have not such a title to the land where they may dwell or roam as to enable them to confer it upon individuals, especially from another country. This Department is not aware that the Fiji Islands are or ought to be an exception to this rule."

Mr. Fish, Sec. of State, to Mr. Hackett, June 12, 1873, 99 MS. Dom. Let. 205.

"The statement made by Mr. Fish, when applied to the United States, is undoubtedly correct. But it must be remembered that the aborigines of this country differed in many very important respects from those of Fiji. . . . England acquired title to the Fiji Islands by cession in 1874. . . . Article IV. of the deed of cession made what was supposed to be ample provision for the pro-

tection of all land titles of foreigners derived from the chiefs or natives prior to the cession, . . . Before the annexation of Fiji to the British Crown, Americans, Germans, and subjects of other countries had located there, and, according to Fijian customs, forms, and regulations, had purchased lands from the natives, and these purchases were duly attested and made a matter of record in the office of the American and German consuls at Levuka. . . . In the case before Mr. Fish the question of the Fijian right to sell land was not involved, and therefore his allusion to it should be viewed in the light of an obiter dictum. The fact is, England does not claim a foot of land in Fiji by right of discovery."

Memorandum accompanying instruction of Mr. Hill, Act. Sec. of State, to Mr. Choate, ambass. to England, Oct. 31, 1899, S. Doc. 140, 56 Cong., 2 sess. 52, 53, 54, 68.

7. Contract Claims.

(1) not as a rule officially presented.

§ 995.

It is not usual for the government of the United States to interfere, except by its good offices, for the prosecution of claims founded on contracts with foreign governments.

Mr. Forsyth, Sec. of State, to Mr. Hunter, chargé d'affaires to Brazil, No. 5, Sept. 15, 1834, MS. Inst. Brazil, XV. 8; Mr. Webster, Sec. of State, to Mr. Thurston, April 15, 1841, 31 MS. Dom. Let. 391 (relating to a promissory note accepted by the Mexican Government); Mr. Calhoun, Sec. of State, to Mr. Crump, May 28, 1844, MS. Inst. Chile, XV. 49; Mr. Marcy, Sec. of State, to Baron Gerolt, Prussian minister, June 15, 1854, MS. Notes to Pruss. Leg. VII. 15 (relating to an alleged breach of a contract made by the Mexican Government in regard to tobacco); Mr. Marcy, Sec. of State, to Mr. Clay, min. to Peru, No. 21, Dec. 27, 1854, MS. Inst. Peru, XV. 147 (relating to the claim of Dr. Joseph Whitmore against the Government of Peru on account of the latter's alleged breaches of contracts in respect of the construction of steamers, for which he had been recommended by Mr. Clay to the Peruvian Government as a competent person); Mr. Marcy, Sec. of State, to Mr. Crampton, Brit. min., Oct. 12, 1855, MS. Notes to Gr. Br. VII. 501; Mr. Marcy, Sec. of State, to Mr. Fowler, July 17, 1856, 45 MS. Dom. Let. 405 (relating to the claim of Messrs. Tyler, Arnold & Dennis against Peru for nonfulfillment of contract); Mr. Cass, Sec. of State, to Mr. King, M. C., Feb. 22, 1858, 48 MS. Dom. Let. 184 (relating to the claim of a Mr. Reeves against Turkey for services as a naval constructor); Mr. Trescot, Assist. Sec. of State, to Mr. Perry, Nov. 15, 1860, 53 MS. Dom. Let. 256; Mr. Seward, Sec. of State, to Messrs. Harmony & Lopez, Feb. 26, 1862, 56 MS. Dom. Let. 409 (relating to a claim against Ecuador for nonfulfillment of a contract made by claimant under its authority for the purchase of a subma-

rine telegraph cable); Mr. Seward, Sec. of State, to Mr. Culver, min. to Venezuela, Oct. 3, 1863, MS. Inst. Venezuela, I. 286; Mr. Seward, Sec. of State, to Mr. Dickinson, No. 29, Nov. 25, 1863, MS. Inst. Am. States, XVI. 389; Mr. Seward, Sec. of State, to Mr. Bond, Sept. 6, 1865, 70 MS. Dom. Let. 813; Mr. Seward, Sec. of State, to Mrs. Van Cort, Dec. 28, 1866, 75 MS. Dom. Let. 11 (relating to a claim against the Russian Government for compensation for an invention); Mr. Seward, Sec. of State, to Mr. Dwyer, Oct. 4, 1867, 77 MS. Dom. Let. 177 (relating to a claim against Venezuela for services as a soldier); Mr. Seward, Sec. of State, to Messrs. Sullivan & Brooker, Dec. 5, 1867, 77 MS. Dom. Let. 421 (relating to bills of exchange drawn and accepted by agents of Mexico); Mr. Seward, Sec. of State, to Mr. Edmunds, M. C., Jan. 13, 1868, 77 MS. Dom. Let. 573 (relating to the claim of a Mr. Hall against Austria for legal services rendered to the late Prince Maximilian); Mr. Seward, Sec. of State, to Mr. Page, governor of Vermont, May 2, 1868, 78 MS. Dom. Let. 419 (relating to the same subject as the last preceding letter); Mr. Seward, Sec. of State, to Mr. Reid, July 17, 1868, 79 MS. Dom. Let. 94; Mr. Seward, Sec. of State, to Mr. Hansen, Dec. 23, 1868, 80 MS. Dom. Let. 39 (relating to a claim against the North German Union for expenses in surveying a route for a ship canal in Holstein); Mr. Seward, Sec. of State, to Mr. Conkling, Feb. 9, 1869, 80 MS. Dom. Let. 270; Mr. Fish, Sec. of State, to Mr. Conkling, May 8, 1869, 81 MS. Dom. Let. 70; Mr. Fish, Sec. of State, to Mr. Campbell, Jan. 4, 1870, 83 MS. Dom. Let. 10; Mr. Fish, Sec. of State, to Mr. Hanks, March 16, 1870, 83 MS. Dom. Let. 506; Mr. Fish, Sec. of State, to Mr. Bassett, June 27, 1870, MS. Inst. Hayti, I. 188; Mr. Fish, Sec. of State, to Mr. Wilson, July 12, 1870, 85 MS. Dom. Let. 283; Mr. Davis, Assist. Sec. of State, to Mr. King, Dec. 9, 1870, 87 MS. Dom. Let. 219; Mr. Fish, Sec. of State, to Mr. Blow, Feb. 22, 1871, MS. Inst. Brazil, XVI. 298; Mr. Hunter, Act. Sec. of State, to Mr. Folingsby, July 5, 1871, 90 MS. Dom. Let. 96; Mr. Fish, Sec. of State, to Mr. Washburne, May 24, 1872, MS. Inst. France, XIX. 11; Mr. Fish, Sec. of State, to Mr. Helper, Dec. 11, 1872, 96 MS. Dom. Let. 491 (relating to a claim of Mr. Colton against Bolivia, for compensation for copies of a map of that Republic); Mr. Fish, Sec. of State, to Mr. Merrick, Jan. 22, 1873, 97 MS. Dom. Let. 302; Mr. Fish, Sec. of State, to Mr. Wing, min. to Ecuador, Dec. 9, 1873, MS. Inst. Ecuador, I. 339 (saying that in cases of contract where "there has been a denial or miscarriage of justice in the courts . . . the good offices of the Department may properly be invoked"); Mr. Fish, Sec. of State, to Mr. Spofford, vice-president of the Samana Bay Co., May 23, 1874, 102 MS. Dom. Let. 321; Mr. Hunter, Second Assist. Sec. of State, to Mr. Cameron, Oct. 1, 1874, 104 MS. Dom. Let. 376; Mr. Fish, Sec. of State, to Mr. Rohan, Nov. 19, 1874, 105 MS. Dom. Let. 239; Mr. Fish, Sec. of State, to Mr. Beardsley, Nov. 21, 1874, May 18, 1875, MS. Inst. Barb. Powers, XV. 209, 237; Mr. Fish, Sec. of State, to Mr. Green, April 7, 1876, 112 MS. Dom. Let. 582; Mr. Fish, Sec. of State, to Mr. Swann, May 4, 1876, 113 MS. Dom. Let. 258; Mr. Fish, Sec. of State, to Mr. Remington, Aug. 2, 1876, 114 MS. Dom. Let. 504; Mr. Fish, Sec. of State, to Mr. Sherman, Dec. 18, 1876, 116 MS. Dom. Let. 271; Mr. Evarts, Sec. of State, to Mr. Durant, March 26, 1877, 117 MS. Dom. Let. 455; Mr. Evarts, Sec. of State, to Mr. Remington, March 22, 1878, 122 MS.

Dom. Let. 257; Mr. Evarts, Sec. of State, to Mr. Seward, May 6, 1878, MS. Inst. China, II. 550; Mr. Evarts, Sec. of State, to Mr. Thompson, Sept. 12, 1878, 124 MS. Dom. Let. 323; Mr. Evarts, Sec. of State, to Sir E. Thornton, Brit. min., May 2, 1879, MS. Notes to Gr. Br. XVIII. 44; Mr. Blaine, Sec. of State, to Mr. Amadore, March 10, 1881, 136 MS. Dom. Let. 472; Mr. Blaine, Sec. of State, to Mr. Logan, min. to Cent. Am., No. 136, March 22, 1881, MS. Inst. Cent. Am. States, XVIII. 163 (see, however, Mr. Blaine, Sec. of State, to Mr. Hurlbut, min. to Peru, Aug. 4, 1881, MS. Inst. Peru, XVI. 506); Mr. Frelinghuysen, Sec. of State, to Mr. Cuyler, June 27, 1882, 142 MS. Dom. Let. 521; Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, June 27, 1882, MS. Inst. Venezuela, III. 226; Mr. Frelinghuysen, Sec. of State, to Mr. Heap, June 23, 1884, MS. Inst. Turkey, IV. 150; Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, Dec. 6, 1884, MS. Inst. Peru, XVII. 100; Mr. Bayard, Sec. of State, to Messrs. Remington & Sons, March 14, 1885, 154 MS. Dom. Let. 480; Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, July 15, 1885, MS. Inst. Venezuela, III. 478; Mr. Bayard, Sec. of State, to Mr. Freer, July 15, 1885, 156 MS. Dom. Let. 262; Mr. Bayard, Sec. of State, to Messrs. Sanders & Hollingsworth, July 23, 1885, 156 MS. Dom. Let. 339; Mr. Bayard, Sec. of State, to Mr. Bebell, Feb. 4, 1886, 158 MS. Dom. Let. 641; Mr. Bayard, Sec. of State, to Mr. Seay, Feb. 20, 1886, MS. Inst. Bolivia, I. 416; Mr. Bayard, Sec. of State, to Mr. Hevner, April 21, 1886, 160 MS. Dom. Let. 5; Mr. Rives, Act. Sec. of State, to Messrs. Morris & Fillette, Oct. 13, 1888, 170 MS. Dom. Let. 222; Mr. Olney, Sec. of State, to Mr. Meyer, Nov. 16, 1895, 206 MS. Dom. Let. 78; Mr. Day, Sec. of State, to Mr. Buchanan, min. to Arg. Rep. No. 362, May 31, 1898, MS. Inst. Arg. Rep. XVII. 363; Mr. Day, Sec. of State, to Mr. Ketcham, July 28, 1898, 230 MS. Dom. Let. 414; Mr. Hay, Sec. of State, to Mr. Powell, min. to Hayti, No. 338, April 12, 1899, MS. Inst. Hayti, IV. 143; Mr. Hay, Sec. of State, to Messrs. E. Becker & Co., April 12, 1899, 236 MS. Dom. Let. 298.

"How far it may be justifiable or expedient formally to press all the claims upon the French Government for immediate payment is a consideration to be distinguished from the clear opinion which is entertained of their intrinsic justice. Wherever they originated in compulsory measures practiced upon the claimants, they are entitled to a full and immediate interposition of their Government; but where the bills have been received by virtue of voluntary contracts, whether with the agents of the French Government or individuals, the receivers, having regard, as they must have had, to the degree of credit and punctuality ascribed to that Government, at the period of their speculation, any calculation and consequent disappointment ought not to be permitted to embarrass their own Government by binding it to pursue very pointed measures for their relief."

Mr. Madison, Sec. of State, to Mr. Livingston, min. to France, Oct. 27, 1803, MS. Inst. U. States ministers, VI. 155.

In instructions given by Mr. Pickering, Secretary of State, October 22, 1799, to the American plenipotentiaries to France, the envoys were

directed to secure the adjustment of "all the claims" of citizens of the United States against that Government, and among these there were enumerated the "sums due to American citizens by contracts with the French Government or its agents." (Am. State Papers, For. Rel. II. 301, 303.)

By the convention between the United States and France, concluded April 30, 1803, for the "payment of sums due" by France to citizens of the United States, provision was made for the satisfaction of "debts."

"With regard to the contracts of an individual born in one country with the Government of another, most especially when the individual contracting is domiciliated in the country with whose Government he contracts, and formed the contract voluntarily, for his own private emolument and without the privity of the nation under whose protection he has been born, he has no claim whatsoever to call upon the Government of his nativity to espouse his claim, this Government having no right to compel that with which he voluntarily contracted to the performance of that contract."

Mr. J. Q. Adams, Sec. of State, to Mr. Salmon, Apr. 29, 1823, Am. State Papers, For. Rel. V. 403.

Quoted in Mr. Fish, Sec. of State, to Mr. Pratt, July 17, 1875, 109 MS. Dom. Let. 141, declining to go beyond the use of good offices in behalf of the claim of the Botanical Gardens Railroad Co. against Brazil for alleged breach of contract.

Quoted, also, in Mr. Hitt, Act. Sec. of State, to Mr. Pixley, Sept. 29, 1881, 139 MS. Dom. Let. 172; Mr. Bayard, Sec. of State, to Messrs. Sanders & Hollingsworth, July 23, 1885, 156 MS. Dom. Let. 339.

"Although a private citizen of the United States may have the right to enter into contracts with foreign governments it is not allowed to a diplomatic representative to lend on such occasion the aid of his official sanction without express instructions to that effect from this Department."

Mr. Forsyth, Sec. of State, to Mr. McAfee, Sept. 23, 1836, MS. Inst. Colombia, XV. 37.

"You appear not fully to have understood your powers and duties under the law of nations in regard to claims of American citizens on foreign governments. I can not explain these more clearly than by extracting a few sentences from a letter dated on the 11th November, 1817, and addressed by this Department to Vice-President Dallas, in answer to an application made by him in behalf of an American citizen. The extract follows: 'It has been the practice of this Department to confine its official action in the recovery of indemnity from foreign governments to tortious acts committed under their authority against the persons and property of our citizens. In the case of violation of contract, the rule has been not to interfere, unless under very peculiar circumstances, and then only to instruct

our diplomatic agents abroad to use their good offices in behalf of American citizens with the Governments to which they are accredited. The distinction between claims arising from torts and from contracts is, I believe, recognized by all nations, and the reasons for this distinction will readily occur to your own mind.' This letter was carefully considered and adopted by the President and the entire Cabinet. I might add, that if this were not the rule, governments, and especially our Government, would be involved in endless difficulties. Our citizens go abroad over the whole world and enter into contracts with all foreign governments. In doing this they must estimate the character of those with whom they contract and assume the risk of their ability and will to execute their contracts. Upon a different principle, it would become the duty of the Government of our country to enforce the payment of loans made by its citizens and subjects to the government of another country. This might prove exceedingly inconvenient to some of the States of this Union as well as to other sovereign States."

Mr. Buchanan, Sec. of State, to Mr. Ten Eyck, comr. to Hawaii, Aug. 28, 1848, MS. Inst. Hawaii, II. 1.

No diplomatic agent of the United States ought, without instructions to that effect, "to interfere officially in a case of an alleged breach by a foreign government of a contract with citizens of the United States, and it is apprehended that it would at least be difficult to find an instance where such an instruction has been given by this Department. The reason for this is obvious. It does not comport with the dignity of any government to make a demand upon another which might not ultimately, on its face, warrant a resort to force for the purpose of compelling a compliance with it. Such a course can not, under this Government, be adopted without authority from Congress, and it is almost impossible to imagine any contract or any circumstances attending the infraction of one by a foreign government which would induce Congress to confer such an authority upon the President."

Mr. Marcy, Sec. of State, to Mr. Clay, min. to Peru, May 24, 1855, MS. Inst. Peru, XV. 159.

"If citizens of the United States combine with Ecuadorians and make a common investment of capital in local enterprises in Ecuador, so as to secure favors from the Government of Ecuador, they can not when disappointed, complain that the Government of Ecuador does not promptly discriminate in favor of their own national privileges as Americans, which they have thus compromitted."

Mr. Seward, Sec. of State, to Mr. Hassaurek, Sept. 12, 1865, MS. Inst. Ecuador, I. 172.

Good offices will be refused when the debt was of a speculative character or when it was incurred to aid the debtor government to make war on a country with which the United States was at peace.

Mr. Seward, Sec. of State, to Messrs. Leavitt & Co., May 6, 1868, 78 MS. Dom. Let. 432.

"I infer from the memorials of Mr. Vigil and of the legislature of New Mexico, that the claims to which you refer arose from contracts, express or implied, with the Mexican Government. Our long-settled policy and practice has been to decline the formal intervention of the Government except in cases of wrong and injury to person and property, such as the common law denominates *torts* and regards as inflicted by force, and not the result of voluntary engagements or contracts.

"In cases founded upon contract, the practice of this Government is to confine itself to allowing its minister to exert his friendly good offices in commending the claim to the equitable consideration of the debtor without committing his own Government to any ulterior proceedings."

Mr. Fish, Sec. of State, to Mr. Muller, May 16, 1871, 89 MS. Dom. Let. 348.

"It is not the policy or the practice of this Department to interpose, as a matter of right, to press upon foreign governments claims of its citizens growing out of the nonfulfillment of private contracts. It does not, however, withhold the exercise of the good offices of its representatives in countries where such claims originate, in manifest instances of injustice to citizens deserving its aid; and you are directed, therefore, in that sense, to bring the matter before the minister for foreign affairs of Japan, with an expression of the strong hope on the part of this Government that ample justice may be done to the claimant.

"There is one consideration which inspires this Government with a deeper interest in cases of this description occurring in Japan than would be entertained concerning similar cases in some other countries, and that is that those foreigners whose services have been engaged by that judicious Government to impart to its officers and people a knowledge of the arts and sciences as a means of perfecting that development which has been so auspiciously begun, may receive such prompt and ample fulfillment of the engagements made by the authorities employing them as will serve as an encouragement to others so employed or to be employed, and that thus they may labor with zeal and confidence, and that the national progress may be thereby accelerated and assured." (Mr. Fish, Sec. of State, to Mr. Shepard, Mar. 19, 1872, MS. Inst. Japan, I. 502.)

When, in cases of claims based on contract, only "good offices" of a diplomatic agent are interposed, such agent is directed "to investigate the subject, and if you shall find the facts to be as represented, you

will seek an interview with the minister for foreign affairs and request such explanations as it may be in his power to afford."

Mr. Fish, Sec. of State, to Mr. Osborn, No. 46, Mar. 4, 1876, MS. Inst. Arg. Rep. XVI. 98.

Case of Venezuelan claims.

By a convention of July 29, 1864, the Venezuelan government agreed to pay to France 600,000 francs in full settlement of all claims. This sum was payable in instalments, which were secured by the hypothecation of ten per cent. of the customs receipts at La Guayra. In 1867 a new convention with France was proposed, but it was not ratified, and the debt meanwhile continued to increase. Subsequently to the convention with France, agreements were made by Venezuela with other nations for the adjustment and payment of the claims of their citizens. Among these nations were Denmark, Germany, Great Britain, The Netherlands, Spain and the United States. Up to 1873, the payments on the foreign debts followed no fixed rule, but in July of that year a law was passed by which forty per cent. of the customs revenues were set aside for the national creditors, and of this portion thirteen per cent. was to be applied to the payment of the foreign creditors. In the division of this thirteen per cent the preferential rights claimed by France appear to have been recognized. In May, 1880, however, the Venezuelan government, by a law or decree, which was made without consulting the foreign governments or creditors, altered the distribution of the thirteen per cent., and, in order to make the change less objectionable to those whose interests were injuriously affected, increased the amount to be distributed by one-twelfth. France and Great Britain, who suffered by the new distribution, protested against it and demanded the fulfilment of the conditions of the original conventions. The French government refused to accept a smaller proportion than was assigned to it under the arrangement of 1873, and, when its demand was refused, suspended diplomatic relations. Venezuela invoked the good offices of the United States, and subsequently proposed, as a guarantee of prompt and regular payment, that the United States should receive and distribute among the foreign creditors the sums to be paid to them. On May 5, 1881, the minister of the United States at Paris was instructed to say to the French Government that, while the United States would be unwilling to guarantee any part of the foreign debt of Venezuela, it would, if desired so to do, receive and distribute the monthly payments. As France declined to yield her claim of priority, the American minister was instructed, on July 23, 1881, to controvert this claim as unjust to the other creditor governments, and to urge that any partition of the available resources of Venezuela should be pro rata; and the proposal was renewed that such partition should be made by the United States as

a guarantee to the creditor nations and a bar to any inequitable advantage of the one over the others. The French government still insisted on its right to priority under the convention of 1864, and maintained that the obligations of Venezuela thereunder could not be altered except by a new agreement. The French government offered, however, to make a concession as to the method of satisfying her claim of priority. Mr. Frelinghuysen stated that he felt disposed to admit the justice of this solution, if it should not be opposed by other creditor governments whose claims would, like those of the United States, be to some extent prejudiced by the admission of a prior claim on the part of France. As to the Venezuelan proposal that the United States should act as receiver for the satisfaction of the foreign creditors, Mr. Frelinghuysen stated that the United States was willing to undertake the task, and that, "to reach such a settlement, the United States is prepared to counsel Venezuela to pay to France during the coming year in cash, over and above the stipulated pro rata payments, the sum of 720,000 francs." Continuing, Mr. Frelinghuysen said: "We would also counsel Venezuela to resume the operation of the claims commission with France, and would use our efforts toward the conclusion of like claims commissions with other governments when justice may require it, adding the sum of any future awards to the amount of the foreign debt.

"Before doing so, however, it is desired to know whether such an arrangement will be acceptable to all the other creditor governments, whose interests, no less than our own, are concerned in the peaceful adjustment of the Franco-Venezuelan controversy on a basis which shall not overshadow the rights of other nations against Venezuela—and whether, in the event of accepting the arrangement proposed, the other governments will empower their representatives in Washington to consult with the representatives of the United States and Venezuela to the end of protocolizing a revised statement of the capitalized indebtedness of Venezuela to each as a basis for future distributions, which for convenience might be payable by us to them quarterly or semi-annually, instead of monthly, as proposed.

"You will lay the foregoing statement and views before the minister for foreign affairs of Great Britain. You will point out to him that the failure to attain a peaceable settlement as between France and Venezuela, and a resort to force by the former to collect her debt, could not but disastrously affect the ability of Venezuela to meet her just obligations towards the other creditor governments; that the common interest of all is concerned in reaching an amicable solution of the complex problem presented; and that the United States, themselves creditors, will nevertheless subserve their interests in the matter to the common good."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to England, March 30, 1883, MS. Inst. Great Britain, XXVI. 609.

Wharton, in his International Law Digest, gives the following gloss of the foregoing instruction: "The government of the United States can not but regard with grave anxiety the attempt of a foreign government to compel by force the payment of mere contract debts due subjects of such government by a South American state." (Wharton, Int. Law Dig. § 232, II. 662.)

The instruction does not relate to the distinctive subject of contract debts, and there is nothing in it referring to a distinction between the method of enforcing the payment of debts founded on contract and those arising from tort.

The position of Mr. Frelinghuysen on the subject actually under discussion was the same as that previously taken by Mr. Blaine, as to which see supra, § 967.

Case of Russian bonds.

"Your letters of December 31 and of the 9th instant, in relation to the collection of principal and interest of certain Russian bonds in your possession, have received attention.

"The instances to which allusion was made in my letter of the 27th ultimo, where the Department has authorized its representatives abroad to receive payments or accept settlements of the bonds of a foreign government, have been when such government was ready to deal with its creditor, and where the intervention of a consular or diplomatic agent of the creditor's country was a convenience to both.

"There are also cases, but not common enough to form a rule of action, where the bonds of one government being wholly or largely held by the citizens of another, upon default thereof, the government of which the creditors are citizens may endeavor, by diplomatic remonstrance or negotiation, to effect an international agreement between the two countries, prescribing time and manner of adjustment.

"Your proposition, however, seems to be founded on a wholly different basis from either of these. It is, as I understand it, to invest the Government of the United States with the legal title of certain Russian bonds, on account of which no payments of any character appear to have been made for twenty-five years, in the expectation that this Government would, by such an assignment, act as the party in interest (not as its creditor's advocate or trustee), and so obtain for itself more favorable terms for the liquidation of these securities than those to which other holders thereof are subject.

"Your proposition is contrary to international usage, and is, moreover, inexpedient to a degree which bars it from favorable consideration, inasmuch as this Government would not wish to make itself a preferred creditor over other of its own citizens or foreigners who may hold other portions of the same debt."

Mr. Frelinghuysen, Sec. of State, to Mr. Wright, Jan. 17, 1884, 149 MS. Dom. Let. 417.

See, to the same effect, Mr. Frelinghuysen, Sec. of State, to Mr. Hunt, min. to Russia, Jan. 12, 1884, MS. Inst. Russia, XVI. 376.

Landreau case.

May 17, 1874, Mr. Thomas, American minister at Lima, enclosed to the Department of State a report of a commission appointed by the President of Peru to estimate the quantity of guano belonging to that Government in the province of Tarapacá. Some of the deposits marked on the list were said to have been discovered by J. T. Landreau. Mr. Thomas said he was often asked if the United States would urge the claim of J. C. Landreau on account of these discoveries made by his brother, J. T. Landreau, and he asked to be enlightened on this point. Mr. Fish, on the 25th of July, stated that, as the claim of J. C. Landreau grew out of a contract which appeared to have been voluntarily made by his brother with the Peruvian Government, it belonged to a class of claims with which it was the practice of the United States not to interfere beyond the exercise of good offices, but that the Department of State had reached the conclusion that the claim was entitled to "some consideration" on equitable grounds. Mr. Thomas was accordingly authorized to make use of his "good offices, unofficially, with the Peruvian authorities in behalf of J. C. Landreau, with a view of securing for him from that Government a speedy investigation and adjustment of his claim." In a subsequent instruction, May 28, 1875, Mr. Fish adverted to the fact that the alleged discovery of guano was confessedly made by J. T. Landreau, a French citizen, and that J. C. Landreau based his claim on the ground that he had advanced money to his brother towards defraying the expenses attending the discovery, on the condition that he was to share in the profits as a partner; but this fact could not, said Mr. Fish, be allowed to make the question an international one, even if the claim were not based on contract. Mr. Fish added that there was no objection to the legation's employing its personal good offices in cooperation with the French legation at Lima, provided the latter should have been authorized to take that course. By a resolution of February 20, 1880, the House of Representatives, on the strength of a report of the Committee on Foreign Affairs, adopted a resolution requesting the President to take such steps as in his opinion might be proper and in accordance with international law to secure to J. C. Landreau a final settlement and adjustment of his claim against Peru, and, if he deemed it proper to do so, to invite France to cooperate to that end. Subsequently the claim became a subject of controversy between the United States and Chile, when it appeared that the latter Government would take the province of Tarapacá; and Mr. Blaine instructed the American ministers at Lima and Santiago to use their good offices in behalf of the claimant, and, in this relation, to say that justice seemed to demand that Landreau should have an opportunity to be heard in support of his claim before a tribunal in Peru competent to decide it, and that no treaty of peace which might cede territory to Chile should be made in dis-

regard of any rights which Landreau might, after an impartial judicial investigation, be found to possess. Subsequently, the case was brought before Mr. Bayard, as Secretary of State, who, after intimating a doubt as to the American citizenship of J. C. Landreau, said: "Without expressing any opinion as to the existence or effect of the contract so set up [by the claimant], it is enough for me now to say that in respect of alleged contractual debts of foreign governments to citizens of the United States, the rule is that, while this Government may interpose its good offices to invite payment, if these offices be declined and the existence of the debt be denied, its interposition ceases. In the present case, payment of this claim was urged upon Peru by former administrations, and its payment was absolutely refused on the ground that no contract of the character claimed had been made. Under these circumstances, this claim is not regarded as one which this Government should further press directly upon Peru; and consequently it can not now be urged indirectly upon Chile, who, in taking possession of the guano deposits in question under a treaty cession, did so with recognition of the liens thereon admitted by Peru to be valid, and can not be expected to recognize others the validity of which is wholly denied by Peru."

Mr. Thomas, min. to Peru, to Mr. Fish, Sec. of State, No. 106, May 17, 1874, For. Rel. 1874, 800; Mr. Fish, Sec. of State, to Mr. Thomas, No. 92, July 25, 1874, MS. Inst. Peru, XVI. 276; Mr. Fish, Sec. of State, to Mr. Gibbs, min. to Peru, No. 2, May 28, 1875, id. 297; Mr. Blaine, Sec. of State, to Mr. Trescot, No. 4, Dec. 16, 1881, For. Rel. 1881, 151; Mr. Bayard, Sec. of State, to Mr. Cowie, June 15, 1885, 156 MS. Dom. Let. 1.

See, also, Mr. Bayard, Sec. of State, to Mr. Christy, June 16, 1885, 156 MS. Dom. Let. 9.

On February 17, 1886, Mr. Jarvis, American minister at Rio de Janeiro, reported the declination of the Brazilian Government for the third time to admit the validity of the Fiedler claim, which formed the subject of the Senate resolution of March 27, 1884, Congressional Record, Vol. XV., pt. 3, p. 2323. The Department of State replied that under the circumstances it could give no further instructions on the subject. This decision was affirmed by Mr. Foster, as Secretary of State, on December 19, 1892, and was reaffirmed by Mr. Gresham, who stated that he had reached the same conclusion as Mr. Foster, namely, "that the claim having been three times strongly presented, and each time, after careful and thorough review, been summarily rejected, the Department was not able to instruct its minister to do anything further in the matter." (Mr. Bayard, Sec. of State, to Mr. Jarvis, min. to Brazil, No. 23, March 22, 1886, MS. Inst. Brazil, XVII. 315; Mr. Gresham, Sec. of State, to Mr. Helper, Sept. 4, 1893, 193 MS. Dom. Let. 321.)

With reference to the Perkins claim against Russia, Mr. Bodisco, on March 10, 1869, enclosed to the Secretary of State a note from Prince Gortchakoff of February 11, 1869, in which Prince Gortchakoff, re-

ferring to a resolution of Congress, in which it was asserted that the Perkins claim grew out of contracts with the Russian Government, asked for copies of the contracts. (MS. Notes from Russian Leg.)

"It is not necessary to remind you that an appeal by one sovereign on behalf of a subject to obtain from another sovereign the payment of a debt alleged to be due such subject is the exercise of a very delicate and peculiar prerogative, which, by principles definitely settled in this Department, is placed under the following limitations:

"1. All that our Government undertakes, when the claim is merely contractual, is to interpose its good offices; in other words, to ask the attention of the foreign sovereign to the claim; and this is only done when the claim is one susceptible of strong and clear proof.

"2. If the sovereign appealed to denies the validity of the claim or refuses its payment, the matter drops, since it is not consistent with the dignity of the United States to press, after such a refusal or denial, a contractual claim for the repudiation of which, by the law of nations, there is no redress. . . .

"3. When the alleged debtor sovereign declares that his courts are open to the pursuit of the claim, this by itself is a ground for a refusal to interpose. Since the establishment of the Court of Claims, for instance, the Government of the United States remands all claims held abroad, as well as at home, to the action of that court, and declines to accept for its executive department cognizance of matters which by its own system it assigns to the judiciary.

"4. When this Department has been appealed to for diplomatic intervention of this class, and this intervention is refused, this refusal is regarded as final unless after-discovered evidence be presented which, under the ordinary rules applied by the courts in motions for a new trial, ought to change the result, or unless fraud be shown in the concoction of the decision."

Mr. Bayard, Sec. of State, to Mr. Bispham, June 24, 1885, 156 MS. Dom. Let. 88.

The rule that a government does not intervene officially in cases of contract "has been applied in innumerable cases in this Department, many of great hardship. . . . And this rule is applied with strictness to cases where the creditor voluntarily goes to the debtor country to conduct in that country an enterprise which is to be closely bound up with its landed and business interests. This Government would peremptorily repel any claim by a European sovereign to exercise international supervision over such of our railroad or business corporations as may be owned in the United States by such sovereign's subject. The rule which this Government would thus decline to recognize it can not with propriety propose to others. . . . The rule just stated does not, however, preclude our diplo-

matic representatives abroad from exercising their personal good offices, under the instructions of this Department, in recommending, to the governments to which they are accredited, claimants who are considered by the Department to be just creditors of such governments."

Mr. Bayard, Sec. of State, to Mr. Dorsheimer, Jan. 25, 1886, 158 MS. Dom. Let. 548.

The interposition of the Department of State having been solicited to obtain from a foreign government a pension to which an American citizen alleged that he had become entitled in such government's service, the Department said: "As a rule the Department refrains from pressing claims growing out of employments voluntarily accepted by American citizens under foreign governments." The Department refused to interfere.

Mr. Blaine, Sec. of State, to Mr. Moffit, June 20, 1890, 178 MS. Dom. Let. 91.

See, to the same effect, Mr. Blaine, Sec. of State, to Mr. Patterson, April 7, 1890, 177 MS. Dom. Let. 180; Mr. Olney, Sec. of State, to Mr. Brown, Sept. 21, 1895, 205 MS. Dom. Let. 19.

In 1896 the United States secured the settlement of the claim of the Hydrographic Commission of the Amazon against Peru for 20,000 silver soles. (For. Rel. 1895, II. 1036; For. Rel. 1896, 492; Mr. Adee, Act. Sec. of State, to Mr. Ellett, Aug. 23, 1895, 204 MS. Dom. Let. 265.)

(2) EXCEPTION WHERE DIPLOMACY IS THE ONLY METHOD OF REDRESS.

§ 996.

By the treaty between the United States and Spain, concluded February 22, 1819, each Government renounced "all claims" of its citizens or subjects against the other, which had been submitted for its interposition since 1802; and by Article XI. the United States, referring to the claims of its citizens against Spain, agreed "to make satisfaction for the same, to an amount not exceeding $5,000,000." A question arose before the commissioners who were appointed to carry this stipulation into effect as to whether claims should be admitted which were founded on breaches of contract to perform unneutral services, and on March 5, 1822, the commissioners addressed an inquiry on the subject to John Quincy Adams, who was then Secretary of State, and who had negotiated the treaty on the part of the United States. Mr. Adams, on March 9, 1822, answered that it was not understood or intended by the United States nor, as he believed, by Spain, that claims arising from contract should be excluded from the benefit of the treaty. Of the absolute obligation of the United States to interpose in behalf of particular claimants no very subtle

or punctilious scrutiny had, he said, been made. It was, said Mr. Adams, "the need of the claimant, and not the legal classification of his claim, for which the assistance of his Government had been solicited," and "the delay or denial of justice, which it was desirable to remedy, was the same, whether it was for a wrong committed, or a contract broken. The claimants have," continued Mr. Adams, "alike, been *promised*, that, at the negotiation of the treaty, their claims would be considered and endeavors made to provide for them *in common with others*. . . . That a government, negotiating for the claims upon another power of its citizens, at their own entreaty, is not competent to compound for them, upon terms as favorable as it can, consistently with its duties to the rest of its own nation, secure, is a doctrine certainly not contemplated at the negotiation of the treaty, and now believed to be without warrant either in the law or usages of nations."

Moore, Int. Arbitrations, V. 4502–4505.

See, as to the origin of this letter, Reminiscences of James A. Hamilton, 57.

International commissions have frequently allowed claims based on the infraction of rights derived from contracts where the denial of justice was properly established. This was done under the convention between the United States and Mexico of April 11, 1839; by the commission under the act of Congress of March 3, 1849, to carry into effect the treaty of Guadalupe Hidalgo; by the commission under the treaty between the United States and Great Britain of February 8, 1853; by the commission under the convention between the United States and Peru of January 12, 1863; by the commission under the convention between the United States and Mexico of July 4, 1868; and by the commission under the convention between the United States and Venezuela of December 5, 1885.

See Moore, Int. Arbitrations, IV. 3425–3590.

See Wheaton, edition by Lawrence (1863), 510; Phillimore, 3rd ed., II. 8; Rivier, Principes du Droit des Gens, I. 272.

The question of the jurisdiction of international commissions over contract claims was ably and exhaustively discussed by J. Hubley Ashton, esq., as agent of the United States before the commission under the treaty between the United States and Mexico of July 4, 1868. After adverting to the broad terms of Article V. of the convention, by which it was stipulated that the proceedings of the commission should be considered a full and final settlement of every claim upon either Government growing out of any transaction prior to the date of the treaty, Mr. Ashton proceeded to argue that the high contracting parties intended to provide for the adjustment of all claims, without regard to the nature of the transaction in which they originated. He maintained, upon the preamble as well as upon the body of the convention, that its framers contemplated and designed "a perfect settlement, including the adjustment and payment, of all claims

. . . which the two nations regarded as subjects of international negotiation and arbitration." But, even conceding that the convention needed interpretation, he contended that its proper interpretation would lead to the same result. (Citing Austin, The Philosophy of Positive Law; Vattel, Book II. ch. xvii., secs. 276, 287, 290; Grotius, Book II., chap. xvi., sec. 25; 2 Phillimore, 96; Austin on Jurisprudence, II. 1024; 16 Peters, 615; Blackstone, Commentaries, Book II., chapter 30; Book III., chapters, 1, 8, 9; Spence, The Equitable Jurisdiction of the Court of Chancery; Slade's Case, 4 Coke; 1 Chitty's Pleading, 100, 126, 135; Mast *v.* Goodson, 2 Blackstone's Rep. 848; Bennet *v.* Lynch, 5 B. & C. 589; Marzetti *v.* Williams, 1 B. & Ad. 415; Kinlyside *v.* Thornton, 2 Blackstone's Rep. 1111; Leslie *v.* Wilson, 6 Moore, 415; Boorman *v.* Brown, 3 Q. B. Rep. 511; Gorett *v.* Ranedge, 3 East, 70; Law Mag., N. S., I. 197; Austin, Lectures on Jurisprudence, I. 64.) The word "injuries," as found in several other treaties in English and Spanish for the settlement of international claims, either alone or in connection with the words "persons" and "property," had, said Mr. Ashton, been uniformly construed as describing all civil injuries. (Citing the treaty between the United States and Spain of 1819, and the opinion of Mr. Binney, Am. State Papers, For. Rel., VI. 788; the treaty between the United States and Mexico of April 11, 1839; the convention between the United States and Costa Rica of July 2, 1860; Opinion of Court of Claims in Meade's Case, 2 N. & H. 275.) He also argued that the circumstances attending the negotiation of the convention and the correspondence preceding its conclusion showed that it was the intention of the contracting parties to include cases growing out of contract as well as those growing out of tort.

A similar argument was made by Mr. Ashton, with favorable results, as agent of the United States before the commission under the treaty between the United States and Venezuela of 1885. See Moore, loc. cit., supra.

"You are aware that it has not been the custom of Her Majesty's Government, although they have always held themselves free to do so, to interfere authoritatively on behalf of those who have chosen to lend their money to foreign governments, and the Mexican bondholders have not been an exception to this rule. The constitutional government, however, while established at Vera Cruz under the presidency of Señor Juarez, concluded with Captain Dunlop, two years ago, an arrangement by which it was stipulated that 25 per cent of the customs receipts at Vera Cruz and Tampico should be assigned to the British bondholders, and 16 per cent to the holders of convention bonds. That convention was confirmed and extended by the arrangement lately made by Captain Aldham. The claims of the bondholders, therefore, to the extent provided for in these arrangements, have acquired the character of an international obligation, and you should accordingly insist upon the punctual fulfillment of the obligations thus contracted."

Lord John Russell, British foreign secretary, to Sir C. L. Wyke, Brit. min., March 30, 1861, 52 Brit. & For. State Papers, 237, 238.

"It is true that this claim arises out of a contract voluntarily entered into by Mr. Sparrow, and consequently belongs to that class of claims regarding which this Government does not as a rule interfere diplomatically, claimants in such cases being remitted to the remedies provided by the laws of the country with whose government or citizens the contract is made and where it is to be executed. In the present case, however, the contract of Mr. Sparrow is directly with the Government of Peru; and it may be that that Government does not hold itself amenable to the suits of private individuals in its own tribunals. In such case, the claimant would be without legal remedy, as no mode of redress is provided for in the contract, either by arbitration or otherwise; and in that event the claim of Mr. Sparrow may properly be held to form an exception to which the general rule as to diplomatic interference would not be justly applicable.

"You will therefore ascertain by proper inquiry whether or not the tribunals of Peru are open to claimants against the Government, and should you find that Mr. Sparrow can not avail himself of these means of redress, it will be proper for you to present this claim to the authorities of Peru, with a view to its speedy adjustment and payment."

Mr. Evarts, Sec. of State, to Mr. Gibbs, min. to Peru, Oct. 31, 1877, For. Rel. 1895, II. 1036; S. Doc. 125, 54 Cong. 1 sess.

The contract in question was entered into by Mr. Sparrow with the Peruvian Government, April 1, 1872, to serve for three years as a civil engineer. He was assigned to duty in that capacity with the hydrographic commission of the Amazon, on which he served till its dissolution in April, 1877. He claimed that there was then due him for services the sum of $2,563.26. The payment of the claim, the justice of which was not denied by Peru, was repeatedly urged by successive Secretaries of State. (For. Rel. 1895, II. 1036–1055.)

It was settled in 1896. (For. Rel. 1896, 492–494.)

"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."

Mr. Trail, chargé at Rio de Janeiro, to Mr. Bayard, Sec. of State, Jan. 21, 1887, For. Rel. 1887, 54, 55.

"The difficulties between Venezuela and certain European powers having been ended by virtue of a protocol whereby that Republic obliges itself to pay pending claims to those powers, other nations, both in Europe and America, which remained neutral during the conflict, had recourse to Venezuela's plenipotentiary at Washington in order to secure a friendly adjustment of their claims. In view of this circumstance certain Mexican citizens, heirs of a commercial firm to which the Government of the Republic in the middle of last century transferred a claim against Venezuela, requested the diplomatic offices of Mexico to obtain for them similar treatment to that accorded to other creditors of that Republic in the definite adjustment of its pending indebtedness. The executive could not refuse to exercise those offices, especially inasmuch as the claim, acquired, as I have said, from the Mexican Government, is based upon a disinterested loan which Mexico, during the early years of independence, made to the country called New Granada, now divided into the Republics of Venezuela, Colombia, and Ecuador. At the time when New Granada was divided into three nations each one of them assumed a proportional obligation to pay the debt to Mexico, but in consequence of its lamentable strife Venezuela has not paid even a part of the share which it assumed. Suitable instructions having been given to our ambassador at Washington, a protocol has been signed providing a basis for the settlement of this claim on the same terms as are contained in the protocols signed by Venezuela's plenipotentiary with the representatives of the other neutral nations to which I have alluded."

Message of President Diaz to the Mexican Congress, April 1, 1903, For. Rel. 1903, 653–654.

The umpire for the Mexican claims awarded the claimants in this case £102,400, representing a principal of £17,955, with interest at 6 per cent for seventy-five years. For the attacks of the Caracas press on the award, see For. Rel. 1904, 865. President Diaz, in his message to the Mexican Congress, April 1, 1904, observed "that, as was to be expected, the commission discharged conscientiously its delicate trust," the umpire giving "a decision in favor of the Mexican claimants, who, as assignees of their Government, had justice on their side, considering the origin of the long-standing debt in question, a debt which the great Bolivar regarded as sacred." (For. Rel. 1904, 486.)

In accordance with a sentence of the supreme court of justice of Peru, and in conformity with the liquidation by the upper court of accounts, there was due to the firm of W. R. Grace & Co., of New York, from the Peruvian Government, with interest up to Aug. 31, 1901, the sum of $99,726.86. The claim had been pending seventeen years, and, in spite of its judicial adjustment, had remained unpaid. On March 3, 1899, the legation of the United States at Lima, acting under instructions, wrote to the foreign office: "A continuance of the conditions which have so long blocked progress in this case would be deemed by my Government to afford foundation for its diplomatic intervention based upon a denial of justice." This statement was repeated by the legation on Nov. 19, 1903. On the 14th of December the minister of foreign relations informed the legation that, by agreement between the minister of finance and the head of the claimant firm, an item for the payment of the claim had been inserted in the budget, and that diplomatic action was unnecessary. Provision for payment was duly made.

For. Rel. 1904, 678–680.

An American firm furnished coal to the Haytian Government and received in payment a certain number of bonds payable in six, twelve, eighteen, and twenty-four months. When the bonds were presented for payment the Government declined to pay them. A diplomatic claim was in consequence made, which was settled in 1904 by the payment by the Haytian Government to the American claimants the sum of $18,000.

For. Rel. 1904, 392.

(3) CONFISCATORY BREACHES OF CONTRACT.

§ 997.

"In all civilized countries instruments of this description [charters] are considered as sacred, and the welfare of the public and the interests of the government itself are deemed to depend upon their being so held. If the great public objects for which charters are granted and the private interests involved in them were liable to be sacrificed at the pleasure of the dominant authority, no authority in the state which might succeed it could expect to accomplish a public object by similar means. In a government which has been so changeable as that of Mexico, it is particularly necessary for the public weal that duties undertaken to be performed by the grantees of a charter, instead of being strictly and harshly judged, should be viewed in a spirit of equity and even indulgence."

Mr. Webster, Sec. of State, to Mr. Letcher, min. to Mexico, Aug. 18, 1851, MS. Inst. Mex. XVI. 273.

"There are several American citizens who, with different interests, claim to have formed engagements with the proper authorities of Nicaragua for opening and using the transit routes, with various stipulations defining their privileges and duties, and some of these contracts have already been in operation. This Government has neither the authority nor the disposition to determine the conflicting interests of these claimants; but what it has the right to do, and what it is disposed to do, is to require that the Government of Nicaragua should act in good faith towards them, and should not arbitrarily and wrongfully divest them of rights justly acquired and solemnly guaranteed. 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. Wherever their citizens may go through the habitable globe, when they encounter injustice they may appeal to the Government of their country, and the appeal will be examined into with a view to such action in their behalf as it may be proper to take. It is impossible to define in advance and with precision those cases in which the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well-defined and established laws are in operation, and where their administration is committed to able and independent judges, cases will rarely occur where such intervention will be necessary. But these elements of confidence and security are not everywhere found, and where that is unfortunately the case the United States are called upon to be more vigilant in watching over their citizens, and to interpose efficiently for their protection when they are subjected to tortious proceedings, by the direct action of the Government, or by its indisposition or inability to discharge its duties.

"But there is yet another consideration which calls for the attention of this Government. These contracts with their citizens have a national importance. They affect not ordinary interests merely, but questions of great value, political, commercial, and social, and the United States are fully justified by the considerations already adverted to in taking care that they are not wantonly violated, and the safe establishment of an interoceanic communication put to hazard or indefinitely postponed. . . . What the United States demand is, that in all cases where their citizens have entered into contracts with the proper Nicaraguan authorities, and questions have arisen, or shall arise, respecting the fidelity of their execution, no declaration of forfeiture, either past or to come, shall possess any binding force unless pronounced in conformity with the provisions of the contract,

if there are any, or if there is no provision for that purpose, then unless there has been a fair and impartial investigation in such a manner as to satisfy the United States that the proceeding has been just and that the decision ought to be submitted to. Without some security of this kind, this Government will consider itself warranted, whenever a proper case arises, in interposing such means as it may think justifiable, in behalf of its citizens who may have been or who may be injured by such unjust assumption of power."

Mr. Cass, Sec. of State, to Mr. Lamar, min. to Central America, No. 9, July 25, 1858, Correspondence in relation to the Proposed Interoceanic Canal (1885), 281, 283–285.

"Where one of the parties to a contract proceeds by an arbitrary act to annul it, on the ground that the other party has failed to comply with its conditions, and by a process which precludes any investigation, the plainest principles of justice are violated. What the United States require is not that their citizens should be maintained in rights they have forfeited, but that they should not be deprived of rights derived from the Government of Nicaragua without a fair examination by an impartial tribunal."

Mr. Cass, Sec. of State, to Mr. Jerez, May 5, 1859, MS. Notes to Cent. Am. I. 151. See, for fuller text of the note, chapter on interoceanic communications.

The Government of the United States will insist on fair and impartial examination and adjudication by Hayti, without discrimination as to nationality, of a contractual claim by a citizen of the United States against Hayti.

Mr. Evarts, Sec. of State, to Mr. Langston, min. to Hayti, Dec. 13, 1877, MS. Inst. Hayti, II. 121. This instruction related to the claim of A. H. Lazare, a full history of which is given in Moore, Int. Arbitrations, II., chap. 42, p. 1749.

A report having reached the British Government that a special envoy from Peru had arrived in Paris, and was in communication with certain persons in connection with the future disposal of guano pledged to the holders of Peruvian bonds, the British minister at Lima was instructed, on November 8, 1879, "to protest against any acts of the Peruvian Government which may tend to weaken the security hypothecated to the holders of Peruvian bonds." This protest was repeated to the Peruvian minister in London.

The Marquis of Salisbury, British for. sec., to Señor Pividal, Peruvian min., Nov. 26, 1879, Parl. Papers, Peru, No. 1 (1882), 16–17.

The Intercontinental Telephone Company, a New Jersey corporation, represented that the Venezuelan Government proposed arbitra-

rily to interfere with certain rights granted to the company for a valuable consideration. The contract between the Venezuelan Government and the company provided that "any doubts or disputes that may arise by reason of this contract shall be decided by the courts of the Republic in conformity with its laws." The United States refused to admit that this clause precluded diplomatic intervention, and added: "The Department insists that the proposed action of the Venezuelan Government virtually confiscating by an arbitrary executive order, against the protest of the corporation, the rights of the latter is in violation of . . . the contract, which entitles the corporation in case of 'doubts or disputes, that may arise' to have the question at issue decided by the courts of the Republic of Venezuela. You are instructed to represent to the Government of Venezuela that this Government is prepared to insist that no action depriving the corporators in question of their rights, against their protest, be taken except in due course of law, through the judicial tribunals of Venezuela, whose proceedings in this relation you are further instructed to watch. And you are furthermore instructed to represent to the Government of Venezuela that this Government will regard the forcible deprivation of this corporation of its property and franchises, without due process of law and fair trial, as a tort, which can not be sustained, and which this Government would consider a breach of comity between friendly governments and entitling the injured citizens to redress."

Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 118, June 23, 1887, MS. Inst. Venezuela, III. 574.

"I observe . . . that in one part of your note to Dr. Seijas, you speak of the case as one of violation of contract, though you subsequently very properly rest the claim on tort. The case is indeed one of violation of contract, but it is not on the contract, for the purpose of obtaining either its fulfilment or damages for its non-fulfilment, that this Government now proceeds. The case is one of an arbitrary confiscation and spoliation of the rights and property of citizens of the United States who acquired these rights and this property in Venezuela, under the express sanction of its Government and the most solemn guarantees of its protection. You are therefore instructed to renew the claim in this specific shape to that Government, and to say that the Government of the United States insists upon such action being taken by that Government as will not only compensate the claimants for the wrong done them, but will assure this Government that the Government of Venezuela continues to be ready to secure to citizens of the United States, who may visit Venezuela, those rights which are guaranteed to them by the law of nations, or by treaty, or by special concessions from Venezuela." (Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 122, Aug. 12, 1887, MS. Inst. Venezuela, III. 578.)

March 12, 1881, and May 20, 1882, the Guatemalan Government entered into a contract with certain citizens of the United States for

the building of a railway from Champerico, on the Pacific coast, to a town in the interior. By these contracts, which were afterwards duly assigned to the Champerico and Northern Transportation Company of Guatemala, a California corporation, the Government agreed to grant a subvention of $700,000 in bonds receivable at the Champerico custom-house for 25% of the duties there collected, as well as not to make any concession for a competing line of railway within a certain distance for the term of twenty-five years. The railway was built, and in September, 1884, was accepted by the Government. It was alleged that in the following year the Government suspended the reception of the bonds, when more than a half of them remained unredeemed; and also that the Government in 1887 made a concession for the construction of a competing railway within the specified distance of the line already built.

"It appears, therefore, that the Guatemalan Government have directly violated two essential features of their contract—the agreement to receive their bonds at the custom-house, and the guaranty against competing roads within 15 leagues—and it is for these breaches of the contract that the petitioner now asks redress.

"It is, of course, unnecessary for me to remind you that the Government of the United States has always refused to press the contractural claims of its citizens against foreign powers, unless it should appear that the citizens holding such claims were unduly discriminated against by the debtor government, or denied a judicial domestic remedy against it. Where these conditions do not exist the intervention of this Government in contractual claims by its citizens against foreign governments is limited to instructions to its diplomatic representatives abroad to exercise, unofficially, their personal good offices in recommending to the governments to which they are accredited a just and honorable settlement of the claims.

"The present case appears to be one of the class in which that course may properly be adopted, and you are therefore instructed to present unofficially to the Guatemalan Government the grievances of which this petitioner complains.

"In so doing you may take occasion to call the attention of the minister of foreign affairs to the great importance to Guatemala, as well as to the citizens of the United States whose interests are now directly involved, of a scrupulous observance of good faith in the performance of their contract. In the pursuance of an enlightened policy, Guatemala has sought to attract the capital and skill of citizens of other countries, and particularly of the United States, to undertake the construction of works of public utility which may serve to open to the world her great but hitherto undeveloped resources. To accomplish this result, nothing is more essential than a feeling on the part of those who may be willing and able to undertake such tasks, of con-

fidence in the exact integrity of the Guatemalan Government, and it is not too much to say that the course of that Government in relation to the contract now under consideration contains nothing in it reassuring for persons whom Guatemala may invite to enter into future engagements. It is vain to expect that the means of men and money required from other nations for the execution of similar works will ever be furnished in the face of such manifestations of disregard for contracts deliberately made.

"It is not questioned that a government, when a monopoly becomes oppressive, may give public relief by the grant of privileges to an adverse interest. If, however, it should do so in such a way as to destroy private rights granted by its own express agreement, it would seem but just that compensation should be made to the parties thereby injured. And, it may be observed, that in the case now in question the exclusive privileges granted to the petitioners' assignors are not only conferred for a limited period, but are so guarded by provisions for prompt and effective service, at rates fixed in the contract itself, as to prevent the possibility of any oppression to the public."

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., No. 563, March 27, 1888, For. Rel. 1888, I. 134.

In a subsequent instruction Mr. Bayard said: "The principle applicable in this, as in other cases of contractural claims against foreign governments, was laid down in my instruction No. 563, of March 27, 1888. It was there stated that, except where citizens holding such claims were unduly discriminated against by the debtor government or were denied a judicial domestic remedy against it, the Government of the United States would refuse to press the claims, and would limit intervention to the tender of the unofficial good offices of our diplomatic representatives. You were instructed that the present case was one in which that course might properly be adopted." (Mr. Bayard, Sec. of State, to Mr. Hall, min. to Cent. Am., Sept. 11, 1888, For. Rel. 1888, I. 165.)

Mr. Hall finally secured the abrogation, with the consent of the grantees, of the concession that infringed the rights of the Champerico and Northern Transportation Company. (Mr. Hall, min. to Cent. Am., to Mr. Bayard, Sec. of State, Nov. 7, 1888, For. Rel. 1888, I. 170.)

In 1883 the Portuguese Government granted to Edward McMurdo, a citizen of the United States, a concession for the construction and operation of a railway from Delagoa Bay to the Transvaal frontier. In conformity with the concession McMurdo formed a Portuguese company and assigned to it his concession, receiving therefore nearly the whole of the company's share capital and a part of its debenture bonds. He was unsuccessful in floating the bonds, and, in order to raise capital, formed an English company, to which he assigned his interests in the Portuguese company, receiving in return the stock of the English company and a part of its debentures. Subsequently controversies arose with the Portuguese Government, which

in 1889 seized the railway. This action was based on article 42 of the concession, which gave the Portuguese Government "the right, of its own authority, to declare the contract null" in certain contingencies. It was provided, however, by article 53, that all questions that might arise between the Portuguese Government and the company should be decided by arbitrators, two to be appointed by each party, and, in case of a tie, a fifth by the Portuguese supreme court. October 12, 1889, Mr. Blaine, as Secretary of State, telegraphed to the American minister at Lisbon to inform the Portuguese minister for foreign affairs that the United States, after careful investigation, considered the forfeiture of the Delagoa Bay railway concession and the confiscation of the property as unwarranted and unjust, and that it would "demand and expect the restoration of property or indemnity for losses inflicted by Portuguese Government at the time of threatened forfeiture." The reasons for this demand were fully set forth by Mr. Blaine in an instruction to the American minister of November 8, 1889. A similar position was taken by the British Government for the protection of the English investors. The Portuguese Government contended that it had not confiscated the line but had only taken possession of it in accordance with the terms of the contract, and declared that the claimants, if they saw fit to do so, might resort to the municipal arbitration provided for in the concession. On April 21, 1890, Mr. Blaine telegraphed to the American minister at Lisbon instructing him to say that the United States would "not permit the property of American citizens to be seized and appropriated by any other government," that the rights of American citizens in the railway could not be solely determined by a Portuguese tribunal, and that the United States would accept nothing less than "an international arbitration of the real merits of the case." By a protocol concluded at Berne, June 13, 1891, between the United States, Great Britain, and Portugal, it was agreed to refer the question of indemnity to an international tribunal with power to fix the amount of compensation due not only for the taking possession of the railway but also for the arbitrary rescission of the concession. An award was rendered on March 29, 1900, in favor of the complaining Governments for the sum of 15,314,000 francs, Swiss money, with interest at 5% from June 25, 1899, to the date of payment, in addition to £28,000 paid on account in 1890. The award amounted, roughly, to about $1,750,000.

For. Rel. 1900, 903; For. Rel. 1902, 848–852; Moore, Int. Arbitrations, II. 1865–1899.

The Chilean Government having objected to the arbitration of the claim of the North and South American Construction Company on the ground that it was a contract claim, it was answered that the

claim "is not, properly speaking, based upon the contract, but upon conduct of the Chilean Government, amounting to a practical confiscation of its property."

Mr. Olney, Sec. of State, to Mr. Gana, Chilean min., June 28, 1895, For. Rel. 1895, I. 83.

Certain bonds were issued by the Haytian Government to pay for work and materials. Of these bonds about $183,000, face value, were held by citizens of the United States. A bill was introduced in the Haytian legislative assembly to convert the bonds at a rate greatly depreciatory of their value. The Department of State said that, as a general rule, the United States could not protest in advance against a pending bill; but, while declining to authorize a contingent protest pending the legislative consideration of the matter, instructed the American minister that he might suggest to the minister of foreign affairs that, as the bonds had been issued to citizens of the United States for value received or effective service performed, the United States might, "in case of due complaint of damage, be constrained to consideration and action if it be established that the arbitrary reduction of one-third from sums which the Haytian Government has contracted to pay to citizens of the United States is enforced."

Mr. Sherman, Sec. of State, to Mr. Powell, min. to Hayti, No. 43, Oct. 26, 1897, MS. Inst. Hayti, III. 582.

A claim was made against the Dominican Government, growing out of the seizure by the Government of Santo Domingo City, under an order of the supreme court of the Republic, of a highway bridge built by a citizen of the United States across the Ozama River within the limits of the city under a concession from the city government to construct the bridge and collect tolls thereon. On the claim being pressed President Henreaux indicated his willingness to settle it by purchasing the bridge at its actual value on December 20, 1895, the date of the judgment of the Dominican supreme court, the value of the structure to be ascertained by two competent engineers, one to be chosen by President Heureaux and the other by the claimant, both engineers to come from the United States, and the value of the concession to be deemed to constitute an important element in estimating the value of the property. Subsequently, on the proposal of President Heureaux, it was agreed that one engineer should be appointed by the United States to render a final decision. Mr. Alfred Noble, of Illinois, was chosen for the purpose, it being stated in his appointment that he was to "survey the Ozama River bridge at Santo Domingo City, . . . and to assess and award the value and amount to be paid by the Dominican Government for said bridge and the franchise and concession therefor," in pursuance of the

agreement between the two Governments. Mr. Noble awarded to the claimant the sum of $74,111.17 in gold, with interest at 6% from December 20, 1895. This represented the actual value of the bridge estimated on the basis of the cost of construction, the arbitrator holding that the valuation of the bridge was not increased above the actual cost by the concession and franchise.

For. Rel. 1898, 274-291.

April 5, 1898, Mr. R. H. May, a citizen of the United States, contracted with the Guatemalan Government to operate the Northern Railroad for a year from April 16, 1898, for a monthly subvention of $35,000 in silver and the revenues of the road, and to do certain extra work, including repairs made necessary by floods. By a further contract, July 16, 1898, he agreed to place a large number of cross-ties in the roadbed at a fixed price. He proceeded to carry out the contracts, but on Sept. 21, 1898, he announced that the operation of the road was suspended. He made this announcement in order to protect himself against additional claims, the operation of the road having in fact just been suspended by a strike of his employees, caused by the failure of Government to make the stipulated payments. The American minister employed his good offices to effect a settlement, and on Sept. 23 and 30, 1898, an arrangement was reached, by which May agreed to rescind his contract and give way to another contractor on certain conditions. A dispute subsequently arose both as to the fulfillment of these conditions and as to the precise terms on which the recision was to be made; and on October 20, 1898, although the contract of the 5th of April provided for the arbitration of all differences, the Guatemalan Government took possession of the road with a show of military force, May formally protesting.

May claimed damages to the amount of $127,793 for forcible dispossession of the property and the violation of his contract rights, for injury to his reputation, credit, and business standing, and for expenses incurred in defending his rights.

On the facts set forth the United States declared that, as a grave and indisputable conflict existed between the parties as to the terms of the alleged agreement of recision, it could not be admitted that one of those parties "had the right to decide and determine the conflict by the strong hand, as was done in this case;" that under the circumstances Mr. May was entitled to the intervention of his Government and to an indemnity which would reasonably compensate him for the damages sustained; and that the controversy was a fit one for international arbitration, which was accordingly demanded.

By a protocol of Feb. 23, 1900, the claim was submitted to the arbitration of Mr. G. F. B. Jenner, British minister to the Central American States, who rendered, Nov. 16, 1900, in favor of the

claimant, an award of $143,750.73 in gold, and also directed the return by the Guatemalan Government of a bond of $40,120.79 which May had deposited with it to assure his compliance with the award.

The money award was composed of the following items:

1. $55,287.79 for subsidies earned, works executed, and expenses incurred under the contract of April 5, 1898.

2. $6,874.11 representing interest thereon at 6% from Oct. 21, 1898, to the date of the award.

3. $41,588.83 for profits that would have been earned had not the Government prevented the performance of the contract.

4. $40,000 as "indemnity for expenses incurred, two years' time lost, suspension of credit, and grave anxiety of mind."

By the protocol, the award was payable within six months, with interest at 6% from the date of its rendition till payment.

See Mr. Hay, Sec. of State, to Mr. Hunter, min. to Guatemala, Nov. 4, 1898, For. Rel. 1900, 648; Mr. Hill, Act. Sec. of State, to Mr. Hunter, Oct. 6, 1899, id. 654; Mr. Hay, Sec. of State, to Mr Jenner, May 12, 1900, 245 MS. Dom. Let. 84; same to same, May 17, 1900, id. 143; Mr. Hay to Mr. Witherspoon, May 17, 1900, id. 161.

In the autumn of 1896 a large part of the city of Jacmel, in Hayti, was destroyed by fire. A relief committee was formed, and with this committee the firm of John D. Metzger & Co., American citizens, agreed to furnish $20,000 worth of lumber, subject to the approval of the arrangement by the Government. The Government subsequently agreed through its proper officers to take $5,000 worth of lumber and to pay for it on delivery. But when lumber to that amount was tendered the Government refused to pay for it, and the relief committee refused to receive it without the instructions and sanction of the Government. There was thus a breach of contract, in consequence of which Metzger & Co. were compelled to dispose of the lumber at a sacrifice. Their loss in this regard was $3,000, which the Haytian Government was adjudged to be obliged to pay.

Award of the Honorable William R. Day, arbitrator, in the matter of the claims of John D. Metzger & Co. *v.* The Republic of Haiti, protocol of Oct. 18, 1899, For. Rel. 1901, 262, 264–269.

In 1894 the Government of Salvador granted to certain persons an exclusive concession for twenty-five years of the privilege of steam navigation of the port of El Triunfo. This concession was assigned to a Salvadorean corporation called "El Triunfo Company, Limited," a majority of whose stock was acquired by the Salvador Commercial Company, a California corporation. The Salvadorean company was subsequently thrown into bankruptcy on a petition fraudulently presented to a court by certain persons, and the President of Salvador

impaired the prospect of obtaining substantial redress from the courts by a decree proclaiming the port in question to be closed. In an instruction to the American minister in Salvador in 1901 Mr. Hay, as Secretary of State, declared that the President of the United States could not take from any man the slightest right or even a doubtful right, even as against a confessed wrongdoer, without submission to the courts, and that the Government of the United States was unable "to conceive of any other procedure as compatible with the existence of the state, which exists only to safeguard rights of property, of contract, of life and liberty, which can not be taken away except upon a fair and impartial hearing and upon solemn judicial decision." The United States demanded international arbitration, and this was agreed to by a protocol signed at Washington, December 19, 1901. A majority of the arbitrators, consisting of the Honorable Henry Strong, chief justice of Canada, and the Honorable Don M. Dickinson, in an opinion accompanying their award, which was in favor of the United States, declared that if the Republic of Salvador had good ground for complaint that the grantees of the concession had by misuser or nonuser of their franchise brought upon themselves the penalty of forfeiture, that Government should have appealed to the courts, "and there, by the due process of judicial proceedings, involving notice, full opportunity to be heard, consideration, and solemn judgment, have invoked and secured the remedy sought," and that it was "abhorrent to the sense of justice to say that one party to a contract, whether such party be a private individual, a monarch, or a government of any kind, may arbitrarily, without hearing and without impartial procedure of any sort, arrogate the right to condemn the other party to the contract, to pass judgment upon him and his acts, and to impose upon him the extreme penalty of forfeiture of all his rights under it, including his property and his investment of capital made on the faith of that contract."

For. Rel. 1902, 838–880, and, particularly, pp. 839, 871.

In support of the right of intervention in the case, the Hon. W. L. Penfield, Solicitor of the Department of State, in a report to Mr. Hay, cited the Delagoa Bay Railway case, and the following publicists: Pradier-Fodéré, Vattel, Halleck, Calvo, and Wharton's Int. Law Digest. (For. Rel. 1902, 846–848.)

The American minister at Caracas was instructed to bring to the attention of the Venezuelan Government, "in the form of kind offices," the fact that much concern had been caused to the United States by the frequent complaints of American citizens of the alleged actual or threatened annulment, by Executive action, of concessions granted to or vested rights acquired by them in Venezuela. These complaints, it was stated, were of such a character and of such fre-

quency as to cause serious embarassment to the Government in its efforts to maintain friendly and harmonious relations. While it was felt to be the imperative duty of every civilized government to protect the vested rights of property of its citizens against arbitrary confiscation or injury, it was not always easy to determine whether the complaints were well founded; but the strong apprehension expressed by the claimants sometimes constrained the United States to bring their cases to the attention of the Venezuelan Government, and this tended to create trouble, especially where it was alleged that vested rights were annulled without judicial hearing or decree. The Government of the United States had assured its citizens that the deprivation of personal or property rights, "except upon solemn judicial trial and determination," was, "according to the constitution of Venezuela, an impossible conception," and it wished to assure that Government of its good will and "its earnest desire to maintain the friendly relations of the two Governments on the permanent basis of justice."

Mr. Hill, Act. Sec. of State, to Mr. Russell, chargé, No. 412, April 30, 1901, MS. Inst. Venezuela, V. 65.

Mr. Conger, the United States minister at Peking, has addressed a protest to the Chinese Government against the canceling of the franchise granted to the American China Improvement Company for the construction of a railway from Canton to Hankau and against its transfer to a French corporation. It is understood that the forfeiture of the concession is based on the grounds that the railway has not been completed within the stipulated period and that the control of the American corporation has passed into the hands of Belgians. The State Department holds that the condition of China for the last year and a half has made it impossible for the company to complete the work, and that China is therefore responsible for the delay; also that the fact that the company still retains its American charter makes it incumbent upon the United States Government, according to its rule in such cases, to defend the franchise.

London *Times*, weekly edition, Nov. 29, 1901, p. 765.

Among the complaints against Venezuela enumerated by the imperial German embassy at Washington, in its promemoria of Dec. 11, 1901, as necessitating measures of pressure, and, if need be, of coercion against the Venezuelan Government was a claim of "the Berlin Company of Discount (Berliner Disconto Gesellschaft) on account of the nonperformance of engagements which the Venezuelan Government has undertaken in connection with the great Venezuelan Railway which has been built by the said Government. Those obligations," said the promemoria, "amount for the time being to

fully 6,000,000 bolivars (1 bolivar to be counted as 80 pfennigs). The obligations continue to increase, as the interest for the values of the 5 per cent Venezuelan loan of the year 1896, which was emitted to the amount of 33,000,000 bolivares, and which have been transmitted to the company as a guaranty for the payment of interest of the capital spent in building, has not been paid regularly since seven years, nor has the payment been made regularly to the sinking fund."

For. Rel. 1901, 192.

In 1888 the firm of Westendorp & Company, bankers of Amsterdam, Holland, brought out a Dominican 6% gold loan of £770,000. As security for the loan the Dominican Government created a first lien on all its customs revenues, and, in order to make the lien effective, authorized the Westendorps to collect and receive at the customhouses all the customs revenues of the Republic. To this end the Westendorps were to create in Santo Domingo an establishment known as the Caisse Générale de la Régie (Caja de Recaudación), generally called the "Régie," to which the collection of the revenues was to be entrusted till the loan was cleared off. Moreover, in case of default, the Westendorps were empowered to create for the purpose of collection a European commission, which it was understood was to be international in character. The Westendorps duly established the "Régie," sending out from Europe necessary agents and employees. In May, 1892, however, they transferred all their rights to the San Domingo Improvement Company of New York, a New Jersey corporation, which transfer was accepted and confirmed by the Dominican Congress in March, 1893. Meanwhile the Westendorps had, in 1890, contracted to take a further issue of £615,000 6% bonds, which were emitted for the payment of the interior debt and also for the partial construction of a railway from Puerto Plata, the principal seaport on the north coast, across and through the mountains to Santiago, the principal city of the interior. Security similar to that in 1888 was given for the new bonds, and the "Régie" was to pay the interest and sinking fund out of the customs revenues. The Westendorps began the construction of the railway and had finished about eleven miles up the mountain and supplied some rolling stock, when the San Domingo Improvement Company, which had acquired the bonds belonging to the Westendorps (about $1,500,000) and all the rights and obligations under their contracts with the Dominican Government, took possession. The San Domingo Improvement Company contracted to complete the railway, which was subsequently done; to guarantee the conversion of the outstanding 6% bonds, including bonds to be issued for the completion of the railway, into new 4% consolidated bonds, amounting to £1,610,000, and to pay off and discharge certain large interior debts,

aggregating $659,000, or $440,000 gold. The Dominican Government also created a new class of bonds, called debentures, at 4%, amounting to $1,250,000. Both classes of new bonds were declared, in the law by which they were authorized, to "be guaranteed by the total amount of the customs receipts, which shall be collected by the San Domingo Improvement Company," and all the stipulations of the Westendorp contracts for the guaranty and validity of the bonds were declared to continue in full force and effect; and it was further expressly provided that, in order to strengthen the credit of the budget, the Improvement Company should, in case of default of interest or sinking fund, or in case of other manifest necessity, request the Governments of Holland, Belgium, England, France, and the United States, in which the bonds were held, each to appoint a member of a financial commission, which was to possess all the "Régie's" rights of collection. It was stipulated, however, that the power of appointment should not be exercised by a country in which less than £100,000 bonds were held. In 1894, in order to separate the fiscal operations and the work on the railway from the collection and disbursement of the revenues, the San Domingo Finance Company of New York was created, under the laws of New Jersey, for the purpose of carrying on the former operations. Subsequently, the company of the Central Dominican Railway was created under the laws of New Jersey for the purpose of operating the railway. In 1895 the Dominican Government became embarrassed by the hostile action of a French fleet which appeared with peremptory demands. In 1889 a company, called the Banque Nationale de Saint Domingue, was created in France to exercise an exclusive franchise for a State bank in Santo Domingo. The bank was duly established and was in operation when, in 1892, a personal difference arose with President Heureaux, and, upon his obtaining a judgment against the bank for a large sum, execution was issued and a levy made upon its property. The French consul intervened, sealed the safe of the bank, and reported to his Government. Diplomatic relations were severed, and a French fleet appeared before the Dominican capital. The dispute was submitted to the arbitration of Spain, but was not decided, and strained relations still continued when, in January, 1895, a naturalized Frenchman was murdered near Samana Bay. The French Government demanded redress in both matters, and threatened to seize the custom-houses of the country and collect a large indemnity. President Heureaux appealed to the Improvement Company to help him, and upon the presentation of the matter to the President and the Secretary of State of the United States, the American minister in Paris was directed to interpose, and in the end the French Government agreed to adjust the matter if the Improvement Company would guarantee the necessary payments. This the com-

pany eventually did, and the Finance Company agreed to purchase some additional debentures, which by law were called "French-American Reclamation Consols," and to buy control of the bank. Such control was purchased in June–October, 1895, the Finance Company acquiring, at something over par, more than three-quarters of all the shares, costing, with some extraordinary expenses and commissions, about $750,000 in gold. In 1897 the Improvement Company, at the solicitation of the Dominican Government, brought about a consolidation of all the debts of the Republic. This consolidation was effected through the Finance Company under an act of the Dominican Congress of August 8, 1897. This law affirmed all previous guarantees, including those relating to liens upon and the collection of the revenues. Although, under the administration of the San Domingo Improvement Company, the amount of the revenues collected had steadily increased, the payment of interest on the Dominican debt was in April, 1899, suspended, chiefly because the revenues had, under a governmental decree, become payable partly in depreciated paper currency. The depreciation of this currency was due to revolutionary movements, which culminated in the assassination of President Heureaux on July 26, 1899. After his death the Government naturally fell into the hands of those who had been his enemies and who were disposed to question and condemn all the acts of his long administration, and an agitation sprang up in the press for the withdrawal of the American companies in the country. Some advocated the withdrawal as the result of friendly negotiation and some through forcible expulsion. Late in 1899 Señor Juan Isidro Jimenez, who had become President, intimated a willingness to negotiate with the companies for the purchase of their interests, but he subsequently changed his position, and, besides causing the bank to be closed through a proceeding in the local courts, issued, on January 10, 1901, an executive order peremptorily excluding the Improvement Company from the discharge of its function in the collection of the revenues under the laws, thus practically destroying the most substantial security for the payment of its bonds. The American companies applied to their Government for relief against this order, and almost immediately thereafter the Dominican Government sent its minister of foreign affairs, Dr. Henriquez y Carvajal, to the United States and Europe on a special mission. Doctor Henriquez laid his case before the Department of State, where he was advised to seek a direct arrangement with the American companies. He then opened negotiations with them, and, on March 25, 1901, concluded with them a contract which was considered by him, as well as by the American companies, to be advantageous to his Government. This contract, which embraced the purchase by the Dominican Government of the interests of the American companies, provided

for the deposit with a trust company in New York of a fixed monthly sum, pending the amicable settlement of all questions, which, so far as they could not be adjusted directly, were to be determined by arbitration. Each of the parties was to appoint an arbitrator; and an umpire, in case they could not agree, was to be designated by the King of Sweden at the request of the American and Dominican Governments. The gross sum to be paid and the method of its payment, together with the security therefor, were also to be determined by the arbitrators. After completing this negotiation Doctor Henriquez went to Europe, where, as the result of the contract made with the American companies, he was able to effect, on June 3, 1901, a contract with the Belgian and French bondholders. Both contracts were submitted to the Dominican Congress in September, 1901. The Belgian contract was promptly ratified, but the American contract was rejected. The principal ground of its rejection seems to have been the objection to leaving it to the arbitrators to fix the sum to be paid. The American companies then invoked the intervention of their Government, and filed with the Department of State on January 6, 1902, their printed case. The Department gave suitable instructions to the American chargé d'affaires to Santo Domingo, with whose assistance another effort was made by the companies to effect a direct settlement. Negotiations had, however, scarcely begun when the existing Government was overthrown and a new one set up. In May, 1902, negotiations were resumed, and the American companies presented a statement as to their properties and claims, with a view to arbitration. The Government, however, adhering to the principle on which the contract of 1901 was rejected, proposed a settlement by the purchase of all the rights, claims, properties, and interests of the companies for a round sum of money. This proposal was accepted, and the sum of $4,500,000 was agreed upon as the price to be paid. This compromise having been reached, the only questions that remained to be settled were those of the annual or monthly payments and the time of the delivery of the railroad. In the end the Government insisted on the delivery of the railroad within a few months after the contract should be signed and before any substantial part of its value had been paid; while the companies insisted that they should be permitted to hold and operate it till it had been paid for, since it would constitute their only tangible security, apart from the offer of the Government to set aside a portion of the revenues of Puerto Plata for the monthly payments. On the question of the railway the negotiations were broken off. The companies subsequently offered to deliver the road after five full annual payments of principal and interest had been made. But this proposal was rejected, and all negotiations ceased. The companies then again applied to their Government, and the Department of State,

considering the demand of the Dominican cabinet for the immediate handing over of the railroad to be unjust, instructed the American chargé d'affaires to San Domingo, in the autumn of 1902, to ask for an arbitration by means of a mixed commission of all questions at issue, including the amount to be paid to the American companies, and a draft of a protocol for that purpose was presented to the Dominican Government. A long discussion ensued, but that Government adhered to its previous position as to the fixing of a lump sum, and on January 31, 1903, a protocol was signed at Santo Domingo city by which it was agreed that $4,500,000 should be paid to the American companies, leaving it to arbitrators to determine the conditions under which the companies' property should be delivered, the terms and times of payment, including security, and the amount of the monthly instalments and the manner of their collection, as well as the rate of interest to be paid on the award. Under this agreement payments at the rate of $18,750 a month were to be made pending the arbitration. The first payment was made in February, 1903, but none subsequently. On July 14, 1904, an award was made by which the principal sum, bearing interest at the rate of four per cent, was to be paid in monthly instalments of $37,500 during the first two years, and $41,666.66 thereafter. Provision was also made for the appointment by the United States of a financial agent, who was to receive the amount due on the 1st of each month, beginning with September 1, 1904, and the revenues of Puerto Plata, Samana, Sanchez, and Monteeristi, and of any other custom-houses opened within a designated zone, were assigned as security. In case of failure to receive during any month the sum then due, the financial agent of the United States was empowered to enter into possession of the custom-house at Puerto Plata, in the first instance, and collect the revenues, and, in case the sums there collected should be at any time insufficient for the payment of the amounts due, or in case of any other manifest necessity, or if the Dominican Government should so request, the financial agent was authorized to exercise at Sanchez, Samana, and Monteeristi any or all of the rights and powers vested in him in respect of the port of Puerto Plata.

Message of the President to the Senate, February 15, 1905, Confid. Exec. V., 58 Cong. 3 sess. 13–20.

V. *ACTS OF AUTHORITIES.*

1. Who may be Considered as "Authorities."

§ 998.

A military commander, acting under the authority of a revolutionary government in Venezuela, which was afterwards recognized as the legitimate government of that country, is not liable for im-

prisonment of, and assault and battery committed on, a citizen of the United States.

Underhill *v.* Hernandez (1897), 168 U. S. 250, affirming 26 U. S. App. 573.

In the case of Ricardo L. Trumbull *v.* United States, No. 27, United States and Chilean Claims Commission (1901), the commission awarded the claimant $3,000 as compensation for services rendered by him at the request of the American minister at Santiago, Chile, in the legal management of an extradition case. The request for the rendition of the services was made by the American minister without obtaining the previous authority of the Department of State at Washington, and the State of New York, in which the crime for which the extradition was sought was committed, declined to pay the bill.

It appears that in October, 1889, the French minister in the City of Mexico "presented to the Mexican Government a supplementary document ratifying the total and absolute renunciation made by Baron Boissy d'Anglas—French minister at the time of the renewal of diplomatic relations between the two countries—of all claims for payment of the debt contracted under the reign of Maximilian." It was stated that this step was taken under telegraphic instructions from the French Government, in order to dissipate rumors which had been widely circulated to the effect that France intended to press such claims, in spite of the protestations of her former minister.

Mr. Blaine, Sec. of State, to Mr. Whitehouse, chargé at Mexico, October 25, 1889, MS. Inst. Mexico, XXII. 473.

As to the exemption of Mexico for acts of the Maximilian government, see Moore, Int. Arbitrations, III. 2902.

That the United States Government is not liable for the debts or torts of officers of a Territory organized under Congressional legislation has been more than once held by courts in the United States.

Mr. Bayard, Sec. of State, to Mr. West, Brit. min., June 1, 1885, For. Rel. 1885, 452, citing the case of the Florida Bonds under the claims convention of 1853. (See Moore, Int. Arbitrations, IV. 3594.)

With reference to the lynching at New Orleans, in March, 1891, of eleven men of Italian nativity by a mob of citizens, and the failure of the local authorities to indict any of the offenders, President Harrison said: "It would, I believe, be entirely competent for Congress to make offenses against the treaty rights of foreigners domiciled in the United States cognizable in the Federal courts. This has not, however, been done, and the Federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen

or for the punishment of his slayers. It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must, in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents as to make this Government answerable for their acts in cases where it would be answerable if the United States had used its constitutional power to define and punish crimes against treaty rights."

President Harrison, annual message, Dec. 9, 1891, For. Rel. 1891, vi.

The claims of the Italian Government growing out of this incident were settled by the payment of 125,000 francs, or $24,330.90. (President Harrison, annual message, Dec. 6, 1892.)

A claim was made by the Government of Sweden and Norway for damages for proceedings against a Swedish vessel by a justice of the peace at Brunswick, Georgia, in violation of treaty stipulations. The amount claimed was less than $300. The governor of Georgia promised to lay the claim before the general assembly of that State. With reference to this condition of things the Department of State said: "As the officer who did the wrong was not under bond, and there is no assurance that a judgment against him would avail the complainant, the matter is not one which can be relegated to the courts. Either the State of Georgia must pay the claim, or the Federal Government must pay in its stead. The injury is the direct result of the wrongdoing of a State official, whom the Federal Government had no part in selecting and over whom it had no control. The obligation to assume the consequences of the unlawful act would seem to rest upon the State whose officer did the wrong and not upon the Federal Government—the people of all the States."

Mr. Olney, Sec. of State, to the governor of Georgia, Feb. 9, 1897, 215 MS. Dom. Let. 616.

2. Responsibility for Their Acts.

(1) within scope of agency.

§ 999.

In respect to the liability of a government for the acts of its agents, a distinction has been drawn in international discussions (1) between different kinds of agents, and (2) as in private law, between acts done within and those done outside the scope of the officer's agency. In the case of a claim made against the United States for damages for the loss of a vessel through the negligence of a pilot in San Francisco, Mr. Cushing, Attorney-General, said:

"In the transaction of public affairs, there are two classes of officers, one employed in the collection of the revenue and the care of the

public property, who represent the proprietary interest of the Government; and another class, who are the agents of society itself, and are appointed by the Government only in its relation or capacity of *parens patriæ*. For the acts of the former, the Government holds itself responsible in many cases, because their acts are performed for the immediate interest of the Government. But, for the acts of the latter, no government holds itself pecuniarily responsible. It provides means to make them personally responsible, or to punish them for malfeasance in office, and in so doing it does all which the people have by their constitution and laws required of the Government."

Cushing, At. Gen., May 27, 1855, 7 Op. 229, 237.

The circumstance that an official act was performed under the advice and with the formal approval of a responsible legal adviser of the Government creates a strong presumption that it was lawfully done.

Ely's Adm. *v.* United States (1898), 171 U. S. 220, 231, citing Mitchel *v.* United States, 9 Pet. 711, 742.

The Government of Chile is responsible to the United States for the spoliation of property belonging to citizens of the United States by officers of Chile.

Mr. Everett, Sec. of State, to Mr. Carvallo, Feb. 23, 1853, MS. Notes to Chile, VI. 65.

F., a citizen of the United States, agreed to erect an electric-light plant in Bluefields, Nicaragua, the contract being signed on the part of the town by Gen. Reyes, governor of the Department of Zelaya, and L. A. Marx, president of the municipal council. F. subsequently obtained, by fraudulent representations, supplies to the value of $1,419.04 from the Post-Glover Electric Co., of Cincinnati, giving in payment a draft on New Orleans. The company, discovering the draft to be worthless, sent an agent after the goods, which were found at Bluefields in the possession of F.'s representative, who turned them over to the company's agent. Gen. Reyes sought to induce this agent step into F.'s contract, and when he declined to do so refused clearance to the steamer that was to take the goods away. They consequently were not shipped, and the agent was obliged to return to the United States without them, except a few valuable pieces which he concealed in his trunk. Subsequently, by judicial process, F.'s contract was declared to have been violated and the goods forfeited, and they were retained by the municipality.

By a protocol signed March 22, 1900, between the United States and Nicaragua it was left to Gen. E. P. Alexander to determine the amount to be paid to the Post-Glover Electric Co., Nicaragua's

liability being admitted. He awarded $1,402.94, which included $1,275.40 as principal and $127.54 as interest.

For. Rel. 1900, 824, 833–835.

A public agent of the Government [Secretary of War], contracting for the use of a building for the Government, is not personally liable under the contract, though he sealed it with his individual seal.

Hodgson *v.* Dexter (1803), 1 Cranch, 345.

(2) OUTSIDE SCOPE OF AGENCY.

§ 1000.

Killing by an officer, in personal malice, of a defendant in a civil process, after service of the writ, is to be considered as the personal act of the officer, for which the Government is not answerable.

Mr. Bayard, Sec. of State, to Mr. West, Brit. min., June 1, 1885, For. Rel. 1885, 450.

The foregoing citation relates to the case of J. P. Tunstall, a British subject, who was killed by a deputy sheriff in New Mexico. Mr. Bayard, in maintaining that the case was one for judicial redress alone, referred to the case of Marshal Haynau in the following terms:

"To the demand of the Austrian minister for Executive intervention, however, the answer was, 'that no proceedings can be taken in this case which are not in accordance with the ordinary administration of law.' If a civil suit was to be brought, it was intimated General Haynau must bring it; if a criminal prosecution for assault was to be instituted General Haynau must appear as prosecutor; and as General Haynau did not desire to take such a responsibility, no redress at all was given. The case was an extreme one. The attack had no color of excuse. The party attacked was an aged man, at the time defenseless, an eminent servant of the Austrian Crown, who, if any person not a foreign ambassador could properly appeal for diplomatic intervention, could make such an appeal. The outrage was offered in such a shape as to make it an offense against the Austrian sovereign under whose orders General Haynau had acted in the matters which had provoked the indignation of the workmen at the brewery. Yet, even in this extreme case, the British Government laid down, and laid down properly, the rule that for injuries inflicted on a foreigner on English soil, redress must be sought, not from the executive, but from the courts. And this rule is not affected by the circumstance that it does not appear that any agents of the civil authority, whether in the exercise at the time of civil functions or not, were participants in the acts of outrage complained of, for those

acts could not have been deemed in any case to have fallen within the scope of their agency."

Mr. Bayard to Mr. West, June 1, 1885, For. Rel. 1885, 457.

"The wisdom of [a diplomatic officer's] presenting [on his own responsibility] by way of ultimatum, peremptory demands for money payment in cases of this character [the arrest, and detention of the property, of persons selling the publications of the American Bible Society in Turkey] is not apparent, for it is a rule of international law that sovereigns are not liable, in diplomatic procedure, for damages to a foreigner when arising from the misconduct of agents acting out of the range not only of their real but of their apparent authority. This Government could not admit such a demand upon it on the part of any foreign power, and it can not be expected to make such a demand against a nation with which it treats as an equal sovereign, unless it has acquired by treaty the right to do so. But this view of the matter is qualified by the right to expect that, when the circumstances of the case warrant it, the government found morally in default will hasten to render proper reparation to the injured party."

Mr. Bayard, Sec. of State, to Mr. Clark, Aug. 17, 1885, For. Rel. 1885, 858.

"The general rule of international law observed by the United States is that sovereigns are not liable in diplomatic procedure for damages occasioned by the misconduct of petty officials and agents acting out of the range not only of their real but of their apparent authority."

Mr. Adee, Act. Sec. of State, to Baron de Fava, Italian ambass., No. 602, August 14, 1900, MS. Notes to Italian Leg. IX. 451, 453.

A citizen of the United States, being entitled to a share of an estate in Denmark, authorized a Danish consul in the United States to collect the money. It was alleged that the consul collected the money, but failed to account for it, and he was afterwards dismissed by his Government from office. On consideration of the authorities, an opinion was intimated that Denmark was not liable for the consul's default, but, in the absence of a full understanding of all the facts, a final opinion was not expressed.

Mr. Wharton, Act. Sec. of State, to Mr. Hanger, March 18, 1892, 185 MS. Dom. Let. 556, citing Story on Agency, § 319; Mr. Justice Miller, in Gibbons *v.* United States, 8 Wall. 275; Pitman's Case, 20 Ct. Cl. 255; 7 At. Gen. 237; Calvo, 4th ed., § 1203.

(3) EXACTION OF REDRESS FOR OUTRAGES.

§ 1001.

On September 13, 1879, John E. Wheelock, an American citizen, was arrested in Venezuela at the instance of an Italian subject, on the charge of having stolen $1,200 from the latter's safe. The arrest was made by an official called a "commissary," named Sotillo, having the dual functions of a magistrate and police constable. When Wheelock was arrested, it appears that Sotillo caused his arms to be pinioned and afterwards subjected him to various tortures for the purpose of extracting from him a confession. Subsequently, when his case came before the district court, Wheelock was honorably acquitted and discharged, with the personal assurance of the district judge that no ground even of suspicion was found against him.

Wheelock sought to make a claim against Venezuela for the sum of $50,000, but the Government of the United States, with the understanding that the Venezuelan authorities were taking energetic measures to punish the official who had caused the tortures to be inflicted upon him, reserved for the time being the question of a formal demand for reparation, with an intimation of the hope that the sense of justice and equity of the Venezuelan Government would guide it to an immediate and unconstrained disposition of the question. The Venezuelan Government subsequently stated, however, that two of its judicial officers had concurred in holding that there was no ground for continuing proceedings against Sotillo, nor for ordering his arrest, and expressed the opinion that, while a new investigation had been ordered, the obligation of Venezuela, if a crime had actually been committed by Sotillo, would be "satisfied" by his condemnation and punishment, and that the Government would not owe any pecuniary indemnity to the person injured. Mr. Evarts, who was then Secretary of State, in an instruction to Mr. Baker, the American minister at Caracas, of October 15, 1880, stated that the general principle that the obligations of a Government were satisfied by the condemnation and punishment of the author of a crime might well be admitted, but that to apply this principle to the proceedings in the case of Sotillo would seem little less than a mockery of justice. There was, said Mr. Evarts, every reason to believe that Sotillo's alleged vindication rested solely on his own testimony and that of his subordinate instruments, Wheelock's evidence not being before the judges; and that the sanction given to such proceedings by the executive government of Venezuela imparted to them the character of an absolute denial of justice. Correspondence continued till 1885, when, on April 2, Mr. Soteldo, Venezuelan minister at Washington, made an offer of $6,000 in settlement of the case. This offer was accepted. In a note of June 29, 1885, Mr. Soteldo declared that his

Government, in making the payment, which it did out of "pure deference" to the people of the United States, was not to be understood as accepting the precedent "that anyone who considers himself injured or aggrieved by the acts of public functionaries, and still less by those of private individuals of the nation, may disregard the ordinary means of redress, i. e., the competent courts of the country, and have direct recourse to the diplomatic interference of his government as a means of securing reparation." Mr. Bayard, in acknowledging, as Secretary of State, the receipt of this declaration, intimated that the object of the two Governments was to reach a "practical adjustment" of the case, and added: "As sovereign States, both the United States and Venezuela have the undoubted right to be satisfied, each for itself, that no wrong done to its citizens by the other passes unredressed; and neither sovereign can rightly be expected to recognize validity as attaching to the municipal enactments of the one which may assume to bar the exercise of the rights given by international law to the other."

In this passage Mr. Bayard seems to have referred to the Venezuelan law of February 14, 1873, in relation to foreigners and claims.

Mr. Evarts, Sec. of State, to Mr. Baker, min. to Venezuela, No. 91, Oct. 15, 1880, For. Rel. 1880, 1041; Mr. Frelinghuysen, Sec. of State, to Mr. Baker, No. 196, Jan. 16, 1883, For. Rel. 1883, 896; Mr. Baker to Mr. Frelinghuysen, No. 683, May 6, 1883, id. 908; Mr. Soteldo, Venezuelan min., to Mr. Frelinghuysen, February 8, 1884, For. Rel. 1884, 597; Mr. Frelinghuysen to Mr. Soteldo, April 4, 1884, id. 599; Mr. Soteldo to Mr. Frelinghuysen, April 10, 1884, id. 602; Mr. Frelinghuysen to Mr. Soteldo, April 25, 1884, id. 607; Mr. Soteldo to Mr. Bayard, Sec. of State, April 2, 1885, For. Rel. 1885, 930; same to same, June 29, 1885, id. 933; Mr. Bayard to Mr. Soteldo, July 7, 1885, id. 934.

Accompanying the dispatch of Mr. Baker to Mr. Frelinghuysen, No. 683, of May 6, 1883, For. Rel. 1883, 908, 909, there is a long note of Señor Rafael Seijas, Venezuelan minister of foreign affairs, to Mr. Baker, of March 29, 1883. In this note of Señor Seijas the objections to Wheelock's diplomatic claim are very elaborately and ably presented on general grounds as well as in connection with the Venezuelan decrees of February 14, 1873, the text of which is given. The text of these decrees will be found in For. Rel. 1883, 917–918. For a discussion of them, see supra, § 919.

In March, 1894, William Wilson, a citizen of the United States, was shot at Bluefields. The evidence showed that he was shot without provocation by Norberto Argüello, acting governor of Roma, one of whose policemen was accessory to the murder; that the dying man was most harshly treated by his assailants, and that the promise of the superior agents of Nicaragua touching the arrest and punishment of the murderer had not been kept. A demand was made on May 12, 1894, that the Government of Nicaragua manifest its disapproval of the conduct of its officers; that Argüello be brought to

immediate trial; that his protector, Governor Torres, be dismissed from office; that the murderer's accomplice be dealt with according to his deserts, and that the Government of Nicaragua should adopt such measures as to leave no doubt as to its purpose and ability to protect the lives and interests of citizens of the United States dwelling in the reservation, and to punish crimes committed against them. It seems that Argüello was arrested and escaped, and a promise was made that no effort would be spared to recapture him. A demand was also made for the removal from office of the Nicaraguan commissioner to the Mosquito reservation, Carlos A. Lacayo, who was deemed to be even more culpable than Torres. Governor Torres was removed, but the Nicaraguan Government requested that the demand for Lacayo's removal be withdrawn, alleging that he had performed his full duty. It was stated that every effort would be made to recapture Argüello, and that the policeman who was his accomplice had been ordered to be put on trial.

Mr. Gresham, Sec. of State, to Mr. Baker, min. to Nicaragua, May 12, 1894, For. Rel. 1894, 468.
See, also, For. Rel. 1894, 470, 475–477.

"The case of George Webber deserves attention. This unfortunate man, a naturalized citizen of the United States, of Bavarian origin, 70 years old, was capriciously arrested at Konia, taken under circumstances of great hardship, at first by railway, then on foot, and afterwards, when physically exhausted, in a rough cart, to Broussa on March 28, 1895, and thrown into prison, where he died during the night from the effects of his hard treatment, without medical attendance. The minister promptly sent his secretary of legation to Broussa to examine the matter, and found that the arrest of Webber was apparently causeless; that his possession of a United States passport was disregarded, and that his death was due to the fatigue and privations to which he had been wantonly subjected. Demand was accordingly made for a searching investigation and the punishment of any officials found in fault, the removal of the delinquent governor being specifically asked. These just demands have not so far borne fruit; and they will be further insisted upon, with the addition of a requisition for a suitable indemnity, should the facts elicited by the minister's inquiry be confirmed."

Report of Mr. Olney, Sec. of State, to the President, Dec. 19, 1895, S. Doc. 33, 54 Cong. 1 sess. 4; For. Rel. 1895, II. 1256, 1258, 1266–1271.
See Mavroyeni Bey, Turkish min., to Mr. Olney, Sec. of State, Dec. 21, 1895, For. Rel. 1895, II. 1413, 1414.

In August, 1903, Dr. Shipley, an American citizen visiting Smyrna, was attacked, wounded, and robbed by a member of the Turkish

police, while another member looked on and offered no assistance. The case was brought to the attention of the Turkish Government, and eventually a complete and formal apology was made by the commandant of the police at Smyrna, both to the American consul and to Dr. Shipley, and the latter's claim for the property taken from him was paid in full. The incident was then declared by the United States to be closed.

For. Rel. 1903, 733.

In January, 1904, a Mexican, named Zambrano, at Brownsville, Texas, was charged by his employer with having stolen a fowling piece and pawned it. While on his way to the pawnshop, in company with his employer, they met a ranger, named McKenzie, who, at the employer's request, accompanied them with a view to Zambrano's probable arrest. At the pawnshop Zambrano confessed the theft, but afterwards started to run away, when, at a distance of six or eight paces, McKenzie fired at him three shots, one of which pierced his shoulder and another his neck. Zambrano was then conducted to prison, where he was cared for by the city physician. On his trial he confessed and was sentenced to only five days' imprisonment in consideration of his previous misfortune and detention. It was alleged that the firing by McKenzie was not only unlawful, but was unnecessary to effect the arrest, but the grand jury refused to indict him. It was alleged, among other things, in McKenzie's behalf, that he was somewhat lame, so as to be at a disadvantage in giving chase to an escaping prisoner. The Mexican Government officially complained of Zambrano's treatment and asked for an indemnity. On the ground of "the failure of the authorities of Cameron County, Texas," to try and punish McKenzie for "unlawfully shooting" Zambrano, the United States offered an indemnity of $500, which was accepted by the Mexican Government.

For. Rel. 1904, 473–482.

3. Judicial Authorities.

§ 1002.

By a note of October 31, 1856, the Chevalier Bertinatti, Sardinian minister at Washington, complained of the action of the marine court of the city of New York in arresting and convicting Captain Bontemps, master of the Sardinian brig *Phebo*, on a charge of assault and battery, the alleged offense having been committed upon two of the seamen of the brig on the high seas. Captain Bontemps made no defense, but the Italian vice-consul interposed and denied the jurisdiction of the court. The Department of State, while conceding

that the court's assumption of jurisdiction was excessive, pointed out that an appeal should have been taken from the judgment to a higher tribunal and added: "A government can not be held responsible for the mistakes of its courts, in the administration of justice, and certainly should not be when the party complaining has not exhausted all the means placed within his reach of correcting the errors that may have been committed. . . . It is alleged that the marine court exceeded its powers and gave judgment in a case over which it has no jurisdiction. Supposing this to be a correct view of its proceedings its acts are absolutely void, and both the court and the parties who instituted and carried on the prosecution are personally responsible for their illegal acts."

Mr. Marcy, Sec. of State, to Chevalier Bertinatti, Sardinian min., Dec. 1, 1856, MS. Notes Italy, VI. 178.

In 1846 the American brig *Caroline* sailed from New York for Callao, Peru. On the voyage she was compelled by stress of weather to put into St. Catharines, Brazil, where she was condemned and sold as unseaworthy. In 1848 the case was brought to the attention of the Department of State by an American company in which the brig was insured, and instructions were sent to Mr. Wells, United States consul at St. Catharines, to endeavor to recover the vessel on the ground that her condemnation was fraudulent. On July 28, 1855, Mr. Wells, who had then ceased to be consul at St. Catharines, submitted to the Department of State, as attorney, a claim against the Government of Brazil, in which he represented that he had obtained a judgment for the recovery of the vessel before a judge at St. Catharines, but was prevented from executing it by the municipal judge at Santos, where he found the vessel. The claim was based on the alleged fraud committed by the municipal judge at St. Catharines in condemning a sound and good vessel and for the malicious conduct of the judge at Santos in preventing the execution of the judgment of restoration. On September 18, 1855, Mr. Marcy, as Secretary of State, instructed the American minister at Rio de Janeiro to present the claim to the Brazilian Government; but that Government, on the ground of certain alleged irregularities, declined to pay it, while reserving the question whether governments might be held liable for damages which, either through error or bad faith, their subordinate authorities might commit in the ordinary exercise of their functions. In July, 1859, Mr. Cass, Mr. Marcy's successor, thought that the case required careful examination by a person versed in the maritime law of Brazil. In May, 1862, Mr. Seward instructed Mr. Webb, then American minister at Rio, to look into the claim. Mr. Webb, asked the Brazilian Government for a final decision and received it in the form of a rejection of the claim, and

he expressed the opinion that it would be bad policy to attempt to press it at that time. On April 12, 1867, he reported that Mr. Wells had been trying to sell the claim to a Brazilian, and that he supposed a purchaser had been found. On the 1st of the following October, however, he reported that he had settled the claim for a certain amount in bills of exchange on London, but stated that all over a certain proportion was to be paid to the Brazilian purchasers of the claim. It further appeared that he had brought about the settlement by threatening to break off diplomatic relations. On December 7, 1867, Mr. Seward, in acknowledging the receipt of certain bills of exchange, said that Mr. Webb's course had shown "much energy and sagacity," but that, if the settlement was brought about in consequence of the transfer of the claim to Brazilians, this circumstance would "certainly have weakened the moral and annulled the legal right" of the United States further to interfere in the matter. Mr. Seward also observed that the ground of complaint was that the judge who condemned the vessel was actuated by fraudulent motives; but that as Mr. Wells was removed from the consulate at St. Catharines for improper official conduct, the Department deemed itself bound to scrutinize any transaction with which he was connected, and that the proceeds of the bills of exchange would not be paid to him till further information should have been received as to the transfer of the claim to Brazilians. On January 17, 1868, Mr. Seward submitted the case to the Attorney-General, with a request for an opinion as to whether the Brazilian Government was justly responsible for damages resulting from the alleged corruption of the judge at St. Catharines. Accompanying his letter there was a report from the examiner of claims of the Department of State, who held that the claim was groundless and that its settlement established a dangerous precedent. The examiner of claims also stated that Mr. Webb had rejected an offer of arbitration by the Brazilian Government. Mr. Webb's conduct was also made the subject of a formal complaint by that Government. He himself admitted that the case had created a strong public feeling in Rio against the United States and the American minister.

December 29, 1871, Mr. Akerman, Attorney-General, sent to Mr. Fish an opinion in which he took the ground that the Brazilian Government was not responsible, and that, if the charge of corruption against the judge at St. Catharines was established, redress should be sought in the courts of Brazil. It appears that no definite information was possessed by the Department of State as to the disposition of the proportion of the money which was to have been paid to the Brazilian purchasers of the claim. Mr. Webb stated that the money had been paid over to them, but gave no further information on the subject. The Brazilian minister at Washington stated that his Government had paid to Mr. Webb, besides the £5,000 sent by

him to Washington, the sum of £9,252, making in all £14,252. By the diplomatic and consular appropriation act of June 11, 1874 (18 Stat. 70), the sum of $57,500, or so much thereof as might be necessary, was appropriated " for repaying to the Government of Brazil money erroneously claimed by and paid to the United States."

For the diplomatic correspondence in the case, see S. Ex. Doc. 52, 43 Cong. 1 sess.

For the opinion of Attorney-General Akerman, see 13 Op. 553.

" I have to acknowledge the receipt of your despatch No. 34 of the 16th December last, in relation to the detention under judicial authority of the schooner *Indian* of Galveston, Texas. . . . The court in this instance may have been very much mistaken, of which there is no evidence, but it is to be presumed that any error into which it may have fallen will be corrected upon appeal to the superior tribunals. When it is found that manifest injustice in a plain case has been sanctioned by the court of last resort, then and not till then, can we call upon the executive branch of the Mexican Government to redress the wrong. I need not say to you that a judicial court can not make reparation in damages for any error into which it has fallen, and that it is a principle vital to that independence of the judiciary which this Government cherishes as an invaluable safeguard for the rights and liberties of the subject, that judges should not be held personally responsible for errors of judgment. They may be indictable for the malicious usurpation of power or malicious exercise of real authority at the suit of their own Government, but private parties, whether domestic or alien, can in general sustain no action against them for their official proceedings."

Mr. J. C. B. Davis, Assist. Sec. of State, to Mr. Chase, consul at Tampico, Jan. 10, 1870, 57 MS. Inst. Consuls, 101.

See, to the same effect, Mr. Hunter, Second Assist. Sec. of State, to Mr. Russell, master of the schr. *Indian*, July 7, 1870, 57 MS. Inst. Consuls, 172; Mr. Uhl, Act. Sec. of State, to Mr. Cogswell, April 17, 1894, 196 MS. Dom. Let. 385.

" The Department might not be able to coincide with the view expressed in your dispatch to the effect that the Government of Guatemala might be held responsible for wrongs resulting from the corrupt conduct of one of its judges. It is understood to be a well established principle of public and municipal law that no government is answerable to a party who may have suffered from the corrupt conduct of its public officers. It is, however, unnecessary to discuss this question at length now as the Department has . . . reached the conclusion that no just grounds exist for the diplomatic interference of this Government."

Mr. Blaine, Sec. of State, to Mr. Logan, min. to Central America, No. 136, March 22, 1881, MS. Inst. to Central America, XVIII. 163.

Proceedings were taken in the District of Columbia for the condemnation of certain property for the use of the Government of the United States. The property was condemned and the amount of its appraised value paid by the Government into court according to law. A claim was subsequently made against the United States, and in support of the claim it was contended that the money was paid over by the court to persons who were not entitled to it. Held, that, even assuming that the money was erroneously paid over, the United States could not be held responsible for it. "The courts of the United States," said the court, "are in no sense agencies of the Federal Government, nor is the latter liable for their errors or mistakes; they are independent tribunals, created and supported, it is true, by the United States; but the Government stands before them in no other position than that of an ordinary litigant. . . . It had discharged its entire liability by the payment into court, and was not entitled to notice even of the order for the distribution of the money. If the Attorney-General had appeared, it might have been charged that he was a mere interloper, and that only the owners of the land were interested in the distribution of its proceeds."

United States *v.* Dunnington (1892), 146 U. S. 338, 351.

4. Sanitary Measures.

§ 1003.

See supra, § 191, as to quarantine.

In the latter part of 1894 a disease thought to be cholera (afterwards found to be diarrhea-cholera) appeared in the valley of Parahyba, State of Rio, Brazil. In consequence, traffic over the railroad from Rio de Janeiro to São Paulo was suspended, and several lots of watermelons from the interior were seized by order of the sanitary authorities of the State of São Paulo and destroyed. The watermelon producers of São Paulo, among whom were many Americans, were thus prevented from disposing of their crops. Early in 1895 these producers filed claims with the State government of São Paulo, and, as the claims were not paid, they appealed to their own governments for diplomatic interposition. In August, 1896, the Department of State held that the measures taken by the authorities of São Paulo were justified under the circumstances, and that an indemnity could not be demanded for the Americans involved. The Department suggested, however, that there might be ground for equitable relief and directed the American legation to lay the matter before the Brazilian Government in that sense. The Brazilian Government answered that, the claims having been administratively denied, the claimants must seek their remedy in the courts. In view of this

answer the Department of State, in March, 1897, instructed the legation that the matter could not be further pressed.

Mr. Adee, Act. Sec. of State, to Mr. Thompson, min. to Brazil, No. 350, Aug. 21, 1896, MS. Inst. Brazil, XVIII. 202; Mr. Sherman, Sec. of State, to Mr. Thompson, No. 400, March 27, 1897, id. 234.

In each of these instructions it was stated that if citizens of other countries should be indemnified, an indemnity would of course be insisted upon for the losses of citizens of the United States.

5. Tariff Changes.

§ 1004.

As to the power of taxation, see supra, §§ 183, 184.

Claims were made by certain American merchants against the Spanish Government for the refund of duties which they were compelled to pay in 1845 on property shipped to Cuba on the faith of a decree issued by the Cuban authorities on October 7, 1844, which the Spanish Government afterwards refused to sanction and which, pending the voyages of the vessels to Cuba, was rescinded. In 1860 a convention was concluded at Madrid for the settlement of the claims for the sum of $128,635.54. This convention was submitted to the Senate of the United States, which, on March 5, 1860, declined to approve it.

Mr. Frelinghuysen, Sec. of State, to Mr. Colquitt, Nov. 8, 1884, 153 MS. Dom. Let. 160; Mr. Bayard, Sec. of State, to Mr. Frye, Feb. 17, 1886, 159 MS. Dom. Let. 98.

With reference to complaints of citizens of the United States who had purchased sugar and molasses in Porto Rico with the intention of exporting them, of a decree of the captain-general of that island imposing a duty of three dollars a hogshead on sugar and fifty cents a hogshead on molasses, to take effect immediately, Mr. Fish said that when important changes in the fiscal regulations of foreign countries were made they were usually prospective in their operation, so that they might have no injurious effect on previous transactions. This rule he considered to have been lost sight of in the decree in question, and he requested the Spanish minister at Washington to convey to the captain-general of Porto Rico and also to the Spanish Government the expectation that "amends will be made for any losses which citizens of the United States may have sustained, or may incur, in consequence of the unusual terms of the decree referred to."

Mr. Fish, Sec. of State, to Mr. Lopez Roberts, Span. min., April 3, 1869, MS. Notes to Span. Leg. VIII. 245.

An American firm at New York shipped, on August 25, 1894, a cargo of flour and other provisions to San Juan, Porto Rico, the reci-

procity agreement with Spain under section 3 of the McKinley Act then being in force. When the cargo arrived at San Juan the reciprocity agreement had come to an end, and the authorities declined to assess the duties under it. The firm in question protested against the action of the authorities in imposing without due notice in advance the heavier duties on the cargoes, and appealed to the Department of States for relief. The Department held that, as the new tariff act of the United States, commonly known as the Wilson-Gorman Act, which went into operation at midnight of August 27–28, 1894, repealed the legislation under which the reciprocity agreement was concluded, and as the basis of reciprocal treatment then disappeared the United States could not claim the continuance of the agreement nor contest the right of the Spanish Government to treat it as cancelled from that day and hour. "Our own legislation," said the Department, "took effect immediately on the act becoming a law, and without formal notice or other knowledge of its provisions and effects than could be obtained from the publicity given to it during the ten days before it became a law."

Mr. Uhl, Act. Sec. of State, to Messrs. Flint & Co., Sept. 11, 1894, 198 MS. Dom. Let. 538.

As to the refund of duties levied under the tariff act of August, 1842, on certain goods exported from British ports prior to September 1, 1842, see Mr. Buchanan, Sec. of State, to Mr. Hülsemann, chargé d'affaires, April 27, 1846, MS. Notes to German States, VI. 134.

6. Debasement of the Currency.

§ 1005.

"Many citizens of the United States complain that contracts entered into with the Spanish Government for metallic money have been discharged to their very great loss in depreciated paper.

"The injustice of this is manifest. Between discharging a debt by paying one-half its nominal amount, and the whole of its nominal amount possessing only one-half its real value, there is no difference.

"To your remonstrances heretofore made on this subject, we observe that the minister of His Catholic Majesty has only replied—the absolute right of a sovereign nation on its own territory.

"This right we mean not to question or impair. But coextensive and coeval with it, is the privilege of a foreign friendly nation, to complain of, and remonstrate against, such acts of sovereignty as are injurious to its citizens or subjects. This privilege we mean respectfully to exercise.

"In contracts entered into by individuals with a sovereign power there exists no tribunal to enforce their performance. For this the good faith of the sovereign is alone relied on. This is held sacred,

and is always pledged to exempt from the operation of that paramount power over all transactions within its dominions the engagements of the sovereignty itself.

"The citizens of the United States, therefore, who have formed specie contracts with the Spanish Government, hold as a pledge the faith of that Government solemnly plighted, that its power shall never be so exercised as to work injury or injustice to them."

Mr. Marshall, Sec. of State, to Mr. Humphreys, min. to Spain, Sept. 23, 1800, MS. Inst. U. States Ministers, V. 383.

When "a state has recourse to violent financial operations tending to do away with inherent obligations to satisfy its indebtedness, the violation of property rights which results is sufficient to authorize other nations to take up in this respect the cause of their subjects, and to employ for their protection every means authorized by the law of nations." (Martens, Droit des Gens, by Vergé, 1864, liv. 3, ch. 3, 298–299.)

December 22, 1903, the President of Guatemala issued a decree legalizing the payment in silver or bank notes of gold debts judicially demanded. The subject was brought to the attention of the Department of State by American merchants doing business in Guatemala, as well as by the American legation there. The legation was instructed to make earnest remonstrance against the application of the decree to debts due to American citizens. Remonstrances were made by other powers. The decree was subsequently revoked.

For. Rel. 1904, 346–351, and particularly Mr. Hay, Sec. of State, to Mr. Combes, min. to Guatemala, No. 105, March 24, 1904, id. 349.

7. Patents and Inventions.

§ 1006.

A citizen of the United States sought the interposition of his Government to obtain reimbursement from the Russian Government for the value of an invention made by him, which was said to be in use in Russian fortifications and vessels, as well as for the heavy outlay in bringing his plans to perfection. It was held that the matter was "not one which can properly be presented through the legation of the United States."

Mr. Fish, Sec. of State, to Mr. Myers, M. C., Jan. 27, 1875, 106 MS. Dom. Let. 311.

With reference to the request of a citizen of the United States for assistance in obtaining from the German Government compensation for the use of an invention connected with breech-loading artillery, the Department of State said: "You state that patents have been granted you in the United States, England, France, Austria, and Belgium, and as patents in Prussia are not granted to foreigners, that you informed the war office of your invention, and although the same had been used,

compensation therefor has been refused. Questions concerning the protection to be granted to inventions, or compensation when the same are used, in the absence of treaty stipulations, are dependent upon the law of the particular country where the protection is claimed or the supposed injury is committed. If the laws of the country afford no protection in such cases, it is not competent for this Government, by a diplomatic channel, to supply the omission or to procure either protection for an American inventor, or compensation for his invention." (Mr. Cadwalader, Assist. Sec. of State, to Mr. Broadwell, July 28, 1875, 109 MS. Dom. Let. 233.)

8. "UNCLAIMED ESTATES" CLAIMS.

§ 1007.

Applications are frequently made to the Department of State and its representatives abroad for aid in obtaining moneys supposed to be due from unclaimed estates in foreign lands. In June, 1886, the American minister at Brussels wrote that no trace of any such estate as that of Hannah Rouk, in Belgium, could be found, and that if any such estate ever existed, the rights of the claimants apparently had long since been barred by lapse of time.

In May, 1886, the American minister in London reported that, so far as he could learn, there was no such estate in England known as the "Dalton estate." The case, he said, appeared to be one of those constantly recurring delusions among the less intelligent class of the American people, which occasioned many hundreds of applications to the legation. Such delusions were fostered by designing persons, who issued advertisements inquiring for heirs of almost all known surnames, and gave it out that these advertisements emanated from the British Government, which was anxious to distribute the property in its hands. In reality, the Government held no such property and of course had issued no such advertisements. In 1887, one George F. Anderson, a citizen of the United States, was found guilty by the central criminal court in London of obtaining money by false pretenses from certain American citizens in connection with an alleged unclaimed estate in England. The culprit was sentenced to five years' penal servitude.

In 1886 the American minister at Paris, answering an inquiry concerning an alleged estate in France left by Baron von Kuhmann, who died in that country in 1811, said that the experience of the legation in searching for estates of the class in question had never resulted in anything satisfactory, and that the proper course for those who wished to obtain information was to apply to a lawyer.

Similar reports as to nonexistent estates have been received from Denmark and Germany.

In 1852 the Government of the Netherlands appointed a commission to settle all estates remaining in charge of the old orphans' chambers when they were abolished in 1811. The name Hartsinck is not among those found in the records of the commission. In 1886–1887 a report was widely circulated in the press as to "an imaginary estate known as the Graaf, Graff, Graef, Groff, or Grove" in the Netherlands. The report was unfounded.

One of the most active and persistent of the unclaimed-estates swindles is that which is now and then carried on from Spain, particularly from Valencia, where a Spanish prisoner is supposed to have died leaving the care of a young daughter to some educational institution. The prisoner is alleged to have left a valuable concealed treasure, the whereabouts of which can be discovered only by regaining possession at considerable cost of the sequestered baggage or other property left by the supposed prisoner. An advance of money of from $2,000 to $7,000 is generally asked for by a supposed priest who is seeking to recover the treasure or to take care of the unfortunate daughter.

As to estates in Belgium, see Mr. Tree, min. to Belgium, to Mr. Bayard, Sec. of State, No. 116, June 26, 1886, For. Rel. 1886, 38.

As to estates in France, see Mr. Bayard, Sec. of State, to Mr. McLane, min. to France, No. 176, Dec. 1, 1886, For. Rel. 1887, 278; Mr. McLane to Mr. Bayard, No. 431, June 13, 1887, id. 301.

As to England, see Mr. Phelps, min. to England, to Mr. Bayard, Sec. of State, No. 285, May 14, 1886, For. Rel. 1886, 334; also, For. Rel. 1887, 463–465.

As to Denmark, see Mr. Porter, Act. Sec. of State, to Mr. Plumb, Aug. 28, 1886, 161 MS. Dom. Let. 345, enclosing a copy of a dispatch from Mr. Anderson, min. to Denmark, to Mr. Bayard, Sec. of State, No. 62, Aug. 7, 1886, MS. Desp. from Denmark.

As to Germany, see the circular referred to by Mr. Bayard, Sec. of State, to Mr. Lampas, March 26, 1887, 163 MS. Dom. Let. 479.

As to the Netherlands, see Mr. Frelinghuysen, Sec. of State, to Mr. Hartsinck, Nov. 13, 1884, 153 MS. Dom. Let. 200; Mr. Bell, min. to the Netherlands, to Mr. Bayard, Sec. of State, No. 169, Sept. 8, 1886, and No. 220, Feb. 23, 1887, For. Rel. 1887, 883–885, 890–894.

As to Spain, see Mr. Strobel, chargé, to Mr. Bayard, Sec. of State, No. 352, Sept. 22, 1888, For. Rel. 1888, II. 1468; Mr. Gresham, Sec. of State, to Mr. Wehle, March 29, 1893, 191 MS. Dom. Let. 58; Mr. Adee, Second Assist. Sec. of State, to Mr. Hoyt, Oct. 22, 1897, 221 MS. Dom. Let. 601; Mr. Adee to Mr. Miller, April 2, 1898, 227 MS. Dom. Let. 141.

9. Liability for Torts of Public Ships.

§ 1008.

A claim for damages exists against a vessel of the United States guilty of a maritime tort, as much as if the offending vessel belonged to a private citizen; and although, for reasons of public policy, the

claim can not be enforced by direct proceedings against the vessel, yet it will be enforced by the courts whenever the property itself, upon which the claim exists, becomes, through the affirmative action of the United States, subject to their jurisdiction and control. Therefore, where a prize ship, in charge of a prize master and crew, committed a maritime tort by running into and sinking another vessel, the damages of the owners of the latter were ordered to be assessed and paid out of the proceeds of the sale of the former, before distribution to the captors.

The Siren, 7 Wall. 152.

February 21, 1885, the American schooner *Lanie Cobb*, while at anchor in the harbor of Laguayra, was run into by the Venezuelan schooner *Ana Eulogia*, which was owned by the President of Venezuela and was in the service of the Venezuelan Government. The master of the *Lanie Cobb* sought to obtain redress from the Venezuelan authorities, both administrative and judicial, but without success. In September, 1885, the American minister in Caracas was instructed to demand from the Venezuelan Government an indemnity of $1,986. A clearer case, said the Department of State, of a denial of justice could scarcely be conceived. The master had sought to secure an equitable settlement, which, after much circumlocution, was denied him. As the *Ana Eulogia*, at the time of the accident, was under the commission of the Venezuelan Government, it was contended that that Government was responsible for damage inflicted "on account of the careless and inexcusable acts" of those on board. "The right of our citizens," said the Department of State, "to demand compensation for damages which they may sustain, as in the accident to the *Lanie Cobb*, as well as that of a government to insist upon due reparation of such wrongs in behalf of its citizens, whenever necessary, is one which belongs to them by the rules of international law, and which is so recognized by all civilized countries."

Mr. Bayard, Sec. of State, to Mr. Scott, min. to Venezuela, No. 22, Sept. 3, 1885, For. Rel. 1885, 923.

See, also, For. Rel. 1885, 903, 905, 913, 914, 915, 926.

For the claim by the United States against Mexico for the sinking of the American schooner *Daylight* by the Mexican gunboat *Independencia*, see For. Rel. 1884, 340, 343, 345, 358, 362, 370; and supra, § 988.

See, also, Mr. Frelinghuysen, Sec. of State, to Mr. Morgan, min. to Mexico, May 19, 1884, MS. Inst. Mexico, XXI. 82.

In 1885 Congress appropriated $1,973.84 to pay damages to Nagai Jinske, a Japanese, for injuries done to his junk by the U. S. S. *Ashuelot* by a collision in Japanese waters in 1869.

Act of March 3, 1885, 23 Stat. 496.

10. ACTS OF SOLDIERS.

§ 1009.

As to liability for the acts of soldiers, see Moore, Int. Arbitrations, III. 2992, 3002.

A tribunal of arbitration, sitting in Chile, adopted certain rules of decision, among which was the following: "Acts committed by soldiers or persons connected with the army without orders from their superiors in command do not compromise a government." With reference to this rule the Department of State said: "The position of this Government is, that while a government is responsible for the misconduct of its soldiers when in the field, or when acting either actually or constructively under its authority, even though such misconduct had been forbidden by it, it is not responsible for collateral misconduct of individual soldiers dictated by private malice. But the mere fact that soldiers, duly enlisted and uniformed as such, commit acts 'without orders from their superiors in command,' does not relieve their government from the liability for such acts."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 33, Oct. 27, 1885, For. Rel. 1885, 625.

The United States is not liable for injuries resulting from the unauthorized acts of individual soldiers. (Mr. Magoon, law officer, division of insular affairs, Feb. 6, 1901, Magoon's Reports, 338.)

Owen Young, a citizen of the United States, was shot and killed at his hacienda in Peru, on September 24, 1884, by a Peruvian soldier. It appears that a fight took place between a band of Peruvian Government troops and a band of enemies, and that after the conflict had subsided some of the Government troops repaired to Young's dwelling for water, when one of them began to denounce a servant and all the members of the household as accomplices of the enemy. Young came forward to protest, and was shot down. The only ground for the accusation of partisanship against Young and his family appeared to be the fact that during the fight the enemies of the Lima Government sought to use his house for shelter. Mr. Frelinghuysen instructed the American minister at Lima, Dec. 15, 1884, "to secure the prompt punishment of the criminal, and at the same time see that full justice is done to the family of the murdered man." The Peruvian Government argued that it was not responsible for Young's death, because it had not the means of preventing it. The United States replied that the responsibility of the Government of Peru grew out of the fact that a wrong was committed by one of its its own agents. The "power and authority" of the Peruvian Government, said Mr. Bayard, on August 24, 1886, "were represented at the scene of the murder by its military forces; and a member of those

forces, who, it is intimated in the minister's note, were irritated by the use which the enemy had sought to make of Mr. Young's house, shot him down, although he was a citizen of the United States and a noncombatant. It was not a case of collateral misconduct dictated by private malice, in which case the Peruvian Government might disclaim responsibility. It was an act of outrageous violation, by an agent of that Government while in the line of his duty, of a right which it was his business to protect.

"The mere fact that soldiers, duly enlisted as such, commit acts without orders from their superiors in command, does not exempt their Government from liability for such acts. A government may be responsible for the misconduct of its soldiers when in the field, or when acting, either actually or constructively, under its authority, if such misconduct, even though it had been forbidden by it, was in contravention of the rules of civilized warfare."

Mr. Frelinghuysen, Sec. of State, to Mr. Phelps, min. to Peru, No. 81, Dec. 5, 1884, For. Rel. 1885, 587; Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 85, Aug. 24, 1886, MS. Inst. Peru, XVII. 231.

For prior correspondence in relation to this case, see For. Rel. 1884, 432–436; For. Rel. 1885, 587–616.

In August, 1885, the Peruvian Government stated that it had so far been impossible "to discover the author of Young's death." (For. Rel. 1885, 614–615.)

Captain Emmet Crawford, U. S. Army, was shot and killed in Mexico, January 11, 1886, by Mexican troops, while he was in command of a detachment of Indian scouts in pursuit of hostile Indians from the United States. The shooting occurred early in the morning, and the Mexican Government maintained that it was due to the Indian scouts having been mistaken for hostiles. The Department of State, having upon all the evidence reached the conclusion that the United States could not be warranted in assuming the position that the shooting was intentional and a hostile act, referred the question for an opinion to the Secretary of War, who communicated, in reply, with an expression of his concurrence, the opinion of the Lieutenant-General of the Army (General Sheridan), that the United States would not be justified in taking the position that the killing "was intentional or a hostile act," and that no further action should be taken. The claim was not pressed.

Mr. Bayard, Sec. of State, to Sec. of War, Oct. 15, 1887, 165 MS. Dom. Let. 611; Mr. Endicott, Sec. of War, to Sec. of State, Nov. 16, 1887, MS. Misc. Let.; Mr. Blaine, Sec. of State, to Mr. Bingham, March 7, 1891, 181 MS. Dom. Let. 166.

As to the obtaining by Mexican forces, on the day following Captain Crawford's death, of some stock from Lieutenant Maus, U. S. Army, then in command of the American expedition, and the subsequent return of the stock by the Mexican Government, see For. Rel. 1887, 673, 680, 691.

In December, 1893, the American schooner *Henry Crosby* came to anchor about a quarter of a mile from the shore, ten miles from the port of Azua, at a place which was mistaken for that port. A week previously the governor of Azua had been assassinated by revolutionists, and the authorities were watching to prevent the escape of the assassins, especially by sea. On the following day, the master of the *Crosby*, seeing some persons on shore, ordered some of his crew to approach in a yawl and inquire whether the place was Azua. When near the shore they made inquiry in English, and, receiving a reply which, by reason of not understanding Spanish, they erroneously understood to be in the affirmative, they started back to the schooner. As they drew away some of the soldiers, who had been concealed in bushes, opened fire on them, seriously wounding one of the seamen and slightly wounding another. They also fired numerous shots at the schooner, but failed to do her any damage. The next morning the schooner, having obtained a pilot, proceeded to Azua and discharged. A claim against the Dominican Government was presented to the Department of State in behalf of the vessel, her owners, and crew. It was held that the claim should not be presented in behalf of the owners for anything more than the direct injury done to the yawl and for money paid for expenses of the man who was seriously wounded, and that the two wounded men were entitled to indemnity for their injuries, provided their citizenship was proved. The case was considered by the Department of State as one of mistake. No insult to the flag appeared to have been intended, and expression of regret had been made by the Dominican authorities.

Mr. Uhl, Act. Sec. of State, to Messrs. Goodrich et al., April 10, 1894, For. Rel. 1895, I. 229; see, also, 215–216, and Mr. Gresham, Sec. of State, to Messrs. Goodrich et. al., August 1, 1894, For. Rel. 1895, I. 233.

The Department of State declined to present the claim in the form in which it was made, and the claimants do not appear to have submitted it in any other form. (Mr. Uhl, Act. Sec. of State, to Mr. Fischer, M. C., Dec. 6, 1895, For. Rel. 1895, I. 233.)

In December, 1894, three sailors from the American schooner *Isaiah K. Stetson* were wounded by soldiers at Santa Catharina, Brazil. Two of them died from their wounds. The minister of the United States at Rio asked for an investigation and the prompt punishment of the guilty. The minister of foreign affairs replied that the Government deeply regretted the occurrence, which took place during a street brawl in the vicinity of a drinking saloon and house of prostitution, and that efforts were being made to find and punish the culprits. Two soldiers were arrested and convicted. On appeal, the conviction was affirmed and they were sentenced to eight years each in the penitentiary.

For. Rel. 1895, I. 52–59.

April 10, 1896, Mr. Olney, Secretary of State, addressed a note to the Spanish minister at Washington, concerning the case of Mr. José M. Delgado and his father, José G. Delgado, both American citizens. It was alleged that the father and son were the lessees of a sugar plantation near Bainoa, in the province of Havana, where a fight took place between the Cuban insurgents, under Gen. Maceo, and the Spanish forces. After a short contest Maceo withdrew, and a squad of Spanish troops then rode into the house and took the claimant, José M. Delgado, and seven laborers to a point near by, where they awaited the coming of the Spanish general Melguizo. On the latter's arrival the claimant exhibited his citizenship papers and assured the general that he had been strictly neutral. On hearing that he was a citizen of the United States Gen. Melguizo struck him three times with his hands, saying, "Just as I will shoot you, so would I shoot the American consul. I care nothing for all those papers of American citizenship." The claimant and the seven laborers were then ordered to be shot. They were fired upon, and the claimant was wounded twice with bullets and then with a machete, and was left for dead. Six out of the seven laborers were killed. The claimant was later found alive and was taken in charge by his father, who, on learning that the Spanish troops were searching with intent to kill all persons who might be able to give testimony concerning the crime, took his son to a distant place and hid him in a cane field, where they remained four and a half days without medical aid. In consequence of the intervention of the United States consul at Havana, the claimant was brought to that city. The expectation was expressed by the United States that the "Government of Spain would disavow the act of Gen. Melguizo, punish him and his accomplices in this crime, and pay the claimant a suitable indemnity for the injuries inflicted upon him."

Mr. Olney, Sec. of State, to Mr. Taylor, min. to Spain, May 11, 1896, For. Rel. 1896, 586–588.

Gen. Melguizo and other Spanish officers who were present, as well as certain employees on the estate, made declarations entirely denying the allegations that the claimant had disclosed his American citizenship, and that words were uttered offensive to the consul of the United States. They alleged, on the other hand, that the Spanish troops, after arresting the claimant and the seven laborers, were compelled to abandon them and retreat, and that in the confusion they were wounded or killed by the bullets and machetes of the insurgents. (Duke of Tetuan, min. of State, to Mr. Taylor, Am. min., June 30, 1896, For. Rel. 1896, 600–614.)

The minister of the United States at Madrid replied that none of the depositions stated as a fact that the claimant was wounded by the insurgents, while they all admitted that he was shot on the day in question, and that he and the other persons were, as Gen. Melguizo confessed, ordered to the rear; nor did Gen. Melguizo pretend that he was ignorant of the claimant's citizenship. (For. Rel. 1896, 615–618.)

The Department of State subsequently sent to the minister of the United States at Madrid a letter from the attorney of the claimant, in relation to a claim which J. M. Delgado had made for $200,000. (For. Rel. 1896, 618.)

The case was further discussed at Madrid, and on October 7, 1896, Mr. Olney wrote to Mr. Taylor that further instructions were necessarily deferred till the return of the Spanish minister at Washington, when he expected to have a conference with him in regard to the case. (For. Rel. 1896, 622–631.)

Pears's case.

On the evening of January 31, 1899, Frank Pears, a citizen of the United States, was shot and killed by a sentinel near the office of the Pittsburg & Honduras Timber Company, in San Pedro, Honduras, while passing between his office and his house. The commander of the troops immediately organized a court of inquiry, which found that the sentry was not guilty of any crime, and released him from custody. A day or two afterwards, however, he was discharged from the army. February 16, 1899, Mr. C. Fiallos, minister of justice, and Mr. Allison, United States consul at Tegucigalpa, sitting as a commission to investigate the case, took the testimony of several witnesses. It appears that Mr. Pears when killed was on a spot where he had a right to be; that he was not accompanied, nor engaged in the act of flight; that he was standing in the full light of a street lamp, and that he was shot only a few seconds after he was first challenged. Article 41 of the Military Regulations of Honduras requires a sentry to challenge when a person is at a distance of from 40 to 50 paces; Mr. Pears when shot was at a distance of more than 63 paces. If the person challenged gives the wrong reply or fails to answer, the sentry is required to repeat the challenge three times, and then, if the same thing occurs, to call the guard to arrest the person. Only in case of flight is he authorized to shoot. Mr. Pears when shot was advancing toward the sentry. The United States declared that under the circumstances his killing could be regarded as nothing but the "cruel murder of a defenceless man innocently passing from his office to his house." The United States therefore demanded the arrest and punishment of the sentry and payment of an indemnity of $10,000 in gold for the relatives of Pears.[a]

The Government of Honduras suggested arbitration, but the United States pressed for an immediate settlement of the claim.[b]

The Government of Honduras denied its liability, maintaining that the death of Mr. Pears "was due merely to a misfortune greatly to be lamented;" that the sentry "could and ought to have acted with more prudence, and therefore ought to be tried in conformity with the

[a] Mr. Hay, Sec. of State, to Mr. Hunter, min. to Honduras, March 16, 1899, For. Rel. 1900, 671.

[b] For. Rel. 1900, 676–678.

law;" that the act could not justify a diplomatic claim, since the investigation was being conducted in accordance with the laws, and that it was not possible to allege a denial of justice, since no one had appeared as an interested party accusing the author of the death of Mr. Pears or asking an indemnity. These contentions were supported by a report of Mr. Fiallos, minister of justice.[a]

Late in February or early in March, 1899, the sentry was arrested and brought before a special military court on a charge of manslaughter. The trial began March 7, 1899, and was concluded on the 24th or 25th of the following month. This court decided that Pears was killed unintentionally and without gross negligence, and that the act of shooting was under all the circumstances lawful and innocent. The court therefore discharged him. The Government of the United States held that, considering the manner of the prosecution before the military court, in which the prosecuting attorney argued in defense of the sentry, it was "impossible to confide in its finding of facts or in its conclusions;" that it was more reasonable to accept the view of the minister of justice who conceded that the sentinel ought to have acted with greater prudence, although the military court had exonerated him; that, if there was any doubt of the liability of the Government of Honduras in the first instance, that doubt was dispelled by the subsequent action of the military authorities. The conclusion of the United States was expressed as follows: "That Pears was wantonly shot through the sentinel's gross ignorance of his duty and through the gross ignorance or negligence of the officers of the guard and of the post in failing properly to instruct him, can not be doubted. Either this is true, or the alternative conclusion is inevitable, that he was intentionally shot. In either case it was done in violation of the military ordinance. And there has appeared no serious purpose on the part of the Honduran Government to punish either the sentinel or his superiors. Under all the circumstances the Government of Honduras ought in equity to pay the indemnity demanded." The United States therefore insisted on the payment of the sum previously demanded.[b]

In a later instruction the United States said: "The Department is not disposed to require the punishment of the sentinel who killed Pears. His punishment was not mentioned in instruction No. 236, of March 20 last. But delay in responding to the demand for indemnity should not be allowed to pass unnoticed."[c]

The President of Honduras submitted the claim to a commission of three jurists, who reported that the demand originally made by

[a] For Rel. 1900, 678–685.

[b] Mr. Hay, Sec. of State, to Mr. Hunter, min. to Honduras, March 20, 1900, For. Rel. 1900, 685–689.

[c] Mr. Hay, Sec. of State, to Mr. Hunter, min. to Honduras, July 22, 1900, For. Rel. 1900, 691.

the United States for the punishment of the sentry was inadmissible as he had already been acquitted by the courts. This view, as has been seen, was accepted by the United States, and the only remaining question was that of the indemnity. On this question the commission of jurists found that as the sentry had been tried and acquitted in accordance with the laws of the Republic, there was lacking a legal foundation for the claim for indemnity. They suggested, however, that on grounds of good will, the Government might seek an amicable settlement with the United States in order to put an end to the controversy, and for that purpose might offer to pay a smaller sum than that which had been demanded, especially as four of the relations of the deceased had placed in hands of the President of the Republic a letter addressed to the Secretary of State of the United States, in which they declined to accept the share which might be apportionable to them out of the sum demanded.[a]

The United States insisted upon the prompt payment of the $10,000 in gold.[b] The Government of Honduras decided to pay the sum demanded. November 2, 1900, the President of the Republic issued a decree declaring that the case was settled, in order to "avoid difficulties of a more serious character," and that although the Government had been unsuccessful in its efforts to reduce the amount of the indemnity it had obtained an abandonment of the demand for the punishment of the sentry, which was "the most dangerous portion of the claim," in this way "the honor of the country remaining untouched."[c]

In April, 1899, Bernard Campbell, a citizen of the United States, made a contract in New York for service as an engineer on a steamer in the West Indies. He supposed that his service was to be on board of a merchant vessel, and, with this understanding, he and certain other persons under similar contracts took passage for the West Indies on the steamer *Clyde*. When the *Clyde* arrived at Cape Haitien, April 17, 1899, Admiral Cooper and Captain Compton, of the Haytian navy, boarded the vessel and informed Campbell that he was expected to serve on a Haytian man-of-war that lay nearby. He refused; was threatened with death; but still refused. The next day, while waiting on the wharf for passage to Montecristi, in Santo Domingo, he was beaten by Haytian soldiers and thrown into the sea. He finally got back to New York, permanently injured in health. The presumption was strong that the cause of the assault

[a] For. Rel. 1900, 692–695.

[b] For. Rel. 1900, 696. The Department of State had brought to the attention of the four members of the Pears family the letter purporting to be signed by them, and had received from them denials that they had renounced their claim.

[c] For. Rel. 1900, 701–702.

upon him was his refusal to serve in the Haytian navy. The United States maintained that he was entitled to a "substantial indemnity."

Mr. Gresham, Sec. of State, to Mr. Smythe, min. to Hayti, Jan. 31, 1895, For. Rel. 1895, II. 811.

The claim was settled in April, 1898, by the Government of Hayti agreeing to pay to the United States the sum of $10,000 in gold. (For. Rel. 1898, 397–398; President McKinley, annual message, Dec. 5, 1898.)

For correspondence, see H. Doc 305, 54 Cong. 1 sess.

A suit brought by Campbell in New York against certain alleged Haytian agents, related to a matter entirely separate and distinct from the injury on which his diplomatic claim was based. (Mr. Olney, Sec. of State, to Mr. Smythe, min. to Hayti, No. 136, March 20, 1896, MS. Inst. Hayti, III. 479.)

On June 6, 1904, Lewis L. Etzel, an American war correspondent, was killed by Chinese soldiers at Niuchwang. The killing was not premeditated or intentional and the soldiers were at most only guilty of criminal carelessness. The Chinese authorities sentenced the corporal, who was in charge of the men and commanded them to fire, to five years' imprisonment, cashiered the commandant of the district who was responsible for the discipline which made the commission of such a crime possible, and offered to the family of the deceased in a spirit of friendliness the sum of $25,000 Mexican. This was accepted as a settlement of the case.

For. Rel. 1904, 168–176.

The executors of the deceased asked that the sum of $60,000 in gold be demanded, but the American minister at Peking considered this sum exorbitant, and his opinion was concurred in by the Department of State. (For. Rel. 1904, 173–174.)

VI. *ARREST AND IMPRISONMENT.*

1. Indemnity not Demanded where Proceedings are Regular.

§ 1010.

With reference to the case of Dr. Peck, a citizen of the United States, who, while in Cuba for his health, was, as it was alleged, arrested and thrown into prison without accusation of crime, the Department of State said: "The United States ask no immunity for their own citizens when offenders, but they can not quietly submit to see them arrested and thrown into prison and there detained without any charge against them."

Mr. Marcy, Sec. of State, to Mr. Cueto, Span. min., unofficial, April 17, 1855, MS. Notes to Span. Leg. VII. 56.

There is no provision in the laws of the United States to indemnify a person who has been imprisoned after a trial, and who is

subsequently shown not to have been guilty of the crime for which he was sentenced, or to indemnify a person who has been imprisoned pending trial and afterwards is found not guilty. "The Government holds itself justified in its action by the probable cause that must precede indictment and trial. In case one has been maliciously and falsely accused, upon a charge made by a private person, and as a result of the accusation is imprisoned or committed, he has a right of action against such private person for damages for false imprisonment. Otherwise there is no redress."

Mr. Frelinghuysen, Sec. of State, to Baron Schaeffer, Austrian min., June 28, 1882, MS. Notes to Austria, VIII, 338.

In September, 1893, Edgar W. Mix, a citizen of the United States, was arrested at Przemysl by the local police for taking photographs from a railway station. Przemysl is a fortified town, and it is a grave offense to take any pictures of the fortifications or their immediate surroundings. Mr. Mix was detained two days, when he was discharged on a telegraphic order from Vienna. He sought to make a claim against the Austrian Government for 100,000 francs. The minister of the United States at Vienna declined to present the claim and submitted it to the Department of State. The Department approved the minister's action, saying: "By taking photographs at Przemysl he (Mr. Mix) violated the law in force there, and however innocent in his intentions or ignorant of the law he may have been, his acts subjected him to the arrest and annoyance which he suffered. His release was by your exertions effected as soon as could possibly have been expected, and meantime no harsh or unreasonable treatment seems to have been experienced by him."

Mr. Uhl, Act. Sec. of State, to Mr. Tripp, min. to Austria-Hungary, Nov. 17, 1893, For. Rel. 1894, 23–26.

A citizen of the United States, who was temporarily in Guatemala for his health, was arrested while making a pencil sketch of a fort in Guatemala city. He was confined in the military barracks about thirty-six hours, and complained that he suffered severe physical detriment by reason of the coldness of the room in which he was detained. He was released upon the interposition of the United States minister, who vouched for his innocence of any intentional wrongdoing. The arrest occurred at a time when trouble existed between Mexico and Guatemala in regard to the boundary, and it appeared that the person in question was arrested because he was suspected of being a Mexican spy. It was held that, as it did not appear by the facts presented that he was illegally imprisoned, or that he was maltreated while in prison, or that his release was unduly

delayed, the United States would not be warranted in demanding an indemnity.

Mr. Olney, Sec. of State, to Mr. Gould, June 29, 1896, 211 MS. Dom. Let. 149.

A naturalized citizen of the United States, of Austrian origin, having been arrested in his native country on suspicion that he had fled therefrom in order to avoid military duty, was detained while the matter was being investigated. Through the intervention of the American minister he was released. He afterwards filed a claim for indemnity. This claim was brought to the attention of the Austro-Hungarian Government, which declined to entertain it. No further action was taken by the United States, and, in view of this apparent acquiescence in the decision of that Government, the Department of State declined to press the claim further.

Mr. Rockhill, Act. Sec. of State, to Mr. Pitzele, Sept. 30, 1896, 213 MS. Dom. Let. 34.

2. Reparation for False or Irregular Arrest.

§ 1011.

November 12, 1892, Frederick Mevs, a citizen of the United States, who represented in Hayti an American firm which paid annually about $75,000 in customs duties into the Haytian treasury, was suddenly arrested at Port au Prince, apparently on suspicion of attempting to evade, personally, the payment of duties to the amount of two dollars. By the Haytian law a person imprisoned is required to be interrogated within twenty-four hours after his confinement. This provision was not observed, and Mr. Mevs was held in prison under circumstances of great aggravation till December 1, 1892, when his case was called in the correctional court and dismissed. Before the news of his release was received, the vice-consul-general of the United States at Port au Prince was instructed to enter an earnest protest against his imprisonment, and, if he had not already been released, to report by cable. The American minister, who was then on leave in the United States, was sent back to Port au Prince on the U. S. S. *Atlanta* to investigate the case and ask for such reparation as he might, in his discretion, deem proper. The minister having reached the conclusion that a gross outrage had been perpetrated on Mr. Mevs, he was instructed to present a demand in writing, setting forth the expectation that Hayti would be impelled by its sense of amity and justice to tender a proper indemnity for Mr. Mevs's illegal imprisonment, and stating that a settlement must be reached through the legation. The Department of State refused, however, to concede the

minister's urgent request that the commanding officer of the *Atlanta* be present at his interview with the minister of foreign affairs, the President being unwilling to have any naval demonstration made while diplomatic negotiations were pending. The question as to the proper course to be adopted in the event of an unconditional refusal of indemnity was reserved. April 12, 1893, the case was finally closed by the payment of $6,000 United States currency to the legation.

Mr. Foster, Sec. of State, to Mr. Terres, chargé at Port au Prince, tel., Dec. 2, 1892, For. Rel. 1893, 358; Mr. Foster to Mr. Durham, min. to Hayti, Dec. 22, 1892, id. 363; same to same, tel., Jan. 17, 1893, id. 369; same to same, tel., Jan. 20, 1893, id. 374; same to same, Feb. 16, 1893, id. 378. See, also, as to the final settlement, id. 381.

See MS. Inst. Hayti, III. 304, 305, 310.

W. H. Argall, Henry Thomas, and Robert Pardee alleged that they were held in prison unlawfully, and that the Guatemalan authorities refused to accept bail offered by the United States minister, or to permit a messenger sent by him to see the prisoners in order that measures might be taken for their defense. It was also stated that Argall was while in custody lashed with a whip. The authorities alleged, while two witnesses denied, that Argall had struck the subofficer who gave him the blows. The case was settled by Guatemala paying $1,200—$1,000 for Argall and $100 each for Thomas and Pardee, the parties all being satisfied.

For. Rel. 1894, 312; For. Rel. 1895, II. 771–775.

"The recommendation made in my special message of April 27th last is renewed, that appropriation be made to reimburse the master and owners of the Russian bark *Hans* for wrongful arrest of the master and detention of the vessel in February, 1896, by officers of the United States district court for the southern district of Mississippi. The papers accompanying my said message make out a most meritorious claim, and justify the urgency with which it has been presented by the Government of Russia."

President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, LXXXI.

A claim was made against the Argentine Government for the alleged wrongful arrest of William J. Hale, a citizen of the United States, at Rosario, in 1871. The claim was eventually settled as a matter of good will by the payment of the sum of $7,500.

Mr. Rockhill, Act. Sec. of State, to Mr. Hale, Aug. 6, 1896, 211 MS. Dom. Let. 674.

In the case of Charles Lillywhite, a naturalized citizen of the United States, of British origin, the American ambassador in London

was authorized to accept the sum of £600 in settlement of a claim of Lillywhite for his arrest, false imprisonment, and deportation from New Zealand to England, and to pay the money over to him against his full receipt.

For. Rel. 1901, 231–236.

For the acceptance by the British Government of the sum of $1,000 for the undue imprisonment of A. E. Hatheway, a British subject, by the military authorities of the United States, see Mr. Bayard, Sec. of State, to Sec. of War, Jan. 9, 1889, 171 MS. Dom. Let. 285.

3. Wrongful Arrest and Maltreatment.

§ 1012.

A citizen of the United States, Mr. John E. Wheelock, having been treated in 1879 with great cruelty by a Venezuela official named Sotillo, proceeded against Sotillo in the Venezuelan courts, but there, in gross violation of justice, was refused redress.

"The general principle here invoked by Mr. Saavedra, that if a crime is committed against the person, property, or character of an alien resident of the country by a citizen of the country in which such alien may be resident, and the government of such country secures the judgment and punishment of its author, its obligations to the government of the party wronged are satisfied, and that it would not in such case owe pecuniary indemnity to the offended, may very well be admitted; but to claim this for the proceedings had before the Venezuelan judges in the case of Commissary Sotillo would seem little less than a mockery of justice.

"To the worst features of the outrage perpetrated on Mr. Wheelock (the occurrence in the woods) there were no witnesses but the perpetrators and the victim. Mr. Wheelock's evidence was not before the judges, and there is therefore every reason to believe that Sotillo's alleged vindication rested solely on his own testimony and that of his subordinate instruments.

"To denominate the proceedings against the officer Sotillo as a miscarriage of justice, is the mildest form of denunciation that can be applied. The sanction of the executive Government of Venezuela imparts to them the character of an absolute denial of justice. Were such an outrage as that perpetrated by Sotillo on Mr. Wheelock possible—as fortunately it is not—in the United States, and Venezuelan citizens were the subject of it, the offending officer would be instantly dismissed from the public service and handed over to the proper tribunals for trial, and, if found guilty, subjected to the severest punishment denounced by the laws of the country against an offense at once so abnormal and inhuman. It is unnecessary to invoke the principles of the treaty of amity and friendship (1860) existing between

the United States and Venezuela, of the 3d article of which these acts are in clear contravention. It is no less an offense against the principles of public law and the civilization of the age. This Government would be wanting in that duty which it owes to its citizens, and regardless of its own dignity, were it lightly to pass over so flagrant an outrage."

Mr. Evarts, Sec. of State, to Mr. Baker, min. to Venezuela, Oct. 15, 1880, For. Rel. 1880, 1041, 1043.

As sustaining this position, see Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, Jan. 16, 1883, For. Rel. 1883, 896; same to same, Feb. 24, 1883, id. 900; same to same, Nov. 16, 1883, id. 933.

This claim was settled for $6,000. (See supra, § 919.)

In March, 1883, Howard C. Walker, a citizen of the United States, residing in Minatitlan, Mexico, as shipping clerk to a lumber merchant, was arrested by order of the judge of first instance at that place on a charge of stealing timber and shipping it as the property of his employer. It was alleged that he was treated with much indignity and that bail was refused him till he had to be removed to his own house on account of illness. In the following November he was acquitted, but the case was appealed and a new trial ordered, and he was again arrested and imprisoned, as it was alleged, with aggravated hardships, and thus held for nearly four months till he was released on $40,000 bail. In March, 1885, he was tried again, and again acquitted. The Government again appealed from the decision, and on January 22, 1887, the supreme court of Vera Cruz rendered a final decision acquitting and vindicating him. Indemnity was claimed from the Mexican Government, on the ground that bail was refused, that the trial was unduly delayed, and that the prisoner was subjected to insult and illtreatment. The Mexican Government denied that it was responsible for the injuries and damages which Walker was alleged to have suffered; that he had the right to proceed against his calumniators, if any there were, but not against the Government; that the claim was in reality an incident of the complaint of the captain of a Norwegian barque, which complaint was not well founded; that there was no voluntary or unjust delay on the part of the Mexican authorities, and that the fact that Walker was acquitted was proof that there was no laxity in the administration of justice in the case.

For. Rel. 1884, 360, 366, 369, 372, 377; For. Rel. 1888, II, 1103, 1137; For. Rel. 1889, 600, 602; For. Rel. 1890, 633, 641, 643.

As to the imprisonment, trial, sentence, and pardon of R. C. Work, an American citizen in Mexico, on a charge of murder, see For. Rel. 1888, II, 1182, 1185, 1191, 1223, 1228, 1234, 1239; For. Rel. 1889, 563, 565, 601, 602; For. Rel. 1890, 623, 626, 627, 630, 633, 641.

For the case of Edward Lycan, an American citizen, imprisoned at Guaymas, State of Sonora, Mexico, and released by writ of *amparo*, see For. Rel. 1893, 108–119.

April 28, 1883, Dr. Maurice Pflaum, a citizen of the United States, practicing medicine at Axar, in Syria, was arrested at his drug store by the Turkish authorities and taken before a magistrate on a charge of having insulted a Turkish official with whom he had had a wordy altercation over a bill for medical attendance. The magistrate discharged him; but, as he was returning to his home, he was intercepted by three officers of police, who, on his attempting resistance to arrest, beat him unmercifully and dragged him to prison, where he was confined in a room 14 feet by 16, along with thirteen Turkish prisoners. Two hours later he was taken before the local tribunal, and, after being interrogated, was sent back to prison with the assurance that he would be released as soon as the necessary papers could be made out. He was imprisoned till the next afternoon, when, being seriously ill from the effects of the confinement and the beating, he was transferred to a hospital, where he lay for some time in a critical condition. Apart from the violence committed, it was urged that, as the governor of Axar did not confine himself to arresting Dr. Pflaum, but also assumed to try and sentence him, the case involved an infraction of Article IV. of the treaty of 1830. On these facts General Wallace, the American minister at Constantinople, on his own responsibility, demanded from the Turkish Government the dismissal from office of the governor of Axar and an indemnity of £2,000, Turkish money. His action was approved by Mr. Frelinghuysen, Secretary of State, and he was instructed to press the demand in the name of the United States, and to urge its early and equitable adjustment.

The Turkish Government maintained that the authorities of Axar had acted towards Dr. Pflaum in a regular manner; that, in the absence of an American consular agent, the tribunal of first instance of the town had taken cognizance of the case; and that Dr. Pflaum was found guilty of having insulted a director of tithes, of having hit with his fist a sergeant of police, and of having struck in the face a corporal of the guard while they were in the exercise of their duties. The case was, however, referred to the Turkish minister of justice, and, on January 8, 1885, General Wallace reported that some "irregularities" had been discovered in the proceeding against Dr. Pflaum, and that the judge and another official of the tribunal at Axar had been removed and the president reprimanded. Mr. Frelinghuysen expressed the opinion that the admission of irregularity in the proceedings should be followed up by the Turkish Government by an offer of indemnity, and that, unless such an offer was made within a reasonable time, a demand for a suitable indemnity should be made. Such a demand was presented by General Wallace on February 27, 1885, in general terms. On March 25, 1885, Mr. Bayard, Secretary of State, wrote that the language in which the demand was made appeared to be peremptory, and that, if it included a demand for

"exemplary or consequential damages," the Department would reserve its opinion thereon until a detailed examination of the case could be made. The Turkish minister of foreign affairs, on April 6, 1885, addressed a note to General Wallace, in which he denied the claim for indemnity on the ground that the law gave no right to an individual who considered himself to be injured in penal matters to claim pecuniary indemnity from the State, but that the parties in interest might sue the magistrates for any irregularities in the proceedings. Mr. Bayard, in an instruction to Mr. Cox, General Wallace's successor, of August 17, 1885, stated that he was unable to accept this as a final or satisfactory answer, in view of the magnitude of the offense and the cruelty which was practiced. He was not disposed to say that the insistence upon indemnity should be such as to disturb the friendly relations of the two countries, but the claim should be factfully renewed.

For. Rel. 1883, 853, 873, 879, 887; For. Rel. 1884, 544, 564, 567; For. Rel. 1885, 825, 831, 841, 844, 846, 859, 868.

4. IMPRISONMENT IN VIOLATION OF TREATY RIGHT.

§ 1013.

From March 6, 1884, to May 27, 1885, C. A. Van Bokkelen, a citizen of the United States, was imprisoned at Port au Prince, Hayti, on account of certain debts, in consequence of having been refused by the courts the benefit of a judicial assignment of his assets on the ground of his being an alien. His release from imprisonment was eventually obtained through the interposition of the United States, which took the ground (1) that continuous imprisonment for debt, where no criminal offense was imputed, was contrary to the generally recognized principles of international law, and (2) that his imprisonment contravened Articles VI. and IX. of the treaty between the United States and Hayti of 1864. By Article VI. it was stipulated that the citizens of the contracting parties should have free access to the tribunals of justice on the same terms as natives of the country, while by Article IX. they were guaranteed the right to dispose of their property by sale, donation, testament, or otherwise. It was contended by the United States that under Article VI. Van Bokkelen was entitled to the same rights in the tribunals of justice of Hayti as citizens of that country; that the right under Article IX. to dispose of property embraced the disposition of it by means of a general assignment for the benefit of creditors, and that as, by the law of Hayti, the right to be released after an assignment for the benefit of creditors was an incident of the imprisonment for debt of a Haytian debtor, so, under the treaty, it was an incident of the imprison-

ment for debt of an American debtor. After Van Bokkelen's release a claim for damages for his imprisonment was presented to the Haytian Government. This claim was referred, under a protocol concluded May 24, 1888, to Mr. Alexander Porter Morse, as arbitrator, who, on December 4, 1888, awarded the claimant the sum of $60,000.

Mr. Bayard, Sec. of State, to Mr. Langston, min. to Hayti, March 28, 1885, No. 358, For. Rel. 1885, 507.

For a full history of the case, see Moore, Int. Arbitrations, II. 1807–1853; and see, also, supra, § 992.

5. Enforced Labor in Case of Persons Accused.

§ 1014.

In remonstrating against the action of the Mexican authorities in the case of two American citizens, who, while imprisoned at Piedras Negras on a charge of crime, of which they were afterwards acquitted, were compelled to labor on the public highways until the court, on the protest of the American consul, relieved them, the Department of State said: "The deprivation of liberty following upon a charge of crime is allowed, because, without it, the punishment of criminals would be impracticable, although in many cases the innocent may thus be made to suffer unjustly. The exaction of labor rests on a wholly different ground. It is essentially a penalty, just as the imposition of a pecuniary fine; and it is understood that this distinction is clearly laid down in the Mexican law."

Mr. Blaine, Sec. of State, to Mr. Dougherty, chargé, No. 423, Dec. 29, 1890, MS. Inst. Mexico, XXII. 687.

6. Detention of Witnesses.

§ 1015.

"Detention of witnesses to prevent their disappearance and insure their giving testimony when called for is common in the jurisprudence of all countries, and special provisions exist in those where the principles of the civil law are in force relative to the detention *au secret* of an accused person: but such detention should be reasonable and not unduly prolonged or harshly enforced, and is merely a temporary measure in the administration of justice."

Mr. Frelinghuysen, Sec. of State, to Mr. Langston, min. to Hayti, No. 324, Jan. 20, 1885, For. Rel. 1885, 490.

7. MARTIAL LAW.

§ 1016.

As to martial law, see, further, supra, § 196.

During the civil war in the United States many claims arose out of the arrest and detention of aliens under martial law. Claims of this type to the number of a hundred were presented to the American and British claims commission, under Art. XII. of the treaty of May 8, 1871, the total amount demanded being $10,000,000, with interest. In thirty-four cases awards were made in favor of the claimants, in all amounting to $167,911. Similar claims were also presented to the French and American claims commission under the convention of Jan. 16, 1880, some of which were allowed.

For the British claims, see Moore, Int. Arbitrations, IV. 3278–3311; for the French claims, see id. 3311–3322, and particularly the case of Dubos, id. 3319.

For the payment by the British Government of £6,000 in full and untechnical settlement of the claims of American citizens for alleged wrongful arrest, imprisonment, and deportation from South Africa by the military authorities, see For. Rel. 1901, 216–222.

As to the case of Julio Romano Santos, imprisoned in Ecuador, see Moore, Int. Arbitrations, II. 1579.

"In July, 1864, a question was raised as to the position of British subjects residing at Memphis, U. S., then under martial law, and Lord Lyons was instructed to inform them that Great Britain could not interfere with the operation of that law in a foreign state, and that British subjects who wished to secure British protection must discontinue their residence in places under such military control. Parl. Papers, No. 363, 1864."

1 Halleck's Int. Law (Baker's ed.), 351.

With reference to the claim of a citizen of the United States for damages for arrest and detention by the Spanish authorities in Cuba, Mr. Seward said:

"This Government has not as yet paid, or made any provision for paying, damages to neutrals who were arrested and detained during the late rebellion, upon information and suspicion which investigation proved insufficient to warrant a continuance of such restraint. Having learned by our own experience that errors of this sort are among the unavoidable incidents of civil war, and the legislative authority having reserved for itself the settlement of the principles upon which indemnification shall be measured and granted in cases where it shall be found justly due, this Government is not in a position to render it discreet for it peremptorily to demand vindictive

damages from a friendly power now suffering the same misfortune of internal hostilities from which we have recently found deliverance."

Mr. Seward, Sec. of State, to Mr. Edwards, Feb. 27, 1869, 80 MS. Dom. Let. 369.

In conclusion, Mr. Seward said: "The case requires full and careful consideration. The papers relating to your claim do not afford the means of making any estimate of the actual loss occasioned to you by your arrest and detention. Definite and precise evidence upon this point will probably be found essential to success in applying for an equitable indemnity." (Ibid.)

The person to whom the foregoing letter was addressed was an engineer on a sugar estate near Manzanillo, in Cuba. On the outbreak of the insurrection in October, 1868, and the establishment of martial law in Manzanillo, he was provided by the governor with a pass to enable him to go to and from the estate. After his arrest he was not allowed to communicate with the United States consular representative till November 30, when he was arraigned before a military commission on a charge of aiding the insurgents to obtain "drinkables." The charge was not sustained, and the commission recommended that he be discharged, but he was kept in prison till January 2, 1869, pending the examination of the proceeding by the captain-general at Havana. During his imprisonment some of his effects were appropriated by the Spanish soldiers. He demanded an indemnity of $50,000. The mixed commission under the agreement between the United States and Spain of February 11–12, 1871, awarded him $5,000 American gold.

Moore, Int. Arbitrations, IV. 3268.

See, also, S. Ex. Doc. 108, 41 Cong. 2 sess. 203, 204.

Case of Panama "Star and Herald."

"I have the honor to inform you that my attention has been recently called by the attorney for the Star and Herald Company to the claim of that company against the Colombian Government for the suppression of its paper at Panama in the year 1886.

"From an examination of the documents and correspondence in this Department relating to the claim, it appears that the *Star and Herald* was a newspaper established at Panama, owned and published by an American company. By special decree of the President of Colombia it was excepted from the operation of the general decree which suspended the publication of all newspapers in the Republic from September, 1885, to March 13, 1886. The granting of this special decree was coupled with the expression of a hope, which may be construed as an injunction, that strict circumspection as to political subjects would be observed by the publishers.

"On March 6, 1886 (one week before general liberty of the press was reinaugurated), the President of Colombia, by a telegram from Bogota, ordered Gen. Santo Domingo Vila, the civil and military chief of the Department of Panama, to warn the *Star and Herald* to desist from censure, and if it persisted, to suppress it. What 'censure' the paper had been guilty of does not appear.

"On March 26, 1886 (two weeks after the general reestablishment of the liberty of the press), Gen. Santo Domingo Vila issued an order suspending the publication of the paper for sixty days from that date. He assigned as reasons (1) unfriendliness evinced by the paper toward the Government on more than one occasion during the last civil war; (2) the recent order from Bogota directing its suspension; (3) its failure to give an account of recent important administrative acts of the Government; and (4) its refusal to publish certain documents sent the editor, and the latter's failure to answer a private note transmitted to him with the documents.

"The only specific charge against the paper was that last recited; that is, its failure to publish certain documents transmitted to it by General Vila, with a private note to the editor. The documents referred to were telegrams preferring a charge of smuggling against General Montoya, a brother officer of General Vila; and the note of the latter, transmitting them to the editor of the Star and Herald, merely suggested that he might publish them if he saw fit to do so.

"On April 2, 1886, the Government at Bogota, having heard of the suspension, telegraphed to General Vila, remonstrating against the severity of his decree, and requesting him out of regard for the Government of the United States to reduce the period of suspension from sixty to twenty days. On April 5 General Vila replied that he would do no act to disturb the friendly relations between the two Governments, but he nevertheless continued the suspension in force.

"The Colombian Government seems to have given the matter no further consideration until May 17, 1886, when our minister at Bogota (Mr. Jacobs), having made earnest remonstrances on the subject, a telegram was sent General Vila censuring him and ordering him peremptorily to reestablish the *Star and Herald*. General Vila thereupon requested the appointment of a successor to himself, but the appointment was not made. On May 24, 1886, General Vila was again ordered to reinstate the paper or surrender his office; and the next day he replied, remarking that the full term of suspension fixed by him had expired, and tendering his resignation. The resignation was accepted and a new appointment made.

"When this Government was first informed of the suspension, and before all the facts as they have been above recited were known, it was unwilling to believe that the act was that of the Colombian Govern-

ment itself. The American minister at Bogota (Mr. Jacobs) was therefore instructed to call the attention of that Government to what was supposed to be the unauthorized act of General Vila. He was directed 'to ask of the Colombian Government either the frank disavowal of the act of its agent and the stern rebuke and punishment of Gen. Santo Domingo Vila for this reprehensible excess of authority, or the assumption of responsibility for his acts.'

"In the course of this instruction it was observed that if the suspension were decreed by authority of the Government at Bogota, 'this' would 'merely transfer to the executive national power at Colombia the responsibility of wanton injury to the rights and property of American citizens;' and it was finally intimated that the Colombian Government might be liable to the persons injured by General Vila's acts, even though it did not authorize, but disavowed them. A copy of this instruction from the Department to Mr. Jacobs was delivered to the Colombian minister for foreign affairs in June, 1886.

On June 10, 1887, the Department transmitted to Mr. Maury, then the American minister at Bogota, for presentation to the Colombian Government, the memorial of the Star and Herald Company, claiming from that Government an indemnity of $91,000. The amount claimed, this Department then said, was reasonable and just, and even a much larger amount might have been regarded as not unreasonable, considering the wanton interference with rights under the protection of treaty, and the unwarrantable resort to violence instead of the guaranteed channels of the law.

"The Colombian Government suggested that the claim be submitted to a special commission, the appointment of which had been proposed, for the arbitration of American claims growing out of the last civil war in Colombia; and subsequently that Government expressed to Mr. Maury the opinion that, unless the claimants would accept the arbitration desired by it, they should proceed for redress against General Vila personally in the Colombian courts.

"This Government thought, and so informed that of Colombia, that this claim, resting on principles somewhat different from the others, should be adjusted without reference to the method to be adopted for their settlement. Colombia then proposed that the negotiations in the case should be conducted at Washington, and during the month of December, 1888, some correspondence passed between this Department and Mr. Hurtado looking to an interview on the subject of claims. No record or memorandum of any interview regarding this claim is found in the Department.

"The next correspondence, and the last on the subject, is that between the Department and Mr. Hurtado in 1890. Mr. Blaine, in his notes of January 31 and May 7 of that year, called Mr. Hurtado's

attention to this case, observing that the claimants had received no redress; that 'such redress, it is thought, should now be tendered;' that this Government earnestly 'desired a settlement of the case, and hoped it might soon receive a proposition looking to its adjustment.'

"Mr. Hurtado, in reply, stated that from interviews with Mr. Blaine's predecessor he had been led to suppose the United States would not press this claim diplomatically unless the claimants should first proceed against General Vila personally in the Colombian courts and those courts exonerate him from liability. He announced his Government's position to be that it is under no liability to the claimants, because, as it is said, that Government distinctly disavowed General Vila's action. The only recourse of the claimants, Mr. Hurtado suggests, is against General Vila personally in the Colombian courts, and in support of this position reference is made to article 35, paragraph 4, of the treaty of 1846. That paragraph is as follows:

"'If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby, each party engaging in no way to protect the offender or sanction such violation.'

"The long period which has elapsed since the receipt of Mr. Hurtado's last note seemed to call for the foregoing review of this case. Replying now to that note, I beg to say I can not admit that Colombia has exonerated herself from liability to the claimants by disavowing the act of General Vila, or that the claimants can be required to proceed ineffectually against him in the Colombian courts before asking indemnity from his Government. I beg to call your attention to the fact that although the Government at Bogota knew of the suspension of the *Star and Herald* a very few days after it took effect it did not denounce that act as being in excess of General Vila's authority. It merely requested him to reduce the period of suspension from sixty to twenty days. It did not concern itself further to see that this request was complied with, nor did it give General Vila any peremptory order to reinstate the paper until May 17, when the suspension had already been fifty-one days in force. Even then it took no steps to enforce its order by dismissing General Vila, but permitted him to remain in command and continue the suspension in force until it expired by the terms of his own decree of March 26 previous. Then, and not till then, his resignation was accepted.

"That the suspension was the act of the Colombian Government, and not the mere unauthorized act of General Vila, appears likewise from the President's telegraphic order to him of March 6, 1886, directing him to suppress the paper if it did not cease from censure, thus manifestly giving him discretion in the premises. The suspension was also admitted to have been the act of the Government, and

was defended as being justified by the political state of the country in a note from Mr. Respreto to Mr. Jacob of April 30, 1886. It was again acknowledged to have been the act of the Government, and sought to be justified, in a note from Mr. Respreto to Mr. Jacob of May 17, 1886; and in this note Mr. Respreto argued that the United States, if placed in the same position as that of Colombia toward the *Star and Herald*, would have taken similar measures.

"In the face of these facts and admissions it is impossible for the Colombian Government to deny that the suspension of the claimant's paper was authorized by it or to assert that it was the mere personal act of one of its citizens within the meaning of the treaty provision cited by Mr. Hurtado. Nor was any specific charge ever made against the paper which, even if established in proper judicial proceedings, would have justified its suspension. But there was no judicial proceeding or inquiry. The suspension was an entirely arbitrary act of executive power, and that no political emergency justified it is proved by the fact that the general decree restricting the liberty of the press had been rescinded two weeks before the date of General Vila's order of suspension.

"This Government can not believe that Colombia, on a reconsideration of the whole matter, will deny its liability to make the claimants a fair indemnity. The amount of the indemnity is another question. Although $91,000 has heretofore been asked, with the approval of this Department, the claimants announce their readiness to accept a compromise offer approximating what is right.

"This Government feels itself entitled to expect such an offer from your Government at an early day and to insist that this matter, already so long delayed, be brought to a satisfactory conclusion."

Mr. Gresham, Sec. of State, to Mr. Rengifo, Colombian chargé, Feb. 11, 1895, For. Rel. 1899, 218–220.

"The claim originated in 1886, as a result of a decree of the civil and military chief of Panama, Gen. Santo Domingo Vila, prohibiting the publication of the said journal for two months. In view of the abnormal condition of the Republic at that time, the decree of the civil and military chief would have been perfectly correct if he himself had not granted a few days before the absolute liberty of the press.

"The National Government, considering this proceeding somewhat unjust, disapproved the suspension decreed by Gen. Santo Domingo Vila, and as this gentleman showed himself but little disposed to revoke his order of suspension, the Government was obliged to accept his resignation. In acting thus the Government relieved itself of all responsibility, if it ever had any, for, according to the practice of

nations and national legislation, no government is responsible for the acts of its agents or subalterns which are not in perfect accord with the faculties conferred upon them by law or the instructions which the government itself may have given them. For a government to share with its agents the responsibility of acts of this nature it would be necessary that, having been able to avoid them, it had not done so; that once accomplished, it had not attempted to frustrate their effects; that it had not disapproved the conduct of the agent; in a word, that it had ratified or sanctioned them in some manner. None of the above exceptions are applicable to the case of the *Star and Herald*. The Government upon learning of the act accomplished attempted to frustrate its effects, ordering the civil and military chief of Panama to remove the prohibition of the paper, and when Gen. Santo Domingo Vila declared that he would stand by his decree or hand in his resignation, the Government chose the latter, which shows a formal disapproval of the conduct of the civil and military chief in the matter under discussion.

"If there is any responsibility, it must not be exacted from the Government, but from the functionary who exceeded the powers with which he was invested through the courts of Colombia.

"As is understood by the treaty of December 12, 1846, between Colombia and the United States, article 35, section 4, of which says: 'If any one or more of the citizens of either party shall infringe any of the articles of this treaty, such citizen shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby, each party engaging in no way to protect the offender or sanction such violation.'

"'The proprietors of the *Star and Herald*, upon complaining to the Government of the suspension of the paper, qualified the decree of Gen. Santo Domingo Vila as illegal. If the claimants themselves admitted its illegality, it could not compromise the Government unless the Government had sanctioned it. It is evident, however, that the contrary occurred, whereupon the claim has no foundation. I also call your excellency's attention to the fact that if the editors of the *Star and Herald* and pretended to obey the order of suspension, they really laughed at it, eluding its effects by printing and publishing the same journal under another name (*The Telegram*), which had a large circulation.

"An examination of the numbers which appeared of this publication, and their comparison with those of the *Star and Herald* which preceded its suspension and with those which appeared immediately after the order of suspension had been revoked, show clearly the identity of the two papers. The size and kind of paper, the printing

types, the distribution of matter, the advertisements of a permanent character, the office where the paper was printed, all was the same in both papers.

"The editors, far from desiring to hide this, gave it to be clearly understood by adopting the title of the Evening Edition of the *New York Herald*.

"Immediately upon the termination of the decree of suspension of the *Star and Herald*, the *Telegram* disappeared because there were no longer grounds for its continuance. There was, therefore, no paralyzation of work in the enterprise, nor were its interests injured. Therefore the prohibition of General Santo Domingo Vila, even considering it unjust, can not serve as a foundation for a claim for damages: it is an act that constitutes at most 'injuria absque damnum.'"

Señor Holguin, min. of for. aff., to Mr. McKinney, min. to Colombia, Nov. 10, 1896. For. Rel. 1899, 224, 225–226.

See, also, report of Señor Holguin to the Colombian Congress, For. Rel. 1899, 221, 222–223.

"This note of the Colombian minister is virtually a repetition of his report upon that claim, a copy of which was forwarded to the Department on July 30, 1896.

"Its conclusions of law are utterly at variance with well-established principles and can not be seriously considered, while the statement of facts therein contained are contradicted by the entire history of the case. The pretense that the suppression of the *Star and Herald* was the act merely of Governor Santo Domingo Vila, for which he, personally, should be held responsible, and not the Government of Colombia, has been denied in every instruction sent by this Department, and you will please inform that Government that this contention will not be again considered.

"Secretary Bayard on May 15, 1886, directed a protest against the suppression of this American newspaper, holding Colombia responsible for the acts of General Vila, its civil and military governor of the national Department of Panama, who, as subsequently shown, was also a secretary of state duly commissioned for that Department. That the suppression was allowed to continue its full term and that the act was wrongful are among the admitted facts in the case. Secretary Blaine on January 31, 1890, in his letter to Minister Hurtado, said:

"'Although that action was manifestly arbitrary and wrongful, and has never been defended, the suspension was permitted to continue for two months. It was attended with serious detriment, not only to the rights of the company under the treaty as an American corporation, but also to its pecuniary interests.'

"He added:

"'It is now nearly four years since the *Star and Herald* was suspended, but the company has been afforded no redress at the hands of the Colombian Government for the great wrong inflicted. Such redress, it is thought, should now be tendered.'

"On February 11, 1895, my immediate predecessor, Secretary Gresham, in a note to Mr. Rengifo, said that the suspension was not the mere unauthorized act of General Vila, but that of the Colombian Government, which it was impossible for it to deny, and that this suspension 'was an entirely arbitrary act of executive power.' . . .

"And now, after 11 years, comes the assertion that the *Star and Herald* papers suffered no loss, as their types were used during the suppression for printing a newspaper under another name. I am informed that during the suspension the types and printing establishment were leased to a German subject, Mr. August Kruger, who published with them a paper called the *Evening Telegram*, and something was saved in this manner to the owners of the *Star and Herald*. Of course, it was not the same newspaper, nor known as such, or General Vila would have closed it at once.

"The Panama *Star and Herald*, and the edition called *La Estrella de Panama*, were published in several languages, with a very large circulation and advertising lists, not only in Colombia, but abroad. It needs no corroboration that, as stated by claimants, subscribers on the coast and elsewhere, as well as advertisers, sought other papers in the meantime, many of them never to return. If one of the large New York papers were discontinued for two months, the result need not be figured; and in a country where revolutions were frequent the fear of renewed suspensions was a legitimate one. Claimants' assertion that the wrong complained of led to great loss and final suspension is probably true, as their journals had prospered during previous years."

Mr. Olney, Sec. of State, to Mr. Sleeper, min. to Colombia, Feb. 24, 1897, For. Rel. 1899, 227, 228, 229.

In November, 1898, a new government having been established in Colombia, a bill passed the Colombian Congress against "strong opposition," to authorize the Government to pay the claim. It was definitely adjusted in January, 1899, by an arrangement for the payment of $30,000 U. S. gold, Señor Marquez, the new minister for foreign affairs, having previously made a protest, embracing the arguments previously employed against the claim. (For. Rel. 1899, 238–241.)

See, as to this case, For. Rel. 1888, I. 423; For. Rel. 1890, 260 et seq.

Case in Hawaii.

"I have the honor to acknowledge the receipt of your note of February 5th relating to the claim of Manuel Gil dos Reis, a Portuguese subject, against the Government of Hawaii on the ground of false imprisonment. I am also in receipt of your personal note of February 6th relating

to the same subject. In reply I beg to say that your several communications have been submitted to an impartial officer of this Department, who has given the subject careful and equitable consideration. His report and conclusions are substantially as follows:

"It appears from a consideration of all the evidence in the case that there was at least *probable cause* for the arrest of Mr. Reis, and that there was no reasonable doubt on the part of the officer causing the arrest that Mr. Reis was engaged in the conspiracy against the Provisional Government of Hawaii because of reliable information from different sources of the use of seditious language on the part of Mr. Reis, while he was in the constant employment, as a hack driver, of those known to be 'Royalists.'

"Furthermore it appears that several claims against the Hawaiian Government by *citizens of the United States* who were arrested and imprisoned at the same time as Mr. Reis and *under similar circumstances* were presented to this Department before the annexation of Hawaii by the United States, and this Government was asked to collect indemnities from the Hawaiian Government. Upon investigation and consideration, the Government of the United States decided that those claimants, *although citizens of the United States*, were not entitled to diplomatic intervention.

"There was no evidence in those cases of maltreatment of the claimants during the imprisonment, nor is there in the case in question, nor that the arrest was due to any cause other than the desire of the existing government to investigate thoroughly every case of suspected complicity in the uprising, nor was there any evidence of direct or indirect participation by those claimants in the uprising. Yet an investigation showed that the imprisonments were not made without some ground of suspicion, and this Government decided that the alleged illegal treatment complained of was justified by the circumstances which were unusual.

"In view therefore, of its adverse action as to claims of its own citizens based on similar grounds to those in the case in question, the Government of the United States would not feel justified in taking favorable action on the claim of Mr. Reis.

"In relation to the case you mention in your personal note to the Secretary of State, of the Portuguese subject who had obtained naturalization papers in the United States, and had returned to Portugal and becoming implicated in an attempt at revolution, found himself in trouble and applied to the American minister for protection, who insisted on the man being tried in the civil instead of the military courts, it is respectfully submitted that in that case the civil courts in Portugal were then open, while in Hawaii at the time of the arrest of Reis, that country was under martial law, and there could be no resort to the civil courts."

Mr. Hill, Act. Sec. of State, to Viscount de Santo-Thyrso, Portuguese min., February 15, 1901, MS. Notes to Portugal Leg. VII. 280.

The claim above referred to grew out of the attempted revolt in Hawaii in January, 1895. See supra, §§ 108, 196.

8. Protocol with Spain, 1877.

§ 1017.

As to this protocol, see supra, § 196.

When, in 1893, in the case of an American named Howard, who was brought before a court-martial in Havana for trial for an offense committed in a sailors' row, the consul-general of the United States applied for the prisoner's transfer to the civil jurisdiction in conformity with the protocol of 1877, the deputy prosecuting attorney denied the existence of such an agreement and remanded the prisoner into the hands of the court-martial. The consul-general then called upon the prosecuting attorney, who, although he was aware that the agreement existed, explained the error of the deputy by stating that the agreement had never been published by the Spanish Government. The deputy then withdrew his opposition, and Howard was transferred to the civil jurisdiction.

Mr. Williams, consul-general at Havana, to Mr. Uhl, Assist. Sec. of State, March 23, 1895, For. Rel. 1896, 755.

Mr. Julio Sanguily, a naturalized citizen of the United States, registered as such in the United States consulate-general at Havana, was arrested at his home in that city, Feb. 24, 1895, by order of the governor-general of the island, on suspicion of conspiring against the Spanish Government, and was lodged in the Cabana fortress, subject to the military jurisdiction. As he was not captured with arms in hand, the consul-general asked that he be transferred to the ordinary jurisdiction, with the right to appoint such advocates, solicitors, or notaries as he might choose for his defense, in accordance with the protocol of 1877 and art. 7 of the treaty of 1795. Although Sanguily had been a general in the insurgent army in the Cuban insurrection of 1868–1878, his American citizenship, which was acquired August 6, 1878, was afterwards recognized by the governor-general of Cuba, who issued to him in 1878 and again in 1886 a personal pass (cedula personal) in that character; and on March 16, 1895, the governor-general issued a decree directing that the provisions of the treaty and the protocol be strictly complied with. Nevertheless, Sanguily was soon afterwards committed again to the military jurisdiction on another charge, founded on an alleged kidnapping, and was remanded into solitary confinement and deprived of all intercourse with his counsel by order of the court-martial. The consul-

general repeated the protest and request which he had made in the previous instance. The governor-general affirmed his adherence to the decision previously made, but took the ground that the preliminary investigation of the charge, as distinguished from the formal trial, did not fall within the stipulations of the treaty and the protocol. The United States denied this contention, maintaining that the treaty of 1795 excluded the military jurisdiction altogether; that the protocol merely recognized and explained the treaty right; that even the arrest, when made by the military authority, was to be construed as a civil act, but that by no fiction could a preliminary military examination be deemed a civil examination of first instance. The consul-general was therefore directed to file a formal protest "declining to recognize validity of military jurisdiction in preliminary stage."

A month later, the promised transfer to civil jurisdiction not having been reported, the consulate-general was instructed to demand that Sanguily's "military imprisonment cease forthwith and that he be speedily given civil trial on charges preferred by civil process, or else released." It turned out, however, that he had already been transferred and that he was then under prosecution before a civil tribunal. In the following September a request was made for his speedy trial or release, it appearing that a Spanish subject, jointly accused with him, had been tried by military process and acquitted. The receipt of further information, however, materially modified this aspect of the case. The civil trial began November 28, 1895, on charges of sedition and rebellion, and ended in Sanguily's sentence, Dec. 2, 1895, to imprisonment for life. The charge of kidnapping was afterwards quashed. A judicial appeal was taken to the supreme court at Madrid from the sentence on the charge of rebellion, and the case was remanded for a new trial. This trial took place in December, 1896, and resulted in a sentence of life imprisonment. From this sentence an appeal was taken again to the supreme court at Madrid. In February, 1897, Sanguilly withdrew his appeal, and his sentence was commuted by the Queen Regent from "perpetual imprisonment and civil interdiction" to "perpetual exile and its accessories." This was done upon his voluntary written pledge to leave and remain away from Cuba and to abstain not only from giving aid to the insurrection, but also from claiming the protection of the United States if he should do so. On his release he went to the United States.

For. Rel. 1896, 750–753; S. Doc. 104, 54 Cong. 2 sess.; For. Rel. 1896, 757, 760, 765, 766, 767, 768, 776, 779, 788, 789–817, 833, 820, 836, 839, 843, 844.

See other discussions of arrests in Cuba, as follows: Eugene S. Pelletier, For. Rel. 1896, 631, 633; Glean brothers, id. 632, 634, 640, 641, 650; George Calvar and Peter Duarte, id. 633, 634; Bert S. Skiller, id. 637, 638, 647; Francis J. Larrieu, id. 639, 641; Samuel T. Tolon, id. 641–645, 647, 652–655; Suarez del Villar, id. 645–647, 649, 662; For. Rel. 1897, 483; Manuel Fernandez Chaqueilo, For. Rel. 1896, 645, 648, 649; Oscar Cespedes, id. 662–670; Adolphus Torres, Charles Scott, Jorge W. Aguirre, José L. Cepero, and Luis Someillau, For. Rel. 1897, 483–487.

Toward the end of April, 1896, the American schooner *Competitor* was captured by the Spanish authorities while landing arms and ammunition for the insurgents near San Cayetano, in Cuba. Several persons were taken on board, and in behalf of some of them a right to the protection of the United States was asserted. In behalf of these the consul-general of the United States at Havana claimed a trial under art. 7 of the treaty of 1795 and the protocol of 1877. The Spanish authorities denied the claim, and alleged that they were not entitled to the benefits of the protocol because they were not "residing" in Spanish territory; and they were tried and sentenced by a summary court-martial. On appeal this sentence was annulled, and the case was then proceeded with by an ordinary court-martial, with the rights of counsel and defense guaranteed by the treaty of 1795, the proceeding being in the nature of a preliminary examination. The consulate-general, in reporting this proceeding, observed that the United States, in the case of Sanguily, "declined to recognize the validity of the military jurisdiction in preliminary or at any stage of the proceedings." The Department of State, however, replied that it was not believed that a protest "at this preliminary stage of proceedings" could "be of any avail," and directed that the proceedings be watched and that the "conclusions" of the "preliminary inquest" be reported as soon as they were reached.

For. Rel. 1896, 744, 745; S. Doc. 79, 54 Cong. 2 sess.

VII. *EXPULSION.*

§ 1018.

The subject of expulsion is fully discussed elsewhere.

See supra, §§ 550–559.

For claims on account of expulsion decided by mixed commissions, see Moore, Int. Arbitrations, IV. 3333–3359.

For the settlement by Great Britain of claims for deportation from South Africa by the military authorities, see For. Rel. 1901, 216–222, and supra, § 559.

VIII. *ACTS OF PRIVATE PERSONS.*

1. Governments, as a Rule, not Liable.

§ 1019.

"The act of the subject can never be the act of the sovereign; unless the subject has been commissioned by the sovereign to do it."

Case of the Resolution, Federal Court of Appeals, 1781, 2 Dallas, 1.

"By the law of nations, if the citizens of one state do an injury to the citizens of another, the government of the offending subject ought to take every reasonable measure to cause reparation to be made by the offended. But if the offender is subject to the ordinary processes of law, it is believed this principle does not generally extend to oblige the government to make satisfaction in case of the inability of the offender."

Lincoln, At. Gen., 1802, 1 Op. 106, 107.

An alleged Danish vessel was seized by an American vessel as French property, on the south side of the island of St. Domingo, and, whilst awaiting examination, under the American flag, was seized by a British ship and taken to Jamaica and there condemned. It was ruled that as the first captors were not liable for capturing and detaining the vessel long enough for examination, nor for the second capture, and as the Government of the United States is not liable even for the unlawful captures of its subjects, the United States were not bound to indemnify the Danish owner.

Lincoln, At. Gen., 1802, 1 Op. 106.

The Government of the United States is not liable to foreign governments for misconduct of its private citizens within their jurisdiction, such citizens not being in any sense its representatives.

Mr. Forsyth, Sec. of State, to Mr. Calderon de la Barca, Sept. 17, 1839, MS. Notes to Spain, VI. 39.

Governments do not undertake to reimburse persons for the criminal acts of individuals, such as theft. (Magoon's Reports, 471.)

Case of Mexican shepherds.

January 30, 1875, Mr. Mariscal, Mexican minister at Washington, in a note to Mr. Fish, who was then Secretary of State, made representations concerning the lynching (by hanging) of seven Mexican shepherds on November 28, 1873, on a ranch owned by a Mexican near Nueces, Texas. No coroner's inquest, said Mr. Mariscal, was held until the 5th of December, the delay being due, as was alleged, to an Indian invasion; no blame was by the inquest fixed upon anyone,

and, although the crime had evidently been committed by many persons and must have left many vestiges, it had been said that there was no means of discovering the murderers. It was alleged by Mr. Mariscal that landowners and other residents of Texas were in various places organized for the purpose of killing shepherds, who were accused of stealing and skinning cattle in order to sell their hides, and that the victims of this system were usually Mexicans, who were made the scapegoats of the criminals. The Mexican consuls at Brownsville and San Antonio had earnestly solicited the proper officers of justice in Texas to investigate and punish the killing of the shepherds in question, but nothing serious in that direction seemed to have been done; and it was, said Mr. Mariscal, suggested that the authorities were for one reason or another indisposed to take such action. In reply to a letter of the Mexican consul at San Antonio, Governor Coke, of Texas, stated that it was a matter of regret that lawlessness prevailed to a great extent in the western and border counties, and that in some degree it could not be reached by the regular authorities, but that "this state of things results necessarily, in a measure, from our form of government." While this was, said Governor Coke, no excuse or justification for the murderers, who ought to be punished, and so far as the executive could bring it about would be dealt with by law, he suggested that Mexican stockmen might avoid these "inflictions" by remaining on the Mexican side of the Rio Grande, or, if they came into Texas, by scrupulously respecting rights of property, which he was informed they had not always done. He added that he would call the attention of the proper officers of the law to the matter, with a view to the prosecution of the offenders if the law had been violated. Mr. Mariscal maintained that these declarations of the executive of Texas revealed not only the powerlessness of the authorities of that State, but also the prejudice which existed against Mexican herdsmen; and he declared that, although efforts had been made to secure the enforcement of the law, nothing of the kind had been obtained.

Replying to these representations, Mr. Fish, on February 19, 1875, took the ground that a government is not "answerable in pecuniary damages for the murder of individuals by other individuals within its jurisdiction." It was, said Mr. Fish, undoubtedly the duty of a government to prosecute such offenders according to law by all the means in its power; but if this duty was honestly and diligently fulfilled, the obligations of the government were discharged. "Though the crime," said Mr. Fish, "by which the Mexican shepherds are alleged to have lost their lives may not be without precedent, it seems obviously unreasonable, in view of the peculiar condition of the quarter where it was perpetrated, to expect that it would certainly be punished. This seems especially true when it is taken into consid-

eration that, under the system of law which pervades this country, no person can be arrested upon suspicion of having committed a crime, except upon the affidavit of a credible witness. The affidavit referred to must specify the name of the accused party. It is not alleged in your note that the course adverted to was pursued in this case. . . . Mexicans in Texas and Americans in Mexico who engage in business near the border must not at present, or perhaps for some time to come, expect either government to insure them against all the risks inseparable from such enterprises."

Mr. Mariscal, March 9, 1875, stated that he concurred in the principle that a government was not answerable in pecuniary damages for the murder of individuals by other individuals within its jurisdiction, but that the ground on which he alleged liability in the present case was "the denial of justice, or rather the absolute lack of its administration." The authorities, as he maintained, had been altogether negligent; nothing had been done even to save appearances. Although the families of the murdered men, who resided in a foreign country, had made no sworn complaint, it was the duty of the authorities to investigate a fact so well known as that of the murder of the shepherds in question, which had been published and commented upon by the newspapers; but weeks and months had passed but nothing was done.

In reply, on April 6, 1875, Mr. Fish said: "Murder, in this country, can only be prosecuted upon information, under oath, as to the fact and as to the perpetrators. This Department is not aware that there has been any such information in this case. Had there been, and had the proper authorities then refused or neglected to prosecute the offenders, there would have been ground for the charge that there had been a denial of justice. At present there has been no such denial, as there has been no application in that shape only in which it can legally be entertained."

Mr. Mariscal, in a note of the 17th of April, declared that he was unable to subscribe to this conclusion, in view of the fact that there had been an absolute neglect on the part of the authorities to examine into the case. Mr. Mariscal observed that if the public authorities were under no obligation to take measures for the detention of a murderer, crime would often go unpunished, especially in the case of a foreigner, who would leave no relatives or friends behind willing to undertake the task of furnishing evidence in regard to the crime; and that the difficulty would be greatly increased in a country in which a prejudice prevailed against a certain class of foreigners, such as had been manifested in Texas against Mexicans.

The case was revived by Mr. Romero, Mexican minister at Washington, in a note of July 17, 1888, in response to which Mr. Bayard, on the 13th of August, declared that the position taken by the Depart-

ment of State in 1875, as defined in Mr. Fish's notes, was still believed to be sound in international law.

Mr. Mariscal, Mexican min., to Mr. Fish, Sec. of State, Jan. 30, 1875, For. Rel. 1875, II. 954; Mr. Fish to Mr. Mariscal, Feb. 19, 1875, id. 973; Mr. Mariscal to Mr. Fish, March 9, 1875, id. 978; Mr. Fish to Mr. Mariscal, March 18, 1875, id. 980; Mr. Mariscal to Mr. Fish, March 29, 1875, id. 981; Mr. Fish to Mr. Mariscal, April 6, 1875, id. 982; Mr. Mariscal to Mr. Fish, April 17, 1875, ibid; Mr. Romero, Mexican min., to Mr. Bayard, Sec. of State, July 19, 1888, For. Rel. 1888, II. 1306; Mr. Bayard to Mr. Romero, Aug. 13, 1888, id. 1308.

As to the case of the lynching of José Ordiña, a Mexican citizen, by certain residents of Arizona, who sought to obtain information from him concerning stolen animals and who "by mistake let him hang too long," see Mr. Blaine, Sec. of State, to Mr. Zamacona, Mexican min., Nov. 15, 1881, For. Rel. 1882, 407.

Lamar's Case.

José D. Lamar was naturalized in the United States in 1881, and in the same year went to Santo Domingo, where he became, in partnership with his mother, the owner of a sugar plantation. In 1886 he shot and killed a Dominican negro named Rosario, with whom he had had an altercation and who had attacked him with a knife. Lamar immediately gave himself up to the local authorities, who took him into custody and set out for Sabana Grande, the chief town of the district, which was four miles distant. On their way they were twice attacked by bands of Rosario's relatives, who were, however, beaten off. After a detention of forty-eight hours at Sabana Grande, Lamar was taken under escort to Santo Domingo city, it being apprehended that his life was in danger in the former place. He complained that on his way to Santo Domingo city his arms were pinioned, and that when he reached the capital he was humiliated by being taken through the public streets. He also complained of the condition of the cell in which he was confined. He afterwards sought to make a claim against the Government of the Dominican Republic for $100,000 in gold for (1) imprisonment for fifty-eight days, (2) losses for interruption of work on his plantations and depredations thereon, and (3) losses on account of being obliged to sell his estate and take up another line of business. The Department of State held that the only plausible grounds on which a claim could be based were (1) unjustifiable maltreatment by the officers of the Government, and (2) the refusal or neglect of the Dominican authorities to protect him in the enjoyment of his estate after his release. It was held that the case would not admit of the first of these contentions. The circumstances, said the Department of State, far from showing enmity and a disposition to persecute, indicated great solicitude and exertion on the part of the Dominican authorities to protect their prisoner from the vengeance of Rosario's friends. There appeared to be noth-

ing unusual or cruel in the manner of his confinement, unless the placing in the stocks, which continued only for a short time. There was nothing unusual in his having been pinioned, and his being compelled to pass through a crowd of people on his arrival at Santo Domingo city was doubtless unavoidable, as the killing of Rosario caused great excitement and the presence of his slayer naturally attracted a crowd. Nor had he shown any evidence of considerable pecuniary loss. The fact that, after his release, he deemed it expedient to sell his estate and leave Santo Domingo was not thought necessarily or even fairly to warrant the inference that the Dominican authorities failed to extend to him that measure of the protection of their laws to which he was entitled.

Mr. Bayard, Sec. of State, to Mr. Rodriguez, March 15, 1887, 163 MS. Dom. Let. 306.

In reply to a complaint of the Japanese minister of the failure of the local authorities to prevent the enforcement of a boycott against Japanese subjects residing in Butte, Montana, it was stated that the Attorney-General of the United States had advised that there was no Federal statute which made the act in question a criminal offense against the United States, and that redress must be sought by suit or action by the person or persons injured.

Mr. Sherman, Sec. of State, to Mr. Hoshi, Japanese min., March 31, 1897, For. Rel. 1897, 368. See, for another case of boycott, supra, § 988.

In the case of Frank B. Riley, a boiler-maker on the U. S. S. *Newark*, and an enlisted seaman in the Navy, who was alleged to have been murdered by a lodging-house keeper at Genoa, Italy, while the *Newark* was in that port, it was held that the case, as thus stated, was not of a character to warrant diplomatic intervention.

S. Ex. Doc. 35, 52 Cong. 2 sess.

2. Liability May Result from Negligence or Complicity.

§ 1020.

The government of a foreign state is liable not only for any injury done by it, or with its permission, to citizens of the United States or their property, but for any such injury which by the exercise of reasonable care it could have averted.

Report of Dr. Francis Wharton, Solicitor of Dept. of State, affirmed by Mr. Bayard, Sec. of State, to Mr. Scruggs, min. to Colombia, May 19, 1885, For. Rel. 1885, 212.

As to the difficulties between France and Santo Domingo and the Caccavelli incident, see For. Rel. 1895, I. 235. The Caccavelli incident related to the murder of a French merchant of that name at Samana.

An indemnity was demanded for his killing. Negotiations as to other difficulties, which included a dispute as to the national bank of Santo Domingo, were suspended by France till the assassin should be executed. The Dominican Government was in the end compelled to settle up. The Dominican Government denied, while the French maintained, that the murder of Caccavelli was committed under circumstances which showed the complicity of the authorities. (For. Rel. 1895, I. 398, 400–401. The terms of settlement are printed at pages 400–401.)

A foreign government is liable for damages to personal property sustained by a consul of the United States, and in violation of his consulate, owing to the negligence of such government.

Mr. Frelinghuysen, Sec. of State, to Mr. Mathews, Jan. 16, 1883, MS. Inst. Barb. Powers, XVI. 103. Same to same, April 24, 1883, id. 111.

With reference to a claim sought to be made against the Haytian Government on account of the piratical acts of its citizens in pillaging Navassa Island, it was held that, as there was "no evidence of negligence in preventing the act, complicity in it, or refusal to punish those proved guilty of participating in the expedition," there was no liability on the part of the Haytian Government.

Mr. Hay, Sec. of State, to Mr. Fowler, April 15, 1899, 236 MS. Dom. Let. 351.

Lenz case.

"In May, 1891, Frank Lenz, a citizen of the United States, while making a bicycle tour of Asia, disappeared shortly after crossing from Persia into Koordistan, under circumstances indicating his murder. Repeated demands for investigation, and inquiries on and near the spot with the efficient aid of the British consul at Erzerum, disclosed that the unfortunate young man, while traveling alone and unescorted, had been murdered at or near Tchelkani, not far from Alashgerd, by natives, who had appropriated his scanty belongings. Later, through private enterprise and on behalf of the family of Lenz, Mr. W. L. Sachtleben undertook an investigation with a view to the discovery and Christian sepulture of Lenz's remains and the collection of such evidence as might further implicate his murderers. The United States minister assisted this investigation in every possible way, asking suitable escort to protect the investigator and demanding peremptory orders to bring the murderers to justice.

"After characteristic delays Mr. Sachtleben was at last enabled to visit Alashgerd, in company with the local governor, Shakir Pasha, as a member of a commission of eight, which was deputed to investigate the murder and take all necessary action. The facts were established by testimony and by the circumstantial finding of fragments of the victim's bicycle and personal belongings, and at last accounts

some five or six persons, Koords and Armenians, were to be put on trial for the murder."

Report of Mr. Olney, Sec. of State, to the President, Dec. 19, 1895, S. Doc. 33, 54 Cong. 1 sess.; For. Rel. 1895, II. 1257. See, also, For. Rel. 1895, II. 1315, 1332.

"Your excellency . . . cites the case of Lenz, who disappeared in a remote locality of the Empire; . . . The Sublime Porte naturally deplores any violation of law, and it desires to settle every incident in accordance with the precepts of justice. Acts of the kind in question, however, even those connected with the most horrible murders, are committed in every country in the world. Your excellency is certainly not ignorant of the murder of Galeb Abdullah, an Ottoman subject, which was committed near Susanville, Lassen County, Cal. This murder was not committed recently, but about the 15th of June, 1891, and, notwithstanding the efforts of the American authorities, the murderer is still at large, and probably happy to have escaped with his life, unless he has since died a natural death." (Mavroyeni Bey, Turkish min., to Mr. Olney, Sec. of State, Dec. 21, 1895, For. Rel. 1895, II. 1413, 1414.)

The case of Galeb Abdullah, to which the Turkish minister here refers, was brought to the notice of the Department of State by the Turkish legation, October 13, 1891. The Department promptly communicated with the governor of California, who, on the 21st of October, replied that the murder was committed in a remote and lonely place in the mountains and was not discovered till some days after it was committed; that the sheriff of the county actively sought information and offered a reward of $100 for the discovery of the murderer and $200 for his arrest and conviction; but that there was little hope of the murderer's being discovered. The public administrator, who was the county coroner, took charge of the body and of the money of the deceased, obtained letters of administration upon his estate, and provided for him a decent burial, paying for it out of money found on his body. The rest remained in the administrator's hands, awaiting the claims of heirs. It was supposed that the murderer was an Indian, as the deceased had been selling jewelry at an Indian camp just prior to his death. (Mr. Olney, Sec. of State, to Moustapha Bey, Turkish min., Jan. 26, 1897, MS. Notes to Turkey, II. 115; Mr. Rockhill, Act. Sec. of State, to Moustapha Bey, March 6, 1897, Id. 122.)

The Turkish Government also made representations concerning the killing of Joseph Nadir, an Ottoman subject, in the State of Washington, October 8, 1893. It was alleged that Nadir was assassinated by an Indian, who was tried for the crime on May 8, 1894. The witnesses, however, were unable to identify the defendant as the person who did the shooting, and the case against him was therefore dismissed. The killing occurred near an Indian reservation, in a place where the country was wild and thinly settled, and there was little reason to suppose that the mystery of the tragedy would ever be cleared up. (Mr. Olney, Sec. of State, to Moustapha Bey, Turkish min., Jan. 26, 1897, MS. Notes to Turkey, II. 115.)

Another case repeatedly brought to the notice of the Department of State was that of Hatil Mehemmed, called "Harry the Turk," an Ottoman subject, who disappeared from Portland, Maine, on February 16, 1896. On the 6th of the following May a body was found which was

supposed to be his. No clew to the murderer could be found, although the authorities of Portland diligently sought to discover him. There appeared to be some question as to whether the body found was that of Mehemmed, and, apart from his disappearance and the finding of the body, there was nothing to show that he had been killed. On these facts it was held that no lawful means of detecting crime had been omitted in the case, and that any lack of punishment was due not to indifference to the requests of a friendly power or to a lack of appreciation of the gravity of the facts, but to the mystery surrounding them and the inability to adduce evidence sufficiently conclusive to discover and punish the perpetrators of the crime referred to. (Mr. Olney, Sec. of State, to Moustapha Bey, Turkish min., Jan. 26, 1897, MS. Notes to Turkey, II. 115. See, also, Mr. Rockhill, Acting Sec. of State, to Moustapha Bey, March 6, 1897, id. 122.)

In reply to an inquiry whether two native Armenians, who were naturalized American citizens, had been killed in Turkey, the Department of State said that only one such case had been reported, that of Dr. Nahabed Abdalien, at Gureen, where he was a practicing physician. This case was being investigated by the American minister with a view to ascertain the facts and prefer a claim of indemnity. (Mr. Olney, Sec. of State, to Mr. Lodge, M. C., Jan. 13, 1897, 215 MS. Dom. Let. 197.)

"The Department appreciates the force of your observations on the Frank Lenz claim and the hazards of the journey he took. If his murderers had been duly punished, this Government would not have felt disposed to demand the payment of an indemnity. The evidence showed a deliberate, premeditated murder, yet the judgment was rendered against the murderers as for 'murder without premeditation,' under the 174th section of the criminal law. And even this penalty was not actually inflicted, for the guilty parties escaped. It is hoped, in view of the enormity of the offense and the miscarriage of justice, that the Turkish Government will pay a reasonable indemnity."

Mr. Hay, Sec. of State, to Mr. Straus, min. to Turkey, March 25, 1899, For. Rel. 1899, 766–767.

The Turkish Government having, in June, 1901, paid the United States the lump sum of $19,000 in settlement of American claims, leaving it to the United States to determine the beneficiaries and distribute the fund, the parents of Lenz received $7,500 from the Department of State. (*New York Times*, Jan. 8, 1902.)

Renton case.

About 1888 Charles W. Renton, a citizen of the United States, taking with him his wife and a niece, went to Brewers Lagoon, Honduras, and settled on a tract of land granted to him by the Government of Honduras near the mouth of the Patook River. He kept a store at his house and traded with the natives, buying their rubber, hides, sarsaparilla, and other products. He also cultivated orange trees, cocoanut plants, and lemon, lime, and cocoanut trees, and he imported a quantity of mining machinery from

the United States. His neighbors were native Indians, whose huts stood not far from his house. A year or two after the Rentons' arrival a company of Frenchmen, known as Eude Brothers, obtained a concession from the Honduras Government to cut and export mahogany from the vicinity of the lagoon. They at first lived at Renton's house, but in consequence of a personal disagreement afterwards left it and removed to Brewers Lagoon village. In the course of a year they sold their concession to the Brewers Lagoon Wood and Produce Company, of Belize, British Honduras, receiving therefor a certain amount of stock. The management of this company's works was entrusted to an Englishman named Dawe, whose headquarters was on Cannon Island, in Brewers Lagoon, about four miles from the entrance from the sea. Soon afterwards a dispute took place between Renton and the company in consequence of the occupation by the latter of certain land. The Government decided against Renton. Subsequently a dispute arose as to the use of an Indian trail which led through Renton's fenced land. The Government again decided against him. Mutual charges were also from time to time made as to the stealing and killing of cattle. These things led to a continual strife, which resulted in Renton's murder. The persons implicated in it were J. G. Dawe, Fernando and Edgar Eude, Arthur Sandham, Jesse J. Kittle, Arthur Isert, and a negro named Johnson, all members and employees of the company. The two Eudes and Kittle, who was an American citizen, bore the reputation of desperate men.

On the morning of March 15, 1894, the negro, Johnson, carrying a rifle, was sent with a horse carrying supplies to the company's ranch, in the rear of Renton's home, where the company kept its work cattle. Renton objected to his going through his land with his rifle, and the negro left his horse in front of Renton's house and returned to the Indian village, where he found Dawe, Fernando Eude, and Kittle. Dawe instructed Johnson to go back and entice Renton out of the house by means of threats and abuse, and promised to follow him with the others in the bush and protect him. Renton was provoked into going out and was followed by Charles Johnson, an American, who was temporarily in his employ. Shots were exchanged, but it is not clear who began the firing. Dawe, Kittle, and Eude opened fire from the bush and wounded Charles Johnson in the leg. Renton dragged the wounded man into his house, and, although the negro, Johnson, continued his provocative conduct, remained there. Subsequently, Dawe returned to the village and sought reenforcements, while Kittle and Eude crossed the lagoon in a boat to prevent Renton from escaping, should he attempt to do so. About midnight the whole party, well armed and carrying a demijohn of anisette, and led by Isert, proceeded to Renton's house, which they surrounded. When

Renton appeared in the morning (March 16), they fired on him, striking him in the right side and seriously wounding him. He fell back into the house, his wife closing the door and in so doing receiving a wound in the wrist. A parley then took place, Mrs. Renton offering to give up the house if their lives were spared. Finally there was a complete surrender. Renton and Johnson, both wounded, and Mrs. Renton and the niece were taken to an Indian hut near by and kept under guard. The house was then robbed and burned. In the evening Mrs. Renton was taken away in a boat to Patook, where she was held as a close prisoner for several days. She was then ordered to go to Nicaragua and threatened with death if she should ever return to Honduras. Renton shortly afterwards was taken away from the hut by Isert, Fernando Eude, Kittle, and Sandham, and was not again seen alive. Mrs. Renton made a complaint to the Government of the United States, and in June, 1894, the American minister asked the Government of Honduras to investigate the case and bring the culprits to trial. An investigation was held by the Honduran authorities in the following autumn, but, as it was without result, Commander C. H. Davis, of the U. S. S. *Montgomery*, was sent in March to make a report. He first called at Trujillo. The governor there admitted that the previous investigation had been one-sided, no witnesses having been examined except those who would testify in favor of the Brewers Lagoon Wood and Produce Company either through interest or intimidation. At Brewers Lagoon Commander Davis found no inhabitants except the officers and employees of the company and a few Indians. Nor did he find any of the persons implicated in Renton's murder, except Dawe and Kittle, all the rest having then left. Fernando Eude had in fact just fled for having murdered the captain of an English schooner. A naval board of inquiry, constituted by Commander Davis, found that Mrs. Renton's claim for $37,420 was a just one; that all the portable property on Renton's place at the time of his murder had since been either destroyed or appropriated by the company; that the Honduran authorities had taken no steps to prevent such destruction or appropriation, and that all legal steps taken by them in relation to the murder of Renton, the abduction of his wife and niece, the burning of his dwelling, and the robbery of his personal property were either half-hearted and farcical, or were smothered at the outset by bribery and corruption. It appeared that during the investigation of the murder held soon after it occurred, the comandante, under whose authority it was held and whose power in the province was extreme, was a guest at Leo Eude's house.

After the receipt of the naval report, the United States urged prompt action for the punishment of the guilty parties. On May

29, 1895, Señor Bonilla, Honduran minister of foreign affairs, declared that no means had been or would be omitted in the prosecution of the crime, but that so far "obstacles have been met with which it has been impossible to overcome, and which have greatly hindered the attainment of their ends—such as the deed having taken place in so desolate a locality; nearly all the witnesses being foreigners and speaking another language; the refusal of some of them to speak the truth, and the absence from the Republic of the greater number of those who were present." These explanations were amplified by Mr. Lazo Arriaga, Honduran minister at Washington, in a note of June 17, 1895. Toward the end of the month, however, the minister of foreign affairs telegraphed that three arrests in the case had been made; and legal proceedings were duly instituted against the prisoners. On February 12, 1896, Mr. Olney, Secretary of State, instructed the legation of the United States in Honduras that it has been decided that the claim for indemnity growing out of Renton's murder should not be pressed for the time being. The Government of Honduras had, he said, declared its intention to push the prosecution of the persons charged with the crime promptly and vigorously to a conclusion. If the trial should be so conducted, the claim for damages and indemnity might remain in abeyance till the result of the trial was known. Full instructions would then be given. In conclusion, Mr. Olney said: "This suspension of the claim is without prejudice and is not intended as an intimation that it will be abandoned or that the claims are in any respect weak or ill-founded. The desire of this Government is, first, that the authorities of Honduras may be left free to punish the murderers of Renton; after that, such action as the conditions call for, will be taken respecting the claim." A similar statement was made by Mr. Olney to the minister of Honduras at Washington.

It appears that on June 22, 1895, Isert, Dawe, Sandham, Kittle, Johnson, and Fernando and Edgar Eude were committed by a justice of the peace for assassinating Renton and burning his house, for wounding Johnson, and (with the exception of Dawe) for the forcible and illegal removal of Mrs. Renton from Honduras. The trial was held in the district court at Trujillo, before a jury, by whom it was found that the wounding of Renton and his wife and Charles Johnson was the result of shots fired by Sandham, Kittle, Isert, and Fernando and Edgar Eude, but that it was not shown who among the aggressors actually inflicted the wounds, and that it was not proved that Renton was dead. The jury also found that Edgar Eude, and Dawe, and Isert, bore "an irreproachable reputation." From the decision of the district court an appeal was taken to the superior court at Comayagua, by which Isert, Dawe, and Edgar

Eude were condemned to imprisonment for two years and six months, and Kittle and Sandham to imprisonment for three years, for "attempted homicide on the person of Mr. Renton;" to imprisonment for three years and eight months and for five years, respectively, for burning Renton's house; and to imprisonment for six months and for a year and six months, respectively, for the illegal detention of Mrs. Renton. In all, therefore, Isert, Dawe, and Edgar Eude were sentenced to imprisonment for six years and eight months, and Kittle and Sandham to imprisonment for nine years and six months. They were also condemned "to pay for the curing" of Renton, and "to supply food" to him and his family while he might be "incapacitated for work!" An appeal was taken on the part of the accused to the supreme court of Honduras, but this court on February 8, 1897, held the appeal to be inadmissible. On March 18, 1897, Dawe alone remained in prison, the rest of the accused having escaped. None of them appears to have been recaptured.

On these facts Mr. Hay, Secretary of State, in an instruction to the American minister in Honduras, Feb. 25, 1904, held that, apart from the fact that Isert, who led in the attack on the Rentons on the 16th of March, and who previously aided their persecution, was a minor Honduran official, being subcommandante of the coast, the liability of the Government of Honduras was fully established. While a state, said Mr. Hay, is not ordinarily responsible for injuries done by private individuals to other private individuals in its territory, it is the duty of the state diligently to prosecute and properly to punish the offenders; and "for its refusal to do so it may be held answerable in pecuniary damages." In this relation Mr. Hay said:

"There was an inexcusable delay in initiating a judicial investigation. The first proceedings were partial and one-sided. The subsequent judicial proceedings, which were the direct result of the naval investigation by the U. S. S. *Montgomery*, terminated in condemning for minor offenses persons who, the evidence before the Department shows, were guilty of a deliberate and brutal murder. And finally, soon after the decision of the supreme court all of the murderers, with the single exception of Dawe, were permitted to escape.

"The case is very similar to that of Frank G. Lenz, who was murdered by Turkish subjects while passing through a remote part of the Ottoman Empire, in the course of a bicycle tour around the world, in 1894. It was only after persistent efforts by the friends of the murdered man and by this Government that the Turkish authorities began an investigation of the crime. The guilty parties were finally identified and arrested, and, although the evidence showed a premeditated murder, judgment was rendered for murder without premeditation, and they were permitted to escape in a body in a manner which

showed gross negligence, if not complicity, on the part of the officials charged with their custody. Under the circumstances this Government demanded and collected of the Turkish Government an indemnity in behalf of the mother of the murdered man. In instructing our minister in regard to the case Secretary Hay said: 'If his [Lenz's] murderers had been duly punished, this Government would not have felt disposed to demand the payment of an indemnity. The evidence showed a deliberate and premeditated murder, yet the judgment was rendered against the murderers as for "murder without premeditation," and even this penalty was not actually inflicted, for the guilty parties escaped.' (Secretary Hay to Minister Straus, March 25, 1899.)"

With regard to the amount of the indemnity, Mr. Hay directed the following demands to be made: For the murder of Renton and the failure promptly to apprehend and adequately to punish the offenders, $15,000; for the loss of property, $32,104.20; for the value of the lands that Renton had taken up, in case the Government of Honduras should refuse to grant them to his heirs, the sum, tentatively, of $100,000; for injuries to Mrs. Renton's person and health, $10,000; for the loss of her individual property, $10,000; for the ill-treatment of the niece, $5,000.

By an agreement concluded at Tegucigalpa, Nov. 25, 1904, the Government of Honduras engaged to pay in full settlement of the Renton claims the sum of 78,607.82 pesos silver, of legal circulation in Honduras, in monthly installments, chargeable on the customs revenues of Puerto Cortes.

For. Rel. 1895, II. 890–897, 883, 889, 920; Mr. Olney, Sec. of State, to Mr. Young, min. to Honduras, No. 265, Feb. 12, 1896, For. Rel. 1895, II. 934, MS. Inst. Cent. Am. XX. 598; also, For. Rel. 1895, II. 935–936; For. Rel. 1896, LXXV.; For. Rel. 1897, 347–352; Mr. Hay, Sec. of State, to Mr. Combs, min. to Honduras, No. 97, Feb. 25, 1904, For. Rel. 1904, 352.

In the same agreement the Government of Honduras also settled the claim of the estate of Jacob Baiz, an American citizen, for 41,392.18 pesos silver. (For. Rel. 1904, 368–369.)

In October, 1903, the American ship *Benjamin Sewall* was wrecked on the coast of Formosa. As the crew were going ashore their boat was attacked by the savages of Botel Tobago, and some of the men, by reason of being thrown into the water, were drowned. In response to a representation by the American vice-consul at Tamsui, the Formosan government stated that it had "efficiently and strictly censured the savages" and would "warn them not to repeat such misconduct again in future." The Government of the United States deeming this to be an insufficient reparation, a Japanese police force attacked the savages, captured some of them, and burnt some of their

houses. It seems that there was special difficulty in dealing with the savages, owing to want of knowledge of their language.

For. Rel. 1904, 440–448.

3. Brigandage.

§ 1021.

Case of Knapp and Reynolds.

On May 21, 1883, two American missionaries, named Knapp and Reynolds, who were traveling in the vilayet of Bitlis, put up for the night at the oda of one of the four Armenian residents of the village of Ghuorie, where lived the noted Kurd named Mirza Bey. While they were at supper, some villagers entered the room, among whom was Moussa Bey, a son of Mirza Bey. It seems that Moussa Bey felt himself insulted because the missionaries did not offer him a cup of coffee, and, taking four assistants, waylaid them the next day. They beat Mr. Knapp with clubs till they supposed him to be dead, while Moussa Bey with his own hand struck down Reynolds, giving him ten cuts with a sword. The two men were then bound and dragged into the bushes and there left to die. The offense and the offenders were well known, and the names of the latter were given to the Turkish Government. The British consul at Erzeroum lent his active aid, and efforts were made to secure the punishment of the culprits. The efforts to obtain the punishment of Moussa Bey and his associates having been ineffectual, by reason of the connivance of the local authorities with them, a demand was made for the trial of the offenders in Constantinople. The Turkish Government was also requested to dismiss the governors of Bitlis and Van and to pay an indemnity. The governor of Bitlis was dismissed, and the Turkish Government instituted proceedings against two of the delinquent magistrates. The outrage upon Messrs. Knapp and Reynolds was only one of many that had occurred in the same region, in which Moussa Bey was concerned. These incidents, by which numerous British subjects were affected, attracted wide attention and became the subject of discussions in the British Parliament. In June, 1889, chiefly through the influence of Sir William White, British ambassador, Moussa Bey was brought to Constantinople to answer the charges against him, but was not put under arrest. He presented a petition to the Sultan denying the charges and asking for a trial. On his trial he was acquitted of some of the charges, and an appeal was taken to the court of cassation. He was not, however, tried for the assault on Messrs. Knapp and Reynolds, and the Sultan declined to order a second trial. The Turkish Government in fact took the ground that the culpability of Moussa Bey in the affair was not legally established, and that, although a long delay had taken place, the interested

parties were still at liberty to sue the judges as well as to proceed against Moussa again before the competent tribunal in case they should discover new evidence against him. The United States refused to be content with this answer, and claimed the fulfilment of the promise of the Turkish Government that Moussa Bey would be brought to punishment. In the summer of 1890 an imperial iradé was issued for Moussa's exile to Medina. He fled from Constantinople, but was captured three weeks later in the vilayet of Broussa and was brought to Constantinople under guard, and on October 19, 1890, was sent thence to Medina. The governor of Scutari, a cousin of Moussa, in whose custody he was at the time of his escape, was removed and sent to Monastir.

For. Rel. 1883, 850, 864, 866, 882, 886, 888; For. Rel. 1884, 532, 535, 537, 542, 544, 548, 550, 552, 558, 563, 565; For. Rel. 1885, 827, 834, 842, 844, 846, 859, 868; For. Rel. 1889, 725, 728; For. Rel. 1890, 721, 724, 739, 740, 742, 744, 745, 758, 761, 764, 765, 773, 775.

See the case in 1870 of certain British subjects murdered by brigands in Greece. Mrs. Lloyd, the widow of one of the murdered persons, obtained at first a pension from the Greek Government, and afterwards a grant of £10,000. (Parl. Papers, Nov. 1, 1871, p. 9.)

See an article on this case, in connection with that of Miss Ellen M. Stone, in 1901, in the San Francisco *Argonaut* of Oct. 28, 1901.

Case of Leon M. Baldwin.

August 19, 1887, Leon M. Baldwin, a citizen of the United States and a mining engineer, who was employed as superintendent of the Valenciana mine, in the State of Durango, Mexico, was shot and killed by two well-known outlaws in the village of Ventanas. It appeared that this was one of a series of acts of violence that had lately been perpetrated by bandits in that quarter. Acts of robbery, kidnapping, and homicide had been frequent, and it was alleged that, although one of the victims was a prominent native official of Ventanas, nothing had been done by the Mexican Government to render life and property secure. About ten days after Mr. Baldwin's assassination, the native population, wrought up by a new outrage, dispersed the bandits and killed five of their number, including the murderers of Mr. Baldwin. It was alleged that some of the crimes were at least partly inspired by hatred of citizens of the United States, and that this feeling had the sympathy and active support of a large part of the native population of Ventanas. Under these circumstances, Mr. Bayard, on March 15, 1888, instructed Mr. Bragg, then American minister in Mexico, to lay the case before the Mexican Government with a view to obtain "an appropriate redress to the representatives of Mr. Baldwin."

Mr. Bayard, Sec. of State, to Mr. Bragg, min. to Mexico, No. 8, March 15, 1888, For. Rel. 1888, II. 1144.

See, also, For. Rel. 1888, II. 1087, 1092, 1202, 1217, 1248, 1250, 1254.

Mr. Bragg, when first presenting the case to the Mexican Government, laid down too broadly, in the opinion of the Department of State, the principle of liability of governments to indemnify foreigners voluntarily within their jurisdiction for losses growing out of neglect of duty by public officials, and was instructed to modify his presentation of the case. (Mr. Bayard to Mr. Bragg, No. 55, May 23, 1888, MS. Inst. Mexico, XXII. 208.)

See, also, For. Rel. 1889, 550, 562, and Mr. Bayard, Sec. of State, to Mr. Whitehouse, chargé, No. 181, Dec. 7, 1888, MS. Inst. Mexico, XXII. 318, 319.

"It is not asserted by the Government of the United States that the slayers of Mr. Baldwin exercised so nice a discrimination in their criminal conduct as to select foreigners alone for their victims. It is doubtless true that Mexicans as well as foreigners were robbed and murdered. Enmity and the desire for plunder may have been mingled as motives of the outrages that were perpetrated. But it appears by the evidence of all the witnesses that there was a prevalent hostility to foreigners, and that, while the enmity against certain Mexicans may have proceeded from personal causes, there was a general prejudice against foreigners, and especially against Americans, because of their nationality. In several instances, as in that of the killing of Mr. Baldwin, this prejudice seems to have been the chief, if not the sole, motive of the crime. Mr. Mariscal has given a very prominent place in his argument to the murder of Quiros, the jefe politico of Ventanas, with a view to show that the killing of Mr. Baldwin can not be attributed to prejudice against him as a foreigner and an American. The evidence in the possession of the Department is to the effect that Quiros, having shown a disposition to oppose the bandits, became an object of hatred which was significantly expressed by them in the charge that he was the friend of the 'Gringos.' That they should have regarded any act of interference with them as an act of friendship to the foreigners whom they thus denominated, and that they should for that reason have made the interference a ground of resentment and retaliation, is, when considered in connection with the nationality of those whom they selected as their victims, most powerful evidence that there was a deliberate purpose to expel or exterminate the American residents.

"It has been shown that, upon the facts established by the testimony in regard to the death of Mr. Baldwin, the Government of the United States may well be content to rely for the maintenance of its position upon the measure of international liability incorporated in the treaties cited in the reply of the Mexican Government. Mr. Mariscal, however, also refers to the rule laid down by the United States on several occasions in respect to the liability of a government for injuries caused by mob violence, as an answer to

the claim made in the present case. The leading instance cited by him in this relation is that of the outrages upon the Chinese, in respect to which the Government of the United States denied its legal liability to respond in damages, although in reality it has paid more than half a million dollars to the Chinese Government for the relief of the sufferers. The attacks upon the Chinese and the killing of Mr. Baldwin, possess, indeed, certain similar features. Both were directed against foreigners; both were actuated in a measure by prejudice growing out of differences in nationality; and both were committed in wild and sparsely settled regions. But here the parallelism ends. The Chinese outrages were a sudden and violent outbreak of one body of aliens against another. So that this Government, replying, on the 18th of February, 1886, to the representations of the Chinese minister, said: 'The attack upon them [the Chinese], as your [the Chinese minister's] note truly states, was made suddenly by a lawless band of about 150 armed men, who had given no previous intimation of their criminal intent.'

"In the case of Mr. Baldwin, the amplest notice was given both to the Federal and State authorities of Mexico of the lawless proceedings of those who committed that crime. The depredations of Bernal had been continued through a period of ten or more than ten years. An especial degree of disorder had existed in the neighborhood of Ventanas for a year and a half. The offenders were well known, though at the particular time they were not of the immediate band of Bernal. The most urgent importunities were again and again addressed to the authorities by those who were in danger, but no serious steps were taken to afford them protection.

"Nor in the end were the bandits deprived of the security which the negligence of the authorities had given them, except by the voluntary opposition of the inhabitants of the village of Durango.

"To sustain this denial of redress Mr. Mariscal has invoked the familiar rule that the measure of protection and of privilege to which foreigners residing in a country are entitled is that which the government of the country accords to its own citizens. As a general proposition, this rule is undoubtedly acceptable; but its applicability is by no means universal. Where the question to be determined is the measure of private rights and remedies under the municipal law, the rule above stated may, with certain well-settled exceptions, readily be adopted. But, where a government asserts that its citizens in a foreign country have not been duly protected, it is not competent for the government of that country to answer that it has not protected its own citizens, and thus to make the failure to perform one duty the excuse for the neglect of another.

"It is true that in this way foreigners may enjoy an advantage over the citizens of a country. This, however, is not a matter for

foreign governments to consider. They have no power to regulate the relations of another government to its citizens; nevertheless, they are bound to ask that their own may be protected.

"The Government of the United States in asking redress for the killing of Mr. Baldwin, has claimed nothing beyond what it is entitled to demand upon the elementary principles of international law and the plainest dictates of reason. It is not, therefore, my purpose to enter into a disquisition upon the utterances of publicists as found in their works. I will, however, quote from the last edition of Calvo's exhaustive treatise on international law the following pertinent passages:

"'Section 1271. Any person disturbing public tranquillity, or violating the sovereign rights of a nation, or its laws, offends the state, declares himself its enemy, and incurs just punishment. His responsibility is not less when, instead of attacking the state, the crimes or offenses of which he has been guilty menace personal safety or the rights and property of individuals. In both cases, the government would fail to perform its duty if it did not repress the injury committed and cause the offender to feel the weight of its penal legislation. The state is not only under obligations to secure the reign of peace and justice among the different members of the society whose organ it is; it must also see, and that most carefully, that all who are under its authority offend neither the government nor the citizens of other countries. Nations are obliged to respect one another, to abstain from offending or injuring each other in any way, and, in a word, from doing anything that can impair each other's interests and disturb the harmony which should govern their relations. A state that permits its immediate subjects or citizens to offend a foreign nation becomes a moral accomplice in their offenses and renders itself personally responsible.

"'As regards its enforcement, this principle has nothing absolute, and admits of reservations inherent in the very nature of things; for there are private acts which the most vigilant authority can not prevent, and which the wisest and most complete legislation can not always hinder or repress. All that other nations can ask of a government is that it shall show that it is influenced by a deep sense of justice and impartiality, that *it shall admonish its subjects by all the means in its power that it is their duty to respect their international obligations*, that it shall not leave offenses into which they may have been led unpunished; and finally, that it shall act in all respects in good faith and in accordance with the precepts of natural law; to go beyond this would be raising a private injury to the magnitude of a public offense, and would be holding an entire nation responsible for a wrong done by one of its members. . . .

"'Section 1274. . . . When the Government has had knowledge of the act from which the damage has resulted and has not displayed due diligence in preventing it or in arresting its consequences, either with the means at its disposal, or with those which it might have asked from the law-making power, the State will be responsible for willful neglect of diligence. In that case, the degree of responsibility of the State will have for its basis the facilities (whether greater or less) which it had for making previous provision for the act, and the precautions (whether greater or less) which it was in its power to take to prevent it.'

"The passages above cited are sustained by the learned author with ample citations of authority and an exhaustive review of the precedents. The United States asks nothing more than is due to it under the rule laid down by the distinguished Argentine publicist.

"Mr. Mariscal has also invoked the familiar rule that claimants must pursue their remedies in the courts of the country before they can resort to diplomatic intervention. As a general proposition this rule may be accepted as true. But it is obvious that it is applicable only where adequate judicial remedies exist for the redress of the grievance complained of. In the present case no such remedies have been alleged to exist, and the subject-matter of the complaint is not, in reality, one of judicial cognizance. This Government is not aware of any courts or of any processes by which the issue could be tried and redress obtained by the claimant in Mexico. Nor, where the question presented is whether the Government of a country has discharged its duty in rendering protection to the citizens of another nation, can it be conceded that that government is to be the judge of its own conduct.

"This Government, therefore, is compelled to ask the Government of Mexico to reconsider its denial of redress in the case of Mr. Baldwin and to render justice in the matter in accordance with the principles upon which it has been claimed."

Mr. Blaine, Sec. of State, to Mr. Dougherty, chargé, No. 430, Jan. 5, 1891, MS. Inst. Mexico, XXIII. 14, 21.

It was suggested by the United States, in 1892, that, in view of its settlement of the New Orleans affair and of the Chilean Government's similar action in the case of the *Baltimore*, Mexico might, by adjusting the Baldwin claim, furnish another illustration of the disposition to settle cases without controversy. This suggestion, however, was made without prejudgment of the eventual position of the United States. Señor Mariscal subsequently intimated that, upon the final determination of the right of Mexico to the Weil and La Abra fund, the Mexican Government would take up the Baldwin claim for the purpose of agreeing upon an equitable sum to be paid

to the claimant as a gratuity. In August, 1894, however, before the Weil and La Abra question was ended, the Mexican Government agreed to dispose of the Baldwin claim by paying in installments $20,000 in gold to Mr. Baldwin's widow. The payment was made and accepted with the understanding that it was done "as a matter of simple equity, without implying any admission that in the case in question the Mexican Government was, strictly speaking, responsible, and that it is not to constitute a precedent for the future treatment of similar cases." President Cleveland, in his annual message of December 3, 1894, said: "An indemnity tendered by Mexico, as a gracious act, for the murder in 1887 of Leon Baldwin, an American citizen, by a band of marauders in Durango, has been accepted and is being paid in installments."

See Mr. Foster, Sec. of State, to Mr. Ryan, min. to Mexico, July 23, 1892, MS. Inst. Mexico, XXIII. 254; same to same, Jan. 7, 1893, id. 315; Mr. Wharton, Act. Sec. of State, to Mr. Ryan, Feb. 24, 1893, id. 327; Mr. Gresham, Sec. of State, to Mr. Romero, Mexican min., Aug. 20, 1894, For. Rel. 1894, 424; Mr. Gresham, Sec. of State, to Mr. Clement, Aug. 30, 1894, 198 MS. Dom. Let. 433.

James H. Duvall, a citizen of the United States, was killed in Mexico by highwaymen, whose purpose was robbery. "The Mexican authorities promptly apprehended the murderers, and the Department understands that they were tried, convicted, and punished. Under these circumstances it is not believed that any claim for damages could be maintained." (Mr. Gresham, Sec. of State, to Mrs. Robinson, Sept. 20, 1894, 198 MS. Dom. Let. 637.)

Marauders in Peru.

"The grievances complained of appear to have been inflicted by a band of marauders or brigands in the interior of Peru, where the small forces of the Government were inadequate to resist and beat them off. . . . You have properly demanded the apprehension and punishment of the offenders, and this seems to be as far as this Government is warranted in going in obtaining redress and reparation for the injuries inflicted, unless it should be shown that the Peruvian Government has neglected to discharge its duty in that behalf. . . . If it be true that some of them [the offenders] are still at large and within the jurisdiction of Peru, you will call the attention of that Government to the fact and request the appropriate action."

Mr. Hay, Sec. of State, to Mr. Dudley, min. to Peru, No. 210, Sept. 5, 1899, MS. Inst. Peru, XVIII. 177.

Case in Persia.

March 9, 1904, the Rev. Benjamin W. Labaree, an American missionary, and his servant were barbarously murdered near Urumia, Persia, by a band of Kurds, under the lead of Mir Ghaffar, and alleged lineal descendant of Mahomet. The motive was said to be mainly religious and race hatred, and incidentally robbery. The Persian Government, on the request of the Ameri-

can minister, ordered a search for the criminals and prompt punishment, and as Mir Ghaffar had previously murdered a British subject, the British legation joined the American in insisting on energetic action. More than two months later, Mir Ghaffar was arrested, but there were still three Kurds, at least equally culpable, who remained at large. Late in June the American minister reported that the accomplices would not be arrested unless a peremptory message was sent by the United States. It was alleged that the chief ecclesiastic of Urumia had in a measure instigated the crime, and that the governor shielded the culprits for a bribe. On October 12, 1904, Mr. Hay telegraphed to the American minister that the President was very much disturbed over the failure of the Persian Government to punish the murderers, and that, if immediate satisfaction was not given, he would be constrained to lay the matter before Congress and recommend such action as might lead to a compliance with the demand for effective justice. Subsequently the legation reported that it had been informed that a detachment of fifty mounted men, which had been dispatched to arrest the murderers, had killed "six accomplices" and were pursuing the "remainder." This information proving to be unfounded, Mr. Hay, Nov. 25, 1904, telegraphed that the reported failure of the Persian Government to punish the murderers was a source of the "gravest concern" to the President; that he could not permit the just demands of the United States to be trifled with or evaded any longer; and that if no satisfactory action was taken before Congress met, in less than two weeks, he would be constrained to invoke the action of that body. On the 28th of November the legation reported a prospect of settlement, and asked for instructions as to indemnity. Mr. Hay immediately specified the sum of $50,000, and directed the legation to obtain a sufficient assurance that the engagements of the Persian Government would be carried out, adding that the President would not brook delay and that a prompt settlement must be insisted upon. Dec. 28, 1904, the American minister reported that, after consultation with Mr. Labaree's widow, he had proposed and the Persian Government had accepted the following settlement: (1) $30,000 cash in gold; (2) effective and swift punishment of all guilty persons; (3) no special tax on the province or on Christians to cover the indemnity. This settlement was approved, on condition that it be carried out immediately. January 3, 1905, the payment of the indemnity was reported.

For. Rel. 1904, 657–677, 835.

Case of Perdicaris.

On the night of May 18, 1904, a band of natives, headed by a "bandit" named Raisuli, broke into the country house of Ion Perdicaris, an American citizen, about three miles from Tangier, and carried him away, together with his

stepson named Varley, a British subject. The consul-general of the United States and the British minister informed the Sultan's deputy that the Moorish authorities were to be held personally responsible, and, in order to secure the release of the captives, insisted that any terms demanded by Raisuli be immediately granted. The South Atlantic Squadron of the United States was ordered to Tangier. Long negotiations ensued between the Moorish authorities and Raisuli for the payment of a ransom and the release of the prisoners. On June 22, 1904, Mr. Hay telegraphed to the American consul-general at Tangier that the United States "wants Perdicaris alive or Raisuli dead," and that further than this the least possible complication with Morocco and other powers was desired. The consul-general was directed not to arrange for landing marines or seizing custom-houses without specific instructions. The captives were released on the 24th of June. A British man-of-war, which had been at Tangier, left on the 25th, and the American squadron departed two days later.

For. Rel. 1904, 496–504.

As to the action of France, see For. Rel. 1904, 307; and of Great Britain, id. 338.

Indian depredations.

The Department of State, while declining to present a claim to the Mexican Government for the murder of a citizen of the United States by Indians in Mexico, said: "It is noticed, however, that you allege that the Indians were incited to make their attack on the person and property of your husband by the authorities of Yucatan. If this can be shown the Mexican Government may be held accountable therefor."

Mr. Cadwalader, Act. Sec. of State, to Mrs. Stephens, Dec. 24, 1875, 111 MS. Dom. Let. 227.

A commission was appointed in pursuance of a joint resolution of Congress approved May 7, 1872, to inquire into depredations committed by Indians and other disorderly persons on the Texas frontier. The commission made a report which was transmitted to Congress, and a resolution was adopted by the House of Representatives directing the Committee on Foreign Affairs to inquire, among other things, as to what further measures and legislation were necessary to afford redress for such depredations. It does not appear that the committee ever made any report on the matter.

Mr. Hill, Act. Sec. of State, to Mr. Kleberg, Jan. 8, 1901, 250 MS. Dom. Let. 125, citing H. Ex. Doc. 39, 42 Cong. 3 sess.; H. Ex. Doc. 257, 43 Cong. 1 sess.; H. Misc. Doc. 289, 43 Cong. 1 sess.

See, also, Mr. Porter, Assist. Sec. of State, to Mr. Offutt, May 9, 1885, 155 MS. Dom. Let. 312.

The Canadian government held that it was not liable to pay compensation for horses stolen from a citizen of the United States by the

Blood Indians. (Mr. Sherman, Sec. of State, to Mr. Hay, ambass. to England, No. 285, Oct. 27, 1897, MS. Inst. Great Britain, XXXII. 276; Mr. Adee, Second Assist. Sec. of State, to Mr. Walton, Oct. 27, 1897, 222 MS. Dom. Let. 51, enclosing copy of a dispatch from Mr. Hay, No. 139, Oct. 8, 1897.)

As to the release of the United States by Mexico from liability for Indian depredation claims under treaties between the two countries, see Moore, Int. Arbitrations, III. 2430.

IX. *MOB VIOLENCE.*

1. Destruction of French Privateers, 1811.

§ 1022.

The question of a government's liability for injuries suffered by foreigners within its jurisdiction has on various occasions been discussed and determined in cases of mob violence. Such cases sometimes apparently present strong grounds of national liability because of the popular approval of the mob's action, and the consequent immunity of the actors from prosecution and punishment. The rule, however, which has generally been maintained in argument, even if not in practice, is that while a government is bound to employ all reasonable means to prevent such disorders, it is not required to make indemnity for the losses that may result from them, unless, as in the case of Art. XXXV. of the treaty of 1846 with New Granada, or as in the case of an attack on official representatives, there is a special obligation of protection.

On November 15, 1811, an affray took place in a house of ill fame in Savannah, Georgia, between some American sailors and some seamen belonging to the French privateers *La Franchise* and *La Vengeance*, which were then in that port. In the affray one of the American sailors was killed and a French seaman was mortally wounded; and in consequence of this affair a local mob was raised, which killed several of the French seamen and destroyed the privateers by fire, notwithstanding the interference of the police and military authorities of Savannah. It seems that the State of Georgia offered to make reparation for the outrage, but that M. Serurier, French minister at Washington, looking upon it as an attack upon the flag of his country, demanded the prosecution and exemplary punishment of the guilty, the tender of satisfaction for an insult to the flag, and an indemnity for the owners of the vessels. The claim for indemnity, which was for the sum of 170,000 francs, was embraced in the negotiations of Mr. Rives with the French Government in 1831. In a note to Mr. Rives of June 15, 1831, Count Sebastiani, minister of foreign affairs, said: "It is universally admitted that all damages sustained in consequence of popular tumults are to be repaired either by

the district in which they were received, or by the government of the country; for, in such cases, the ordinary tribunals are incapable of rendering justice to the individuals who have suffered. The government under the faith and protection of which strangers place their persons and property and, more especially, their navigation and commerce, should secure them from acts of violence of this nature, which, on account of the number of persons engaged, become public acts. In the United States, strangers neither can nor ought to know any other than the General Government of the Union; and if the responsibility rest in the end upon the State of Georgia or the city of Savannah, it is the duty of the Federal Government, towards a country in peace with the United States, to use its power in obtaining justice for the injured. The minister of France at Washington demanded indemnifications for the loss of these two vessels as early as 1812, but the success of this demand became naturally involved in the examination, then going on, of claims against France which the United States was preparing to assert. The chamber of deputies has strongly recommended that this claim should be admitted in the negotiation now pending between France and the United States."

In a reply made by Mr. Rives to this note on June 19, 1831, it was intimated that the opposition of M. Serurier to the consummation of an arrangement with the State of Georgia would "materially impair" the application to the United States for indemnity. Mr. Rives also observed that the case was obviously different from those in which the United States was then demanding indemnity, where the wrongs were committed under express orders of the Government of France, but that if, on examination, there was found to be ground for a fair demand on the justice of the United States, he did not doubt that his Government would make reparation for it.

Count Sebastiani also presented a claim of 70,000 francs on account of the French privateer *La Revanche du Cerf*, which was burned by a mob at Norfolk, Virginia, on the night of April 15, 1811, because, it was said, of false reports which were circulated against the vessel. Count Sebastiani stated that the offenders remained unpunished. Mr. Rives possessed no information whatever with regard to the case, but observed that, as the act appeared to have been committed "with perfect secrecy under cover of the night, excluding thereby all opportunity for the protective interposition of the laws or of the public authority," it seemed "sufficiently clear that there is no principle of public law which can render the Government of the United States responsible for it."

By the convention concluded July 4, 1831, for the mutual settlement of claims, it was recited that, in consideration of the payment of 1,500,000 francs, the United States was liberated from all claims on the part of France or her citizens, either for supplies or accounts,

or for "unlawful seizures, captures, detentions, arrests or destructions of French vessels, cargoes, or their property."

Count Sebastiani to Mr. Rives, June 15, 1831, H. Ex. Doc. 147, 22 Cong. 2 sess. 191; Mr. Rives to Count Sebastiani, June 19, 1831, id. 201, 203. See, also, Mr. Van Buren, Sec. of State, to Mr. McAlister, Dec. 10, 1830, 23 MS. Dom. Let. 541.

2. Riots at New Orleans and Key West, 1851.

§ 1023.

In 1851 a riot took place in New Orleans, the Spanish consul and consulate and various Spanish residents being the objects of attack. It appears that on August 21, 1851, news was brought to New Orleans by the steamer *Crescent City* of the capture by the Spanish authorities in Cuba of one of the Lopez filibustering expeditions. Some of the members of the expedition were executed, while others were held as prisoners. On receipt of the news a Spanish paper at New Orleans, called *La Union*, published an "extra," giving an account of the affair with comments. Subsequently, the office of this newspaper was attacked by a mob and practically destroyed; some Spanish coffee houses and tobacco stores were wholly or partly demolished; and the Spanish consulate was raided. The consul, Señor Laborde, took refuge in the house of a friend and afterwards went to Havana, leaving Spanish interests in care of the British and French consuls. The Spanish minister, Señor Calderon de la Barca, complained that the consul was not protected, but was left at "the mercy of a ferocious rabble."

September 25, 1851, a month after the riot occurred, the Acting United States Attorney at New Orleans, Mr. E. A. Bradford, made a report on the affair, in response to a request of the Department of State. He stated that on the morning of August 21 placards were posted up, threatening an attack on *La Union* during the ensuing night. The attack was made, however, between 3 and 4 o'clock in the afternoon, probably having been precipitated by the "extra" in regard to the capture of the expedition. No police were present and no arrests were made. The next disturbance occurred at a Spanish coffee house. The office of the Spanish consul was first attacked between 5 and 6 o'clock the same afternoon. On hearing of the attack, the recorder of the first municipality repaired to the spot with two or three police officers, and found the mob in the office destroying the furniture. He at length persuaded the rioters to withdraw, but they took with them the consul's sign and burnt it in a public square. The consular office was then nailed up, but no guard was placed over it. "Within an hour afterwards," says Mr. Bradford, "the rioters returned, forced their way again into the office and without any inter-

ruption or hindrance destroyed all the furniture of the office, threw the archives of the consulate into the street, defaced the portraits of the Queen of Spain and of the Captain-General of Cuba, and tore the flag of Spain (which they found in the office) into pieces. All these outrages were committed upon the office of the consul without any interference on the part of the police (none of whom appear to have been present) and without the apprehension, as yet, of any of the offenders. Other disturbances took place during the night and numerous arrests of the rioters were made; but, so far as I can learn, none of the persons concerned in the attack upon the consul's office have been taken or identified. . . . The riots doubtless are to be ascribed to the exasperation excited by the news from Cuba. It was a sudden outbreak, for which the public authorities were not prepared and which the citizens did not immediately rally to resist; but it is a significant fact that in no instance where the police made the attempt, did they fail to check the rioters—that in no case was any violent resistance opposed to them, nor was any effort even made to rescue parties which they arrested."

Mr. Webster, writing to Mr. Calderon, November 13, 1851, said:

"The assembling of mobs happens in all countries; popular violences occasionally break out everywhere, setting law at defiance, trampling on the rights of citizens and private men, and sometimes on those of public officers, and the agents of foreign governments, especially entitled to protection. In these cases the public faith and national honor require, not only that such outrages should be disavowed, but also that the perpetrators of them should be punished, wherever it is possible to bring them to justice; and, further, that full satisfaction should be made, in cases in which a duty to that effect rests with the government, according to the general principles of law, public faith, and the obligations of treaties. . . .

"Mr. Calderon expresses the opinion, that not only ought indemnification be made to Mr. Laborde, her Catholic Majesty's consul, for injury and loss of property, but that reparation is also due from the Government of the United States to those Spaniards residing in New Orleans whose property was injured or destroyed by the mob. . . . But, while the Government has manifested a willingness and determination to perform every duty which one friendly nation has a right to expect from another in cases of this kind, it supposes that the rights of the Spanish consul, a public officer residing here under the protection of the United States Government, are quite different from those of the Spanish subjects who have come into the country to mingle with our own citizens, and here to pursue their private business and objects. The former may claim special indemnity; the latter are entitled to such protection as is afforded to our own citi-

zens. . . . The President is of opinion, as already stated, that, for obvious reasons, the case of the consul is different, and that the Government of the United States should provide for Mr. Laborde a just indemnity; and a recommendation to that effect will be laid before Congress at an early period of its approaching session. This is all which it is in his power to do. The case may be a new one; but the President, being of opinion that Mr. Laborde ought to be indemnified, has not thought it necessary to search for precedents."

In conclusion Mr. Webster stated that if Mr. Laborde should return to his post, or a successor to him be appointed, he would be received and treated with courtesy, and with a national salute to the flag of his ship, if he should arrive in a Spanish vessel.

President Fillmore, referring in his annual message of December 2, 1851, to the incident in question, said:

"Ministers and consuls of foreign nations are the means and agents of communication between us and those nations, and it is of the utmost importance that while residing in the country they should feel a perfect security so long as they faithfully discharge their respective duties and are guilty of no violation of our laws. This is the admitted law of nations and no country has a deeper interest in maintaining it than the United States. Our commerce spreads over every sea and visits every clime, and our ministers and consuls are appointed to protect the interests of that commerce as well as to guard the peace of the country and maintain the honor of its flag. But how can they discharge these duties unless they be themselves protected? And if protected it must be by the laws of the country in which they reside. And what is due to our own public functionaries residing in foreign nations is exactly the measure of what is due to the functionaries of other governments residing here. As in war the bearers of flags of truce are sacred, or else wars would be interminable, so in peace ambassadors, public ministers, and consuls, charged with friendly national intercourse, are objects of especial respect and protection, each according to the rights belonging to his rank and station. In view of these important principles, it is with deep mortification and regret I announce to you that during the excitement growing out of the executions at Havana the office of her Catholic Majesty's consul at New Orleans was assailed by a mob, his property destroyed, the Spanish flag found in the office carried off and torn in pieces, and he himself induced to flee for his personal safety, which he supposed to be in danger. On receiving intelligence of these events I forthwith directed the attorney of the United States residing at New Orleans to inquire into the facts and the extent of the pecuniary loss sustained by the consul, with the intention of laying them before you, that you might make provision for such indemnity to him as a just regard for the honor of the nation and the

respect which is due to a friendly power might, in your judgment, seem to require. The correspondence upon this subject between the Secretary of State and her Catholic Majesty's minister plenipotentiary is herewith transmitted.

"The occurrence at New Orleans has led me to give my attention to the state of our laws in regard to foreign ambassadors, ministers, and consuls. I think the legislation of the country is deficient in not providing sufficiently either for the protection or the punishment of consuls. I therefore recommend the subject to the consideration of Congress."

By an act of Congress of August 31, 1852, the sum of $25,000 was appropriated "to make compensation to the Spanish consul and other subjects of Spain residing at New Orleans, and subjects of Spain at Key West, for losses occasioned by violence in the year 1851, arising from intelligence then recently received at those places of the execution of certain persons at Havana who had recently invaded the Island of Cuba." By an act of March 3, 1853, however, the President was requested to make an investigation of the losses in question, and it was provided that such losses as he should certify to have been suffered should be paid.

The ground on which the appropriation for the private subjects of Spain was made was explained in the Senate by Mr. Mason, chairman of the Committee on Foreign Relations, and Mr. Underwood, of the same committee, the latter saying: "The ground on which the question was put before the Committee on Foreign Relations, in a great degree, was the magnanimity of the Queen of Spain in liberating those individuals (captured in Cuba and held as prisoners) after they had been sent across the ocean, and permitting them to return home. We wished to show a mark of courtesy and respect for that magnanimity, in conceding a boon, if you so regard it, in making this concession to the subjects of Spain."

With reference to the acknowledgment in the foregoing case of a special liability for the protection of ministers and consuls, it may be observed that by the law then and now existing, and now embodied in the Revised Statutes of the United States, special provision is made touching the protection of public ministers. By section 4062 of the Revised Statutes, every person who "violates any safe-conduct or passport duly obtained and issued under authority of the United States," or who "assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of a public minister, in violation of the law of nations, shall be imprisoned for not more than three years, and fined, at the discretion of the court."

By section 4063 any judicial process "whereby the person of any public minister of any foreign prince or state, authorized and received as such by the President, or any domestic or domestic servant

of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached," is declared to be void; and by section 4064 every person suing out or executing such process is declared to be "a violator of the laws of nations, and a disturber of the public repose," and is to be imprisoned for not more than three years and fined at the discretion of the court.

Mr. Webster, Sec. of State, to Mr. Calderon da la Barca, Span. min., Nov. 13, 1851, 6 Webster's Works, 509, 511; annual message of President Fillmore, Dec. 2, 1851, Richardson's Messages, V. 118; act of Aug. 31, 1852, 10 Stat. 89; act of March 3, 1853, 10 Stat. 262–263; Cong. Globe, 1851–1852, vol. 24, part 2, p. 2341.

See also, H. Ex. Doc. 113, 32 Cong. 1 sess.; H. Ex. Doc. 2, 32 Cong. 1 sess.

Analogies and comments.

"Your despatch No. 241 of the 9th instant, has been received. It relates to the attack on the Protestant Church at Acapulco by a mob. Such an incident is not uncommon to propagandism in regions where the doctrines sought to be disseminated may be new and consequently more or less unpalatable. Martyrs must be expected at such times. It is much to be deplored that a citizen of the United States should have been one of the victims. The promptness and energy with which you applied to the Mexican Government in the matter, are to be commended. There is cause to fear, however, that we can not judiciously require from them a pecuniary compensation for the relief of the wife and children of the murdered man, unless we can show that the killing was occasioned by an act or omission of a person in authority at Acapulco. Governments are not usually accountable in pecuniary damages for homicides by individuals. All that can fairly be expected of them is that they should in good faith, to the extent of their power, prosecute the offenders according to law."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 192, Feb. 23, 1875, MS. Inst. Mexico, XIX. 166.

On the night of April 14, 1901, a mob sacked an American Baptist mission church at Nictheroy, near Rio de Janeiro. The cause of the trouble appears to have been religious feeling. Damages for the destruction of property were promptly paid by the local State authorities, without any diplomatic demand and without any diplomatic action beyond certain personal and unofficial conversations on the part of the American minister.

For. Rel. 1901, 28–30.

"Your despatch No. 224 of the 21st of January last, has been received. It relates to the claim of William Scott Smyth against the Brazilian Government. You represent that the facts as set forth in the memorial of the claimant are admitted by that Government,

which, however, denies its accountability and says that the province where the injury to Mr. Smyth took place is alone answerable. Supposing, however, the case to be a proper one for the interposition of this Government, the reference of the claimant to the authorities of the province for redress will not be acquiesced in. Those authorities cannot be officially known to this Government. It is the Imperial Government at Rio de Janerio only which is accountable to this Government for any injury to the person or property of a citizen of the United States committed by the authorities of a province. It is with that Government alone that we hold diplomatic intercourse. The same rule would be applicable to the case of a Brazilian subject who, in this country, might be wronged by the authorities of a State. There would, however, be this difference. In all our States, the authorities are chosen or appointed by the people or authorities thereof. The United States Government has no part in their election or appointment. In Brazil, however, the governors of the provinces being appointed by the Imperial Government, the latter may be regarded as specially responsible for their acts in all cases where the law of nations may have been infringed and justice may be unattainable through the courts.

"If the Imperial Government allows that the claimant was forcibly deprived of his property by a mob set on by the governor of the province, is this admission enough to create its accountability?

"There is at least one signal instance in our own history where this Government has indemnified foreigners for the loss of their property from a mob. The riots at New Orleans and Key West in 1852 are referred to, when the houses and shops of many Spaniards there were sacked. It is true that Mr. Webster, in a note to Mr. Calderon on the subject, stated that the reparation was voluntarily made and not from any sense of obligation on the part of this Government under the law of nations. In that case, however, there was no proof, or as is understood even any charge, that the riot was instigated by those authorities who were charged with the duty of preserving the public peace. It is not improbable that, if those authorities had confessedly instigated the riot, Mr. Webster's opinion as to the responsibility of this Government might have been different, especially if the sufferers should have been without a remedy through the courts.

"It is the duty of Brazil when she receives the citizens of a friendly state, to protect the property which they carry with them or may acquire there. If persons in the service of that Government connive at or instigate a riot, for the purpose of depriving a citizen of the United States of his property, the Imperial Government must be held accountable therefor.

"You will inform the minister for foreign affairs of the conclusion which has been reached here on this point, and will express

the hope that reparation to the claimant in this case will not be longer withheld."

Mr. Fish, Sec. of State, to Mr. Partridge, min. to Brazil, No. 141, March 5, 1875, MS. Inst. Brazil, XVI. 455.

See, also, same to same, Feb. 27, 1875, id. 454.

For further comments on the New Orleans riot, see Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 292, April 18, 1884, S. Ex. Doc. 143, 50 Cong. 1 sess. 81, 83; cited infra, § 1046.

"Referring to your despatches, Nos. 90 and 199, in relation to the claim of Messrs. Wexel and De Gress, citizens of the United States, against the Government of Peru, on account of losses incurred by the entry of a political mob on their premises on the evening of Sunday, the 20th of August, 1876, I have now to acknowledge the receipt of your despatch No. 230, from which it appears that the claim in question (which was brought to the attention of the minister of foreign affairs of Peru in your note of the 8th of October, 1877), has been denied by the Government of that country, in pursuance of an elaborate opinion of the attorney of the supreme court.

"It is observed that the opinion of the attorney places the removal of the arms and other articles from the establishment of the claimant in the light of a common burglary, which took place some hours subsequent to the dispersion of the mob of that day, while the claimants aver that their warehouse was literally sacked by a mob, and during a time when a force of cavalry was stationed within a few yards of the same, but which did not attempt its protection; and they state that these facts are corroborated by the Lima newspapers, dating from August 20 to August 30 of that year.

"If the facts are that a mob composed of many and perhaps many hundred persons took, for the time being, practical possession of the capital of Peru, and the police and the military in the hands of the executive authority were actual witnesses of the event, while scarcely a hand was raised or an order issued with a view to suppress the riot, or preserve life and property, an event so grave in its character that the ministers were subsequently called before the legislative body to explain their conduct and to account for their neglect of any efforts to preserve the peace, and a vote of censure passed on two of them, which compelled their resignation, it is difficult to understand how this violent entry on the premises of the claimants can be treated as a common burglary, and on the assumption that the statement of facts of the claimants is correct it is not perceived upon what grounds of public law the Peruvian Government, which was even especially bound to protect them by the terms of Article XV. of the treaty of 1870, can deny to them reasonable satisfaction.

"As regards the alleged failure of Messrs. Wexel and De Gress to pursue the rioters in court, it is not made evident that they could

have indemnified themselves for their losses by such proceeding; it is not made clear, indeed, that the police discovered any responsible perpetrators of the deeds complained of.

"But the attorney lays down a doctrine that the state is not responsible to foreigners that immigrate within its territories either for crimes committed by persons individually, or by mobs, and in support of this doctrine, the attorney cites from a letter of Mr. Webster when Secretary of State. But the action of this Government in that case will, I think, be found to be against him.

"Unlike the case now being considered, which occurred under the immediate eyes of the Government, the case referred to by the attorney took place in a seaboard town more than a thousand miles distant from the capital of the United States. The character of that case and the action of Congress thereon appear in the following copy of a resolution of Congress:

"'*March 3, 1853 (No. 14), a resolution for the relief of the Spanish consul and other subjects of Spain residing at New Orleans, and of subjects of Spain residing at Key West, by indemnity for losses occasioned in the year eighteen hundred and fifty-one.*

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and is hereby requested to cause an investigation to be made of any losses that may have been sustained by the consul of Spain and other persons residing at New Orleans or at Key West, in the year eighteen hundred and fifty-one, and who, at the time, were subjects of the Queen of Spain, by the violence of individuals arising out of intelligence then recently received at those places, of the execution of certain persons at Havana, in Cuba, by the Spanish authorities of that island, and that such losses, so ascertained, to persons, at that time subjects, as aforesaid, on the certificate of the Secretary of State, that the same are proven to the satisfaction of the President, together with the reasonable costs of the investigation, shall be paid to those entitled, out of any money in the Treasury not otherwise appropriated. Approved March 3, 1853.'

"The Spanish sufferers from that *émeute* were accordingly indemnified.

"You will avail yourself of a favorable opportunity to present these views to the minister of foreign affairs."

Mr. Evarts, Sec. of State, to Mr. Gibbs, min. to Peru, No. 107, May 28, 1878, MS. Inst. Peru, XVI. 362.

As to the case of riots at Port au Prince, Hayti, Sept. 22, 1883, see Moore, Int. Arbitrations, II. 1859.

As to claims growing out of the fires at Port au Prince of July 4 and July 7, 1888, see Mr. Wharton, Act. Sec. of State, to Mr. Riddle, May 9, 1891, 281 MS. Dom. Let. 654; Mr. Adee, Act. Sec. of State, to Mr. Durham, min. to Hayti, No. 72, Aug. 15, 1892, MS. Inst. Hayti, III. 278.

In 1880 certain British subjects were injured by a mob in Texas. It was held by the Secretary of State, after consulting the Attorney-General, that as the offense "was against the peace and dignity of that State," it was "cognizable only by the authorities of that State. So far as their legal remedy against the assailants is concerned, the Dows [the parties injured] stand as to their natural and civil rights in precisely the same condition as to recourse to the State tribunals as the citizens of that State; and, in their capacity of British subjects, they can resort also to the courts of the United States at their option for civil redress and indemnity."

Mr. Evarts, Sec. of State, to Sir E. Thornton, May 24, 1880, MS. Notes to Gr. Brit. XVIII. 295.

As to the murder of Mr. Connelly, an American citizen, at Angangueo, State of Michoachan, Mexico, on March 14, 1880, see Mr. Bayard, Sec. of State, to Mr. Connelly, April 9, 1885, 155 MS. Dom. Let. 33.

The Government of the United States is not responsible to that of Japan for the lynching and murder of a Japanese subject in Utah by a mob which could not have been quelled by due diligence and energy by the Government. In this case the Japanese had previously shot and killed a woman "without excuse or justification."

Mr. Frelinghuysen, Sec. of State, to Mr. Kuki Rinichi, Oct. 20, 1884, MS. Notes to Japan, I. 274.

3. Panama Riot, 1856; Fortune Bay Case, 1878.

§ 1024.

In the case of the riot at Panama on April 15, 1856, the Government of New Granada, by the convention of Sept. 10, 1857, acknowledged its liability, "arising out of its privilege and obligation to preserve peace and good order along the transit route," an acknowledgment which was understood to refer to the engagements of Art. XXXV. of the treaty of 1846.

See supra, § 344; Moore, Int. Arbitrations, II. 1361.

With reference to the claims of the American fishermen whose nets were torn up and who were driven from Fortune Bay, in Newfoundland, by a mob of natives, Mr. Evarts said: "If I am correct in the views hitherto expressed, it follows that the United States Government must consider the United States fishermen as engaged in a lawful industry from which they were driven by lawless violence at great loss and damage to them; and that as this was in violation of rights guaranteed by the treaty of Washington, between Great Britain and the United States, they have reasonable ground to expect at the hands of Her Britannic Majesty's Government proper compensation for the loss they have sustained."

Mr. Evarts, Sec. of State, to Mr. Welsh, min. to England, Aug. 1, 1879, For. Rel. 1880, 530, 538.

The claims growing out of this affair were settled for £15,000. (For. Rel. 1881, 504–510, 514, 586, 590.)

4. Attacks on Chinese at Rock Springs and Elsewhere.

§ 1025.

"I have the honor to acknowledge the receipt of your note of the 10th of November last, in relation to the recent unfortunate occurrences at Denver, Colo., by which certain Chinese residents of that city suffered very serious injuries in their persons and property, were subjected to wanton and undeserved outrage, and one of their number killed.

"These sad consequences resulted from the conduct and action of a lawless mob, who, for a brief period, during the 31st of October, and the night following that day obtained the mastery over the law and the local authorities. The attack of the mob appears to have been, at first, indiscriminately directed against the peaceable and law-abiding of the whole community.

"I embrace this opportunity to state for your own information and that of the Chinese Government, which you worthily represent, that the President upon the receipt of the information that in this outbreak of mob violence the Chinese residents of Denver had been made a special object of the hatred and violence of that lawless mob, felt as much indignation and regret as could possibly be felt by yourself or your Government, and I need scarcely assure you that, in common with my colleagues in the executive government, I shared fully in this sentiment of the President.

"You express in your note, the desire that this Government shall extend protection to the Chinese in Denver, and see that the guilty persons are arrested and punished; and you add that 'it would seem to be just that the owners of the property wantonly destroyed shall, in some way, be compensated for their losses.'

"It affords me pleasure to assure you that not only in Denver, but in every other part of the United States, the protection of this Government will always be, as it always has been, freely and fully given to the natives of China resident in the country, in the same manner and to the same extent as it is afforded to our own citizens. As to the arrest and punishment of the guilty persons who composed the mob at Denver, I need only remind you that the powers of direct intervention on the part of this Government are limited by the Constitution of the United States. Under the limitations of that instrument, the Government of the Federal Union cannot interfere in regard to the administration or execution of the municipal laws

of a State of the Union, except under circumstances expressly provided for in the Constitution. Such instances are confined to the case of a State whose power is found inadequate to the enforcement of its municipal laws and the maintenance of its sovereign authority; and even then the Federal authority can only be brought into operation in the particular State, in response to a formal request from the proper political authority of the State. It will thus be perceived that so far as the arrest and punishment of the guilty parties may be concerned, it is a matter which, in the present aspect of the case, belongs exclusively to the government and authorities of the State of Colorado. In this connection, it is satisfactory to be able to note, with approval, the conduct of the public authorities of Colorado, and of the people of Denver, on the unfortunate occurrence in question. It was seen then as it always is in such outbreaks that the fury of the brutal and lawless, who compose such mobs, is ultimately turned against the weak and defenseless, and it is creditable alike to the appreciative sense of public duty of the authorities of Colorado and the humane instincts of the citizens of Denver, that their first care in this emergency (involving as it did for the moment, the lives and property of all alike), was the protection and safety of the Chinese residents, whose presence seemed to serve as a special incitement to the passions of the mob. And this brings me to the suggestion of your note, 'That the owners of the property wantonly destroyed shall, in some way, be compensated for their losses.'

"It seems superfluous to recall to your attention the fact, but too well attested by history, that on occasions, happily infrequent, often without motive in their inception, and always without reason in their working, lawless persons will band together and make up a force in the character of a mob of sufficient power and numerical strength to defy, for the moment, the denunciations of the law and the power of the local authorities. Such incidents are peculiar to no country. Neither the United States nor China are exempt from such disasters. In the case now under consideration it is seen that the local authorities brought into requisition all the means at their command for the suppression of the mob, and that these means proved so effective that within twenty-four hours regular and lawful authority was reestablished, the mob completely subdued, and many of the ringleaders arrested.

"Under circumstances of this nature when the Government has put forth every legitimate effort to suppress a mob that threatens or attacks alike the safety and security of its own citizens and the foreign residents within its borders, I know of no principle of national obligation, and there certainly is none arising from treaty stipulation which renders it incumbent on the Government of the United States to make indemnity to the Chinese residents of Denver, who in com-

mon with citizens of the United States, at the time residents in that city, suffered losses from the operations of the mob. Whatever remedies may be afforded to the citizens of Colorado or to the citizens of the United States from other States of the Union resident in Colorado for losses resulting from that occurrence, are equally open to the Chinese residents of Denver who may have suffered from the lawlessness of the mob. This is all that the principles of international law and the usages of national comity demand.

"This view of the subject supersedes any discussion of the extent or true meaning of the treaty obligations on the part of this Government toward Chinese residents, for it proceeds upon the proposition that these residents are to receive the same measure of protection and vindication under judicial and political administration of their rights as our own citizens.

"In communicating to you the views of this Government in the premises, I have pleasure in adding the assurance that it will upon every occasion, so far as it properly can, give its continued attention to every just and proper solicitude of the Chinese Government in behalf of its subjects established here under the hospitality of our treaties."

Mr. Evarts, Sec. of State, to Chen Lan Pin, Chinese min., Dec. 30, 1880, For. Rel. 1881, 319.

The Department of State will take all steps necessary to comply with the third article of the Chinese immigration treaty in so far as it constrains this Government to "'exert all its power to devise measures for' the protection of any Chinese who suffer ill-treatment, and secure to them the full enjoyment of their rights."

Mr. Frelinghuysen, Sec. of State, to Governor of Georgia, Mar. 12, 1883, 146 MS. Dom. Let. 119.

See, also, Mr. Frelinghuysen, Sec. of State, to Governor of California, June 20, 1882, 142 MS. Dom. Let. 448.

"That when the courts of justice are open to a foreigner in a State, the Federal Executive will not take cognizance of his complaint, was maintained by Mr. Evarts and Mr. Blaine, on December 30, 1880, and March 25, 1881, when declining to accept for the Executive jurisdiction over a claim for damages to certain Chinese inflicted by a mob in Colorado in November, 1880. (United States, Foreign Relations, 1881, pp. 319, 335.)"

Mr. Bayard, Sec. of State, to Mr. West, Brit. min., June 1, 1885, For. Rel. 1885, 150, 456.

See a discussion of the case of Gen. Haynau, id. 456–457.

On November 30, 1885, Mr. Cheng Tsao Ju, Chinese minister at Washington, brought to the notice of Mr. Bayard, who was then Sec-

retary of State, "a subject of the gravest importance." He represented that several hundred Chinese subjects who had entered the United States in conformity with treaty stipulations and had established themselves at Rock Springs, in the Territory of Wyoming, where they had erected houses and had for several years been engaged in the lawful pursuit of peaceful industry, were, on September 2, 1885, while quietly engaged in their usual occupations, suddenly and without provocation attacked by a lawless band of armed men who were said to have numbered about a hundred and fifty persons. The Chinese were ordered by the mob to leave their homes, but, before an opportunity was afforded them to do so, a deadly fire of musketry was opened upon them, and they were compelled to abandon their homes and property and flee to the mountains for their lives. Many of them were, however, shot while in their houses or while they were endeavoring to run away from them. Fire was then set by the rioters to the houses, and the entire village and all Chinese habitations thereabout were burned to the ground. Twenty-eight Chinese were killed and fifteen were more or less severely wounded, while a large amount of property, valued at $147,748.74, was destroyed or appropriated by the rioters. In presenting this complaint, the Chinese minister stated that he desired again to acknowledge the inestimable service which had been rendered by the authorities of the United States to the Chinese consuls at San Francisco and New York, who were directed by the legation to make a personal investigation of the occurrence, and also to express the thanks of his Government to the President of the United States for the timely dispatch of troops to Rock Springs after the massacre, a measure which had, he was sure, prevented still further loss of life and property among his countrymen. In summarizing the circumstances, the Chinese minister emphasized the facts (1) that the attack upon the Chinese was "unprovoked on their part," (2) that, although it occurred in broad daylight, the civil authorities made no attempt to prevent or suppress the riot and afterwards held an inquest which had been described as a "burlesque," and (3) that, according to the reports of the consuls, none of the offenders was likely ever to be brought to punishment by the Territorial or local authorities. The Chinese minister therefore asked, in the name of his Government, that the persons who had been guilty of the murder, robbery, and arson in question be brought to punishment; that the Chinese subjects be fully indemnified for all losses and injuries they had sustained; and that suitable measures be adopted to protect the Chinese residing in Wyoming and elsewhere in the United States from similar attacks.

With this statement the Chinese minister said that he might consider his duty discharged, but for the fact that when his legation had previously called attention to a similar, though much less bloody and

disastrous event at Denver, Colo., in 1880, Mr. Evarts, who was then Secretary of State, had expressed doubts as to the legal liability of the United States to make pecuniary indemnity to the Chinese sufferers by the Denver mob, and that Mr. Blaine, who succeeded Mr. Evarts as Secretary of State, had concurred in the latter's views. He therefore desired to show why, in the opinion of his Government, indemnity ought in justice and equity to be granted to the sufferers by the Rock Springs outrage, in spite of the position maintained by Mr. Evarts in his note of December 30, 1880, and by Mr. Blaine in his note of March 25, 1881. The Chinese minister drew attention to the fact that in the case of the riot at Denver, Colo., Mr. Evarts had invoked the principle that the Federal Government could not interfere in regard to the administration of the municipal laws of a State of the Union, except where the Constitution of the United States expressly so provided. As the case at Rock Springs occurred within a Territory of the United States, this principle, said the Chinese minister, was not applicable. But there was, he declared, a broader view of the subject, to which he desired to ask attention. Mr. Evarts, said the Chinese minister, had declared that all that was required by "the principles of international law and the usages of national comity" was that the same remedies should be open in Colorado to Chinese as to residents of Denver. Without questioning the interpretation given by Mr. Evarts to the rules of "international law," the Chinese minister proceeded to examine in detail what the "usages of national comity" in reality had been and still were. Under the treaty between the United States and China of 1868, American citizens in China, so far as the full protection of the laws was concerned, had, said the Chinese minister, no other and greater guarantees and rights than Chinese subjects in the United States. It was true that Mr. Blaine, in citing Article XI. of the treaty of 1858, guaranteeing to Americans in China the protection of the local authorities, had noted the fact that this provision was not reciprocal; but he did not understand that Mr. Blaine had therefore designed to assert that an equivalent obligation was not incumbent upon the local authorities in the United States. Besides, it was expressly stipulated in Article VI. of the treaty of 1868, and in Article II. of the treaty of 1880, that Chinese subjects in the United States should be treated as those of the most-favored nation. These things being so, the Chinese minister called attention to the fact that before the year 1858 the Chinese provincial and local authorities had, upon the intervention of the American diplomatic and consular representatives, indemnified American citizens in many instances for losses occasioned by riots and violence, and that in 1858 a convention was agreed upon whereby the Chinese Government paid over to the United States the sum of $735,258.97, "in full liquidation of all claims of American citizens." A large part

of the claims embraced by this settlement was for losses sustained by mob violence, robbery, and other lawless acts of individual Chinese subjects. The amount thus paid proved to be greater than the amount of the claims, and the unexpended balance was afterwards returned by the United States. In addition to this, said the Chinese minister, it would be found that it had been, since 1858, the constant and uniform practice of the American diplomatic and consular representatives, acting under their instructions, to intervene with the Chinese Imperial and local authorities in all cases which came to their notice of injuries or losses suffered by American citizens from mob violence, and that they had asked those authorities not only to punish the offenders, but to indemnify the American citizens for all their losses. In such cases the Chinese Government had, either directly or through the local authorities, caused losses to be paid for the burning or destruction of houses by mobs; had required the local authorities in some cases to rebuild or repair the destroyed or injured houses; had made indemnity for petty thefts, whose perpetrators were unknown or could not be arrested, and had caused the return of money or the payment of indemnity in many other cases. The Government of the United States had sent its consuls and vessels of war to demand the trial of rioters where a single American suffered losses valued at less than $500; had required that the guilty should be punished in the presence of representatives of the American Government, and that the rioters should give bond for the future security of American citizens. Its representatives had asked for the destruction of prints in interior districts calculated to incite mob violence, the destruction of the block or type, and the punishment of the possessors. Its minister plenipotentiary had intervened with the Imperial Government to secure the return of sums as small as $73, stolen from American citizens, and to see that the latter were guarded with greater vigilance. These acts of intervention on the part of the American Government and its representatives, so often repeated through a long series of years, had, said the Chinese minister, been independent of any treaty stipulations to that effect. It could not be believed that in so doing the United States had required of China that which it would not, in the language of Secretary Fish, expect of a "European or American state under the rules of the equitable code which regulated the intercourse of civilized nations." Neither could it be believed that the United States would so far violate the spirit of the "Golden Rule," incorporated in Article XXIX. of the treaty of 1858, or "the usages of national comity," referred to by Mr. Evarts, as to require of China that which, under similar circumstances, it would not concede to China in reciprocity.

Having thus examined what had been the practice of the United States towards China, the Chinese minister adverted to the action of

the United States in the case of the riots at New Orleans and Key West in 1850, when the Congress of the United States authorized the Secretary of State to indemnify the Spanish subjects at those places for all the losses sustained from lawless mobs, and a large sum of money was paid out of the National Treasury for that object. The Chinese minister said that he well understood that this was done as a voluntary act of good will, but he claimed that it went to show that there were high principles of equity and "national comity," rising above the narrow limits of statutory law and controlling the actions of nations. And if, in times past, the equity and wisdom of the Secretary of State, of the President, and of the Congress of the United States had *found a way* whereby the obstructions referred to by Messrs. Evarts and Blaine had been overcome as to the subjects of other nations, he did not doubt that an equally efficacious method would be devised for the relief of the subjects of China, especially in view of the fact that the Chinese Government had uniformly and for a long series of years granted, at the request of the Government of the United States, similar relief to its citizens, and that, too, in the face of strong local prejudice and at the cost of many hundred thousands of dollars. In conclusion, the Chinese minister adverted to the fact that when the United States, in 1880, sent a special mission to Peking to secure a modification of the treaty of 1868 respecting immigration, the American plenipotentiaries assured those of China that if the modifications desired by the United States should be conceded, the Chinese laborers then in the United States should have ample protection guaranteed to them by a specific treaty stipulation, and that the United States would "construe all such obligations in that spirit of friendly liberality which has marked its relations with the Chinese Government." He therefore submitted the question whether the Government of the United States did not thereby incur an increased obligation, if that were possible, to afford ample protection to Chinese laborers, such as those who had been murdered and robbed at Rock Springs.

Mr. Cheng Tsao Ju, Chinese minister, to Mr. Bayard, Sec. of State, Nov. 30, 1885, For. Rel. 1886, 101.

See, also, Mr. Cheng Tsao Ju to Mr. Bayard, Feb. 15, 1886, For. Rel. 1886, 154.

The correspondence also is printed in H. Ex. Doc. 102, 49 Cong. 1 sess.

The reply of Mr. Bayard, Secretary of State, to the foregoing notes bears date February 18, 1886. It had been delayed, as he remarked, by circumstances beyond his control and in part painfully personal to himself, but he stated that the influence of the Chinese minister's note would be detected in the reference made by the President in his last annual message to the condition and treatment of Chinese subjects in the United States. In that message the President

had declared that the power of the United States should be exerted to maintain the amplest good faith towards China in the treatment of her citizens; that the law should be inflexibly enforced in bringing the wrongdoers to justice, and that every effort had been made by the United States to prevent the violent outbreaks in question, and to aid the representatives of China in their investigation of the outrages, which were traceable to the lawlessness of men, not citizens of the United States, engaged in work in competition with Chinese laborers. Mr. Bayard declared that he but spoke the voice of honest and true American citizens throughout the country when he denounced with feeling and indignation the bloody outrages in question, and that there was nothing to extenuate such offenses against humanity and law, not the least of which was "the wretched travesty of the forms of justice by a certain local officer acting as coroner and pretending to give a legal account of the manner in which the victims met their death."

Having made these preliminary comments, Mr. Bayard pointed out that the Territory of Wyoming contained the usual framework of the governments which form the American Union, comprising an executive, a legislative, and a judicial branch, which was as competent to discharge its administrative obligations as was the government of any State, and was responsible in the same way. In this relation he referred to recent occurrences at Seattle, in Washington Territory, where blood had been shed under the authority of Territorial officials in successful defense of the right of certain Chinese to peaceable and law-observant residence. The scene of the lamentable occurrences at Rock Springs was, said Mr. Bayard, remote from any center of population and marked by all the customary features of a newly and scantily settled locality. It consisted of a scattered assemblage of dwellings near a railway station and in the vicinity of some coal mines. The population was made up of men of all races, migratory in their habits. To this remote and unprotected region Chinese laborers voluntarily resorted in large numbers. Their assailants were discontented mining laborers, who had unsuccessfully endeavored to induce the Chinese to join them in a strike for higher wages. On neither side was there any representative of the Government of China or of the United States or of the Territory of Wyoming. The incident was therefore devoid of official character and also of national character. The assailants equally with the assailed were aliens. Violent assaults and homicides were, continued Mr. Bayard, very frequent in all newly settled countries, where the social elements were incongruous and the organization of police and justice was inchoate and imperfect. Continuing, Mr. Bayard said:

"By argument and analogy you seek to show that a singular and exceptional obligation rests upon the United States toward China-

men, correspondent and reciprocal to the contractual obligations of China in respect of citizens of the United States resorting thither. . . . But, before this *ad hominem* argument can be duly weighed, we must know where the conventional argument actually places us, and the measure of protection and redress they actually and necessarily contemplate in the respective countries. . . . The several treaties of 1844, 1858, 1868, and 1880 are acts *in pari materia*, and no subsequent one of them abrogates those which are prior in date. There have been successive modifications, extensions, or substitutions as to special subjects, but always in express revival and renewal of preexisting treaties; and, unless abrogated in express terms or repealed impliedly by the adoption of new and inconsistent features, they all remain in force. Upon those premises, and passing all the personal and residential stipulations in review, we find restrictions expressly recognized throughout all the treaties which prove the inability to provide reciprocity, by reason of the totally variant basis on which the administrative functions and powers of the two countries are conducted.

"Until 1868 no right of emigration of Chinese subjects to the United States was ever formally extended. None was, perhaps, needed, for, under our free, popular Government, and in the absence of any restrictive legislation, our territory was and is equally open to all aliens. It was altogether different in China. That country was closed to alien residence as by a wall. A specific right had to be conventionally created before this exclusion could be modified. To certain classes of citizens of the United States the treaty of 1844 granted carefully restricted rights to visit and sojourn in China, but in every one of the articles which treats of transient or permanent right of residence appears the qualification that it is for the purposes of trade.

"Article I. applies to our citizens 'resorting to China *for the purposes of commerce*.' Article III. permits Americans to frequent certain specified ports, 'and to reside with their families *and trade there*.' Article IV. relates to 'citizens of the United States *doing business* at the said' ports. Article V. refers to 'citizens of the United States *lawfully* engaged in *commerce*.' The important Article XIX., in regard to protection, speaks of 'citizens of the United States in China *peaceably attending to their affairs*,' and by 'their affairs' we may regard the 'lawful' commerce elsewhere spoken of in the treaty as having been uppermost in the minds of the negotiators. Not merely was the purpose of their sojourn restricted, but citizens of the United States could not, under Article XVII., lawfully transgress certain residential limits. Even within those limits they were not free to select the sites for their 'houses and places of business, and also hospitals, churches, and cemeteries.' The 'mer-

chants' of the United States were not to unreasonably insist on particular spots for those objects. Their residence was expressly conditioned on its being acceptable to the native inhabitants. The treaty says, and I am sure you will recognize the force of this provision:

"'The local authorities of the two Governments shall select in concert the sites for the foregoing object, *having due regard for the feelings of the people in the location thereof.*'

"And of that found at the close of the same Article XVII.:

"'And in order to *the preservation of the public peace*, the local officers of the Government at each of the five ports shall, in concert with the consuls, define the limits *beyond which it shall not be lawful for citizens of the United States to go.*'

"The impracticability of maintaining efficient police protection in many portions of every widely extended domain was recognized by the Chinese Government when they expressly guarded against liability in the closing paragraph of Article XXIV. of the treaty of 1844, as follows:

"'But if, by reason of the extent of territory and numerous population of China, it should in any case happen that the robbers can not be apprehended or the property only in part recovered, then the law will take its course in regard to the local authorities, but the Chinese Government will not make indemnity for the goods lost.'

"Article XII. of the treaty of 1858 is a substantial reaffirmation of these conditions. And it is to be noted that this treaty of 1858, while re-enacting many of the provisions of that of 1844, and passing over others, in no place intimates any enlargement of the residential class of unofficial American citizens to include others than merchants and their families within the narrow limits aforesaid. Ten years later we find the Burlingame treaty opening with the significant declaration that the object of preceding treaties has been to give aliens certain restricted privileges of resort and residence in particular localities 'for purposes of trade.' Article V. appears to extend the purposes of residence and resort by including 'curiosity' as a motive; but even this extension is incidental to the enunciation of a principle, so that laws may be passed, not to guarantee 'free migration and emigration' without limit, but to prohibit involuntary emigration—in other words, to suppress the labor and cooly traffic.

"Article VII. permits Americans to establish schools in China, and by implication includes American teachers in the classes admitted to restricted residence. In this, as in the other treaties, there is nothing to offset the idea of continued restriction, for Article VI., which gives to citizens of the United States visiting or residing in China 'the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation,' neither creates nor extends any right of alien sojourn.

but rather confirms the announced determination of China to reserve all such rights not expressly granted.

"To sum up, as the treaties stand, American citizens not of diplomatic or consular office may resort to China for trade, for curiosity, or as teachers, and then only to certain carefully limited localities, 'having due regard to the feelings of the people in the location thereof.' If the citizens or subjects of any other power should be granted other or greater privileges, then the citizens of the United States will have equal treatment.

"On the other hand, Chinese subjects were at all times free between 1844 and 1868 to come to the United States and travel or sojourn therein, pursuing whatever lawful occupation they might see fit to engage in, without the need of treaty guarantee. The sixth article of the Burlingame treaty created no privilege in their behalf; it simply recored an existing fact; for the Chinese were then as free to visit and sojourn in the United States as any other aliens were, and no law of regulation or inhibition was upon our statute-books.

"There was, therefore, in all these years no reciprocity of treatment of the citizens or subjects of the one country within the jurisdiction of the other. There could not be, for the Chinese Government so restricted and hedged about its conceded and carefully limited privileges as to make reciprocity impossible on the part of the United States, unless taking the form of retaliation, which our system of laws makes impracticable.

"The treaty of 1880 is absolutely unilateral. It conveys no hint of reciprocity. Its second article gives to Chinese teachers, students, merchants, and those actuated by motives of curiosity, and also to the Chinese laborers *then* (1880) in the United States, the right to 'go and come of their own free will and accord,' and, in addition to this, the same treatment as the citizens or subjects of the most-favored nation. I refrain from asking you to point out to me any responsive position in any of our treaties with China which guarantees to American teachers, students, merchants, curiosity-seekers, and laborers the right to 'go and come of their own free will and accord' throughout the length and breadth of China, 'without regard to the feelings of the people' in the localities whither they may resort. . . .

"Passing from the question of reciprocity, whether in its sentimental or contractual aspects, to the question of the actual guarantee stipulated by the United States to Chinese of all classes, including laborers within their jurisdiction, and of the responsibilities of this Government in the matter, we find that in the treaty of 1868, by its sixth article, the United States for the first time established, as a treaty right, the theretofore consuetudinary privilege of emigration of Chinese to this country. That article says:

"'Chinese subjects, visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions in respect to

travel or residence as may there be enjoyed by the citizens or subjects of the most-favored nation.'

"This is renewed, with definition and limitation of the particular classes of Chinese to which it is applicable, in the second article of the treaty of 1880. What is the substantial and full intent and meaning of these provisions as laid down in 1868, and again with special definition in 1880? What 'most-favored nation' is to be taken as a test and for the purpose of comparing the rights of its citizens or subjects in the United States with those of China? To constitute a special favor between nations it must exist in virtue of treaty or law, and be extended in terms to a particular nation as a nation. Applying this test, the citizens or subjects of no nation (unless it be those of China) have any special favor in the way of personal treatment shown them in the United States. All are treated alike, the subjects of the most powerful nations equally with others. An Englishman, a Frenchman, a German, a Russian, is neither more nor less favored than one of any other nationality.

"Tried by this test, will it be denied that the public and local laws throughout the United States make no distinction or discrimination unfavorable to any man by reason of his Chinese nationality, except only those Federal laws regulating, limiting, and suspending Chinese immigration which have been enacted in conformity with the express provisions of the treaty of 1880?

"What are the duties of the Government of the United States under that treaty towards Chinese subjects within their jurisdiction?

"The Chinese subjects now in the United States are certainly accorded all the rights, privileges, immunities, and exemptions which pertain to the citizens and subjects of the most favored nation, as is provided in the second article of the treaty. They are suffered to travel at will all over the United States, to engage in any lawful occupation, and to reside in any quarter which they may select, and there is no avenue to public justice or protection for their lives, their commercial contracts, or their property in any of its forms which is not equally open to them as to the citizens of our own country.

"The same laws are administered by the same tribunals to Chinese subjects as to American citizens, save in one respect, wherein the Chinese alien is the more favored, since he has the right of option in selecting either a State or a Federal tribunal for the trial of his rights, which, in many cases, is denied for residential causes to our own citizens; and he may even at will remove his cause from a State to a Federal court.

"Thus, I find in the public press the announcement that Wing Hing, on behalf of himself and others, Chinese subjects, has lately brought suit in the United States circuit court to recover $132,000 from the city of Eureka, Humboldt County, California, for loss of

property by the action of a mob in February of last year. A citizen of that State would have been compelled to resort to a State tribunal, without appeal beyond the jurisdiction of the State, whereas the Chinese plaintiff in question can carry his case on appeal to the Supreme Court at Washington, thus divesting his rights from all adverse chance of local prejudice. . . .

"The provision of an organized and in some cases privileged forum excludes the idea of direct recourse by the alien to other means of obtaining justice or redress. Your note argues that direct recourse to administrative or executive settlement is open to citizens of the United States in China, and instances are cited to show this. Surely, this rather proves that to the alien in China no such judicial forum is secured as to aliens in the United States.

"The extraterritorial tribunals established for their own citizens or subjects by all the powers in treaty relations with China are, in principle and from the reason of the thing, incompetent to adjudicate questions touching the liability of China to aliens. In default of Chinese tribunals admittedly competent to take cognizance of the causes of foreigners, what alternative remains besides denial of justice or resort to diplomatic settlement?

"The system of government which prevails in the United States, and which their public written Constitution had made well known to the Government of China at the time of our entering into treaties with that country, creates several departments, distinct in function, yet all tending to secure justice and to maintain law and order. . . . The question of liability for reparation or indemnity for losses to individuals, occurring in any way, must be settled by the judgments of the judicial branch, unless the act complained of has been committed under official authority in pursuance of governmental orders to that end. . . .

"The doctrine of the nonliability of the United States for the acts of individuals committed in violation of its laws is clear as to acts of its own citizens, and *a fortiori* in respect of aliens who abuse the privilege accorded them of residence in our midst by breaking the public peace and infringing upon the rights of others, and it has been correctly and authoritatively laid down by my predecessors in office, to whose declarations in that behalf your note refers. To that doctrine the course of this Government furnishes no exception. . . . Nothing can be clearer than the enunciation of the doctrine of Government non-liability on that occasion [the New Orleans riot of 1850]. While denouncing such outrages as disgraceful and in criminal violation of law and order, it was emphatically denied that the acts in question created any obligation on the part of the United States, arising out of the good faith of nations toward each other, for the losses thus occasioned by and to individuals. Neither is there

a parity between the Spanish incident of 1850 and the recent riot and massacre of the Chinese at Rock Springs. The essential feature of the first is wholly wanting in the second. The emblem of Spanish nationality had suffered an affront in a city of the United States. The special immunity attaching to the Spanish consular representative had been impaired and he subjected to personal indignity. The incident occurred at a time when the Spanish Goverment had just shown its regard for and good will toward the United States in pardoning certain American citizens who had participated in a hostile invasion of Cuba, and had incurred the condemnation of the authorities of that country. Recognizing the merciful action of the Queen of Spain in this regard, and as a responsive act of generosity and friendship tending toward good relationship, the President, while expressly denying the principle of national liability, recommended to Congress the appropriation of certain moneys to be paid to private individuals on account of the damages caused by riots at New Orleans and Key West, and to the Spanish consul at New Orleans a special indemnity as an official of Spain.

"In one thing, however, the Spanish riots of 1850 and the Rock Springs massacre of 1885 are similar. Both grew out of alien animosities transplanted to our shores. . . . But this has no bearing on the question of the indemnity accorded to Spain, which was, as you indeed candidly admit in your note, 'a voluntary act of good will above and beyond the strict authorization of domestic law,' and, I may add, of international law also.

"A measure of international obligation rests on the United States under the third article of the treaty of 1880, which, in the event that Chinese laborers or others in the United States, 'meet with ill treatment at the hands of other persons,' requires the Government of the United States to 'exert all its power' to devise measures for their protection and to secure to them the same 'rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.'

"That the power of the National Government is promptly and efficiently exercised whenever occasion unhappily arises therefor you have justly acknowledged, and it has been abundantly shown. The conditions under which this power may be applied are not always clear and are sometimes very difficult. Causes growing out of the peculiar characteristics and habits of the Chinese immigrants have induced them to segregate themselves from the rest of the residents and citizens of the United States, and to refuse to mingle with the mass of population as do the members of other nationalities. As a consequence race prejudice has been more excited against them, notably among aliens of other nationalities who are more directly brought into competition with the Chinese in those ruder fields of merely

manual toil wherein our skilled native labor finds it unprofitable to engage. . . . Moreover, the Chinese laborers voluntarily carry this principle of isolation and segregation into remote regions where law and authority are well known to be feeblest, and where conflicts of labor and prejudices of race may be precipated on the slightest pretext and carried without check to limits beyond those possible where the powers of law may be better organized.

"No measures can be devised to meet the problem which do not take this state of things into account, nor can they be effective if they do not contemplate the exercise of authority where it is competent to afford protection, for these measures have only for their object to secure to the Chinese the same rights as other foreigners of the most favored nation enjoy, not superior or special rights. For Chinese labor is not alone repugnant to the local communities; from many quarters of the land comes the same cry—the conflict of different alien laborers and the oppression of the weaker by the stronger. There can and should be no discrimination in applying punitive measures to all infractions of law. And so, too, with preventive measures. What will protect a Hungarian or Italian contract laborer in Pennsylvania or a Swedish "non-union" man in Ohio is equally applicable to a Chinaman on the Pacific coast. . . .

"Reverting, however, to your appeal of November 30, which I understand to be a direct application to the sense of equity and justice of the United States for relief for the unfortunate victims of the carnage and excesses of the mob at Rock Springs, I am compelled to state most distinctly that I should fail in my duty as representing the well-founded principles upon which rests the relation of this Government to its citizens, as well as to those who are not its citizens and yet are permitted to come and go freely within its jurisdiction, did I not deny emphatically all liability to indemnify individuals, of whatever race or country, for loss growing out of violations of our public law, and declare with equal emphasis that just and ample opportunity is given to all who suffer wrong and seek reparation through the channels of justice as conducted by the judicial branch of our Government.

"Yet I am frank to say that the circumstances of the case now under consideration contain features which I am disposed to believe may induce the President to recommend to the Congress, not as under obligation of treaty or principle of international law, but solely from a sentiment of generosity and pity to an innocent and unfortunate body of men, subjects of a friendly power, who, being peaceably employed within our jurisdiction, were so shockingly outraged; that in view of the gross and shameful failure of the police authorities at Rock Springs, in Wyoming Territory, to keep the peace, or even to attempt to keep the peace, or to make proper efforts to uphold the law, or punish the criminals, or make compensation for the loss

of property pillaged or destroyed, it may reasonably be a subject for the benevolent consideration of Congress whether, with the distinct understanding that no precedent is thereby created, or liability for want of proper enforcement of police jurisdiction in the Territories, they will not, *ex gratia*, grant pecuniary relief to the sufferers in the case now before us to the extent of the value of the property of which they were so outrageously deprived, to the grave discredit of republican institutions."

Mr. Bayard, Sec. of State, to Mr. Cheng Tsao Ju, Chinese min., Feb. 18, 1886, For. Rel. 1886, 158; also, in H. Ex. Doc. 102, 49 Cong. 1 sess.

As to the excitement at Canton on receipt of the news that the President had refused to acknowledge the liability of the United States to make indemnity, see For. Rel. 1886, 77, 81.

For a supplementary discussion of the responsibility of China as well as of the United States in cases of riot, see For. Rel. 1887, 169.

The foregoing correspondence was transmitted to Congress by President Cleveland, with a special message of March 2, 1886, in which he invoked "the benevolent consideration of Congress, in order that that body, in its high discretion, may direct the bounty of the Government in aid of innocent and peaceful strangers whose maltreatment has brought discredit upon the country; with the distinct understanding that such action is in no wise to be held as a precedent, is wholly gratuitous, and is resorted to in a spirit of pure generosity toward those who are otherwise helpless."

Provision for indemnity was made by the act of February 24, 1887. By this act it was simply provided that the sum of $147,748.74 should be "paid to the Chinese Government, in consideration of the losses unhappily sustained by certain Chinese subjects by mob violence at Rock Springs, in the Territory of Wyoming, Sept. 2, 1885; the said sum being intended for distribution among the sufferers and their legal representatives, in the discretion of the Chinese Government."

No reservation was made in this act of the question of liability.

Message of President Cleveland of March 2, 1886, H. Ex. Doc. 102, 49 Cong. 1 sess. Act of Feb. 24, 1887, 24 Stat. 418.

The question of liability was discussed in the debates in Congress, and in some of the speeches dissent was expressed from the view of non-liability maintained by Mr. Bayard in the correspondence with the Chinese minister. In the Senate, where the vote in favor of the bill stood 30 to 10, Mr. Edmunds, who formed one of the majority, said: "There can be negligence between nations on the part of governments. . . . One nation as between itself and another is not bound by the internal autonomy of that state, but it looks to the body of the nation to carry out its obligations, and if they have not the judicial means to do it, for one reason or another, the nation that is injured is not bound by the failure of the nation whose people committed the injury." (Cong. Record, vol. 17, part 5, p. 5186, June 3, 1886.)

For the subsequent return by the Chinese legation of the sum of $480.75, representing duplicated claims for losses, see For. Rel. 1887, 243–244.

By Art. V. of the immigration treaty between the United States and China, signed at Washington, March 12, 1888, it was stipulated that the sum of $276,619.75 should be paid by the United States to the Chinese minister at Washington as full indemnity for various losses and injuries inflicted upon Chinese in the United States. The losses and injuries thus referred to were inflicted in the Territories of Washington, Montana, and Alaska, and the State of California, and were in addition to the losses at Rock Springs, for which indemnity was made under the act of Feb. 24, 1887.

It was expressly declared in Art. V. that the money was to be paid by the United States "without reference to the question of liability therefor (which as a legal obligation it [the United States] denies)." With regard to this question Mr. Bayard, in a report to the President March 16, 1888, explaining the provisions of the treaty, said:

"But the fact remains that they [the Chinese] have suffered grievously in person and property, and whilst the liability of the United States is wholly inadmissible, as is recited in Art. V. of the treaty now submitted, yet it is competent for this Government, in humane consideration of those occurrences, so discreditable to the community in which they have taken place, and outside of the punitive powers of the National Government, to make voluntary and generous provisions for those who have been made the innocent victims of lawless violence within our borders, and to that end, following the dictates of humanity, and, it may be added, the example of the Chinese Government in sundry cases where American citizens who were the subjects of mob violence in China have been indemnified by that Government, the present treaty provides for the payment of a sum of money. . . . This payment will, in a measure, remove the reproach to our civilization caused by the crimes referred to, as well as redress the grievance so seriously complained of by the Chinese representative, and unquestionably will also reflect most beneficially upon the welfare of American residents in China."

The treaty of March 12, 1888, for reasons in no way connected with Art. V., was not ratified. Congress, however, by the deficiency appropriations act of October 19, 1888, provided for the payment "out of humane consideration and without reference to the question of liability therefor," of the precise sum specified in Art. V., such payment to be made "to the Chinese Government as full indemnity for all losses and injuries sustained by Chinese subjects within the United States at the hands of residents thereof."

For the text of the treaty of March 12, 1888, and Mr. Bayard's report to the President of the 16th of the same month, see For. Rel. 1888, I. 396–400, containing a reprint of Senate Confid. Doc. Executive O, 50 Cong. 1 sess.

For the message of President Cleveland to the Senate, Sept. 18, 1888, with correspondence in relation to the treaty, see For. Rel. 1888, I. 359–395, being a reprint of S. Ex. Doc. 272, 50 Cong. 1 sess.

For the clause in the deficiency appropriations act of Oct. 19, 1888, see 25 Stat. 565, 566; For. Rel. 1889, 116–118 (showing also the payment of the money).

As to attacks on Chinese merchants at Vallejo, Cal., see For. Rel. 1891, 461–466.

In a dispatch, No. 52, October 7, 1878, the American legation at Peking reported that Prince Kung had issued instructions to the authorities at Shanghai to examine into and pay the losses sustained by citizens of the United States in the riot which took place in May, 1874, within the French concession at Shanghai. The Department of State expressed "satisfaction that so just a demand has been so frankly and promptly met."

Mr. Evarts, Sec. of State, to Mr. Holcombe, No. 266, Dec. 13, 1878, MS. Inst. China, II. 588.

In 1889 the Chinese Government settled claims growing out of the then recent riots at Chin Kiang by the payment of 156,000 taels and the offering of apologies and the firing of salutes.

Mr. Denby, min. to China, to Mr. Blaine, Sec. of State, No. 899, May 29, 1889, MS. Desp. from China; acknowledged by Mr. Wharton, Act. Sec. of State, to Mr. Denby, min. to China, No. 437, July 12, 1889, MS. Inst. China, IV. 545.

The collection of indemnities from China arising from disorders that culminated in the Boxer movement is elsewhere detailed.

See supra, § § 808–810.

5. Lynching of Italians at New Orleans and Elsewhere.

§ 1026.

New Orleans, 1891.

On the morning of March 14, 1891, eleven persons of Italian origin, who were charged with having been concerned in the murder of D. C. Hennessy, chief of police of New Orleans, Louisiana, were killed by a mob of citizens in the parish prison in that city. Of the eleven persons who were killed, five had not been tried, while three had been acquitted, and three were to be tried a second time. The murder of Hennessy was alleged to have been the result of machinations of a secret society called the Mafia. Immediately after the killing of the prisoners, the Italian consul at New Orleans reported the occurrence to Baron Fava, then Italian minister at Washington, who was on the same day instructed by Marquis Rudini, Italian minister of foreign affairs, to denounce the act of the mob and to request immediate and energetic measures for the protection of Italians in New Orleans and the punishment of the

persons who were concerned in the attack on the jail. Baron Fava, in pursuance of his instructions, on March 15, 1891, brought the matter to the attention of Mr. Blaine, who was then Secretary of State, with the request that he cause the competent authorities of the State of Louisiana to feel that it was their imperative duty to take special care that the lives of Italians in New Orleans should be protected, and "that the guilty parties, whether perpetrators, accomplices, or instigators of the massacre which took place yesterday, be speedily brought to justice." At the same time, Baron Fava reserved the right of his Government afterwards to demand any other reparation which it might think proper.

On the same day, Mr. Blaine telegraphed to Governor Nicholls, of Louisiana, saying that it had been represented by the minister of Italy that among the victims of the mob were three or more Italian subjects; that the treaty between the United States and Italy guaranteed to such subjects "the most constant protection and security for their persons and property;" that the President deeply regretted that the citizens of New Orleans should have so disparaged the purity and adequacy of their own tribunals as to transfer to the passionate judgment of a mob a question which should have been judged dispassionately and by settled rules of law; and that it was the hope of the President that the governor would cooperate with him in maintaining the obligations of the United States toward the Italian subjects who might be within the perils of the prevailing excitement, to the end that further bloodshed and violence might be prevented, and all offenders against the law promptly brought to justice. A copy of this telegram was communicated to Baron Fava.

The Italian Government, however, urgently insisted on a promise of reparation, and, failing to obtain it, withdrew its minister. When informing the Government of the United States of his proposed departure, Baron Fava, in a note of March 31, 1891, defined the demands of his Government as follows:

"The reparation demanded by the Government of the King . . . was to consist of the following points:

"(1) The official assurance by the Federal Government that the guilty parties should be brought to trial.

"(2) The recognition, in principle, that an indemnity is due to the relatives of the victims."

In a note of April 1, 1891, to the Marquis Imperiali, who became chargé d'affaires on the withdrawal of Baron Fava, Mr. Blaine, referring to those demands, stated that, while the Government of the United States had recognized the principle of indemnity to those Italian subjects "who may have been wronged by a violation of the rights secured to them under the treaty," and while he had repeatedly given to Baron Fava the assurance that under the direction of the

President all the incidents connected with the unhappy tragedy of the 14th of March should be most thoroughly investigated, yet he had also informed him that in a matter of such gravity the Government of the United States "would not permit itself to be unduly hurried," nor would "make answer to any demand until every fact essential to a correct judgment shall have been fully ascertained through legal authority. The impatience of the aggrieved," concluded Mr. Blaine, "may be natural, but its indulgence does not always secure the most substantial justice."

The Italian Government having interpreted Mr. Blaine's language as conveying an admission that an indemnity was due, Mr. Blaine, in a note to the Marquis Imperiali, of April 14, 1891, corrected that impression and stated that the question whether the treaty had been violated was one upon which the President, with sufficient facts before him, had taken full time for decision. Mr. Blaine, after an examination of the facts and the law, concluded his note as follows:

"If, therefore, it should appear that among those killed by the mob at New Orleans there were some Italian subjects who were resident or domiciled in that city, agreeably to our treaty with Italy, and not in violation of our immigration laws, and who were abiding in the peace of the United States and obeying the laws thereof and of the State of Louisiana, and that the public officers charged with the duty of protecting life and property in that city connived at the work of the mob, or, upon proper notice or information of the threatened danger, failed to take any steps for the preservation of the public peace and afterwards to bring the guilty to trial, the President would, under such circumstances, feel that a case was established that should be submitted to the consideration of Congress with a view to the relief of the families of the Italian subjects who had lost their lives by lawless violence."

On May 5, 1891, the grand jury at New Orleans made a report, excusing those who participated in the attack on the jail, and none of them was indicted or brought to trial.

President Harrison, in his annual message of December 9, 1891, said:

"The lynching at New Orleans in March last of eleven men of Italian nativity by a mob of citizens was a most deplorable and discreditable incident. It did not, however, have its origin in any general animosity to the Italian people, nor in any disrespect to the Government of Italy, with which our relations were of the most friendly character. The fury of the mob was directed against these men as the supposed participants or accessories in the murder of a city officer. I do not allude to this as mitigating in any degree this offense against law and humanity, but only as affecting the international questions which grew out of it. It was at once represented

by the Italian minister that several of those whose lives had been taken by the mob were Italian subjects, and a demand was made for the punishment of the participants and for an indemnity to the families of those who were killed. It is to be regretted that the manner in which these claims were presented was not such as to promote a calm discussion of the questions involved; but this may well be attributed to the excitement and indignation which the crime naturally evoked. The views of this Government as to its obligations to foreigners domiciled here were fully stated in the correspondence, as well as its purpose to make an investigation of the affair with a view to determine whether there were present any circumstances that could, under such rules of duty as we had indicated, create an obligation upon the United States. The temporary absence of a minister plenipotentiary of Italy at this Capital has retarded the further correspondence, but it is not doubted that a friendly conclusion is attainable.

"Some suggestions growing out of this unhappy incident are worthy the attention of Congress. It would, I believe, be entirely competent for Congress to make offenses against the treaty rights of foreigners domiciled in the United States cognizable in the Federal courts. This has not, however, been done, and the Federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen or for the punishment of his slayers. It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must, in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents as to make this Government answerable for their acts in cases where it would be answerable if the United States had used its constitutional power to define and punish crimes against treaty rights."

In his annual message of December 6, 1892, President Harrison made the following announcement:

"The friendly act of this Government in expressing to the Government of Italy its reprobation and abhorrence of the lynching of Italian subjects in New Orleans, by the payment of 125,000 francs, or $24,330.90, was accepted by the King of Italy with every manifestation of gracious appreciation, and the incident has been highly promotive of mutual respect and good will."

The indemnity referred to by President Harrison, amounting to 125,000 francs, was tendered by Mr. Blaine to the Marquis Imperiali in a note of April 12, 1892. In this note Mr. Blaine observed that while the injury "was not inflicted directly by the United States, the President nevertheless feels that it is the solemn duty, as well as the great pleasure, of the National Government to pay a satisfactory indemnity. Moreover, the President's instructions carry with them

the hope that the transactions of to-day may efface all memory of the unhappy tragedy; that the old and friendly relations of the United States and Italy may be restored, and that nothing untoward may ever again occur to disturb their harmonious friendship." The Marquis Imperiali, in a note of the same day, accepted the indemnity "without prejudice to the judicial steps which it may be proper for the parties to take." He also reciprocated Mr. Blaine's expression of a desire for the restoration of cordial relations, and declared, by an instruction of his Government, "that the diplomatic relations between Italy and the United States are from this moment fully reestablished."

For the diplomatic correspondence concerning the foregoing incident, see For. Rel. 1891, 665–667, 671–672, 674–686, 712–713.

For the President's annual messages of 1891 and 1892, see For. Rel. 1891, v; For. Rel. 1892, xiv.

For the tender and acceptance of the indemnity, see For. Rel. 1891, 727–728.

After the withdrawal of Baron Fava from Washington Mr. Porter, the American minister at Rome, withdrew from that capital and was afterwards granted leave to visit the United States, a leave which was afterwards extended till further instructions. (Mr. Blaine, Sec. of State, to Mr. Porter, Jan. 14, 1892, MS. Inst. Italy, II. 554.)

"This Government accepting the friendly suggestion of Italy will order Mr. Porter to return to his post and will be glad to be advised of the appointment of a minister to the United States, thus fully reestablishing diplomatic relations upon the most friendly basis. The President does not doubt that the pending differences between the two Governments can be speedily adjusted, but he thinks that any discussion of that matter should abide the return of both ministers to their posts. This telegram and what was said by him in his annual message should leave no doubt of the disposition of this Government touching the matter in dispute." (Mr. Wharton, Act. Sec. of State, to Mr. Whitehouse, chargé at Rome, tel., March 16, 1892, MS. Inst. Italy, II. 558.)

See, also, Wharton, Act. Sec. of State, to Mr. Whitehouse, chargé, tel., March 14, 1892, MS. Inst. Italy, II. 558.

Colorado.

March 11, 1895, the corpse of A. J. Hixon, an American saloon keeper, was found in the coal field of Rouse, Huerfano County, Colorado. A coroner's jury found that he was murdered by an Italian miner, named Andinino, who was immediately taken to Walsenburg, 7 miles away, and lodged in jail. Other Italian miners were implicated by the inquest and were arrested. Four of them were held, named, respectively, Vittone, Ronchietto, Giacobini, and Gobetto. On their way to Walsenburg under the escort of two deputy sheriffs they were intercepted by half a dozen men on horseback. Vittone was instantly killed. Ronchietto escaped with a wound, but was soon recaptured, and was lodged in jail in the same cell with Andinino. Giacobini and Gobetto

fled. During the following night seven men, masked and armed, got into the jail and killed Andinino and Ronchietto, sparing another prisoner, a German, who was in the same cell. Thus three in all were killed—Andinino, Ronchietto, and Vittone. Giacobini and Gobetto were afterwards found wandering in the mountains frostbitten, so that their feet had to be amputated.

Baron Fava, the Italian ambassador, in his representations to the Department of State, claimed that the circumstance that neither in the attack on the road nor in the breaking into the jail "did the public force make any resistance whatever," evidently fixed "the responsibility of the local authorities." The Italian consul at Denver reported, however, that in his efforts to secure the prosecution of the offenders he enjoyed the cooperation of the authorities from the governor down. But owing to various causes, among which were the sparseness of the population and the infrequency of terms of court, difficulties and delays occurred in the institution of proceedings.

In October, 1895, the Italian ambassador, at the suggestion of the Secretary of State, formulated a claim. In submitting it he said: "I leave to your high and benevolent appreciation to suggest the amount which may be deemed suitable to indemnify the families of the victims of the Colorado mob, according to the spirit of justice which prompts all your actions."

The claim was, as a preliminary measure, referred to the governor of Colorado for consideration, with a request for his views as to the probable action of the State in the light of the ambassador's representations.

In a report to the President, January 30, 1896, Mr. Olney, with a view to the submission of the claim to Congress, said:

"The facts are without dispute, and no comment or argument can add to the force of their appeal to the generous consideration of Congress. . . . The only question would seem to be as to the amount of the gratuity in each case, which must rest of course wholly in the discretion of Congress, to whom it can hardly be necessary to cite the statutes of many States of the Union fixing the maximum to be exacted in the case of death caused by negligence at the sum of $5,000."

President Cleveland, in a message of February 3, 1896, communicating to Congress Mr. Olney's report and the accompanying correspondence, said:

"In my last annual message allusion was made to the lawless killing of certain Italian laborers in the State of Colorado, and it was added that 'the dependent families of some of the unfortunate victims invite by their deplorable condition gracious provision for their needs.'

"It now appears that in addition to three of these laborers who were riotously killed, two others who escaped death by flight incurred pitiable disabilities through exposure and privation.

"Without discussing the question of the liability of the United States for these results, either by reason of treaty obligations or under the general rules of international law, I venture to urge upon the Congress the propriety of making from the public Treasury prompt and reasonable pecuniary provision for those injured and for the families of those who were killed."

Baron Fava, Ital. ambass., to Mr. Olney, Sec. of State, Oct. 16, 1895, For. Rel. 1895, II. 950; report of Mr. Olney to the President, Jan. 30, 1896, id. 938; special message of President Cleveland, Feb. 3, 1896, H. Doc. 195, 54 Cong. 1 sess., For. Rel. 1895, II. 938.

See, also, For. Rel. 1895, II. 938–945, 954.

"I have the honor to state, having regard to previous correspondence upon the subject, that the act of Congress approved June 8, 1896, entitled, 'An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1896, and for prior years, and for other purposes,' contains the following provision for the payment out of humane consideration, and without reference to the question of liability therefor—

"'To the Italian Government for full indemnity to the heirs of three of its subjects who were riotously killed, and to two others who were injured, in the State of Colorado by residents of that State, ten thousand dollars.'

"I inclose a check . . . for the sum of $10,000."

Mr. Olney, Sec. of State, to Baron Fava, Italian ambass., June 12, 1896, For. Rel. 1896, 426.

Two of the three who were killed, namely, Ronchietto and Vittone, had declared their intention to become citizens of the United States, but had not completed their naturalization. There was no evidence that the third, Andinino, "had taken any steps to throw off his Italian allegiance." (Mr. Olney, Sec. of State, to Baron Fava, Ital. ambass., June 24, 1895, For. Rel. 1895, II. 949.)

Hahnville, La., 1896.

"The recent incident of the lynching and injuring of five Italian subjects in the State of Colorado had scarcely been closed by the payment to Italy of the indemnity graciously voted for the benefit of the sufferers and their families by Congress in the deficiencies appropriation act approved June 8, 1896, when a somewhat similar outbreak of mob fury occurred at Hahnville, in the State of Louisiana, whereby three prisoners of Italian origin, held on charge of homicide, met violent death.

"Upon the assumption that the unfortunate men were, as in the case of some of the victims of the preceding lynchings, Italian subjects, the Government of Italy sought the mediation of that of the

United States with the State authorities to the end of investigating the occurrence, and if the facts so warranted, making provision for the families of the sufferers as in the former instances. The State of Louisiana promptly instituted an inquiry, expressing regret and a purpose to seek out the offenders. An independent investigation, set on foot by the Department of State and conducted by a trusted agent, has just been concluded. As its result, it appears that all the normal precautions for the safety of the prisoners had been taken by the local officers, and that no blame can justly attach to them by reason of the sudden outbreak of mob violence against these three men against whom there lay convincing evidence of the murder of two estimable citizens of the neighborhood. That the lawless act was directed against the victims as criminals, and not because of racial prejudice, is shown by the circumstances that three other Italians confined in the same jail on lesser charges were unharmed.

"A more important result of the investigation in its bearing upon the possible international features of the case was the ascertainment of the fact that the three lynched men by participating in the political affairs of this country and voting at elections must probably be regarded as having renounced their natural status. It is established by the appropriate record evidence that one had also taken the preliminary steps to abjure Italian allegiance, while the others must be presumed to have done so, since by domicile and sharing in the electoral franchise they had acquired lawful citizenship of the State of Louisiana, a privilege inuring only to such as could show their declaration of intention to be naturalized. Their cases being thus differentiated from the prior instances at New Orleans and Walsenberg, when indemnity was offered to the relatives of such of the lynched men as were found to have remained faithful subjects of Italy, the precedent then set is only applicable now so far as it eliminates all claim by Italy on behalf of those men who were ascertained to have exercised the civil rights of aliens lawfully admitted to citizenship in this country.

"Whether or not any obligation rests upon the Federal Government under the circumstances—a matter as respects which the Government has thus far reserved its decision—the existence or the absence of such obligation can not diminish the feelings of abhorrence with which all good citizens must view such brutal acts of blind vindictiveness in defiance of the justice of a Commonwealth and in disparagement of its good name."

Report of Mr. Olney, Sec. of State, to the President, Dec. 7, 1896, For. Rel. 1896, LXXVI.

In 1896 three persons, named Salvatore Arena, Lorenzo Salardino, and Giuseppe Venturella, were lynched at Hahnville, Louisiana.

The Italian ambassador complained of a failure of justice in the case. By the deficiency act of July 19, 1897, Congress appropriated the sum of $6,000 to be paid, "out of humane consideration and without reference to the question of liability therefor, to the Italian Government, as full indemnity to the heirs of three of its subjects, Salvatore Arena, Guiseppe Venturella, and Lorenzo Salardino, who were taken from jail and lynched in Louisiana in 1896."

30 Stat. 105, 106.

For a detailed account of the circumstances and a summary of the diplomatic correspondence, see the chapter on Nationality, supra, § 387.

See, also, H. Doc. 37, 55 Cong. 1 sess.

For the payment over of the money, see For. Rel. 1897, 353.

Tallulah, La., 1899.

July 22, 1899, Count Vinci, Italian chargé, communicated with the Department of State concerning the lynching during the preceding night of five persons of Italian origin by a mob at Tallulah, La. The names of the victims were Giovanni Cirano, of Tusa; Francesco, Carlo, and Giuseppe Difatta, of Cefalo; and Rosario Fiducia, also of Cefalo. The outrage originated in a quarrel concerning a goat which belonged to one of the Difatta brothers, who carried on the grocery business at Tallulah. It seems that the goat was in the habit of climbing on the balcony of the house of a Dr. Hodge, who, becoming annoyed, shot it. The next day Carlo Difatta accosted Dr. Hodge in the street and struck him a blow with his fist. The doctor shot him, and when he fell put his foot upon him, apparently intending to fire again. Giuseppe Difatta then shot at the Doctor from a gun loaded with bird shot. A rumor having spread that Dr. Hodge had been killed, a mob quickly collected and went in search of Carlo and Giuseppe Difatta, who had succeeded in getting away and concealing themselves, while the sheriff arrested Francesco Difatta, Rosario Fiducia, and Giovanni Cirano and lodged them in jail. It was stated that Cirano and Fiducia had taken no part in the affray. Giuseppe and Carlo Difatta were found by the mob and were hanged, and the mob then went to the jail and took Francesco Difatta, Giovanni Cirano, and Rosario Fiducia and hanged them also.[a]

See For. Rel. 1899, 440–441, 444, 447–448, 453–459, 463.

"For the fourth time in the present decade question has arisen with the Government of Italy in regard to the lynching of Italian subjects. The latest of these deplorable events occurred at Tallulah, Louisiana, whereby five unfortunates of Italian origin were taken from jail and hanged.

"The authorities of the State and a representative of the Italian Embassy having separately investigated the occurrence, with dis-

[a] For. Rel. 1899, 453.

crepant results, particularly as to the alleged citizenship of the victims, and it not appearing that the State had been able to discover and punish the violators of the law, an independent investigation has been set on foot, through the agency of the Department of State, and is still in progress. The result will enable the Executive to treat the question with the Government of Italy in a spirit of fairness and justice. A satisfactory solution will doubtless be reached.

"The recurrence of these distressing manifestations of blind mob fury directed at dependents or natives of a foreign country suggests that the contingency has arisen for action by Congress in the direction of conferring upon the Federal courts jurisdiction in this class of international cases where the ultimate responsibility of the Federal Government may be involved. The suggestion is not new. In his Annual Message of December 9, 1891, my predecessor, President Harrison, said:

"'It would, I believe, be entirely competent for Congress to make offenses against the treaty rights of foreigners domiciled in the United States cognizable in the Federal courts. This has not, however, been done, and the Federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen or for the punishment of his slayers. It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must, in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents as to make this Government answerable for their acts in cases where it would be answerable if the United States had used its constitutional power to define and punish crimes against treaty rights.'

"A bill to provide for the punishment of violations of treaty rights of aliens was introduced in the Senate March 1, 1892, and reported favorably March 30. Having doubtless in view the language of that part of Article III. of the treaty of February 26, 1871, between the United States and Italy, which stipulates that 'The citizens of each of the high contracting parties shall receive, in the States and Territories of the other, most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives,' the bill so introduced and reported provided that any act committed in any State or Territory of the United States in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country and constituting a crime under the laws of the State or Territory shall constitute a like crime against the United States and be cognizable in the Federal courts. No action was taken by Congress in the matter.

"I earnestly recommend that the subject be taken up anew and acted upon during the present session. The necessity for some such provision abundantly appears. Precedent for constituting a Federal jurisdiction in criminal cases where aliens are sufferers is rationally deducible from the existing statute, which gives to the district and circuit courts of the United States jurisdiction of civil suits brought by aliens where the amount involved exceeds a certain sum. If such jealous solicitude be shown for alien rights in cases of merely civil and pecuniary import, how much greater should be the public duty to take cognizance of matters affecting the life and the rights of aliens under the settled principles of international law no less than under treaty stipulation, in cases of such transcendent wrongdoing as mob murder, especially when experience has shown that local justice is too often helpless to punish the offenders."

President McKinley, annual message, Dec. 5, 1899, For. Rel. 1899, xxii.

"In my last message I referred at considerable length to the lynching of five Italians at Tallulah. Notwithstanding the efforts of the Federal Government, the production of evidence tending to inculpate the authors of this grievous offense against our civilization, and the repeated inquests set on foot by the authorities of the State of Louisiana, no punishments have followed. Successive grand juries have failed to indict. The representations of the Italian Government in the face of this miscarriage have been most temperate and just.

"Setting the principle at issue high above all consideration of merely pecuniary indemnification, such as this Government made in the three previous cases, Italy has solemnly invoked the pledges of existing treaty and asked that the justice to which she is entitled shall be meted in regard to her unfortunate countrymen in our territory with the same full measure she herself would give to any American were his reciprocal treaty rights contemned.

"I renew the urgent recommendations I made last year that the Congress appropriately confer upon the Federal courts jurisdiction in this class of international cases where the ultimate responsibility of the Federal Government may be involved, and I invite action upon the bills to accomplish this which were introduced in the Senate and House. It is incumbent upon us to remedy the statutory omission which has led, and may again lead, to such untoward results. I have pointed out the necessity and the precedent for legislation of this character. Its enactment is a simple measure of previsory justice toward the nations with which we as a sovereign equal make treaties requiring reciprocal observance.

"While the Italian Government naturally regards such action as the primary and, indeed, the most essential element in the disposal of the Tallulah incident, I advise that, in accordance with precedent,

and in view of the improbability of that particular case being reached by the bill now pending, Congress make gracious provision for indemnity to the Italian sufferers in the same form and proportion as heretofore.

"In my inaugural address I referred to the general subject of lynching in these words:

"'Lynching must not be tolerated in a great and civilized country like the United States; courts, not mobs, must execute the penalties of the law. The preservation of public order, the right of discussion, the integrity of courts, and the orderly administration of justice must continue forever the rock of safety upon which our Government securely rests.'

"This I most urgently reiterate and again invite the attention of my countrymen to this reproach upon our civilization."

President McKinley, annual message, Dec. 3, 1900, For. Rel. 1900, xxii. See, also, For. Rel. 1900, 715, 721, 722, 723, 724, 730, 731.
As to the indemnity paid in this case, see supra, § 387.

Erwin, Miss., 1901.

July 15, 1901, the Italian embassy at Washington urgently presented to the Department of State the case of three Italians, named Giovanni and Vincenzo Serio and Salvatore Liberto, two of whom were killed and the third wounded at Erwin, Miss., and asked (1) that the matter be officially investigated; (2) that the guilty parties be arrested and punished, and (3) that steps be taken to secure to Italians in the locality in question the protection to which they are entitled by treaty. The case was referred to the governor of Mississippi for appropriate action. It seems that the crime was committed under cover of darkness, and the identity of the criminals was not discovered either at the coroner's inquest or at the subsequent investigation by the grand jury. The embassy having suggested that the Federal Government should send a "detective" to the spot for the "detection of the lynchers," the Department of State in reply referred to a suggestion made by Baron Fava in the case of the Tallulah incident in 1889, that the special agent appointed by the Department to investigate the case should "discover and denounce the criminals," and to the answer then made, that "in the actual status of the matter and in the absence of Federal jurisdiction over an offense committed in a State," the agent in question could not assert any part in the administration of justice.

Subsequently the Italian embassy, acting under instructions, protested against what was pronounced to be "a denial of justice, a flagrant violation of contractual conventions, and a grave offense to every human and civil sentiment," and, referring to the omission of Congress to confer jurisdiction in such cases on the Federal courts, as recommended by the President, declared that, until such a measure should have been adopted the Italian Government would not

only "have grounds of complaint for violation of the treaties to its injury," but would "not cease to denounce the systematic impunity enjoyed by crime, and to hold the Federal Government responsible therefor."

The protest was transmitted by the Department of State to "the committees of the Senate and House of Representatives having under consideration the President's recommendation that indemnity be graciously tendered to the families of the victims and that legislation be enacted to give the Federal courts original jurisdiction of treaty offenses against aliens."

For. Rel. 1901, 283, 285, 287, 288, 289, 292–293, 297, 298, 299.

By the act of March 3, 1903, the sum of $5,000 was appropriated to be paid, "out of humane consideration, without reference to the question of liability therefor to the Italian Government, as full indemnity to the heirs of Giovanni and Vincenzo Serio, who were slain, and to Salvatore Liberto, who was injured, by an armed mob at Erwin, Mississippi, on July 11, 1901."

33 Stat. 1032.

The crime was committed at night, and the identity of the persons who committed it was not ascertained by the judicial investigations that were held. (For. Rel. 1901, 283–299.)

6. Case of Bain, and Other Cases.

§ 1027.

Bain's case.

In March, 1895, during a labor disturbance at New Orleans, James H. Bain, then purser of the British steamship *Engineer*, while on the wharves in the discharge of his duties, was shot and wounded by a body of armed men without provocation or warning. As Bain was apparently permanently injured the British Government informally suggested that the United States pay him £500 "as a voluntary grant of compensation." It appears that the rioters did not intend to shoot Bain, but that he was struck by a shot fired at laborers whom the rioters wished to prevent from working on the levee. Six men were arrested for the shooting and indicted for assault with intent to commit murder, but the district attorney stated that as Bain, who had returned to England, was not there, the case could not be tried in his absence. The British ambassador expressed the hope that the case would be pressed upon the authorities of Louisiana, in view of the strong claims of Mr. Bain to their sympathy and liberality. He stated that some months prior to the event in question foreign ships and property were exposed to great danger owing to the lawless proceedings of certain societies which attempted forcibly to prevent the employment of colored laborers in the lading

and unlading of ships, and that, notwithstanding the appeals of the foreign consuls, adequate protection was not afforded to foreign shipping. The rioters were, it was said, allowed by the police to assemble in a building, where they kept an arsenal of revolvers, rifles, and other weapons.

When Bain was shot, the few policemen on the spot concealed themselves for safety behind cotton bales. Similar attacks were made on the British steamship *Merrimac*, but the officers and crew were unhurt though the mob fired at the laborers on the dock. The ambassador called attention to Article I. of the treaty of commerce of 1815, which provides that "the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce." On the occasion in question, it could not be said that "the British steamer had any protection whatever from the armed mob which it was the duty of the local authorities to restrain." It seems that Bain subsequently proceeded to New Orleans.

A copy of the correspondence was communicated to the governor of Louisiana. The governor in reply enclosed a report of the attorney-general of the State, who denied that the State authorities were guilty of any neglect of duty or failure to protect the commerce of the city; and he referred to the opinions of some persons that "the steamship agents were largely responsible for the trouble in giving the preference to unorganized colored labor." But without regard to the merits of this controversy, he stated that the governor called out the militia and gave full and ample protection to the commerce of the city as soon as practicable, after his attention was called to the threatening situation; that the rioting occurred early in the morning before the governor arrived, and that neither he nor any other State authority was to blame for it. It was also intimated that Bain should bring suit against the city for any damages he had received.

The British ambassador decided not to press the case further upon the authorities of Louisiana, but expressed the hope that the Government of the United States might take such action as might "be necessary to obtain from Congress or otherwise the relief to which Mr. Bain is so justly entitled."

The deficiency act of June 8, 1896, contains the following provision for the payment, out of humane consideration and without reference to the question of liability therefor, to the British Government, as full indemnity to certain British subjects: "To James Bain, who was assaulted and injured in the State of Louisiana by residents of that State, $1,000; to Frederick B. Dawson, wife and daughter, for loss of property and bodily injuries inflicted in the State of Nebraska by residents of that State, $1,800." The money in these cases was transmitted to the British ambassador, June 12, 1896.

For. Rel. 1895, I. 686, 689, 690–691, 694–696; For. Rel. 1896, 300.

Cases of Moreno and Suaste.

August 5, 1895, two persons named Sears and Mierhaus were shot, the former fatally, at Yreka, California. Two persons named Stemler and Moreno, the latter a Mexican, were arrested and put in jail on the charge of having committed the crime, and both were identified by Mierhaus. On the night of August 26, 1895, both Moreno and Stemler and two other persons, all of whom were charged with murder, were taken from the jail at Yreka by a mob and escorted to the court-house park, where they were hanged. In May, 1896, Mr. Romero, Mexican minister at Washington, asked that the persons concerned in the lynching be punished, and that a suitable indemnity be paid to Moreno's family. The Department of State requested the governor of California to investigate the affair and report the facts. He replied, July 17, 1896, that shortly after the lynching he took steps to have the guilty parties punished, but that the grand jury failed to find an indictment, no clue to the identity of the persons concerned having been discovered. The governor made a later report to the same effect, in which he declared that he did not think it within the bounds of possibility that any person connected with the affair would ever divulge it. Copies of these reports were furnished to the Mexican Government, which renewed its request for indemnity. In a report to the President, January 14, 1898, Mr. Sherman, as Secretary of State, said: "The case is similar to that of the lynching of the Italian subjects at Hahnville, La., which was brought to the attention of Congress on May 3 and 24, 1897. (See House Doc. No. 37, Fifty-fifth Congress, first session, and Senate Doc. No. 104, same Congress and session.) In this latter case Congress, in the deficiency appropriation act approved July 19, 1897, appropriated, out of humane consideration and without reference to the question of liability therefor, the sum of $6,000 as full indemnity to the heirs of the three Italian subjects lynched. I have the honor to recommend that the same course be pursued in the case of the lynching of Moreno, and that Congress be requested, without question of the liability of the United States, to appropriate the sum of $2,000 as full indemnity to his heirs."

Message of President McKinley, Jan. 18, 1898, H. Doc. 237, 55 Cong. 2 sess.

By the act of July 7, 1898, Congress appropriated the sum of $2,000 to be paid "out of humane consideration, without reference to the question of liability therefor, to the Mexican Government, as full indemnity to the heirs of Luis Moreno, who was lynched in 1895 at Yreka, California." (30 Stat. 653.)

By the act of March 3, 1901, Congress made an appropriation of the same amount in similar terms to be paid to the Mexican Government as indemnity to the heirs of Florentino Suaste, a Mexican citizen who was lynched in Lasalle County, Texas. (31 Stat. 1010.) With refer-

ence to this case, Mr. Hay, Secretary of State, in a report to the President, December 4, 1900, said: "The case is similar to that of the lynching of the Mexican citizen Luis Moreno, at Yreka, California, in August 1895." (Message of President McKinley, Dec. 6, 1900, S. Rep. 1832, 56 Cong. 2 sess. 2.)

In a report in favor of the appropriation which was made in the case of Suaste, Mr. Lodge, from the Committee on Foreign Relations, January 9, 1901, said: "While the contention of the Government of the United States has always been in answer to claims of this nature that the only guaranty provided by treaty stipulations is that aliens residing in this country shall have the same protection under the laws and in the courts provided for its own citizens, and while this position has been in every respect tenable and in a strictly legal sense justifiable, yet in almost every instance we have deemed it advisable, as a matter of equity and justice and good policy and out of humane consideration, to pay indemnities and make reparation." (S. Rept. 1832, 56 Cong. 2 sess.)

7. Case of Don Pacifico.

§ 1028.

Few cases of mob violence are so celebrated as that of the Chevalier Pacifico, commonly called Don Pacifico, a British subject, who suffered injuries at the hands of a mob in Athens in the spring of 1847. This case, not by itself, but in connection with other cases, one of which involved the taking of the property of a British subject by the Greek Government without proper compensation, and another the arrest of a boat belonging to a British man-of-war, formed the subject of reprisals by Great Britain against Greece. The facts in the case of Don Pacifico were that it had for some years been the custom at Athens to burn on Easter day an effigy of Judas Iscariot. In 1847 the Government, in consequence of the presence of Baron C. M. de Rothschild, at Athens, endeavored to prevent the custom from being observed. A report was spread, however, to the effect that this interference with the popular custom was due to the Chevalier Pacifico, who was of the Jewish faith. His house was therefore attacked in the middle of the day by several hundred persons, who, as Sir Edmund Lyons, then British minister at Athens, declared "were aided, instead of being repressed, by soldiers and gendarmes, and who were accompanied and encouraged, if not headed, by persons whose presence naturally induced a belief amongst the soldiers and the mob, that the outrages they were committing would be indulgently treated by the Government." This charge was directly made to the Greek Government, together with a suggestion of compensation, on April 26, 1847. No answer was made to this letter, and on September 14 Sir E. Lyons sent to the minister of foreign affairs, by direction of Lord Palmerston, a demand for redress. The Greek Government took no notice of either of these notes. The names of some of those

who participated in the outrage were given. Some of these persons, one of whom was said to be a son of General Tzavellas, again broke into Don Pacifico's house October 12, 1847.

No reply was made by the Greek Government till December 27, 1847. At length, upon the refusal of the Greek Government to comply with the British demands, reprisals were resorted to.

Palmerston, in his speech of June 25, 1900, said:

"In the middle of the town of Athens . . . M. Pacifico, living in his house, within forty yards of the great street, within a few minutes' walk of a guardhouse, where soldiers were stationed, was attacked by a mob. Fearing injury, when the mob began to assemble, he sent an intimation to the British minister, who immediately informed the authorities. Application was made to the Greek Government for protection. No protection was afforded. The mob, in which were soldiers and gens-d'arms, who, even if officers were not with them, ought, from a sense of duty to have interfered and to have prevented plunder—that mob, headed by the sons of the minister of war, not children of eight or ten years old, but older—that mob, for nearly two hours, employed themselves in gutting the house of an unoffending man, carrying away or destroying every single thing the house contained, and left it a perfect wreck. . . . The Greek Government neglected its duty, and did not pursue judicial inquiries, or institute legal prosecutions as it might have done for the purpose of finding out and punishing some of the culprits." Lord Palmerston also argued that Pacifico was not required to proceed at law for individual redress, (1) because the tribunals were "at the mercy of the advisers of the Crown, the judges being liable to be removed, and being often actually removed upon grounds of private interest and personal feeling," and (2) because any attempt to obtain reparation from individuals would be futile. He quoted Pacifico's statement that if the man he prosecuted was rich he would be acquitted, and that if he was a poor man he had nothing with which to make compensation if he was condemned. In fine, Palmerston said: "The Greek Government having neglected to give the protection they were bound to extend, and having abstained from taking means to afford redress, this was a case in which we were justified in calling on the Greek Government for compensation for the losses, whatever they might be, which M. Pacifico had suffered."

Lord Palmerston, as it appears, defended his action in the Pacifico case on three grounds: (1) That there was a neglect to render protection, (2) that no measures were taken to afford redress, and (3) that there were no tribunals in Athens that could be trusted for that purpose.

39 Brit. & For. State Papers, 332; Hansard's Debates, 3d series, CXII. 394.

See further, as to the case of Don Pacifico, infra, § 1096.

8. Case of U. S. S. Baltimore, and Other Cases.

§ 1029.

Baltimore case.

"The civil war in Chile, which began in January last, was continued, but fortunately with infrequent and not important armed collisions, until August 28, when the Congressional forces landed near Valparaiso and, after a bloody engagement, captured that city. President Balmaceda at once recognized that his cause was lost, and a provisional government was speedily established by the victorious party. Our minister was promptly directed to recognize and put himself in communication with this Government so soon as it should have established its de facto character, which was done. During the pendency of this civil contest frequent indirect appeals were made to this Government to extend belligerent rights to the insurgents and to give audience to their representatives. This was declined, and that policy was pursued throughout, which this Government, when wrenched by civil war, so strenuously insisted upon on the part of European nations. The *Itata*, an armed vessel commanded by a naval officer of the insurgent fleet, manned by its sailors and with soldiers on board, was seized under process of the United States court at San Diego, California, for a violation of our neutrality laws. While in the custody of an officer of the court the vessel was forcibly wrested from his control and put to sea. It would have been inconsistent with the dignity and self-respect of this Government not to have insisted that the *Itata* should be returned to San Diego to abide the judgment of the court. This was so clear to the Junta of the Congressional party, established at Iquique, that, before the arrival of the *Itata* at that port, the secretary of foreign relations of the provisional government addressed to Rear-Admiral Brown, commanding the United States naval forces, a communication, from which the following is an extract:

"'The Provisional Government has learned by the cablegrams of the Associated Press that the transport *Itata*, detained in San Diego by order of the United States for taking on board munitions of war and in possession of the marshal, left the port, carrying on board this official, who was landed at a point near the coast, and then continued her voyage. . . . If this news be correct, this government would deplore the conduct of the *Itata*, and, as an evidence that it is not disposed to support or agree to the infraction of the laws of the United States, the undersigned takes advantage of the personal relations you have been good enough to maintain with him since your arrival in this port to declare to you that as soon as she is within reach of our orders his government will put the *Itata*, with

the arms and munitions she took on board in San Diego, at the disposition of the United States.'

"A trial in the district court of the United States for the southern district of California has recently resulted in a decision holding, among other things, that, inasmuch as the Congressional party had not been recognized as a belligerent, the acts done in its interest could not be a violation of our neutrality laws. From this judgment the United States has appealed, not that the condemnation of the vessel is a matter of importance, but that we may know what the present state of our law is; for, if this construction of the statute is correct, there is obvious necessity for revision and amendment.

"During the progress of the war in Chile this Government tendered its good offices to bring about a peaceful adjustment, and it was at one time hoped that a good result might be reached; but in this we were disappointed.

"The instructions to our naval officers and to our minister at Santiago, from the first to the last of this struggle, enjoined upon them the most impartial treatment and absolute noninterference. I am satisfied that these instructions were observed and that our representatives were always watchful to use their influence impartially in the interest of humanity, and, on more than one occasion, did so effectively. We could not forget, however, that this Government was in diplomatic relations with the then established Government of Chile, as it is now in such relations with the successor of that Government. I am quite sure that President Montt, who has, under circumstances of promise for the peace of Chile, been installed as President of that Republic, will not desire that, in the unfortunate event of any revolt against his authority, the policy of this Government should be other than that which we have recently observed. No official complaint of the conduct of our minister or of our naval officers during the struggle has been presented to this Government; and it is a matter of regret that so many of our own people should have given ear to unofficial charges and complaints that manifestly had their origin in rival interests and in a wish to pervert the relations of the United States with Chile.

"The collapse of the government of Balmaceda brought about a condition which is unfortunately too familiar in the history of the Central and South American states. With the overthrow of the Balmaceda government, he and many of his councilors and officers became at once fugitives for their lives and appealed to the commanding officers of the foreign naval vessels in the harbor of Valparaiso and to the resident foreign ministers at Santiago for asylum. This asylum was freely given, according to my information, by the naval vessels of several foreign powers and by several of the legations at Santiago. The American minister, as well as his colleagues,

acting upon the impulses of humanity, extended asylum to political refugees whose lives were in peril. I have not been willing to direct the surrender of such of these persons as are still in the American legation without suitable conditions.

"It is believed that the Government of Chile is not in a position, in view of the precedents with which it has been connected, to broadly deny the right of asylum, and the correspondence has not thus far presented any such denial. The treatment of our minister for a time was such as to call for a decided protest, and it was very gratifying to observe that unfriendly measures, which were undoubtedly the result of the prevailing excitement, were at once rescinded or suitably relaxed.

"On the 16th of October an event occurred in Valparaiso so serious and tragic in its circumstances and results as to very justly excite the indignation of our people and to call for prompt and decided action on the part of this Government. A considerable number of the sailors of the United States steamship *Baltimore*, then in the harbor of Valparaiso, being upon shore leave and unarmed, were assaulted by armed men nearly simultaneously in different localities in the city. One petty officer was killed outright and seven or eight seamen were seriously wounded, one of whom has since died. So savage and brutal was the assault that several of our sailors received more than two, and one as many as eighteen, stab wounds. An investigation of the affair was promptly made by a board of officers of the *Baltimore*, and their report shows that these assaults were unprovoked, that our men were conducting themselves in a peaceable and orderly manner, and that some of the police of the city took part in the assault and used their weapons with fatal effect, while a few others, with some well-disposed citizens, endeavored to protect our men. Thirty-six of our sailors were arrested, and some of them, while being taken to prison, were cruelly beaten and maltreated. The fact that they were all discharged, no criminal charge being lodged against any one of them, shows very clearly that they were innocent of any breach of the peace.

"So far as I have yet been able to learn no other explanation of this bloody work has been suggested than that it had its origin in hostility to these men as sailors of the United States, wearing the uniform of their Government, and not in any individual act or personal animosity. The attention of the Chilean Government was at once called to this affair, and a statement of the facts obtained by the investigation we had conducted was submitted, accompanied by a request to be advised of any other or qualifying facts in the possession of the Chilean Government that might tend to relieve this affair of the appearance of an insult to this Government. The Chilean Government was also advised that if such qualifying facts

did not exist this Government would confidently expect full and prompt reparation.

"It is to be regretted that the reply of the secretary for foreign affairs of the Provisional Government was couched in an offensive tone. To this no response has been made. This Government is now awaiting the result of an investigation which has been conducted by the criminal court at Valparaiso. It is reported unofficially that the investigation is about completed, and it is expected that the result will soon be communicated to this Government, together with some adequate and satisfactory response to the note by which the attention of Chile was called to this incident. If these just expectations should be disappointed or further needless delay intervene, I will, by a special message, bring this matter again to the attention of Congress for such action as may be necessary. The entire correspondence with the Government of Chile will at an early day be submitted to Congress."

President Harrison, annual message, Dec. 9, 1891, For. Rel. 1891, vi.

"I am directed by the President to say to you that he has given careful attention to all that has been submitted by the Government of Chile touching the affair of the assault upon the crew of the U. S. S. *Baltimore* in the city of Valparaiso on the evening of the 16th of October last, and to the evidence of the officers and crew of that vessel, and of some others who witnessed the affray, and that his conclusions upon the whole case are as follows:

"First. That the assault is not relieved of the aspect which the early information of the event gave to it, viz: That of an attack upon the uniform of the U. S. Navy, having its origin and motive in a feeling of hostility to this Government, and not in any act of the sailors or of any of them.

"Second. That the public authorities of Valparaiso flagrantly failed in their duty to protect our men, and that some of the police and of the Chilean soldiers and sailors were themselves guilty of unprovoked assaults upon our sailors before and after arrest. He thinks the preponderance of the evidence and the inherent probabilities lead to the conclusion that Riggin was killed by the police or soldiers.

"Third. That he is therefore compelled to bring the case back to the position taken by this Government in the note of Mr. Wharton of October 23 last (a copy of which you will deliver with this), and to ask for a suitable apology and for some adequate reparation for the injury done to this Government.

"You will assure the Government of Chile that the President has no disposition to be exacting or to ask anything which this Government would not, under the same circumstances, freely concede. He regrets that, from the beginning, the gravity of the questions involved

has not apparently been appreciated by the Government of Chile, and that an affair in which two American seamen were killed and sixteen others seriously wounded, while only one Chilean was seriously hurt, should not be distinguished from an ordinary brawl between sailors in which the provocation is wholly personal and the participation limited. No self-respecting government can consent that persons in its service, whether civil or military, shall be beaten and killed in a foreign territory in resentment of acts done by or imputed to their government without exacting a suitable reparation. The Government of the United States has freely recognized this principle, and acted upon it, when the injury was done by its people to one holding an official relation to a friendly power, in resentment of acts done by the latter. In such case the United States has not sought for words of the smallest value or of equivocal meaning in which to convey its apology, but has condemned such acts in vigorous terms and has not refused to make other adequate reparation.

"But it was not my purpose here to discuss the incidents of this affair, but only to state the conclusions which this Government has reached. We have given every opportunity to the Government of Chile to present any explanatory or mitigating facts and have had due regard to the fact that the Government of Chile was, for a considerable part of the time that has elapsed since October 16, upon a provisional basis.

"I am further directed by the President to say that his attention has been called to the note of instructions sent by Mr. Matta, secretary of foreign affairs, to Mr. Montt, under date of the 11th ultimo. Mr. Montt very prudently, and, I must suppose, from a just sense of the offensive nature of the dispatch, refrained from communicating it officially to this Government.

"But, in view of the fact that Mr. Montt was directed to give it to the press of this country, and that it was given the widest possible publicity throughout the world, this Government must take notice of it. You are therefore directed to say to the Chilean Government that the expressions therein imputing untruth and insincerity to the President and to the Secretary of the Navy in their official communications to the Congress of the United States are in the highest degree offensive to this Government.

"Recognizing the usual rules of diplomatic intercourse and of the respect and courtesy which should characterize international relations (which he can not assume are wholly unfamiliar to the Chilean foreign office), the President was disposed to regard the dispatch referred to as indicating a purpose to bring about a suspension of diplomatic relations; but, in view of the fact that Mr. Matta was acting provisionally and that a reorganization of the Chilean cabinet was about to take place, and afterwards in further view of the ex-

pectation that was held out of a withdrawal and of a suitable apology, notice of this grave offense has been delayed. I am now, however, directed by the President to say that if the offensive parts of the dispatch of the 11th of December are not at once withdrawn, and a suitable apology offered, with the same publicity that was given to the offensive expressions, he will have no other course open to him except to terminate diplomatic relations with the Government of Chile.

"Mr. Montt, in a note of January 20, has advised me that he has been directed by his Government to inform the Government of the United States that you are not *persona grata* to the Government of Chile, and to request your recall. This has been laid before the President, and he directs you to say that, in view of the foregoing, he does not deem it necessary to make any present response thereto. It will be quite time to consider this suggestion after a reply to this note is received, as we shall then know whether any correspondence can be maintained with the Government of Chile upon terms of mutual respect.

"You will furnish to the minister of foreign affairs a full copy of this note."

Mr. Blaine, Sec. of State, to Mr. Egan, min. to Chile, tel., Jan. 21, 1892, For. Rel. 1891, 307.

On January 25, 1892, Mr. Pereira, Chilean minister of foreign affairs, made a reply to Mr. Blaine's telegram, and, after reciting the substance of the demands of the United States, said:

"Without any intention of opening a discussion as to the facts referred to by the communication, which I have extracted, and confining himself to the first part of the instructions of the honorable Secretary of State, the undersigned must state to your excellency the regret with which the Government of Chile sees that His Excellency the President of the United States finds reason to continue to regard the incident of October as an attack caused by a hostile feeling toward the uniform of the Navy of the United States. That unfortunate occurrence took place on a sudden, in a district where the sailors of the vessels lying in the Bay of Valparaiso are in the habit of assembling, without distinction of nationality.

"From the nature of the incident it would be impossible to prove that there was no doubt as to the special cause which served as its origin or pretext; but the undersigned can assert that that cause was not a hostile feeling toward the uniform of the Navy of the United States, because the people of Chile have always esteemed and respected that uniform ever since the time when they saw it figuring honorably in the ranks of the soldiers and sailors who, in a glorious struggle, gave it independence and established the Republic. The

undersigned admits that the occurrence of October 16 was of greater gravity than those which usually occur in the same district between the sailors who frequent it, and the fact of knowing that two deaths have resulted from it among the 16 wounded men of the *Baltimore*, has sufficed to give it an extraordinary character, and to induce the Government of Chile to hasten to adopt the measures necessary to discover and punish the guilty parties, to offer in due time, if there should be ground for so doing, such reparation as might be due.

"The preliminary examination was commenced on the morning which followed the night of the conflict, some days before you presented your complaint; but the investigation could not be finished with the rapidity that the Government of Chile desired, because the rules of procedure in criminal matters which are established by our laws are of slow application, and it was not possible for the President of the Republic to modify or set them aside. This delay, which was inevitable, owing to the independence with which the judicial authorities must act, has compelled the Government of the undersigned to delay, greatly to its regret, the settlement of the difficulty pending with your Government, and a spontaneous offer of reparation for the injury done to the sailors of the *Baltimore*, and that might be attributed to Chilean soldiers or sailors, or that might affect the responsibility of Chile.

"In view of your communication, and considering that, up to date, it has been impossible for the trial initiated by the judge of the criminal court of Valparaiso to be decided, the undersigned regards it as his duty to declare once more that the Government of Chile laments the occurrence of October 16, and by way of showing the sincerity of his feeling and the confidence which he has in the justice of his cause, he declares his willingness not to await the decision of the examining judge and proposes to the United States Government that the case be submitted to the consideration of the Supreme Court of Justice at Washington, to the end that that high tribunal, with its learning and impartiality, may determine, without appeal, whether there is any ground for reparation and in what shape it should be made.

"The undersigned would remind you, referring to the conduct of the Valparaiso authorities, that it appears from the preliminary examination that they sent without delay to the scene of the conflict all the forces at their disposal belonging to the special guard of the intendencia and to the police. Swanson, Cass, Nichols, Downey, Honner, Cunningham, Williams, Talbot, Hollard, Hodge, Butler, etc., seamen belonging to the crew of the *Baltimore*, stated to the interpreter of that vessel that the object of the police in arresting them was to shelter them from any attempt at attack by the excited people. The undersigned thinks that the action of the police in this matter

should be considered with due allowance for the civil war which had recently been brought to a close. The body was not yet properly organized, nor did it have the force that was required to put down a disorder of such proportions in a short time.

"In this connection it is proper to recall the words used by the honorable Secretary of State at Washington in his note addressed to the Marquis Imperiali, and bearing date of May 21, 1891: 'There is no government, however civilized it may be, however great may be the vigilance displayed by its police, however severe its criminal code may be, and however speedy and inflexible may be its administration of justice, that can guaranty its own citizens against violence growing out of individual malice or a sudden popular tumult.' This was precisely the siuation of the administrative authorities at Valparaiso on the occasion of the occurrence which took place in October.

"The undersigned hopes that the foregoing will convince the honorable Secretary of State that the Government of Chile attaches due importance to the question now under discussion; that he does not for a moment hesitate to condemn, in vigorous terms, the act committed on the 16th of October, or to offer such reparation as is just, and that he has not neglected the opportunity to express these sentiments before now, since on various occasions, and through the plenipotentiaries of both countries, he has forwarded explicit declarations on the subject to Washington.

"The undersigned takes the liberty to recall the fact that, five days after he had taken charge of the department of foreign relations, he addressed to the minister of Chile in the United States a telegram which, in the part relating to this matter, says: 'Express to the United States Government what has already been stated, adding all the data that are known, in the most correct and amicable form; express to the United States Government very sincere regret on account of this unfortunate incident, which although and (not) strange in the ports of the world, this Government doubly laments, owing to its sincere desire to cultivate friendship with the United States.'

"If the United States Government should not accept the foregoing explanations as satisfactory, notwithstanding that the judicial authorities hold the guilty parties responsible for the disorder of October 16, the undersigned must recall the circumstance that the Government of Chile, through the medium of its minister in Washington, has expressed the desire to submit any misunderstanding (dispute) to decision by arbitration by any power or tribunal which may be indicated to it; and, in fact, arbitration was suggested in conference with the minister of Chile in Washington on the 30th of December, when the Government of the undersigned declared its good will and its resolve to accept arbitration after the final judgment, which would not be further delayed many days in furtherance of its pur-

terms.

pose to give a speedy solution to the incident in the most friendly

"The Government of the undersigned called upon its minister for a definite reply on the 11th instant, and on the 13th Minister Montt reported that, notwithstanding certain observations made by the American State Department with respect to the opportuneness of resorting to arbitration, he had, nevertheless, agreed with the Hon. Mr. Blaine that, if any divergence of views or disaccord should supervene after the verdict of the judge of Valparaiso, such controversy would yield to arbitration. The undersigned hastened to declare that he would fully accept such an agreement; for which reason the Government of Chile deems that the case has arisen for submitting to arbitration, in terms as ample as those above indicated, any difference of views which it may have with the Government of the United States concerning the incident of the *Baltimore*.

"There is therefore submitted to the honorable Secretary of State of the Department of Foreign Relations of Washington the designation of either the Supreme Court of Justice of the United States or a tribunal of arbitration to determine the reparation which Chile may have to make for that lamentable occurrence.

"As for the dispatch addressed under date of the 11th of December to the Chilean minister in Washington by the minister of foreign relations of the Provisional Government, the undersigned submits that there could not be on the part of the Government of Chile the purpose to inflict any offense upon the Government of the United States, with which it desires ever to cultivate the most friendly relations. Consequently the undersigned deplores that in that telegram there were employed through an error of judgment the expressions which are offensive in the judgment of your Government.

"Declaring in fulfillment of a high duty of courtesy and sincerity towards a friendly nation that the Government of Chile absolutely withdraws the said expressions, the undersigned trusts that this frank and explicit declaration, which confirms that which had already been made to the honorable Secretary of State in Washington, will carry to the mind of His Excellency Mr. Harrison, of his Government, and of the American people the conviction that the Government and the people of Chile, far from entertaining a feeling of hostility, have the lively desire to maintain unalterable the good and cordial relations which, up to the present time, exist between the two countries—a declaration which is made without reservation in order that it may receive such publicity as your Government may deem suitable. With regard to the suggestion made touching the change of the personnel of your legation to which the instructions of the honorable Secretary of State refer, it is incumbent upon the undersigned to declare that the Government of Chile will take no positive step without the accord

of the Government of the United States, with which it desires to maintain itself in friendly understanding.

"The undersigned brings this already long communication to a close in the assurance that he has therein set forth everything that can fully satisfy your Government. The Government of Chile cherishes the conviction that the relations with the Government of the United States should be sincerely and cordially maintained under the shelter of that mutual respect and that good understanding which are based upon the just and equitable appreciation of the facts, and on the appreciation to be given to the spontaneous declarations made on either side. The undersigned moreover declares that in presenting its explanations his Government finds its inspiration in the words of the instructions which you have quoted and which assure the Government of Chile that the President is not disposed to exact or ask anything which your Government would not under the same circumstances spontaneously concede."

Mr. Pereira, Chilean min. of for. aff., to Mr. Egan, American min., accompanying telegram of Mr. Egan to Mr. Blaine, Jan. 25, 1892. For. Rel. 1891, 309.

"Congress at the last session was kept advised of the progress of the serious and for a time threatening differences between the United States and Chile. It gives me now great gratification to report that the Chilean Government, in a most friendly and honorable spirit, has tendered and paid as an indemnity to the families of the sailors of the *Baltimore* who were killed and to those who were injured in the outbreak in the city of Valparaiso the sum of $75,000. This has been accepted, not only as an indemnity for a wrong done, but as a most gratifying evidence that the Government of Chile rightly appreciates the disposition of this Government to act in a spirit of the most absolute fairness and friendliness in our intercourse with that brave people. A further and conclusive evidence of the mutual respect and confidence now existing is furnished by the fact that a convention submitting to arbitration the mutual claims of the citizens of the respective Governments has been agreed upon. Some of these claims have been pending for many years and have been the occasion of much unsatisfactory diplomatic correspondence.

"I have endeavored in every way to assure our sister republics of Central and South America that the United States Government and its people have only the most friendly disposition toward them all. We do not covet their territory. We have no disposition to be oppressive or exacting in our dealings with any of them, even the weakest. Our interests and our hopes for them all lie in the direction of stable governments by their people and of the largest development of their great commercial resources. The mutual benefits of

enlarged commercial exchanges and of a more familiar and friendly intercourse between our peoples we do desire, and in this have sought their friendly cooperation.

"I have believed, however, while holding these sentiments in the greatest sincerity, that we must insist upon a just responsibility for any injuries inflicted upon our official representatives or upon our citizens. This insistence, kindly and justly, but firmly made, will, I believe, promote peace and mutual respect."

President Harrison, annual message, Dec. 6, 1892, For. Rel. 1892, XIII.

Case of Alfonso XII.

In 1883 Alfonso XII. of Spain, accompanied by the Queen, visited the courts of Vienna, Berlin, and Brussels. While he was in Germany, the Emperor invested him with the colonelcy of the Uhlan regiment, stationed at Strasburg. Owing to this circumstance, the King when he reached Paris was hissed and hooted at by the mob as he passed along the streets. Next day he was called upon at the Spanish embassy by President Grevy, who expressed regret for what had happened. The King shortened his visit and left the next day, but the incident was disposed of by the publication in the Official Gazette at Madrid of an account of what took place at the embassy on President Grevy's visit and of the apology there made by the latter.

Calvo, Le Droit International, 4th edition, sec. 1272; Annual Register, 1883 (273).

Caroline Islands case.

August 14, 1885, news was received in Madrid that Yap, in the archipelago of the Carolines, had been occupied by German forces. "Ten days later the public mind had become thoroughly roused, and a meeting, said to have numbered 150,000 people in the Prado at Madrid, testified to the widespread indignation. According to the fuller particulars forwarded by letter, the imperial flag had been hoisted by the commander of the *Iltis* in the presence of three Spanish men-of-war, and the senior officer in command had limited his action to a protest. An outburst of popular feeling and mob violence followed the publication of this version of the proceedings, the German legation was surrounded (Sept. 4), and the escutcheon and flagstaff were pulled down and burnt, with cries of 'Death to Germany!' . . . Numerous arrests were made, but popular feeling ran high, not only in Madrid, but in many large towns, and the outcry against Germany was almost, if not quite, unanimous throughout the country." The Spanish King and Government, however, conducted themselves with "tact and prudence;" they expressed regret for what had occurred and tendered reparation for the material injury done to the German embassy; their advances were accepted by Germany; the question as to the islands

was referred to the mediation of the Pope; and thus the incident was settled.

Annual Register, 1885 (289); Calvo, Le Droit International, 4th ed., sec. 1272.

9. CASES IN TURKEY.

§ 1030.

"Important matters have demanded attention in our relations with the Ottoman Porte.

"The firing and partial destruction, by an unrestrained mob, of one of the school buildings of Anatolia College, established by citizens of the United States at Marsovan, and the apparent indifference of the Turkish Government to the outrage, nothwithstanding the complicity of some of its officials, called for earnest remonstrance, which was followed by promises of reparation and punishment of the offenders.

"Indemnity for the injury to the buildings has already been paid, permission to rebuild given, registration of the school property in the name of the American owners secured, and efficient protection guaranteed."

President Cleveland, annual message, Dec. 4, 1893, For. Rel. 1893, x.

"While the physical safety of all citizens of the United States appears up to the present date to have been secured, their property has, on at least two recent occasions, been destroyed in the course of local outbursts at Harpoot and Marash.

"The details of the Harpoot destruction have so far been only meagerly reported, although it took place about the middle of November. It is stated that the buildings at that place were set on fire separately by Koords and citizens, in the presence of the Turkish soldiery, during an Armenian riot. Besides the chapel, girls' theological school and seminary building, the ladies' house, boarding house, and residences of three American missionaries were burned, the aggregate loss on the buildings, personal property, stock, fixtures, and apparatus being estimated in the neighborhood of $100,000. The United States minister has notified the Porte that the Turkish Government will be held responsible for the immediate and full satisfaction of all injuries on that score.

"The American Missionary School of Science at Marash was burned during a sanguinary outbreak on November 19. The value of the property destroyed has not been ascertained, but after prompt investigation the minister will make like demand for adequate indemnity."

Report of Mr. Olney, Sec. of State, to the President, Dec. 19, 1895, S. Doc. 33, 54 Cong. 1 sess.; For. Rel. 1895, II. 1257.

See, as to these cases, For. Rel. 1895, II, 1340, 1349–1350, 1356, 1357–1358, 1369, 1370–1380, 1395, 1407, 1416, 1423, 1434, 1444, 1446–1447.

For a note to the Porte, expressing thanks for the meritorious conduct of certain Turkish officers at Harpoot and elsewhere, see For. Rel. 1895, II, 1382.

Tevfik Pasha, minister of foreign affairs, in a note to Mr. Terrell, Feb. 14, 1896, maintained that in the disturbances at Harpoot and Marash "the local authorities and imperial troops" made every effort for the protection of the property and lives of Americans, who had made acknowledgment of the measures taken for their safety, and that Turkey consequently was not obliged to indemnify them for their losses. He denied that any pillage was committed in the houses of the American missionaries. He also advanced that a government is not responsible for damage necessarily done in defending itself against an insurrection.

Mr. Olney, Oct. 17, 1896, replied that this doctrine of irresponsibility went much beyond "the very generally stated principle of international law that a government is not liable for damage to local interests of foreigners by the acts of uncontrollable insurgents," and "would appear to expand that doctrine to include irresponsibility for acts of the Government in repressing insurrection;" and that, in either case, it wholly ignored "the responsibility of Turkey for spoliations and injuries committed by its authorities or agents themselves upon the persons and property of American citizens," of which spoliations and injuries there was declared to be abundant proof. The Turkish answer was therefore pronounced to be "entirely inadmissible."

Referring, on Oct. 28, 1896, to affidavits from Harpoot establishing the complicity of the Turkish soldiers in the burning and plundering of the American college in that city, the United States said: "That the premises of American citizens were inadequately guarded, fired upon by Turkish shot and shell, pillaged by Turkish soldiery, and left for hours to the unchecked ravages of fire, seems to be fully established, and in the face of such evidence the plea advanced in Mavroyeni Bey's note on behalf of the Ottoman Porte is utterly untenable, to say nothing of the almost conclusive proof of collusion between the garrison and the attacking Kurds. No room is discernible for the application of the limited and jealously qualified rule of international law relative to the irresponsibility of a government for the acts of uncontrollable insurgents. The negligence of the authorities and the acts of their own agents are here in question, not the deeds of the Kurds, nor still less of the supposed Armenian rebels on whom the Porte seems to seek to throw the responsibility of these burnings and pillagings."

Mr. Olney, Sec. of State, to Mr. Terrell, min. to Turkey, Oct. 17, 1896, For. Rel. 1896, 892; same to same, Oct. 28, 1896, id. 893. See also id. 880, 883, 886, 895, 898.

As to the proof of complicity or connivance of the Turkish officials, see For. Rel. 1895, II. 1444, 1446–1448, 1455–1458.

"We have made claims against the Turkish Government for the pillage and destruction of missionary property at Harpoot and Marash during uprisings at those places. Thus far the validity of these demands has not been admitted, though our minister, prior to such outrages and in anticipation of danger, demanded protection for the persons and property of our missionary citizens in the localities mentioned, and notwithstanding that strong evidence exists of actual complicity of Turkish soldiers in the work of destruction and robbery.

"The facts as they now appear do not permit us to doubt the justice of these claims, and nothing will be omitted to bring about their prompt settlement."

President Cleveland, annual message, Dec. 7, 1896, For. Rel. 1896, XXVIII.

"None of our citizens in Turkey have thus far been killed or wounded, though often in the midst of dreadful scenes of danger." (Ibid.)

Mrs. Haiganoosh S. Abdalian, widow of Dr. Nahabed Y. Abdalian, a naturalized American citizen, who was killed during the disturbances at Gurun, Turkey, made a claim against the Turkish Government for $50,000 for the murder of her husband, $10,000 for imprisonment, bodily suffering, distress of mind, and the death of an infant child, caused by starvation and exposure, and $1,312 for the pillage and destruction of property belonging to her husband and herself. The whole claim amounted to $61,312. The Turkish Government replied that it could not admit the principle of granting indemnities for claims "arising out of the disorders which took place in certain localities of the Empire."

The Turkish Government made the same reply in respect of the claim of Levon H. Seyranian for the destruction of personal property in the village of Huseinig.

Referring to the Turkish reply in the case of Abdalian, the United States said: "In every case of this kind the Turkish Government either ignores or distorts the abundantly supported contention of this Government that the injuries to American property during the recent disorders were suffered through the insufficiency of the protective measures afforded. A government being able to quell and not quelling such disorders, and damage to American property having resulted, the United States contends that Turkey can be held responsible under a well-recognized principle of international law."

Mr. Sherman, Sec. of State, to Mr. Angell, min. to Turkey, Aug. 23, 1897, For. Rel. 1897, 592.

See, also, For. Rel. 1897, 590, 591.

As to the assault on Miss Melton, an American missionary, at Daree, a mountain village near Amadia, Koordistan, see For. Rel. 1893, 642, 643, 652, 656–665, 668, 683, 689, 695, 700, 704.

Mr. Straus, minister to Turkey, telegraphed to Mr. Hay December 9, 1898: "Had a satisfactory audience. The Sultan has directed the indemnity to be arranged, and sends compliments to the President." This promise was followed by a long and varied negotiation, in which the payment of the promised indemnity was insisted on by the United States. It was not till June 12, 1901, that Mr. Leishman, Mr. Straus's successor, cabled that there had been deposited to his credit in the Imperial Ottoman Bank the sum of 19,000 Turkish pounds, being the equivalent of $92,625. This settlement embraced all valid outstanding claims of the United States against the Turkish Government, including those for the destruction of property at Harpoot and Marash.

For. Rel. 1899, 765–775; For. Rel. 1900, 906–909; For. Rel. 1901, 518.

10. Killing of Rioters by Authorities.

§ 1031.

Riots at Lattimer.

"On the occasion of the conflict which took place on the 10th instant at Lattimer, near Hazleton, Pa., between the sheriff of Luzerne County and his armed force on one side and the striking laborers on the other, 10 Austrian and Hungarian subjects were killed and 11 more or less severely wounded. I take the liberty, Mr. Secretary of State, herewith to inclose a list of these dead and wounded persons, and to add that it has not yet been possible to ascertain the citizenship of all the victims of that collision, and that there are 23 more wounded men in the hospital at Hazleton whose names indicate that they are of Austrian or Hungarian origin, but the physicians who have them in charge have not permitted them to be questioned.

"According to the information which I have received, and which is based upon the inquiries made by the imperial and royal consulate at Philadelphia and the examination of several witnesses of the occurrence, the unfortunate victims of the catastrophe had engaged in no acts of violence and were guilty of no resistance to the lawful authorities that could justify the violent means used against them.

"I have the honor to inclose a report of the examination of 13 eyewitnesses, among which are not only the statements of workmen who had taken part in the procession, but also the sworn depositions of American citizens who were not concerned in the affair at all, and I likewise inclose a memorandum in the English language, in order that

it may be more readily examined, wherein I have given a concise account of the occurrence as it is shown, by the aforesaid inquiries, to have taken place.

"I have no reason to doubt the correctness of these depositions, or that of the reports which I have received, and I have found no fact mentioned in the numerous accounts given by the press that deprives the essential points of the accompanying statements of their force. These important points go to show that:

"(1) The workmen who took part in the procession from Harwood to Lattimer were unarmed, and had no intention of engaging in acts of violence at the latter place.

"(2) That the sheriff, before fire was opened, had certainly not exhausted all means of asserting his authority in a peaceful manner, but that fire was opened upon defenseless and unarmed men, who had already obeyed the first orders of the sheriff, who forbade them to pass through West Hazleton.

"(3) That the men fled at the first shot, and that the firing upon the fugitives was nevertheless continued for two minutes.

"In this connection I have the honor, Mr. Secretary of State, to call your special attention to the statement made by Mr. Boyle, the undertaker at Hazleton, who says that of the 10 bodies mentioned by him 9 had received their wounds in the back.

"The Imperial and Royal Government, in view of this statement, can not avoid the impression that its subjects suffered death or wounds, not in consequence of unlawful resistance to the constituted authorities, and therefore not through their fault or owing to an unfortunate accident, but through an unjustifiable, illegal, and, as it appears, improper use of the official authority of the sheriff, consequently of a responsible representative of the authority of the State. It has therefore instructed me to call the attention of the Federal Government to the case, and to request it to cause the facts to be subjected to a rigid investigation, and to acquaint me with the result thereof with as little delay as possible.

"I have the honor hereby to obey these instructions, and I have, at the same time, been directed to add that my Government reserves the right to ask for a suitable indemnity for its subjects who were killed or wounded on that occasion, and for their surviving relatives."

Mr. Hengelmüller, min. of Austria-Hungary, to Mr. Sherman, Sec. of State, Sept. 28, 1897, For. Rel. 1898, 46.

The receipt of Mr. Hengelmüller's note was acknowledged Oct. 9, 1897, and on the 11th of the same month he was advised that the governor of Pennsylvania had been requested to investigate the case and report the result.

After further correspondence, not material to the merits of the case, Mr. Hengelmüller was informed, Dec. 28, 1897, that the trial of

the persons charged with the killing and wounding of the Austrian and Hungarian subjects would take place during the coming month, and that certain reports on the case which the governor of Pennsylvania had in his possession would be held by him till the conclusion of the trial, since their publication might prejudice it.

To this communication Mr. Hengelmüller replied (1) that his Government could in no case consider the "technical question" of the guilt or innocence of the sheriff and his posse of the crime with which they were charged "as being synonymous with the question whether those victims of the catastrophe, who had a right to their protection, are entitled to indemnity;" (2) that, while his Government had no reason to doubt the accuracy of the investigations made by its own consular officers, it had requested, as a preliminary step, the institution of an investigation by the Federal Government, in the hope that that Government would be glad to "ascertain the facts for itself, and to secure a basis, well established by both parties, for the subsequent treatment of the case;" and (3) that, as the last communication of the United States was tantamount to a declaration that no such investigation could be made, his Government had instructed him to declare that it must hold the Federal Government responsible for the injuries complained of and must ask of it a just and adequate indemnity for the victims.

The United States declared itself unable to accept either the premises or the conclusion of this reply, but, in view of the position taken by the Austrian Government, requested the governor of Pennsylvania to send on the reports in his possession, assuring him that they would not be made public pending the trial of the sheriff and his deputies.

For. Rel. 1898, 57, 62, 64, 68.

"I have now the honor to advise you that I have received from his excellency, the governor [of Pennsylvania] . . . a statement by Mr. Martin, the high sheriff of Luzerne County, and a report by Brig. Gen. J. P. S. Gobin, who commanded the Third Brigade of the National Guard of Pennsylvania at Hazleton during the riots, and also copy of the report of Gen. Thomas J. Stewart, adjutant-general of Pennsylvania, relating to the same subject.

"By a collation of these three statements, which are mainly in substantial agreement, the circumstances of the occurrences near Hazleton appear to be as follows:

"About the last of August or 1st of September the employees of one of the collieries near Hazleton ceased work because of some difficulty with the superintendent. The employees at other mines followed in sympathy, and the movement developed into large marching parties, which began to assemble and move upon the workings and

drive the workmen from their places. The sheriff, whose office is at Wilkes-Barre, was appealed to by the owners of the mines for protection from the interference. He went to Hazleton and summoned and swore in a large number of armed deputies to preserve the public peace. At different times prior to September 10 marching bodies attempted to drive the workers from several mines, and were turned aside or dispersed by the sheriff and his deputies. On September 10, a body of men, estimated at from 300 to 600, started from Harwood to visit Lattimer for the purpose of compelling the men there to cease work. They were met at West Hazleton by the sheriff, who, in the name of the law, commanded them to disperse. They refused and moved on. The sheriff summoned his deputies, and with them reached Lattimer in advance of the mob. As the mob approached, the sheriff, unattended, stepped forward to meet the ringleaders, announced the penalties attending such unlawful acts, and endeavored to persuade the riotous assemblage to turn back. He was surrounded by the mob, some members of which struck him down, the greater number going toward its destination. During the struggle which ensued between the sheriff and the mob, at which time he was entirely surrounded by the rioters, a number of the deputies fired into the mob, as it would seem, without having been commanded to do so, resulting in the killing or mortally wounding of 18 men. The rest of the mob then dispersed.

"These statements, as will be perceived, suggest doubt as to the accuracy of the reports heretofore current that the assemblage of striking miners at Lattimer was peaceably dispersing when orders to fire upon them were given by the sheriff. The facts would rather appear to be that, upon the sheriff advancing unattended in order to meet the ringleaders, he was dangerously assaulted and that shots were fired, without command, by the deputies in the attempt to rescue him. However this may be, I deem it proper to suspend all judgment upon the merits of the question at issue pending the trial which is about to take place, in the course of which I may assume that the true facts of the occurrence will be elicited.

"Following a precedent which has been set in some cases heretofore it is proposed to have a representative of the Federal Government present at the trial to watch the proceedings and report thereon, to the end of thoroughly investigating the matter with a view to such further treatment as may be just and proper."

Mr. Sherman, Sec. of State, to Mr. Hengelmüller, min. of Austria-Hungary, Jan. 20, 1898, For. Rel. 1898, 77.

"The reports which, according to that note [of Jan. 20, 1898], have been received by the Federal Government . . . , present the occurrences in question, in many important particulars, in an aspect differ-

ent from that in which they were presented in the reports received by us, which were sent as inclosures to my note of September 28. This difference in the presentation of the case would especially seem to call for a comparison and scrutiny, as accurate as possible, of the material on both sides, which is based both upon the statements of persons who participated in the incident and upon those of persons who took no part therein. In consideration, however, of the circumstance that the Federal Government, according to your note of January 20, Mr. Secretary of State, considers the question of the way in which all the occurrences actually took place as an open one, I think it proper for me now to refrain from any discussion of the merits of the case, and I take note of your declaration that the Federal Government suspends its decision during the pendency of the trial which is about to take place, and that it expects the facts of the case to be fully elucidated by that trial. I have the honor, at the same time, to express my warmest thanks to the Federal Government for the intention which it has expressed of sending a representative to be present at that trial, and to request you, Mr. Secretary of State, to convey this expression of gratitude to the proper quarter.

"In the meantime I take the liberty to call special attention to the fact that, according to the reports transmitted to the governor of Pennsylvania, fire was opened on the workmen taking part in the march by the sheriff's deputies, although they had received no order to that effect. This statement agrees with the account given in my memorandum of September 28, and I refer to it as a further proof of our oft-repeated assertion that the question of the accused sheriff's guilt, or of his innocence of the crime with which he is charged, is not synonymous with the question whether the victims of the catastrophe are entitled to indemnity."

Mr. Hengelmüller, min. of Austria-Hungary, to Mr. Sherman, Sec. of State, Jan. 24, 1898. For. Rel. 1898, 79, 80.

At the request of the Department of State, the Attorney-General of the United States detailed Mr. Henry M. Hoyt, Assistant Attorney-General, to attend the trial at Wilkes-Barre. Mr. Hoyt was furnished by the Department of State with a letter to the governor of Pennsylvania, who, upon his appearance with it, gave him a letter to the president judge of the courts of Luzerne County, by whom he was afforded every opportunity to follow the course of the proceedings.

The trial was opened at Wilkes-Barre, Feb. 1, 1898. The defendants were James Martin, sheriff, and 68 deputies, who were indicted jointly for murder, with a second count for manslaughter, in the case of each man killed, and for felonious wounding in the case of each man wounded. An indictment in the case of one of the victims killed was selected for trial, and on March 9, 1898, the jury rendered

a verdict of not guilty as to all the defendants. Mr. Hoyt found that the case was "soberly, properly, and fairly tried, that there was abundant evidence to support the verdict, and that it can not be successfully claimed that under all the circumstances involved the verdict was not a just and righteous one." He also expressed the opinion that "the sheriff and his deputies, the legal conservators of the peace, conducted themselves with patience, discretion, and forbearance through the events leading up to the Lattimer fatality: that the conflict there was inevitable (humanely speaking) and could not have been avoided if civil order were to be preserved and obedience to the law enforced; and that under all the circumstances the action of the the sheriff and his posse, although fatal and lamentable in its results, was clearly justifiable." Subsequently Mr. Hoyt also presented a memorandum reviewing the incident in its broader social, as well as in its international, aspects. On the question of international liability he cited the New Orleans riot of 1851, 6 Webster's Works, 507; the Rock Springs case, 1 Wharton's Int. Law Digest, 474–486; the New Orleans riot of 1890, For. Rel. 1891, 727, and the article of James Bryce, *Littell's Living Age*, June 6, 1891, p. 579; Hall's Int. Law, 227, 228, note 1; 2 Wharton's Int. Law Digest, 439, 602, 642, 646, 679, 696.

On the other hand, the Austrian Government presented a report of Mr. Robert D. Coxe, of the Philadelphia bar, as its counsel in the matter, who expressed the opinion that "the trial resulted in a miscarriage of justice." He stated that "the trial was, upon the whole, well conducted by counsel for the prosecution," but that they were "embarrassed at the outset by the inadequate initial preparation of the case" by the previous district attorney, who went out of office on Dec. 31, 1897; that the jury reflected the "general sentiment of the community" by being "in sympathy with the defendants," in regard to some of whom, however, notwithstanding their presence and "technical participation" in the affair, a doubt as to guilt was natural and not to be "denied or unfavorably criticised;" that the organization of the posse comitatus on Sept. 6, 1897, was "a precipitate and premature performance," a device in the interest of the coal operators, and stimulated popular excitement; that a careful consideration of the testimony forced the conclusion "that the deputies were the victims of a sudden panic, under the pressure of which judgment and discretion entirely forsook them;" that the miners, although "turbulent and demonstrative," were unprovided with deadly weapons, and "were not rioters, notwithstanding the unjust intimations to that effect thrown out to the jury in the charge of the court;" and that there was nothing in their "attitude and demeanor" which justified "the belief that reckless slaughter was necessary."

For. Rel. 1898, 80–82, 87, 97–109, 117–148, 151.
See also Mr. Hengelmüller, min. of Austria-Hungary, to Mr. Day, Sec. of State, April 26, 1898, id. 110; Mr. Tower, min. to Austria-Hungary, to Mr. Day, Sec. of State, June 1, 1898, id. 111.

"In the matter of the claim of the Austro-Hungarian Government for indemnity on account of the shooting of certain Austro-Hungarian subjects by Sheriff Martin and his deputies at Lattimer, Pa., I have the honor to inform you that the Department has given attentive consideration to the report by Mr. Robert D. Coxe, the representative of your Government at the trial of the sheriff and his deputies on September 10, 1897.

"Mr. Coxe's report opens with the statement that 'it may be assumed that the prosecution made out a prima facie case.' To one not familiar with our settled course of procedure this statement, while technically accurate, is apt to be misleading. It was not disputed at the trial that the deputies shot and wounded or killed the strikers whose claim for indemnity is presented by the Austro-Hungarian Government. The bare proof of the undisputed facts, under our system of procedure, makes out a prima facie case. But this results not from any proof of actually criminal conduct or guilt on the part of the sheriff and his posse, but from the rule of procedure that any officer who may be prosecuted criminally or civilly for any acts done colore officii is required to show affirmatively in defense the fact that he was an officer, and that the act complained of was done under color of his office in the lawful discharge of his duty. When that is proven the defense is completely made out. That was done, or attempted to be done, in the trial of Sheriff Martin and his deputies; and the question of their guilt or innocence depends on the question whether the sheriff and his deputies, in doing the acts complained of, were within their right in the lawful discharge of their duty. This raises the question of fact. The sheriff is the official conservator of the peace of his county, and the crucial question is whether there was an actual or threatened disturbance of the peace such as to justify preventive or repressive measures; whether a riot was threatened or impending, and, if so, whether the rioters persisted in their unlawful conduct after the sheriff had commanded them to disperse. The facts showing that such was the condition of affairs at and previous to the time of the shooting are recited in the report of the Assistant Attorney-General, Mr. Hoyt, who witnessed the trial as the representative of this Government; and, as will be shown, they are abundantly established by the report of the testimony of the witnesses made by Mr. Coxe, the representative of the Austro-Hungarian Government.

"Mr. Hoyt's report states that the case was fairly tried; that 103 witnesses were examined for the prosecution and 111 for the defense;

that the story told by the witnesses for the prosecution shows that—

"'On the evening of September 9, 1897, at Harwood, near Hazleton, a meeting of the strikers was held, at which it was decided to go the next day, peaceably and without any weapons, to Lattimer, and ask the men there to go on strike, but not to use force nor to destroy property. At noon the next day about 250 men from Harwood and other points started from Harwood and marched to West Hazleton, receiving accessions from Crystal Ridge and other surrounding villages. At West Hazleton the sheriff and his posse met them and told them to disperse; there was some altercation there between the strikers and the sheriff's posse, and then the strikers took a road to Lattimer which passed along the outskirts of Hazleton. At the same time the deputies boarded the cars of a trolley line running from Hazleton to Lattimer and reached the latter place ahead of the strikers. The deputies lined up at Lattimer in front of a row of houses along and a short distance from the road running into Lattimer from the direction of Hazleton, and when the strikers arrived there the sheriff went forward alone and met them again, his deputies remaining on the side of the road behind him, and once more ordered them to disperse. He seized successively two of the strikers by the coat, and while he was engaged in a scuffle with them and with other strikers who gathered around him, one or two shots were heard, but from what source the witnesses (or all but two or three of them) did not definitely say. Then the deputies began to shoot at the strikers, first some scattering shots and then a volley, and the strikers broke and fled. The shooting continued for several minutes while the fleeing strikers were endeavoring to get to cover up the slopes along the road. Many of the witnesses testified that the sheriff informed the strikers at West Hazleton and Lattimer who he was, and produced a paper which he stated to be a proclamation, but did not read.

"'It appeared that the strikers were unarmed; that small clubs which they had previously carried were thrown away on the march between West Hazleton and Lattimer; that they were peaceable and orderly in their conduct on the march, were not riotous either at West Hazleton or Lattimer, and at neither place made an assault upon the sheriff or his deputies, or offered any violence, or used threatening language to them. When the crowd stopped before the sheriff at Lattimer, 10 men or more gathered around him, and while he was parleying with them and endeavoring to pull to the side of the road the men whom he had seized by the coat, the main body of strikers pushed slowly ahead, and at that point and moment the deputies began to fire.

"'Witnesses among the strikers testified that they had not stopped or beaten men on the road from Harwood to West Hazleton, and

thence to Lattimer, nor compelled men to join their number against their wills; that there were 300 or more in their assemblage; that they only went to Lattimer to have a talk with men there, to show themselves, and to induce the Lattimer men by peaceable means to join their strike for more wages. Witnesses also testified to violent language and threatening behavior on the part of the deputies at West Hazleton before the shooting, and again at or near Lattimer after the shooting. The testimony was cumulative that the strikers were peaceable and unarmed, and did not on the march, nor at West Hazleton, or Lattimer exhibit any such conduct as to justify the volley of the deputies.

"'According to the indictments, there were 19 men killed and 38 wounded. . . . Of the men killed 10 were Austrian subjects, and of the men wounded 11 were Austrian subjects.'

"The story of the witnesses for the defense shows, according to Mr. Hoyt's report, that—

"'For a week or more preceding the 10th of September the people of the region had been kept in a terror-stricken condition, owing to the fact that the employees of one of the mines near Harwood had gone on a strike and had induced and compelled the men at other mines to follow them; and had been organizing and assembling marching parties from day to day, which proceeded to various mines, collieries, and open workings, and throughout the villages and country generally; compelled men to cease work, drove the workmen away, stopped the engines, went into the houses of laborers and other residents, and by threats of violence compelled men against their wills to join them; carried and used clubs and other weapons, beating and chasing men who did not wish to join them, and driving them to the brush, shooting at them, and conducting themselves on numerous occasions throughout the week preceding September 10 in such violent, threatening, and lawless manner in both speech and deed that the law-abiding and peaceable citizens and residents were alarmed and fearful for their safety and even for their lives.

"'It also appeared that the sheriff, being appealed to by owners of property for protection of themselves and their employees, went to Hazleton on September 5, duly constituted a large number of citizens as armed deputies, published and posted, in concert with the sheriffs of Carbon and Schuylkill counties, a proclamation against rioting, and instructed the deputies generally that it was their duty to maintain peace at all hazards, but not to take life unless his life or their lives were in danger. It also appeared that the sheriff carefully cautioned his men to keep cool upon all occasions, especially when they met bodies of strikers, and that if his life or their lives were in danger at any time, and that if he was not able for any reasons to give suitable commands, including the command to fire, they

must proceed in such extremity according to their own discretion, under the direction of the leaders whom he had selected.

"'Between September 5 and 10 the sheriff and some or all of his deputies proceeded about the country as called upon; met on various occasions and at sundry points disorderly bands of strikers proceeding about to the collieries and mines, intimidating and stopping the workmen, and successfully dispersed them, without any more violent manifestations than some rough language and threats.

"'On September 10 the sheriff and his posse met the mob, consisting of 400 or 500 men, on their march from Harwood to Lattimer, at West Hazleton, read his proclamation, and commanded them to stop and disperse; arrested one man who refused to stop; passed through the strikers, who handled him somewhat roughly, but after some violent talk on the part of the strikers, refusing to heed his commands and disperse, he did nothing to prevent their march through the outskirts of Hazleton to Lattimer. At the latter place, after lining up the deputies on the side of the road so as to meet and stop the mob before they reached the breaker, the sheriff went forward and met them; commanded them to stop; asked what they were going to do, to which they replied, "Stop Lattimer mines;" and then, upon the sheriff's proceeding to arrest one of them who spoke riotously, many men in the foremost ranks surged around him, knocked him down, and tried to take away his revolver, which he held in his hand to enforce his commands. He did not intend to shoot unless he was compelled to, and, as a matter of fact, he did not shoot, although he tried to shoot one man who struck him a blow on the face which sent him to his knees. During this altercation and assault upon him two of the strikers with revolvers endeavored to shoot him, and one with a knife struck at him.

"'During these proceedings the main body of strikers moved forward past the crowd, around the sheriff, and proceeded, according to many witnesses, pursuing their way toward Lattimer breaker, and, according to several witnesses, they turned at that moment and moved violently and with shouts toward the deputies.

"'All of these events happened within a very brief space of time, and just at this point, when the sheriff's life was in danger and a threatening attack upon the line of deputies had begun, after one or two preliminary shots (the source of which could not be exactly located, though there was evidence showing that they proceeded from the rear of the line of deputies, where three of the strikers were located, beckoning the main body to come on to the assault upon the deputies), a portion of the line of deputies fired the volley described, but ceased firing within a half minute or thereabouts, and then the deputies, or many of them, proceeded with the sheriff to assist in caring for the dead and wounded.

"'It appeared from the story of the defense that the strikers at West Hazleton, as well as at Lattimer, were violent in their actions and language, as they had been during the series of occurrences leading up to Lattimer, and that the deputies made no threats and acted coolly and without violence both at West Hazleton and after the shooting.'

"Mr. Coxe does not report the evidence adduced on behalf of the prosecution, but contents himself with the statement that a prima facie case was made out. He does set out an abstract of the testimony of the witnesses for the defense. By his report of the testimony it is shown, out of the mouths of many witnesses, that the strikers on and prior to September 10, 1897, endeavored to compel others to join them; that they pursued and chased others, who fled; that some of them had pistols, revolvers, and guns, and fired shots at inoffensive people; that large numbers of them carried clubs and pieces of iron and used intimidation, menaces, threats, and opprobrious epithets, which, in popular parlance among the laboring classes, are regarded as insulting in the last degree, as a challenge to physical conflict, and as a sign that the speakers are resolved to persist in their course without regard to consequences; that on September 10, before the shooting occurred at Lattimer, the sheriff halted the strikers, saying to them, 'I want you to stop,' and one man replied, 'You can't stop us,' and they said that they would not stop, and in a few minutes they marched on, two of them grappling with the sheriff, striking him a heavy blow on the cheek, which brought him to his knees, two men holding revolvers and one holding a knife, with which he made a lunge at the sheriff, when the rest of the strikers rushed toward the deputies and the shooting began.

"In his instructions to the jury the judge recited a portion of the testimony of the sheriff as not being in any material part contradicted by the evidence on behalf of the prosecution. It shows that the strikers used the insulting epithets above referred to; that the sheriff read the proclamation to them; that they pushed right on by him; that the crowd surged around him, striking him a terrific blow on the side of the head; that the man with a knife made a lunge at the sheriff while on his knees, and while he was in that posture the shooting began.

"The legal principles by which the validity of this claim is to be determined may be stated in a few propositions.

"No government insures the absolute security of all foreigners who may happen to be within its territory. Aliens, as well as nationals, are bound to respect the laws, the institutions, and the constituted authorities of the State in whose territory they reside. They are treated the same as nationals, and, like the latter, they are, in case of infraction of the penal law, prosecuted and punished. In

particular, if they take part in an insurrection or in a civil war, the treatment to which they expose themselves in such lawless actions affords no legitimate ground for diplomatic intervention.

"The responsibility of governments towards foreigners is not more extensive than that of the foreign sovereign toward his own subjects. The duties of hospitality do not prevent the entire exercise of the right which belongs to sovereignty to employ the legal means to provide for the preservation of the State, nor are foreigners entitled to a privileged position, nor are they exempt from the consequences of criminal conduct, threatened or committed, nor are they to be indemnified for damages resulting from such conduct and from the imperious necessity of watching over the public safety and welfare.

"This Government recognizes the international obligation to do justice, but it can not admit that in this case legal injustice has been done. Even if it were to be conceded that the sheriff and his deputies were acting wrongfully and unlawfully, still the remedy by way of diplomatic intervention can not be invoked until all remedies have been exhausted before the ordinary judicial tribunals. In this case abundant remedies are afforded for redress, if any actionable wrong has been committed; but the disposition of this claim may safely be rested on higher grounds—on the ground that aliens are subject to the same rules of law and order, of peace and justice which bind the citizens of the United States. Whoever sojourns in a foreign land having a settled and pure administration of justice impliedly submits to the local jurisdiction and to the requirements of the municipal law. This Government can not tolerate a state of anarchy, either threatened or inaugurated, in communities composed either of its own citizens or of aliens who may engage in industrial or other pursuits within its territory. If they obey the precepts of the law, it will protect them; if they defy the law and the constituted authorities, then, in common with all others who participate with them in such acts of lawlessness and violence, they must be deemed to accept the consequences of the conflict which they invite.

"There has in this case been no denial of justice, which should be shown as a prerequisite to diplomatic intervention. There has been no denial of justice, because a careful investigation of the rulings of the court at the trial and the instructions to the jury shows that they are characterized by ability, learning, integrity, and impartiality. And if there was any degree of feeling in the community where the strike occurred it was rather creditable than otherwise. It can not be justly characterized as prejudice in the judicial sense of that term, but was rather that sentiment which is ordinarily and inevitably felt against criminal transgressions by all well-ordered and self-governed communities who make and enforce their own laws through agencies

appointed by law and which depends for its enforcement upon the active and healthy public sentiment which lies at the foundation of all law and order. It is not shown that the trial of the sheriff and his deputies was not a fair one, nor is it shown that a legal wrong was done by the sheriff and his deputies, because there was abundant evidence given at the trial, and justifying the verdict rendered, that the Austro-Hungarian subjects who were slain and wounded were aggressors and violators of the law in refusing to obey the command of the sheriff to disperse. The command was seasonably and lawfully given, and even though they may have felt that the command was an unnecessary one, yet the proper respect due to the sheriff as the conservator of the peace of the county and the desire to avoid disorders and the possible effusion of blood which might occur by reason thereof made it their duty as law-abiding citizens to obey the command.

"The principles of international law which support the foregoing conclusions on the facts shown are enunciated by Rivier, Fiore, and others, and accord with the uniform practice and precedents of this Government, not only in controversies in which claims for indemnity have been made by citizens or subjects of foreign states against this Government, but also where such claims have been made by its own citizens, invoking its diplomatic intervention in their behalf against foreign states. These principles were enunciated by Mr. Fish, Secretary of State, in 1873, and again in 1875; by Mr. Buchanan, Secretary of State, in 1848; by Mr. Webster, Secretary of State, in 1851; as well as by Secretaries of State, Mr. Bayard and Mr. Marcy, and as shown in 2 Wharton's Digest, section 230.

"In conclusion, the Lattimer strikers were disturbers of the public peace and violators of the law. They were rapidly drifting into a state of petty war. It was the duty of the sheriff to take measures to prevent, as well as to repress, civil tumults and disorders. On previous occasions he had commanded them to disperse and they obeyed. They were perfectly familiar with his official position and the nature of the authority he exercised. If they had obeyed his lawful command no blood would have been shed; and in their lawless and aggressive conduct, challenging the embodied force of the State, they placed themselves beyond the protecting pale of the law. To reward the wounded living and the heirs of those slain under such circumstances, would be offering a premium to lawlessness and inviting renewed outbreaks and riots.

"This Government is therefore unable to admit the justice of the claim."

Mr. Hay, Sec. of State, to Baron Riedl von Riedenau, Austro-Hungarian chargé d'affaires ad interim, Feb. 1, 1899. For. Rel. 1898, 152.

See annual message of President McKinley, Dec. 5, 1898.

In a note of April 28, 1899, the Austro-Hungarian legation at Washington expressed the dissent of that Government from the views stated in the foregoing note. The Government of Austria-Hungary had, it was said, consistently maintained that the real question to be determined was whether the sheriff and his men, in their capacity as public officers, had violated their duty or overstepped the bounds of their powers; and that if by so doing they had inflicted an injury, the Federal Government was liable to make indemnity for it whether the sheriff and his deputies were or were not found guilty of murder. The United States had based its reply solely on the facts elicited at the trial, where the only question at issue was whether the defendant were guilty of the crime with which they were charged; and, as the United States had not investigated the charges based upon the investigation made in behalf of the Austro-Hungarian Government, it could not be admitted that the question of indemnity was disposed of by the result of the trial. It was alleged and had not been refuted, said the note, that the workmen who took part in the procession from Harwood to Lattimer, September 10, 1897, were unarmed and had no intention of resorting to deeds of violence; that the sheriff, whose order not to march through West Hazleton had been quietly obeyed by the men, did not on his second meeting with them near Lattimer exhaust all means of peaceably exerting his authority; that, on the contrary, he opened fire on unarmed and defenseless people who broke and ran without offering any resistance. It thus appeared, said the note, that the victims had been guilty of no act of violence or insurrection which could justify the severity used against them, and that the sheriff and his deputies acted illegally and in excess of their powers.[a]

The Austrian note, while discrediting in general terms the danger to which the sheriff was alleged to have been exposed, proceeded to examine the four legal positions advanced in the reply of the United States. As to the first—that the responsibilty of governments toward aliens is not more extensive than that toward citizens or subjects, and that aliens can not claim more favorable treatment than natives—its general validity could not, said the note, be admitted. The individual is unconditionally subject to the action of his own State, but not so the alien. The latter doubtless is subject to the laws of the country, but he "is not obliged to suffer absolute wrong."[b]

[a] In this relation the note quoted from Hall's International Law, p. 266, the statement that the State is responsible for the acts or omissions of its administrative authorities which are productive of injury to a foreign state or its subjects so long as such acts are not disavowed and punished.

[b] Citing Bello, Principles of International Law, 82; Franz von Liszt, International Law, 126.

As to the second position—that aliens in general have no claim to indemnity for injuries resulting from acts necessary to the public safety and welfare, especially if they take part in an insurrection or civil war—the note maintained that, even admitting the principle to be correct, it could not be conceded that the disturbances at Lattimer amounted to such a condition of things. The strikers had no political object in view and no intention except that which related to the stopping of work in the mines, nor was there any suspension of the power of the State to act.[a]

As to the third position—that, even if the sheriff and his deputies acted unlawfully, diplomatic intervention could not be invoked, since all the judicial remedies had not been exhausted—the Austrian note maintained that "there is a denial of justice, not only when a well-founded legal claim, preferred by the competent authorities, does not receive attention, but there is, in principle, a denial of justice when, in any particular case, a decision is pronounced which is evidently in contravention of right, even if the case had been conducted in such a way that all legal forms have been accurately and strictly observed." Hence, if there arises "a de facto denial of justice," then, since the making of reprisals has fallen into disuse, the state which considers itself wronged is undoubtedly authorized to intervene diplomatically.[b] Besides, the result of the criminal trial by which the sheriff and his deputies were in no wise censured would render civil suits for damages almost hopeless from the beginning, and the men were not in a position to defray the expense connected with such steps.

As to the fourth position—that the illegality of the sheriff's course had not been shown—the Austrian note contended that such illegality was established by the evidence collected by the Austrian representatives and laid before the United States. An appeal was therefore made to the sense of justice and equity of the United States, with a proposal that, if the appeal should not be granted, the question should be submitted to international arbitration.

Baron von Riedemann to Mr. Hay, Sec. of State, April 28, 1899, For. Rel. 1899, 31.

The Government of the United States answered that nothing was found in the note to alter the conviction previously expressed that the case was "not one for diplomatic intervention. The parties," said the United States, "have a resort to the courts for the recovery of damages if any have been unlawfully occasioned, and this remedy

[a] Citing F. von Martiz, International Redress in Penal Cases, 283.

[b] Citing Grotius, De Jure Belli ac Pacis, book 3, chapter 11; Heffter, sec. 103a; Wharton, Int. Law Digest, II, sec. 230.

has not ever been invoked. This Government is convinced that said strikers were engaged in acts of lawlessness and that any injuries inflicted were sustained by them in resisting the lawful efforts of the local authorities to keep the peace. . . . The maintenance of internal law and order is of sovereign concern to the Government of the United States; and while, out of consideration for the Government of His Imperial and Royal Majesty, this Government would be pleased to defer much to His Majesty's wishes and feelings, I regret that it is unable to do so in this case by consenting to the arbitration of a claim which, in any form, is believed to be inadmissible."

Mr. Hay, Sec. of State, to Baron von Riedenau, June 11, 1899, For Rel. 1899, 39.

See, also, President McKinley's annual message, Dec. 5, 1899.

X. *CLAIMS BASED ON WAR.*

1. Claims Not Usually Allowed on Account of Operations of War.

§ 1032.

A claim was presented to the Russian Government in behalf of a citizen of the United States for the loss of certain property destroyed by the burning of Moscow in 1812. The request for redress was so peremptorily refused that it appeared to be "utterly vain and useless" further to press the matter, which was accordingly dropped.

Mr. McLane, Sec. of State, to Mr. Treadwell, Nov. 30, 1833, 26 MS. Dom. Let. 103.

"The liability of this Government to make amends to those Prussian subjects who complained of maltreatment and robbery by soldiers in the service of the United States in Mexico, can not be acknowledged. It is believed that no war in modern times has been prosecuted with greater forbearance towards non-combatants of all descriptions, than that which characterized the conduct of our forces in the war between the United States and Mexico. Not only was it our belligerent policy to respect private persons and property, as indicated by the orders to our commanding officers in that country, but everything was done which could reasonably have been expected towards carrying that policy into effect. Instances of irregularities undoubtedly occurred, in which both foreigners and Mexicans may have suffered, but this should be considered the fortune of war, from which no foreigners settled in that country had any right to expect to be free.

"You seem to suppose that because the United States claimed and may have received indemnification for injuries done to their citizens during the civil wars in Mexico, they ought to indemnify those for-

eigners who may have been injured during our war with that country. No analogy can be perceived between the two cases. The United States had a treaty with Mexico which promised protection to their citizens in that country. When this stipulation was disregarded by Mexican officers, during the commotions in the Mexican Republic, the Government of that Republic became accountable therefor. If the United States had a treaty stipulation with Prussia by which they engaged to indemnify Prussian subjects domiciled in a country with which we might be at war, for injuries from troops engaged in prosecuting the war in such foreign country, that stipulation would be applicable in this instance and would be respected. No such stipulation, however, exists. It is not even pretended that the injuries complained of resulted from any orders or connivance of officers of the United States. On the contrary, upon the complaint of the sufferers, measures were adopted to inquire into the subject, which, it seems, were defeated by their failure to appear before the proper tribunal."

Mr. Marcy, Sec. of State, to Baron Gerolt, Prussian min., Feb. 15, 1854, MS. Notes to Pruss. Leg. VII. 10.

"Baron Gerolt intimates that foreigners in Mexico must be considered as under the special protection of their respective governments on account of the almost constant state of anarchy in that country. The undersigned, however, understands that Prussia as well as the United States has recognized Mexico as an independent nation. This implies an acknowledgment that the Mexican Government is entitled to the rights and is capable of discharging the duties of a sovereign state, and as such is competent to protect foreigners within her jurisdiction. But even if, for argument's sake only, it were to be allowed that foreign governments were warranted in considering their citizens or subjects as under their own protection in Mexico, at least during the frequent civil wars in that country, the same right cannot be held to exist during a war between Mexico and any other foreign power. The rights of neutrals in Mexico must, in such a case, be measured by the general law of nations."

Mr. Marcy, Sec. of State, to Baron Gerolt, June 15, 1854, MS. Notes to Prussian Leg. VII. 15.

This note related to certain claims of Prussian subjects domiciled in Mexico against the United States for the acts committed by the latter during the war between the United States and Mexico.

A citizen of the United States while on his way from California, in May, 1856, was, as he alleged, induced to stop in Nicaragua for the purpose of engaging in a certain business. While so engaged, in the following October, his establishment was attacked by a party of soldiers, by whom he was wounded, and his property plundered.

He sought to make a claim against Nicaragua for $80,000. The Department of State declined to present it. "When Mr. Butts," said the Department, "domiciled himself in Nicaragua, he knew that the Republic was in a state of war, and assumed therefore the necessary hazards which attend the residence even of a neutral in a belligerent country. In estimating these hazards, he probably weighed against them the profits which he hoped to derive from this business, and if he has been disappointed in his expectations, this Government can only lament that it is unable to afford him any remedy."

Mr. Cass, Sec. of State, to Mr. Burns, M. C., April 26, 1858, 48 MS. Dom. Let. 323.

Persons domiciled in the Confederate States can not claim for damages sustained by them from the forcible manumission of their slaves by Federal troops.

Mr. Seward, Sec. of State, to Mr. Mercier, French min., Nov. 8, 1862, Dip. Cor. 1863, II. 742; same to same, Feb. 24, 1863, id. 752.

"The undersigned Secretary of State of the United States, having taken into further consideration the note of the 9th instant, which Count Wydenbruck, envoy extraordinary and minister plenipotentiary, of His Majesty the Emperor of Austria, addressed to this Department, claiming indemnification for certain tobacco belonging to the Austrian Government, the principal part of which was destroyed by the insurgents in consequence of their having set fire to the warehouses where it was stored on the evacuation of the city of Richmond, he has the honor to communicate the decision of this Government upon the subject.

"It is believed that it is a received principle of public law, that the subjects of foreign powers domiciled in a country in a state of war, are not entitled to greater privileges or immunities than the other inhabitants of the insurrectionary district. If, for a supposed purpose of the war, one of the belligerents thinks proper to destroy neutral property, the other can not legally be regarded as accountable therefor. By voluntarily remaining in a country in a state of civil war, they must be held to have been willing to accept the risks as well as the advantages of that domicile. The same rule seems to be applicable to the property of neutrals, whether that of individuals or of governments, in a belligerent country. It must be held to be liable to the fortunes of war. In this conclusion, the undersigned is happy in being able to refer the Austrian Government to many precedents of comparatively recent date, one of which, a note of Prince Schwartzenberg of the 14th of April, 1850, in answer to claims put forward in behalf of British subjects, who were represented to have suffered in

their persons and property in the course of an insurrection in Naples and Tuscany."

Mr. Seward, Sec. of State, to Count Wydenbruck, Austrian min., Nov. 16, 1865, MS. Notes to Aust. Leg. VII. 193.

In connection with the question whether a government is "responsible for damages caused to domiciled or resident foreigners, in its efforts to repress an insurrection," William Beach Lawrence says:

"This question was raised, when the revolutionary movements in 1849 and 1850 at Naples and in Tuscany were frustrated by the interference of Austria. In 1850, an English fleet proceeded to Naples to support, before the King of the two Sicilies, a demand for indemnity presented by the English minister in favor of British subjects who had suffered damages by the bombardment of Messina. About the same time, the English minister at Florence presented to the Grand Duke of Tuscany a similar reclamation based on the losses which the capture of Leghorn had caused to English merchants. The Grand Duke invoked the support of the court of Vienna and requested the arbitration of Russia. The latter refused to serve as arbitrator, because she did not admit the principle of the British claims. But the cabinet of St. Petersburg addressed a note to that of London. 'According to the rules of public law,' said the dispatch of Count Nesselrode of May 2, 1850, 'as they are understood by Russian policy, it can not be admitted that a sovereign forced to repossess himself of a town occupied by insurgents, is bound to indemnify foreign subjects who may have suffered damage from the assault on such town. When they establish themselves in a country other than their own, they accept the chances of all the perils to which that country may be exposed.' 'If the right which the English Government claims in Tuscany and at Naples should prevail,' further said Count Nesselrode, 'it would result in giving to British subjects an exceptional position abroad, far beyond the advantages enjoyed by the inhabitants of other countries, and would create for the governments which welcome them an intolerable situation. Their presence would be, to the fomenters of trouble, an encouragement to revolt; for if, behind the revolutionary barricades, there should continually rise up the menacing eventuality of future reclamations in favor of English injured in their property by the act of repression, every sovereign whose position or whose relative weakness exposed him to the coercive measures of an English fleet, would find himself stricken with helplessness in the face of insurrection. If claims such as those made in Sicily and in Tuscany should ever be supported by means other than those of conciliation, His Majesty would inevitably be led to examine and specify in a more formal manner the conditions under which he would henceforth consent to accord in his states to British subjects the right of residence and of property.'

"Prince Schwartzenberg expressed himself as follows, April 14, 1850: 'However disposed may be the peoples of Europe to extend the limits of the right to hospitality, they will never do so to the point of giving to foreigners a treatment more favorable than the laws of the country assure to nationals. The first right of every independent state is to assure its own preservation by all the means in its power. When a sovereign using this right is obliged to resort to arms for the suppression of an open revolt, if, in the civil war which results from it, the property of foreigners established in the country is injured, it is a public misfortune which foreigners must share with nationals, and which no more gives them the right to an exceptional indemnity than if their reclamation was founded on any other calamity proceeding from the will of men.'"

Lawrence, Commentaire sur Wheaton, III. 128.

In the House of Commons, June 4, 1850, Lord Palmerston said:

"With regard to the supposed announcement that the honorable gentleman imagines the Governments of Russia and Austria to have made, it is true that in arguing—that in stating their opinions upon, not the Greek claims, but other claims that Her Majesty's Government have made of a similar kind, those Governments, acting on an imperfect knowledge of the circumstances, were of opinion, especially Austria, that it was impossible to draw a distinction between the subjects of a country and foreigners resident in that country, and that if a government chooses to refuse to its own subjects compensation for injuries of any kind received in the course of hostilities, they are entitled also to refuse compensation to the subjects of any foreign state; and it was indicated as an argument to the Government of Great Britain that it might become necessary for the Government of Austria to consider how far it would be its own interest to encourage the residence of British subjects in Austria. It was not stated, however, whether it would exclude our merchants, or our civil engineers employed in constructing their railways, or the travellers who were spending their money in that country. That was an argument, and nothing more. But against that argument I might quote the example of the Government of Austria itself. Very recently an Austrian merchant brig wrecked on the coast of Ireland, near Troy Island, was plundered by the people of that district. The government of Ireland commenced a prosecution for the purpose of punishing the plunderers, and recovering for the owners and masters of the vessel the amount of their loss. The prosecution, however, failed in consequence of a question that arose as to the place where the venue was laid, and no redress could be received in a court of law. The Government of Austria applied for compensation, though in a case where it is evident a British subject could have obtained none in course of law; and Her Majesty's Government, acting on that liberal principle that always guides their conduct in matters relating to foreign countries, granted compensation to the extent of 500*l*.

"Mr. M. Gibson asked when was the decision come to to compensate the Austrian ship on the part of the English Government?

"Viscount Palmerston thought it was about a month ago." (Hansard, Parliamentary Debates, CXI. 717–719.)

See Calvo, Droit Int. III. §§ 1284–1285; Fiore, Droit Int. Public, I. §§ 670–677; Pradier-Fodéré, Traité de Droit Int. Public, I. § 205.

"The Court of Claims, adopting the language of my predecessor, Mr. Seward, has decided it to be the law and usage of nations that one who takes up a residence in a foreign place and there suffers an injury to his property by reason of belligerent acts committed against that place by another foreign nation, must abide the chances of the country in which he chooses to reside; and his only chance, if any, is against the government of that country, in which his own sovereign will not interest himself. Such has been the doctrine and practice of the United States and of the great powers of Europe, and this Government, therefore, can not intervene in behalf of Mr. Fougen, or of any citizen of the United States, under the same circumstances."

Mr. Fish, Sec. of State, to Mr. Washburne, min. to France, No. 272, Apr. 28, 1871, For. Rel. 1871, 335; MS. Inst. to France, XVIII. 508, acknowledging the receipt of Mr. Washburne's No. 413, of April 8, 1871, relating to a claim sought to be made by a Mr. Fougen, who stated that he was a citizen of the United States, for the appropriation and destruction of his property by German troops in France during the Franco-German war.

"He claims, as an American citizen, resident in Mexico, compensation for losses and injuries sustained in Mexico, during a state of public war, at the hands of a hostile invading army. It is an undoubted principle of public law that when one power, in the exercise of its sovereign rights, deems it proper to exercise acts of hostility against the territory of another power, the citizens of foreign states, residing within the arena of war, whose property may be injured or destroyed during the war, have no right to demand compensation on the ground of their being citizens of a third power, for losses which the necessities of war may bring upon them in common with the citizens of the state invaded."

Mr. Fish, Sec. of State, to Mr. Niles, Oct. 30, 1871, 91 MS. Dom. Let. 211, concerning a claim of Juan A. Robinson for losses inflicted by the French troops in Mexico in 1865.

The mere temporary arrest and detention of a citizen of the United States in France at the time of the siege of Paris, during the Franco-German war of 1871, does not, by itself, give ground for a claim against the French Government unless it be shown that the arrest was without excuse or probable cause. "Citizens of the United States, in common with other foreigners who were unfortunate enough to be residents of France during the period to which Mr. Halzer's memorial refers, were rendered liable to certain inconveniences which seem to have been unavoidable under the circumstances, and are inseparable from a condition of war such as France was then in. Such a state of

society as then existed in France demanded from foreigners who were at the time resident there the utmost prudence and caution; whether Mr. Halzer exercised such prudence does not clearly appear from the papers which he has placed on file. His case does not seem to present any feature not common to the cases of many citizens of the United States who were arrested in France during that period on similar grounds, and under circumstances at least as favorable as those which surrounded Mr. Halzer."

Mr. Fish, Sec. of State, to Mr. Washburne, min. to France, Oct. 19, 1872, For. Rel. 1873, I. 239.

With reference to a claim sought to be made against the United States on account of the participation of certain individual American soldiers in the capture and pillage of Bagdad, Mexico, in January, 1866, the Department of State said: "If any offence were committed . . . for which the Government of the United States could justly be held responsible (which is explicitly denied), this Government could not admit the right of any other power than that of Mexico, within whose territorial jurisdiction the event occurred, to call on it for indemnification for losses accruing in consequence of that event to private individuals resident in the town. If such indemnification can rightfully be claimed by other governments in behalf of losses sustained by their citizens or subjects on account of those events, it should be claimed against the state within whose jurisdiction such alleged losses may be found to have been sustained."

Mr. Fish, Sec. of State, to Count Corti, Italian min., Dec. 9, 1872, MS. Notes to Italy, VII. 150.

As to the capture and pillage of Bagdad, see Moore, Int. Arbitrations, IV. 4029.

A claim was presented by the British Government in behalf of Alfred Ravenscroft, a British subject, on account of property alleged to have been taken from his store in Columbus, Georgia, on April 17, 1865, by United States soldiers, under command of General Wilson, by whom the town was captured on that day. The claimant's proofs were defective, and contained no statement as to the relations which he sustained towards the United States or the Confederacy during the civil war, but his actions tended to show that his sympathies were with the Confederacy. The decision of the Government of the United States, however, on the claim was not based on the insufficiency of the evidence. The town of Columbus had, said the Department of State, long prior to its capture by the United States forces been in possession of the forces of the Confederacy, which had been accorded by the British Government, of which the claimant was a subject, the rights of a belligerent. On April 17, 1865, it became the

objective point of contention between the forces of the United States and those of the Confederacy, and there was, said the Department of State, no principle of public law by which either belligerent was bound to make indemnity for property "destroyed in the necessary prosecution of hostile operations." Continuing, the Department of State said:

"Nor does the fact that Mr. Ravenscroft is a subject of Great Britain in any way affect his claim to compensation; being a resident within the seat of war at the time of his alleged losses, he was equally with the citizens of the country subject to the fortunes and incidents of war. Earl Granville, with his usual clearness, applies this principle to the case of Mr. Kirby, an English gentleman, residing at La Forte, Imbault, in France, during the late Franco-German war. The German forces had appropriated much of that gentleman's property for military purposes, and he sought the interposition of his own Government, to enable him to obtain compensation or indemnity for his losses. Lord Granville replies to his application by saying that 'it is out of their (the Government's) power to interfere to obtain any redress for him, inasmuch as foreigners residing in a country which is the seat of war are equally liable with the natives of the country to have requisitions levied on their property by the belligerents.' In another case his lordship says 'that Her Majesty's subjects, resident in France, whose property has been destroyed during the war, can not expect to be compensated on the ground of their being British subjects for losses which the necessities of war have brought upon them in common with French subjects.' And in still another case, that of the English residents at Chantilly, his lordship instructs Mr. Odo Russell, in presenting their case for the consideration of the Emperor of Germany, to state 'that Her Majesty's Government make no claim for the petitioners to be exempted, as British subjects, from the evils incident to a state of war, to which all other persons, resident in France, are exposed.'

"These views are in full accord with the long-established and well-understood rules which the necessities and exigencies of war give rise to. However much they may be modified in practice by the enlightened and humane spirit of modern times, the rules which govern the conduct and rights of belligerents in such emergencies are not changed."

Mr. Fish, Sec. of State, to Mr. Thornton, British min., May 16, 1873, MS. Notes to Gr. Brit. XVI. 101.

Reaffirmed in same to same, Oct. 6, 1873, id. 235.

"The claim to which your letter refers was brought to the attention of the President in 1871, in connection with a claim of a similar character on behalf of Mr. Blanton Duncan [for spoliation of real

property in France by German soldiers], and, together with the documentary proofs subsequently transmitted through the United States legation at Paris, was referred to this Department for consideration.

"The facts and circumstances were then carefully examined; and in replying to Mr. Duncan on the 16th of May, 1871, I took occasion to state that this Government was not in a position to dissent from the view then recently announced by the British Government in the following terms:

"'Her Majesty's Government do not consider that in strict right they would be entitled to claim compensation from the Prussian Government for the destruction of Mr. Smith's property, as it would seem that though an Englishman he has become the proprietor of a house and farm at St. Owen, and has established his wife and family there, by which proceeding he has so incorporated himself into the territory of France as to render it unavoidable that his family and property should be exposed like those of native citizens of France resident in the same district to the evils incident on a state of war.'

"The principle thus admitted by the British Government with reference to their own subjects, this Government has had occasion to apply to claims of a similar character preferred by citizens of other powers who were domiciled in the United States during our own late war. The doctrine is one long established and universally recognized, and no good reason is perceived for departing from it in the present instance."

Mr. Fish, Sec. of State, to Mr. Gibson, Dec. 30, 1875, 111 MS. Dom. Let. 263.

"However severe may have been the claimant's injuries, it must be recollected that like injuries are committed in most cases where towns are sacked, and that aliens resident in such towns are subject to the same losses as are citizens. It has never been held, however, that aliens have for such injuries a claim on the belligerent by whom they are inflicted. On the contrary the authorities lay down the general principle that neutral property in belligerent territory shares the liabilities of property belonging to subjects of the state."

Mr. Bayard, Sec. of State, to Mr. O'Connor, Oct. 29, 1885, 157 MS. Dom. Let. 483.

A citizen of the United States, who was carrying on business on an island in the bay of Rio de Janeiro at the beginning of the Brazilian insurrection of 1893, sought to make a claim against the Brazilian Government for the destruction of his property, including two lighters and three small boats, and for the breaking up of his business. It appeared that his place of business was directly in range of much of the firing between the opposing forces and was several times alternately occupied by the Government and the insurgents.

The Department of State, while declining to present a claim for damages inflicted by the insurgents, said that it was very doubtful also whether a claim could be made for injuries inflicted by the Government forces. "An alien domiciled in a foreign country is not," said the Department, "entitled to any greater privileges or immunities than a native. If war breaks out there, he, in common with the other inhabitants of the country, is necessarily exposed to the inconveniences and disadvantages of such a state of things, and, if his property is injured or destroyed, the Government can not legally be held accountable therefor." The Department cited Bluntschli, § 380 bis, to the effect that "states are not bound to allow indemnities for losses or injuries suffered by aliens or natives resulting from internal troubles or civil war;" Calvo, III. 144, 145, to the same effect; Mr. Frelinghuysen to the Belgian minister, April 17, 1883, Wharton's International Law Digest, II. § 224; Mr. Evarts to Mr. Hoffman, July 18, 1879, For. Rel. 1879, 924. The Department added, however, that, while a state was not obliged to make compensation for injuries such as those in question, yet indemnities had in many instances been voluntarily paid, and cited Vattel, book 3, § 232, to the effect that a sovereign ought to show an equitable regard for sufferers by the ravages of war, if his situation will admit of it. The Department was therefore willing to present a claim for the destruction of property by Government forces, and expressed the hope that, in view of the peculiar hardships in the case, a reasonable compensation might be made. It was added that if the Brazilian Government had compensated its own citizens or the citizens of foreign countries for similar injuries the United States would of course insist on the same treatment for its citizens. It was subsequently stated that the claims of several Brazilian companies for damages suffered during the insurrection had been paid by the Government, and a particular law was cited under which a Brazilian company had been indemnified for such losses. Some of the claims thus paid seemed to be similar in character to that of the American citizen in question, and, on the strength of their payment, the American minister was directed, within the limits of his previous instruction, to urge that a reasonable compensation should be made to the American citizen for his losses.

Mr. Olney, Sec. of State, to Mr. Thompson, min. to Brazil, No. 315, Jan. 29, 1896, MS. Inst. Brazil, XVIII. 171; same to same, No. 358, Oct. 10, 1896, id. 210.

In the case of the American schooner *James A. Simpson*, in which a claim was made for indemnity for damages done to the vessel by the fire of Government troops during the late insurrection in Brazil, the legation was instructed to make a full report as to the nature of the judicial remedy which the Brazilian minister of foreign affairs declared to be open to the claimant, whether this remedy was

against the Government or against individuals responsible for the injury, in case their action was not authorized by the Government, and whether the remedy was practical and substantial, or merely nominal and illusory. (Mr. Sherman, Sec. of State, to Mr. Thompson, min. to Brazil, No. 407, April 22, 1897, MS. Inst. Brazil, XVIII, 238.)

A claim was presented by the British Government to the United States in behalf of William Hardman, a British subject, for £93, for loss of property destroyed through the action of United States troops at Siboney, Cuba, on July 28, 1898. The claim was admitted to belong to the class of those arising from the calamities of war, for which compensation could not strictly be demanded. The President, however, favorably recommended it to Congress in a message of Dec. 13, 1901. The Committee on Foreign Relations of the Senate, January 23, 1902, reported adversely upon it. The British embassy at Washington, on Dec. 31, 1902, again brought up the case, unofficially, and suggested that compensation be made as a matter of grace and favor; but Mr. Hay declined to entertain it, in view of the adverse report of the Foreign Relations Committee.

Mr. Hay, Sec. of State, to Sir M. Herbert, British ambass., personal, Jan. 27, 1903, For. Rel. 1903, 482.

For the report of the committee, see S. Rept. 224, 57 Cong. 1 sess., Jan. 23, 1902.

The destruction of goods by a public enemy does not release the owner from the payment of duties that have become due by law.

Wirt, At. Gen., 1819, 1 Op. 269.

When the British invaded Castine, in the State of Maine, the commander of the United States ship *Adams*, then lying in that port, burnt his vessel to prevent her from falling into the hands of the enemy. The fire was communicated to a neighboring warehouse, in which valuable property was destroyed, for which a claim was made against the Government. It was advised that the destruction was a casualty of war resulting from exposure, and that the Government was not liable.

Wirt, At. Gen., 1819, 1 Op. 255.

"Neutral property in a belligerent's territory shares the fate of war the same as that of subjects or citizens. If injured or destroyed in battle or siege, in the absence of circumstances evincing wantonness or culpable neglect on the part of the Government within whose jurisdiction it is, the public law furnishes the owner no redress against such Government. The case is not altered if the owner happens to be an officer of a neutral power."

Moore, Int. Arbitrations, IV, 3710, adopted in Bacigalupi *v.* Chile, United States and Chilean Claims Commission (1901), 151.

See, also, Wilson's Case, Spanish Claims Commission (1881), Moore, Int. Arbitrations, IV, 3674–3675.

A belligerent is not required to pay for damages to persons or property of enemies or neutrals which, being in the track of war, may be injured by the military operations.

Mr. Magoon, law officer, division of insular affairs, War Dept., Feb. 6, 1901, Magoon's Repts, 338.

"The resort to such measures as were adopted by the forces of the Haytian Government to suppress the local revolt against the Government and the laws may have been, and no doubt was, in the estimation of the Haytian Government, entirely justifiable, and this Government has no disposition to question the correctness of this view as to these precautionary municipal measures; but it follows, nevertheless, that the Government is answerable for the destruction of private property which may have been necessarily sacrificed to the success of such measures. It is because of the recognition by this Government of the necessities that such emergencies give rise to that it limits the demand in the present instance to compensation for actual losses."

Mr. Blaine, Sec. of State, to Mr. Langston, July 1, 1881, MS. Inst. Hayti, II, 275.

Mr. Fish's report of May 15, 1871, giving the reports of Mr. Whiting, Solicitor of the War Department, on claims by aliens for damages in the civil war, is in Senate Ex. Doc. 2, 42 Cong. special sess.

Mr. Lawrence's report on war claims of aliens is found in House Rept. 262, 13 Cong. 1 sess.

By Article VIII. of the treaty between France and the Hova Government of Madagascar, the latter agreed to pay 10,000,000 francs, to be applied to the settlement of French claims that were liquidated prior to the war between the two countries, and to the payment of all damages sustained by private persons of all nationalities on account of the war. The examination and payment of the claims was to devolve upon the French Government, and all persons having such claims were informed by public notice, on March 18, 1886, to present them, together with the documentary evidence in support thereof, either to the minister of foreign affairs at Paris before May 15, 1886, or to the French minister resident at Tamatave before July 15, 1886.

For. Rel. 1886, 308.

2. Nor for Seizing Resources of the Enemy.

§ 1033.

Case of Maza and Larrache.

By notes of December 2 and December 10, 1884, the Spanish minister at Washington presented a claim against the Government of the United States of the Spanish firm of Larrache & Co., successors of Maza & Larrache, on account of the alleged seizure and appropriation by the authorities of the United States, at Shreveport, La., in 1865, of 1,369 bales of cotton, valued at $700,000. It was alleged that the cotton was purchased by Maza & Larrache in the usual and legitimate course of their commerce; that it was seized and confiscated by agents of the United States Government in obedience to orders issued by the Treasury Department; and that the proceeds of the sale of the cotton were deposited in that Department.

Mr. Valera, Spanish min., to Mr. Bayard, Sec. of State, Feb. 19, 1886, For. Rel. 1887, 1003.

Mr. Valera also referred to his notes of Dec. 29, 1884, and Feb. 7 and March 10, 1885, presenting testimony in support of the claim.

In a note of June 28, 1886, Mr. Bayard pointed out that the claimants averred that the confiscated cotton was a part of 3,000 bales which the agent of Maza & Larrache purchased in Louisiana and Texas from the Confederate government in 1864. The case, as thus presented, appeared, said Mr. Bayard, to be a simple one of a private contract for commercial profit and mutual advantage between the claimants and the Southern Confederacy, which was at the time a recognized belligerent at war with the Government of the United States. The claimants knew that the commodity thus contracted for was at the time made use of by the Confederacy in various ways in carrying on the war. Its use for such purposes was publicly proclaimed by the Confederacy and its sale prohibited, except under regulations established or contracts with the Confederate government. Cotton was thus officially classed among war supplies, and as such was liable to be destroyed when found by Federal troops, or turned to any use which the exigencies of war might dictate. In the year in which the claimants made their purchase the Confederate war department, said Mr. Bayard, officially recognized cotton as 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. Continuing, Mr. Bayard said:

"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 indispensibles 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 Supreme Court of the United States in one case, where the property of a noncombatant 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 happened 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."

Mr. Bayard, Sec. of State, to Mr. Muruaga, Spanish min., June 28, 1886, For. Rel. 1887, 1006.

The statement above made with regard to the bombardment of Antwerp is erroneous. An indemnity was obtained by the United States and other powers, though from Belgium and not from the Dutch.

Replying to the foregoing note, on August 13, 1886, Mr. Muruaga pointed out that, while it was stated when the claim was first presented that Maza & Larrache had purchased the cotton under a contract with the Confederate government, it was subsequently shown by the affidavit of the agent of the claimants, which was sent to the Department of State on March 15, 1885, that the cotton was purchased "from loyal citizens of the United States (that is to say, noncombatants) in the States of Texas and Louisiana." The apparent contradiction, said Mr. Muruaga, was explained by the fact that the Confederate government exercised "strict surveilance" over the transportation of all cotton within its territory, and that no purchase could be made except through its officers or with their approval. He had, he said, not forgotten that the place where the purchase was made was within the jurisdiction of a power then at war with or in rebellion against the United States, and that the latter had forbidden all commercial transactions within that territory. But, said Mr. Muruaga, such a prohibition could not, according to the principles and practice of international law, be maintained against other nations unless by an effective blockade of the coast or by something equivalent thereto on land. It was believed to be a matter of history that the United States Government never seriously attempted to maintain by 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 Texas. Since no measures were taken actually to prevent merchants from carrying on commerce in that quarter, it was not reasonable to assert that the Spanish house of Maza & Larrache was engaged in illicit trade. Nor was the cotton in question captured while being carried across the Confederate lines during the war; nor was it seized during the period of active military operations. After May 13, 1865, no resistance was offered to the Federal authorities anywhere in the territories of the Union. The capitulation of the Confederate army of the trans-Mississippi department was signed on the 26th of that month, and General Grant's proclamation to the Union Army announcing the termination of the war was published on the 2d of June. After May 26, 1865, northern

Louisiana, where the claimants' cotton was stored, was, said Mr. Muruaga, peacefully occupied by the United States authorities. The cotton was seized by Treasury agents and taken from New Orleans during June, July, August, and November, 1865.

Mr. Muruaga said that he did not dispute the principle that foreigners or their agents domiciled in an enemy country for mercantile purposes were to be considered as belligerents, and that property abandoned by its owner in belligerent territory was subject to the chances of war and to confiscation. Nor did he deny that governments were not obliged to indemnify the owners of property destroyed in active warlike operations—such as bombardments, battles, and marches. This doctrine was, however, said Mr. Muruaga, subject to numerous exceptions. The Congress of the United States had in a large number of cases compensated 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 Treasury. In this relation he adverted to the captured and abandoned property act of March 12, 1863, and to the act of March 3, 1871, creating the Southern Claims Commission. Moreover, since the close of the war the American Government had concluded conventions with Mexico, England, and France, and the commissioners under these conventions had granted many claims growing out of the operations of the war. As examples of such cases he cited and examined several cases (Mr. Anderson, No. 333; Mr. Gárate, No. 699; Mr. Newton, No. 154, and Mr. Weil, No. 147) before the Mexican Claims Commission. The Anglo-American commission, under the treaty of 1871, also made a number of awards, said Mr. Muruaga, in favor of British subjects, many of whom had resided or been engaged in business within the Confederate lines, on account of property captured by the Union forces within the enemy's lines and subsequently confiscated or appropriated to the use of the United States. Some of these were claims for the value of cotton. The same course was followed by the French and American commission, under the convention of 1880, both in respect of cotton and of other property. Mr. Muruaga also cited the case of Carlisle, 16 Wall. 147, as that of a British subject who, although he was shown to have been engaged in furnishing saltpeter to the Confederate military authorities for the manufacture of gunpowder, was held to have a right to recover the proceeds of his property from the United States Treasury in view of the President's proclamation of amnesty of December 25, 1868. On these grounds Mr. Muruaga asked for a reconsideration of the case.

Mr. Muruaga, Spanish min., to Mr. Bayard, Sec. of State, Aug. 13, 1886, For. Rel. 1887, 1008.

In a note of December 3, 1886, Mr. Bayard reaffirmed the position that as cotton within the Confederate States was publicly recited in their obligations and bonds as a security for their payment, as its exportation and sale were controlled and regulated by statute and it thus became officially and publicly classified among the war assets and supplies of the Confederate government, and as its destruction was authorized wherever found, whenever military exigencies rendered it advisable to avoid capture by United States forces, it was to be considered as "a munition of war, as much as arms or powder," which the authorities of the United States had a right under international law and usage "to seize it as contraband whenever found within the theatre of war." War was, said Mr. Bayard, flagrant at the time and place where the contract with the Confederate government was made by the claimants, the state of war having lasted, as had been judicially determined, till August 20, 1866. Mr. Bayard also denied that the original statement that the cotton was purchased under a contract with the Confederate government was disposed of by the affidavit subsequently made by the claimants' agent; nor could he, he said, admit that "loyal citizens of the United States" and "noncombatants" were "equivalent or convertible terms;" nor was the issue affected by the statement that the cotton was purchased from "loyal citizens" of the United States. If the purchase was made when war was flagrant, with the cooperative approval of the Confederate officials, and if the cotton was held under shelter with the sanction of that Government, it must have been because the investment promised to be beneficial to the Confederacy and therefore prejudicial to the United States.

In support of the right of the United States under the law of nations to seize the cotton in question, in the summer of 1865, Mr. Bayard cited the case of Young *v.* United States, 97 U. S. 58. Mr. Bayard affirmed, however, that the seizure was not to be "narrowed to a question of contraband." Distinctions as to contraband had, he said, grown up from seizures made on board neutral vessels at sea. But here the seizure was not on board a neutral vessel, or on neutral territory invaded on grounds 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 the law of war. "I propose," said Mr. Bayard, "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: . . . 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."

As to the question whether, when the seizure was made, the war was over, Mr. Bayard maintained that a war such as the civil war, in which the belligerents were persistent and determined, could not be said to have closed until peace was conclusively established either by treaty when the war was foreign, or by an accepted proclamation where it was civil. In the summer of 1865 the condition of things in the Southern and Southwestern States was, said Mr. Bayard, such that the maintenance of military rule and the taking into possession by the United States of all property capable of use as military resources was essential to the permanent restoration of order, peace, and a common municipal law. It had accordingly been held by the Supreme Court that the civil war terminated in particular sections of the United States at the periods designated in the proclamations of the President (Batesville Institute *v.* Kauffman, 18 Wall. 151), and it was only by the President's proclamation of April 2, 1866, that the insurrection was declared to have ended in Louisiana and certain other States.

It might, said Mr. Bayard, be said that, while the seizure of the cotton may have been justifiable, the claimants should be paid for its value; but a party whose goods were confiscated as tainted with insurgency could not, he declared, claim compensation if he was himself implicated in such insurgency. In the present case the purchase was not made for legitimate business purposes in the Confederate States. The only value cotton had there was for blockade running, and the cotton in question was to be considered as having been stored for that purpose. But there was another and still stronger ground for confiscation. The Confederate government, long before the seizure in question, had, said Mr. Bayard, quoting the language of Mr. Justice Field in Radich *v.* Hutchins, 95 U. S. 212, prohibited the exportation of cotton from Texas to Mexico, except on condition that the exporter should sell an equal amount for the benefit of the Confederate government. Such a transaction was in the nature of giving "aid and comfort" to the enemy of the

United States, and was a transaction on which no suit could be maintained.

As to the cases cited by Mr. Muruaga from the decisions of international commissions, Mr. Bayard said that he was compelled to exclude these rulings from consideration not merely because they did not sustain the position for which they were cited, but also because, even if they did, they did not bind the Government of the United States, except in the cases in which they were rendered. But in no case that had been cited, said Mr. Bayard, 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 theatre of war as part of the military strength of that insurrection."

Mr. Bayard also observed that the claimants had had an ample and early opportunity to recover the proceeds of their captured cotton (if they could have cleared themselves from implication in the insurrection) under the act of March 12, 1863, 12 Stat. 820, incorporated in the Revised Statutes, sec. 1059. Under the principles laid down in United States *v.* O'Keefe, 11 Wall. 178, the claimants could have had access to the Court of Claims within the time specified to purge themselves from the charge of aiding and comforting the Confederacy, and their failure to avail themselves of that opportunity, and their holding back their claim for twenty years, had greatly strengthened the charge. In view of all the circumstances, Mr. Bayard said that he was constrained to deny the liability of the United States to make the compensation requested.

Mr. Bayard, Sec. of State, to Mr. Muruaga, Spanish min., Dec. 3, 1886, For. Rel. 1887, 1015.

See Mrs. Alexander's Cotton, 2 Wall. 404; United States *v.* Padelford, 9 Wall. 531; Lamar *v.* Browne, 92 U. S. 187.

Some time after the foregoing correspondence took place, Mr. Bayard, on July 7, 1888, asked the Secretary of the Treasury to cause the records relating to captured and abandoned property to be examined, in order to ascertain whether there was any foundation in fact for the claim. The Secretary of the Treasury replied on November 15, 1888. It appeared that none of the cotton alleged to have belonged to the claimants could be traced into the hands of the Treasury agents in New Orleans, and that neither the firm of Maza & Larrache nor their agent appeared in the records as the reputed owner of any cotton seized or collected by agents of the Treasury Department. The claim, therefore, seemed to be unfounded in fact.

MS. Misc. Letters, Dept. of State.

A party whose property, under the direction of the Continental Congress, had been removed during the war to prevent it falling into

the enemy's hands, could not obtain compensation from the commonwealth, such property having been afterwards captured by the enemy.

Resp. *v.* Sparhawk, 1 Dall. 357, 362.

3. Compensation for Property Taken for Belligerent Use.

§ 1034.

"Every civilized state recognizes its obligation to make compensation for private property taken under pressure of state necessity, and for the public good. The state is the transcendental proprietary of all the property, real and personal, of its citizens or subjects. This transcendental right—the *eminent domain* of the state in all countries where rights are regulated by law—is so exercised as to work no wrong, to inflict no private injury, without giving to the party aggrieved ample redress. This doctrine was not engrafted on the public law to give license to despotic and arbitrary sovereigns. It has its foundation in the organization of societies and states, and is as essential to a republic as to the most absolute despotism. It is of the very essence of sovereignty, and without it a state could not perform its first and highest duty, its own preservation. Vital as is this high prerogative of states, it must be exercised in subordination to the clear principles of justice and right. Whenever, from necessity or policy, a state appropriates to public use the private property of an individual, it is *obliged*, by a law as imperative as that in virtue of which it makes the appropriation, to give to the party aggrieved redress commensurate with the injury he has sustained. Upon any other principle the social compact would work mischief and wrong. The state would have the right to impoverish the citizen it was established to protect; to trample on those rights of property, security for which was one of the great objects of its creation.

"Every elementary writer of authority sustains the views here taken of the duty and obligation of states.

"'When a sovereign disposes of the possessions of a community or an individual the alienation will be valid. But justice requires that this community or this individual be indemnified at the public charge.' (Vattel, 112.)

"'Is the state bound to indemnify individuals for the damages they have sustained in war? We may learn from Grotius that authors are divided on this question. The damages under consideration are to be distinguished into two kinds—those done by the state itself or the sovereign, and those done by the enemy. Of the first kind some are done deliberately and by way of precaution, as when a field, a house, or a garden, belonging to a private person, is taken

for the purpose of erecting on the spot a tower, a rampart, or any other piece of fortification; or where his standing corn or storehouses are destroyed to prevent their being of use to the enemy. Such damages are to be made good to the individual, who should bear only his quota of the loss.' (Vattel, 403.)

"'We must observe this, that the king may in two ways deprive his subjects of their right, either by way of punishment or by virtue of his eminent power. But if he do so in the last way it must be for some public advantage, and then the subject ought to receive, if possible, a just satisfaction for the loss he suffers out of the common stock.' (Grotius, b. 2, ch. 14, sec. 7.)

"'The state has an eminent right of property over the goods of the subjects, so that the state or those that represent it may make use of them, and even destroy and alienate them, not only on extreme necessity, but for the public benefit, to which we must add that the state is obliged to repair the damages suffered by any subject on that account out of the public stock. Neither shall the state be absolved from this obligation, though for the present not able to satisfy it; but whenever the state is in a capacity, this suspended obligation shall resume its force.' (Grotius, b. 3, ch. 20, sec. 7.)

"The authorities cited are direct and emphatic, and are supported by every writer of respectability upon public and national law."

Grant's Case, 1 Ct. Cl. 41, 43–44, citing Mitchell *v.* Harmony, 13 How., 113. See also, United States *v.* Russell, 13 Wall. 623.

See Magoon's Reports, 338, 615.

In such cases necessity is a defense. "It is not to be doubted that there are cases in which private property may be taken for a public use, without the consent of the owner, and without compensation, and without any provision of law for making compensation. These are cases of urgent public necessity, which no law has anticipated, and which can not await the action of the legislature. In such cases, the injured individual has no redress at law—those who seize the property are not trespassers, and there is no relief for him but by petition to the legislature. For example: the pulling down houses, and raising bulwarks for the defense of the State against an enemy: seizing corn and other provisions for the sustenance of an army in time of war, or taking cotton bags, as General Jackson did at [New] Orleans, to build ramparts against an invading foe."

Parham *v.* Justices, 9 Ga. 341, 348. See to same effect, Taylor *v.* Plymouth, 8 Metc. 465; Russell *v.* New York, 2 Denio, 461, 473; British Plate Co. *v.* Meredith, 4 Term. R. 794, 796; and other cases cited in Wharton on Negligence, §§ 126, 127.

During the war the Federal army commander, from military necessity, repaired a railroad and rebuilt bridges that the exigencies of

war had destroyed. Held, that the railroad company could not be charged by the United States with the expense.

United States *v.* Pacific R. R. Co., 120 U. S. 227.

The rule, in Congressional cases for war damages, is that allowance will be made only for property taken to be used, and at its value to the Government, not for property taken to be destroyed, or for damages which the owner suffered by reason of the taking. But, in cases of religious and charitable institutions, Congress has adopted a different rule as to the measure of damages, viz, to allow for the value of a building as a building.

Presbyterian Church at Murfreesboro *v.* United States, 33 Ct. Cl. 339.
As to the Bowman Act, 22 Stat. 485, see Heflebower *v.* United States, 21 Ct. Cl. 228; Beasely *v.* United States, id. 225; Carter *v.* United States, 23 id. 326; Conrad *v.* United States, 25 id. 433.

"The duty of making compensation to individuals, whose private property is thus sacrificed to the general welfare, is inculcated by public jurists, as correlative to the sovereign right of alienating those things which are included in the eminent domain, but this duty must have its limits. No government can be supposed to be able, consistently with the welfare of the whole community, to assume the burden of losses produced by conquest, or the violent dismemberment of the state. Where, then, the cession of territory is the result of coercion and conquest, forming a case of imperious necessity beyond the power of the state to control, it does not impose any obligation upon the government to indemnify those who may suffer a loss of property by the cession."

Wheaton Int. Law, pt. iv, § 2.
General Halleck, after citing the above (1 Baker's Halleck, 256) says: "The history of the State of New York furnishes a strong illustration of this rule of public law. The people of the territory now composing the State of Vermont separated from New York and erected that territory into a separate and independent State. Individual citizens whose property would be sacrificed by the event, claimed compensation of New York. The claim was rejected on the ground that the independence of Vermont was an act of force beyond the power of New York to control, and equivalent to a conquest of that territory."

In December, 1870, Prussian troops took forcible possession of and scuttled six British colliers in the River Seine, near the port of Rouen. When the facts became known, the British minister at Berlin, under instructions of Earl Granville, declared to the Prussian Government that the Government of Her Britannic Majesty could not "but consider the seizure and sinking of these vessels to be altogether unwarrantable, and the firing upon them, if it took place, a matter which requires the fullest explanation."

This complaint was communicated to Count Bismarck, then chancellor of the North German Confederation, who immediately gave to the British Government, through the Prussian minister at London, the following assurance, accompanied with an expression of regret:

"We sincerely regret that our troops, in order to avert immediate danger, were obliged to seize ships which belonged to British subjects. We admit their claim to indemnification, and shall pay to the owners the value of the ships, according to equitable estimation, without keeping them waiting for the decision of the question who is finally to indemnify them. Should it be proved that excesses have been committed which were not justified by the necessity of defence, we should regret it still more, and call the guilty persons to account."

At an early day there was paid to the British Government an indemnity of £7,073 6s. 5d., the precise amount fixed by the British Board of Trade.

61 Brit. & For. State Papers, 575, 577, 578, 611.

"I have the honor to inform you that, in conversation with a well-informed person in high position here, I have learned that the German Government have from time to time since the French war favorably considered the claims of German citizens who have suffered from the acts of German soldiers, or from the necessities of military strategy, and that such claims were still occasionally received, but that none were paid where the damage or loss was from acts of the French army. The generality of the successful claims were in Alsace-Lorraine.

"About three years ago I ascertained, in reply to similar private inquiries, that the German Government had paid no claims from foreigners for damages, except one for some coal barges, belonging to British subjects, which were sunk for strategic purposes, and the claim for which was sent through the British embassy in Paris, and immediately paid in cash."

Mr. Everett, chargé at Berlin, to Mr. Frelinghuysen, Sec. of State, No. 309, April 3, 1882, MS. Desp. from Germany, in reply to Department's No. 304, March 21, 1882.

It was represented that certain citizens of the United States were ordered by the Spanish military authorities to build forts and other defensive works on their plantations in Cuba, as well as to contribute large sums to the construction of military works elsewhere. "Such arbitrary acts of force," said the Department of State, "which compel private individuals to give up their property or to expend such money and labor for the Spanish Government, and to do that service which a government in general performs at the public expense, can in no respect be called taxation, and cannot be justified in time of

peace, nor will it be doubted that if enforced they will give rise to a valid claim for compensation and indemnity."

Mr. Fish, Sec. of State, to Mr. Mantilla, Spanish min., Jan. 11, 1876, MS. Notes to Span. Leg. IX. 414. See, also, supra, § 540, IV. 20–21.

The exactions here referred to were incidents of the Ten Years' War in Cuba, 1868–1878. The statement that they could not be justified "in time of peace" referred to Spain's contention that war in the international sense did not exist.

See, in connection with the foregoing note of Mr. Fish to Mr. Mantilla, the instruction of Mr. Fish to Mr. Cushing, May 22, 1876, supra, § 183, vol. 2, p. 65.

By law No. 10 of the Colombian Congress of August 31, 1886, it was provided that all claims presented by foreigners against the Government of the Republic for loans, supplies, expropriations, or damages arising out of the late rebellion in that country should be considered by the executive power, acting through the minister of foreign relations, who should decide in each case "according to the rules established by common law and the law of nations." Where a claimant was dissatisfied, he was to be allowed to appeal to the law courts for a decision. The law declared that the nation should "not be absolutely responsible for the damages and exactions suffered by foreigners on account of rebels." The alien and neutral character of the claimant was required to be proved as a preliminary to the determination of his claim. The right of foreigners to present claims under the law was limited to one year from the date of its promulgation. All contracts were declared to be presumptively fictitious which were concluded between foreigners and disaffected citizens subsequently to the promulgation of the resolution issued by the secretary of foreign relations on February 13, 1885, in conformity with article 12 of the civil code. The rebellion was considered for the purposes of the law as existing from September 18, 1884, to September 30, 1885. The executive power was authorized to make regulations for the execution of the law.

In an instruction to the American legation at Bogotá October 13, 1886, Mr. Bayard, Secretary of State, referring to the foregoing law, said:

"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."

By decree No. 602, of October 11, 1886, the President of Colombia promulgated regulations for the execution of the law of August 31. By this decree it was declared that the Government should not be responsible for damages caused by rebels, except where the following conditions concurred: (1) When the damages were caused by regular forces acting in obedience to the orders of a known chief, and not when caused by fugitive bands or by guerillas in bodies of less than fifty men; (2) when the injury was inflicted by violence or at least against the will or without the consent, express or implied, of the injured person; (3) when the injury was done for the indispensable maintenance of the rebels, and (4) when, in addition to the three foregoing conditions, the injury was inflicted "within the limits prescribed by morals and civilization."

Mr. King, chargé, to Mr. Bayard, Sec. of State, No. 70, Sept. 11, 1886, For. Rel. 1887, 245; Mr. Bayard to Mr. King, No. 53, Oct. 13, 1886, id. 247; Mr. King to Mr. Bayard, No. 83, Oct. 27, 1886, id. 247.

4. Claims for Embargoes.

§ 1035.

Art. VII. of the treaty between the United States and Brazil of Dec. 12, 1828, stipulates that the citizens of the contracting parties shall not "be liable to any embargo, nor be detained with their vessels, cargoes or merchandise or effects, for any military expedition, nor for any public or private purpose whatever, without allowing to those interested a sufficient indemnification." It was held that the Brazilian imperial authorities were not liable in damages under this article for detaining an American vessel so as to prevent her from going to an interior port which was in the hands of insurgents, but that they were so liable for detaining her when this justification had ceased.

Moore, Int. Arbitrations, V. 4615–4617. See, also, Mr. Forsyth, Sec. of State, to Mr. Hunter, chargé d'affaires to Brazil, No. 45, March 13, 1839, MS. Inst. Brazil, XV. 57.

During the insurrection in Cuba from 1868 to 1878, numerous claims were presented by the United States to Spain on account of the embargo or confiscation of estates of citizens of the United States, the release or return of which estates had been directed by the Spanish Government. A number of these claims came before the mixed commission under the agreement between the United States and Spain of February 11–12, 1871, and some of them continued to be pressed after the commission had ceased to exist. Damages were claimed by the United States (1) for the failure of the Cuban authorities to execute the orders of the Spanish Government for the

release of the estates, (2) for the rents and profits received by Spain during the detention of the property and admitted to be in the hands of that Government, and (3) for the detention of the property. On July 12, 1873, the Government of Spain published a decree admitting the illegality of the embargoes, and on the 7th of November, in the same year, the minister of the colonies telegraphed to the captain-general at Havana an order for the restoration of some tweney-five estates prior to the 30th of that month. On February 9, 1876, orders were repeated by the Spanish Government for the restoration of the property of four of the American citizens, and other and similar orders were issued at still later dates. As late as November, 1886, the Spanish Government agreed to pay $1,500,000 in the case of one of the claimants, Antonio Maximo Mora, and the money was paid in 1895.

See, as to the embargoed estates claims, Moore, Int. Arbitrations, II. 1025, 1035; IV. 3754.

See, also, Mr. Frelinghuysen, Sec. of State, to Mr. Foster, min. to Spain, May 3, 1883, For. Rel. 1883, 773.

As to the case of Mora, see For. Rel. 1894, Appendix I. pp. 364–450; For. Rel. 1895, II. p. 1163, et seq.; S. Ex. Doc. 175, 52 Cong. 1 sess.; S. Ex. Doc. 115, 53 Cong. 2 sess.; S. Ex. Doc. 10, 53 Cong. 3 sess.; and infra, § 1055.

As to the points of law involved in the embargoed estates claims, see, particularly, Moore, Int. Arbitrations, II. 1032, 1035–1036.

By a decree of the governor-general of Cuba of January 24, 1896, a general requisition was ordered of horses and mules for military service, and provision was made for their appraisement. No reference appeared in the decree to the treaty rights of aliens, and in due time reports were received of the taking in districts controlled by the Spanish power of horses and mules belonging to citizens of the United States, in some cases with appraisement of their value, in others by arbitrary seizure without receipt or appraisement. Besides, "wanton aggressions upon the property of citizens of the United States by the Spanish soldiery, professing to act under the express orders of their commanders," were reported, for which no warrant was found in any decree. For example, it was averred that, although abundant fodder was near at hand, the Spanish cavalry encamped at certain points had "cut off the tops of growing sugar cane upon plantations known to be owned and operated by citizens of the United States, thus not only destroying the crop, but killing the plants from the roots." No appraisement or tender of value appeared to have accompanied "this spoliation of private alien property."

By article 7 of the treaty between the United States and Spain of 1795 it was "agreed that the subjects or citizens of each of the

contracting parties, their vessels or effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition or other public or private purpose whatever."

"While, in the past, the application of this inhibition to judicial injunctions or preventive administrative embargoes upon the estates of citizens of the United States in Cuba has been contested, its precise relation to the class of acts above described has never been questioned on the part of your Government. Indeed, the Spanish argument touching its limited scope rested precisely and wholly on the allegation that this first clause refers only to the taking of vessels or personal property for military use or for any public or private purposes—in a word, the embargo commonly known in Spanish jurisprudence by the name of angaria. This term and the action it implies corresponds, as to vessels and effects, quite closely with the principle known in other countries as 'eminent domain' in respect to realty, so that the ship or the property may be employed in the public service upon compensation for its use or payment of its just value, although without judicial condemnation. It is therefore admitted and established beyond controversy that, whatever else the exemption of the first clause of article 7 of the treaty of 1795 may import, it certainly means that the vessels and effects of citizens of the United States within the Spanish jurisdiction may not be appropriated against the owner's will to the public use for military or any other purposes, even though compensation be tendered.

"I have to request that you will take a proper opportunity to remind the superior authority of the island of Cuba of the exemption enjoyed by citizens of the United States under existing treaty from the class of spoliations and appropriations to which I have adverted. For your fuller information in the premises I enclose copies of several typical complaints in this relation which have so far reached me, and I venture to express the confident hope that by prompt action on the part of the responsible authorities in Cuba further complaint on this score may be averted. It stands to reason that, in cases where injuries of this nature have already been suffered by citizens of the United States, full reparation will be forthwith made upon due establishment of the facts."

Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Spanish min., Feb. 14, 1896, For. Rel. 1896, 670.

See, also, Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Span. min., March 2, 1896, in relation to the seizure by the Spanish forces of some horses and mules of Mr. F. J. Cazanas, a citizen of the United States. (For. Rel. 1896, 671.)

Mr. Dupuy de Lôme, replying, April 1, 1896, to Mr. Olney's note of February 14, said: "The governor-general of the island of Cuba, in a dispatch which I have just received, states that he has issued positive orders to the civil as well as military authorities of the island

in conformity with the wishes expressed by your excellency in your above mentioned note, General Weyler adding that all representations presented by the consuls of the United States, as I had the honor to previously state to your excellency, will be attended to at once and determined always with the strictest justice." (For. Rel. 1896, 673.)

"The consul of the United States at Sagua la Grande reports the case of Mr. John Jova, a citizen of the United States, owner of a sugar estate known as Natalia, in the vicinity of Sagua. It appears by Mr. Jova's sworn statement that on the 22d of February last a column of Spanish troops numbering about 1,500 men encamped for the night and part of the day following on his estate; that the said troops pillaged all the buildings on the premises, forcing an entrance thereto, appropriating whatever they chose, killing hogs and poultry, and taking a very fine saddle for lady's use, with its equipments, the property of Mr. Jova's wife; that in addition they entered cars where his clothing and other family effects were stored preparatory to removing to a place of greater security, forcing open trunks and other luggage, and rifling them of their contents, and that his appeal to the Spanish general, Oliveira, in command, for protection as an American citizen, produced no results.

"It is obvious that this complaint, except so far perhaps as relates to the food stock taken for the use of the encamped soldiery, does not touch the question of expropriation for organized military operations for which the treaty of 1795 provides, but that the acts in question constitute wanton depredation and pillage of private property by the soldiery, in violation not only of the common rights of an American citizen but of the ordinary rules of war. I need scarcely remind you that by the code of every civilized nation marauding and robbery of this class entail upon the perpetrators the severest penalties known to military law. The circumstances narrated seem, therefore, to call for the most searching inquiry and rigorous punishment of the offenders, with reparation to the injured party, as well as stringent orders to prevent the recurrence of such acts of theft and spoliation."

Mr. Olney, Sec. of State, to Mr. Dupuy de Lôme, Span. min., March 13, 1896, For. Rel. 1896, 672.

Gen. Weyler, as governor-general of Cuba, issued, May 16, 1896, an executive order prohibiting, while the abnormal conditions then existing in the island continued, the export of leaf tobacco produced in the provinces of Pinar del Rio and Havana, except to Spain. A term of ten days from the date of the order was allowed for the exportation of tobacco previously contracted for; but after the expiration of that term no permits for shipment were to be issued. It

was further directed that the manufacturers of Havana were to pay to the treasury an amount equivalent to that which would have been derived from the usual export duties, taking as a basis the collections of the preceding three years. Violators of the order were to be considered as abettors of the rebellion, and the merchandise was to be confiscated, while companies and persons cooperating in its clandestine transportation were besides to incur a fine.

March 20, 1896, the Government of the United States, on hearing of the order, immediately requested of the Spanish Government an extension of the term of ten days for the exportation of tobacco owned or contracted for by citizens of the United States, at the same time stating that the order was understood to apply only to leaf tobacco contracted for by American citizens but not yet become their property by delivery and payment of price, tobacco which had become their "actual property" being "protected from detention by the first clause of article 7 of the treaty of 1795."

The Spanish Government replied that orders had already been sent to Cuba, pointing out the necessity of respecting contracts of foreigners entered into before the issuance of the order, and directing that in all cases the decision should be guided by the strictest spirit of justice and equity. With this prospective adjustment the matter was permitted by the United States to rest till Sept. 12, 1896, when, it having been learned that no tobacco had been allowed to be shipped, a complaint was made as to the refusal of the governor-general to carry out the promises of the Imperial Government. The assurances of that Government were renewed; but the governor-general omitted to take corresponding action, even declaring that he had received no information or instructions from his Government about tobacco of Americans purchased or contracted for before the issuance of the order. Other correspondence ensued, the Spanish Government affirming that it adhered to its promise of relief, but stating that it would not assume that the governor-general had acted improperly in any case prior to its reexamination at Madrid. Meanwhile, complaints of the detention of tobacco steadily accumulated; and early in November, 1896, advices were received at Washington from the consul-general of the United States at Havana that the governor-general had rejected the claims of American citizens who had purchased or contracted for tobacco before the issuance of the order, and had forwarded his decision to Madrid for revision. More than three months later no relief had been granted, and the minister of the United States at Madrid was instructed to present a demand to the Spanish Government in the terms which immediately follow.

The correspondence "shows (1) that the order of May 16 is in violation of the treaty between Spain and the United States in so far as it affects the exportation of tobacco which had become the prop-

erty of citizens of the United States prior to the date of its going into effect; (2) that the Spanish Government has promised repeatedly that the order should not be enforced against tobaccos owned or contracted for by citizens of the United States prior to its date, and the governor-general of Cuba had been accordingly directed; (3) that this promise has not been kept by the Spanish Government, notwithstanding that the most positive and undeniable proof has been furnished both to the governor-general and the Royal Government that certain lots of tobacco were at the date of the order of May 16 the property and actually in the possession of American purchasers, and in other cases had been contracted for but not delivered; (4) that this Government's repeated complaints and protests in behalf of its citizens thus unlawfully treated has resulted in nothing but nonaction and further promises on the part of the Government of Spain.

"There being now no reason to believe that the promised relief will be granted, you are instructed to inform the Spanish minister for foreign affairs that his Government will be held responsible for the indemnification of citizens of the United States in every instance, whether heretofore specifically presented or not, in which tobacco owned by such citizens or contracted for by them prior to the promulgation of the order of May 16, 1896, prohibiting exportation of tobacco, has been detained under that order."

Mr. Olney, Sec. of State, to Mr. Taylor, min. to Spain, Feb. 12, 1897, For. Rel. 1896, 692.

March 23, 1897, Mr. Sherman, Secretary of State, telegraphed to Mr. Taylor, United States minister at Madrid, urging prompt compliance of the Spanish Government with its promise to release tobacco bought or contracted for before the decree of embargo. Objection was made to the release of the tobacco in individual cases on the ground that the claims were not properly supported by proofs. The Duke of Tetuan, in a note to Mr. Taylor June 23, 1897, referred to the "scanty diligence" of the claimants, who, instead of using the right of "administrative appeal," which would have enabled the central government to decide the matter sooner, "preferred to go to the diplomatic channel, slower and less adequate, thus bringing about delays and annoyances imputable only to the claimants." In consequence of this "fault" and "delay" the Spanish Government could not admit the existence of any right to indemnity. Mr. Woodford, United States minister at Madrid, cabled to Mr. Sherman December 31, 1897: "Tobacco bando revoked. Leaf tobacco can be exported on paying tax, 12 pesos per 100 kilos. All manufactured tobacco, except picadura, free of export duty. Santiago de Cuba

excepted from new order. Importation of tobacco from all parts into Cuba prohibited. New order takes effect January 15."

For. Rel. 1897, 487, 489, 490–492, 494–496, 501.

In a note to the Spanish minister at Washington of July 2, 1897, Mr. Sherman, Secretary of State, referring to previous correspondence "concerning the expropriation of property of citizens of the United States for military use in Cuba, in violation of the provisions of article 7 of the treaty of 1795," and especially to the assurance conveyed by a note of the Spanish minister of April 1, 1896, that "General Weyler had issued positive orders to the civil as well as the military authorities of the island," in conformity with the wish expressed in Mr. Olney's note of the 14th of the preceding February, called attention to a case which, if it did not "arise in ignorance of the facts of ownership or in gross misconception of his rights and obligations in the matter on the part of the superior authority of the island of Cuba," manifested, it was declared, "such a complete disregard of the rights of an American citizen as to call for earnest protest and instant demand, such as the consul-general of the United States at Havana has been instructed by cable to make." The case thus referred to was that of the sugar estate called La Confianza, in the province of Matanzas. This property, which belonged to the wife of a citizen of the United States, had, said Mr. Sherman, "been virtually seized by the royal authorities under a proclamation by which the whole of the said estate has been included in one of the 'agricultural zones' created by the governor-general of the island for the declared purpose of relieving the distress of the inhabitants resulting from the enforced concentration of destitute agricultural labor in the garrison towns without resources of their own and without adequate support by the State." However commendable such a measure might be from the point of view of humanity, Mr. Sherman declared that "the appropriation of the estate of an American citizen" in the manner above stated, by converting it into "an agricultural colony of impoverished concentrados," was "a flat violation of the treaty rights of that citizen." Continuing, Mr. Sherman said: "Your Government has admitted the wrongfulness of the practice of expropriating the property of citizens of the United States, even when the military exigencies of a campaign in the field might be pleaded in excuse for taking supplies and food for which rightful compensation is made. It is obviously a more unlawful proceeding to invade the landed estate of an alien owner and, by virtual confiscation thereof, convert it indefinitely to the public use as an agricultural settlement under conditions which, even if their early termination might be looked for, must destroy the material resources of the property, depriving the

owner of even the poor return which might enable the constantly accruing taxation thereon to be met, and working grievous wrong to a citizen of a friendly State."

Mr. Sherman, Sec. of State, to Mr. Dupuy de Lôme, Span. min., July 2, 1897, For. Rel. 1897, 514. The previous correspondence above referred to is printed in For. Rel. 1896, 670, 674.

Mr. Dupuy de Lôme in reply, July 3, 1897, to Mr. Sherman's note of the preceding day, did not contest the legal positions therein assumed, but suggested that until it had been shown "by an actual study of the facts and circumstances" that there had been "a deliberate violation of the treaty, or that just reparation has been denied," a "simple appeal to the sentiments of justice and benevolence" of the Spanish Government would have been more conducive to the attainment of the objects in view. (For. Rel. 1897, 516–517.)

It was alleged that on November 20, 1887, the American steam tug *William S. Moore*, while lying at anchor in the Rama River, Mosquito Reservation, was forcibly seized by an armed body of Nicaraguan troops or persons bearing the uniforms of Nicaraguan soldiers. The American minister to Nicaragua was instructed to present the case to the Nicaraguan Government, with a view to the investigation and the proper explanation or reparation, as the facts of the case might require.

Mr. Bayard, Sec. of State, to Mr. Hall, min. to Central America, No. 523, Dec. 6, 1887, For. Rel. 1888, I. 91.

See, also, Mr. Hall to Mr. Bayard, Dec. 12, 1887, id. 98.

July 13, 1894, during a revolutionary uprising on the Mosquito coast, General Cabezas, in command of the Nicaraguan forces, seized two steam launches called the *Buena Ventura* and the *Alerta*, and employed them in the transportation of troops. The launches were at the time under charter to the Orr & Laubenheimer Co., a Louisiana corporation, which employed them in bringing bananas down the Rama River for shipment on the steamer *Espana*, chartered by the same firm. Through the good offices of Captain O'Neil, U. S. S. *Marblehead*, the launches were soon restored, and the *Espana*, duly laden, sailed after a loss of two days for Mobile. During her next trip to Bluefields the launches were, on July 30, again seized by Gen. Cabezas, and used in transporting troops, who were on the following day landed near Bluefields. The launches were then turned over to the company's agent, but being out of coal they did not resume their regular work till the 1st of August, and the company had meanwhile temporarily employed two other tugs. There resulted another delay of three days in the sailing of the *Espana*.

By a protocol signed at Washington March 22, 1900, the case was referred to Gen. E. P. Alexander, as arbitrator, to determine the amount of the damages.

He found that, owing to the nature of the country and the lack of roads, the use of boats was essential to all military movements in Nicaragua in time of war, and that punitive damages could not be allowed, since the military emergency justified the governmental seizure of private property, but that full compensation should be allowed and the doubt, if any, cast in favor of the private person, though the latter must do his best to reduce his losses to a minimum.

The arbitrator awarded $6,963, as follows:

1. For the first seizure, $3,109, namely: (1) $2,700 injury to bananas, resulting from two days' delay of the *Espana;* (2) $130, pilotage of the *Espana* when fetching Captain O'Neil; (3) $154, two days' demurrage of the *Espana;* (4) $125, two days' wages of launches' crews and of 30 laborers on the *Espana.*

2. For the second seizure, $3,854, namely: (1) $2,700, injury to bananas, resulting from two days' delay of *Espana,* the arbitrator holding that one of the three days' actual delay was due to panic and unnecessary; (2) $154, two days' demurrage of *Espana;* (3) $700, charter of two substitute tugs, with their lighters; (4) $100, two days' wages of launches' crews and of laborers on the *Espana;* (5) $200, minor expenses of launches for two days.

The arbitrator rejected (1) a claim of $180 for coal used in keeping up steam on the *Espana* during her second delay at Bluefields, since he considered the keeping up of steam on that occasion unnecessary; (2) a claim of $650 for damages to a lighter, alleged to be due to overloading with troops, no such claim being mentioned in the memorial or the original papers.

For. Rel. 1900, 824–835.

5. Forced Loans.

§ 1036.

For the consideration of the subject of forced loans by international commissions, see Moore, International Arbitrations, IV, 3409–3411.

The Italian Government in 1856, finding itself obliged to order the levy of a forced loan to provide for the wants of the public treasury, several powers which had no treaty with Italy on the subject found themselves at a disadvantage as compared with Great Britain, whose treaty with Italy expressly stipulated for exemptions from forced loans in case of war. At the request of the representatives of other powers the Italian Government agreed to admit them to the benefits of the British treaty, on condition of eventual reciprocity on the part of their governments, which condition was to be estab-

lished by an exchange of declarations. By direction of the President, the minister of the United States at Florence was instructed to represent that such a declaration on the part of the United States was unnecessary, for the reason that neither the Federal Government nor that of any of the States had ever adopted forced loans or was by its constitution allowed to impose them; and that the attempt to arrange the matter by exchange of declarations would also be inconvenient, for the reason that the President would be obliged to seek the advice and consent of the Senate, which would probably disallow the agreement on the ground that it was exceptional and entirely unnecessary. The Italian Government, satisfied with this statement, decreed the exemption of citizens of the United States from forced loans in case of war. It was suggested that a reciprocal exemption from forced loans might not be objected to by the Senate if it formed part of a general treaty.

Mr. Seward, Sec. of State, to the Chevalier Cerruti, Dec. 11, 1867, MS. Notes to Italy, VI. 347.

"Your despatch No. 200, of the 20th ult., was duly received. The explanation which it contains in regard to the Italian forced loan of 1866 confirms the previous impression of the Department, that that loan was merely an extraordinary tax occasioned by a financial emergency, and differed from an ordinary tax chiefly in being nominally reimbursable. It seems to the Department that citizens of the United States, residing in Italy, could scarcely expect with reason that they should be exempted from such tax, especially by treaty. If, however, the exemption from forced loans should not be expressly stipulated for, it might, if deemed advisable, be claimed under the article of the treaty which is intended to secure to United States citizens in Italy the same privileges which may there be granted to the citizens or subjects of other countries. There would not, however, be any occasion to claim the benefit of such a stipulation if the tax referred to should be impartially levied and no other foreigners should be free from its operation."

Mr. Seward, Sec. of State, to Mr. Marsh, min. to Italy, No. 187, Feb. 26, 1868, MS. Inst. Italy, I. 261.

In the case of Messrs. Ulrich and Langstroth, in 1873, the position was taken by the Department of State that the stipulation of Article VIII. of the treaty between the United States and Mexico of 1831, that the effects of the citizens of the contracting parties should not be detained for any public or private purpose whatsoever without corresponding compensation, rendered the Mexican Government liable for the repayment of forced loans. The stipulation in Article XIV. of the same treaty for the protection of the persons and property of

the citizens of one party within the jurisdiction of the other was cited to the same effect.

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 21, Aug. 15, 1873, MS. Inst. Mexico, XIX. 18; same to same, No. 54, Dec. 16, 1873, id. 48; Mr. Cadwalader, Act. Sec. of State, to Mr. Foster, Sept. 22, 1874, No. 141, id. 121. See, further, as to Ulrich and Langstroth's case, infra, § 1046.

"It may be conceded that by the public law foreigners in a country in a state of insurrection can not expect to be indemnified for all losses sustained from insurgents when the regular government shall have been restored. The case of a forced loan, however, is believed to be an exception. The meaning of the word loan is, that the money borrowed is to be returned. If the borrower is a sovereign, his obligation to repay the amount is as sacred as that of a private individual. If he is an insurgent, who for a time usurps the regular authority, the latter may justly be expected to make it good if the loan was an involuntary one."

Mr. Cadwalader, Act. Sec. of State, to Mr. Foster, min. to Mexico, No. 141, Sept. 22, 1874, MS. Inst. Mex. XIX. 121.

There does not appear to be any article in the treaty between the United States and Mexico of 1831 which expressly exempts citizens of the United States in that country from forced loans, the purpose of that instrument appearing in general to have been to place citizens of the United States in Mexico on the same footing as other foreigners and as Mexicans themselves. Hence, although it is understood that the supreme court of Mexico has decided against the pretension of the Government to raise revenue in that way, yet, so long as the present Executive of the country discards that opinion, it would seem that no beneficial result can be expected from a prolonged diplomatic discussion of the subject.

Mr. Evarts, Sec. of State, to Mr. Scott, consul at Chihuahua, No. 4, April 17, 1877, 85 MS. Desp. to Consuls, 519; Mr. F. W. Seward, Act. Sec. of State, to Mr. Foster, min. to Mexico, No. 399, June 26, 1877, MS. Inst. Mexico, XIX. 349; Mr. Evarts, Sec. of State, to Mr. Foster, No. 511, Sept. 17, 1878, id. 448; same to same, No. 542, Nov. 22, 1878, id. 478.

See, also, Mr. F. W. Seward, Act. Sec. of State, to Mr. Foster, min. to Mexico, No. 568, Jan. 15, 1879, For. Rel. 1879, 772.

Referring to the action of the Peruvian Government in relieving a consular agent of the United States, who seems to have been an American citizen, from the payment of a forced loan, apparently on the special ground of his consular character, the Department of State said that its position was "that of diplomatic resistance to the collection of forced loans from any American citizen located in Peru,

whether in business or not, and whether a consular officer or not.;" and that, although, when the case in question arose, Art. II. of the treaty of Sept. 6, 1870, forbidding forced loans, was still in force, yet "the principle announced" could not, after the expiration of that article, "cease to commend itself to either Government."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 65, May 20, 1886, MS. Inst. Peru, XVII. 215.

Citizens of the United States residing in Nicaragua are expressly exempt from forced loans in time of war, by the terms of Art. IX. of the treaty of 1867.

Mr. Gresham, Sec. of State, to Mr. Baker, min. to Cent. Am., No. 15, June 16, 1893, For. Rel. 1893, 198; same to same, No. 117, Jan. 24, 1894, For. Rel. 1894, 469.

6. Damages for Wanton or Unlawful Acts.

§ 1037.

"According to the laws and usages of nations, a state is not obliged to make compensation for damages done to its citizens by an enemy, or wantonly or unauthorized by its own troops."

Report of Mr. Hamilton, Sec. of Treas., Nov. 19, 1792; Am. State Papers, Class IX. vol. i. of claims; adopted in report of March 26, 1874, on war claims, House Rep. 262, 43d Cong. 1st sess. 32.

The correspondence with Great Britain as to the bombardment of the fortress of Omoa, Honduras, by the British ship of war *Niobe*, on Aug. 19 and 20, 1873, is given in 67 Brit. and For. State Papers, 955.

"If a nation, during a war, conducts itself contrary to the law of nations, and no notice is taken of such conduct in the treaty of peace, it is thereby so far considered lawful, as never afterward to be revivied, or to be a subject of complaint."

Ware *v.* Hylton, 3 Dall. 199, 230.

"We do not, at the present day, often hear, when a town is carried by assault, that the garrison is put to the sword in cold blood, on the plea that they have no right to quarter. Such things are no longer approved or countenanced by civilized nations. But we sometimes hear of a captured town being sacked, and the houses of the inhabitants being plundered, on the plea that it was impossible for the general to restrain his soldiery in the confusion and excitement of storming the place; and under that softer name of plunder it has sometimes been attempted to veil all crimes which man, in his worst excesses, can commit: horrors so atrocious that their very atrocity preserves them from our full execration, because it makes it impossible to

describe them.' It is true that soldiers sometimes commit excesses which their officers can not prevent; but, in general, a commanding officer is responsible for the acts of those under his orders. Unless he can control his soldiers, he is unfit to command them. The most atrocious crimes in war, however, are usually committed by militia and volunteers suddenly raised from the population of large cities, and sent into the field before the general has time or opportunity to reduce them to order and discipline. In such cases the responsibility of their crimes rests upon the state which employs them, rather than upon the general who is, perhaps, unwillingly, obliged to use them."

Halleck's International Law and Laws of War (San Francisco, 1861, § 22, p. 442), citing Kent's Commentaries, Vattel's Droit de Gens, and other authorities.

Cited with approval in Mr. Bayard, Sec. of State, to Mr. Hall, infra, p. 920.

"As civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms;" and that "the principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit."

Instructions for the Government of Armies of the United States in the Field, sec. 1, par. 22.

A belligerent is responsible to neutrals for capricious and wanton injury inflicted on their persons or property.

Mr. Seward, Sec. of State, to Mr. Dayton, Mar. 13, 1863, MS. Inst. France, XVI. 345; Mr. Frelinghuysen, Sec. of State, to Mr. Logan, June 7, 1883, min. to Chile, June 7, 1883, For. Rel. 1883, 107.

A claim was made on behalf of certain Italian subjects for indemnity on account of losses suffered at the capture and pillaging of Bagdad, Mexico, on the morning of January 15, 1866. The town when captured was held by the French. It was taken by a force under the immediate command of R. Clay Crawford, a citizen of the United States, who was acting under General Escobedo, general in chief of the Mexican Republican forces in the north. The attacking force embraced a number of negro soldiers, belonging to the United States Army, who were inveigled from Brownsville, Texas, to take part in the affair. These soldiers were absent from their command without leave and were afterwards subjected to discipline and punishment for their absence. No officer of the United States, military or civil, was in any way connected or identified with the transaction. It was therefore held that the United States was not liable for what took

place, and this position was afterwards sustained by the mixed commission under the treaty between the United States and Mexico of July 4, 1868.

Mr. Fish, Sec. of State, to Count Corti, Italian min., Dec. 9, 1872, MS. Notes to Italy, VII. 150; Moore, Int. Arbitrations, IV. 4029.

Citizens of the United States have a right to engage in the military service of foreign powers, Christian or non-Christian, and in such cases, while the Government of the United States will not take cognizance of their death in battle, it "will expect that no unusual or inhuman punishment be inflicted upon any of its citizens who may be taken prisoners, but that they shall be treated according to the accepted rules of civilized warfare."

Mr. Fish, Sec. of State, to Mr. Williams, min. to China, July 29, 1874, For. Rel. 1874, 300.

On January 7, 1885, Mr. Dawson, American consul at Barranquilla, Colombia, reported that the country was in a state of revolution; that various river steamers, including one owned by citizens of the United States, had been seized by the insurgents, and that the Government authorities had also seized a river steamer similarly owned for the purpose of transporting troops. Mr. Frelinghuysen, in acknowledging the receipt of this report, said that "while the question of accountability for the spoliation of insurgents may remain open, yet there can be no doubt as to the responsibility of the Government *de jure* for all spoliations it may resort to for its own protection."

Mr. Frelinghuysen, Sec. of State, to Mr. Scruggs, min. to Colombia, No. 22, Feb. 25, 1885, For. Rel. 1885, 207.

"It is not disputed that a neutral person domiciled in a belligerent country can not claim from the opposing belligerent redress for injury inflicted by the latter in due course of war. The present case, however, is taken out of this rule by evidence herewith forwarded, showing that the injuries in question were not inflicted in due course of war, but were in violation of the rules of civilized warfare. For such violations of international duty the sovereign of the injured neutral has a right to call for redress."

Mr. Bayard, Sec. of State, to Mr. Hall, May 27, 1886, MS. Inst. Cent. Am. XVIII. 615.

The memorialist claimed compensation for a quantity of cotton and other articles of personal property valued at $4,000, which were shown to have been destroyed by fire set by United States soldiers. There was evidence tending to show that the property in question was at the time of its destruction situated in the theater of war, in

a portion of the country marched over and ravaged by the forces both of the United States and of the Confederacy; and on this ground it was argued on the part of the United States that the claim was not within the treaty between the United States and France of January 15, 1880, because the acts complained of were not committed within "the territorial jurisdiction" of the United States. This question was disposed of by agreement between the two Governments. Apart from the question of jurisdiction, it was contended on the part of the United States that that Government was not liable for losses "arising from depredations committed in places where the armies were present, whether such depredations were by the soldiery or by camp-followers, inasmuch as the acts were not only without authority, either civil or military, but were in violation of the rules, and articles of war, and of the orders of the military commanders." Upon the merits of the case the Commission made an award in favor of Chourreau of the sum of $970.

Joseph Chourreau *v.* United States, French and American Claims Commission, convention of Jan. 15, 1880, Boutwell's Report, 134, 140.

In the case of Edward C. Du Bois *v.* The Republic of Chile, No. 2, before the United States and Chilean claim commission under the treaty of August 7, 1892, it was held by the commissions, the Chilean commissioner dissenting on the grounds that the property in question was the property of the Government of Peru and not of the claimant, that "the Government of Chile should be held responsible for the wanton and unnecessary destruction of claimant's property at Chimbote by General Lynch, in command of the Chilean forces."

Judgment was rendered for the claimant to the amount of $155,232 U. S. gold.

Report of the Agent and Counsel of the United States, 32.

Andrew Moss, a citizen of the United States, made a claim for the burning by Chilean forces of certain houses belonging to him in Miraflores, Peru, in January, 1881. It was alleged that the place was burned by the Chilean forces, wantonly, after a battle near the town, in which they were victorious. The town itself was unfortified and undefended, there being in it neither Peruvian troops nor any fighting. An award was made in favor of the claimant for $6,000.

Andrew Moss *v.* Chile, No. 25, United States and Chilean Claims Commission, 1901.

See Mr. Blaine, Sec. of State, to Mr. Christiancy, No. 153, June 21, 1881, MS. Inst. Peru, XVI. 501.

The commission disallowed a claim for the loss of property by the burning of Chorillos by the Chilean forces, the burning resulting from the taking of the place by storm. (Peter Bacigalupi *v.* Chile, No. 42, United States and Chilean Claims Commission, 1901.)

"5. As war between Spain and the insurgents existed in a material sense, although not a state of war in the international sense, Spain was entitled to adopt such war measures for the recovery of her authority as are sanctioned by the rules and usages of international warfare. If, however, it be alleged and proved in any particular case that the acts of the Spanish authorities or soldiers were contrary to such rules and usages Spain will be held liable in that case.

"6. It is the opinion of the Commission that the treaty of 1795 and the protocol of 1877 were in full force and effect during the insurrection in Cuba, and they will be applied in deciding cases properly falling within their provisions."

Statement by the president of the Spanish Treaty Claims Commission, Mr. William E. Chandler, Nov. 24, 1902, concurred in by Commissioners Diekema and Wood. (S. Doc. 25, 58 Cong. 2 sess.)

Commissioners Maury and Chambers dissented as to paragraph 5, for the reason that even though it was correct as an abstract proposition, it tended to qualify the liability of the United States under Art. VII. of the treaty of peace with Spain of Dec. 10, 1898. (S. Doc. 25, 58 Cong. 2 sess. 10, 12.)

The foregoing propositions were repeated, under the numbers 5 and 9, in a statement issued by the commission on April 28, 1903. (Id. 6, 7.)

7. Question of Reconcentration.

§ 1038.

"6. As this Commission has been directed by Congress to ascertain and apply the principles of international law in the adjudication of claims of neutral foreigners for injuries to their persons and property caused by a parent state while engaged in subduing by war an insurrection which had passed beyond its control, it can not fail, in determining what are and what are not legitimate war measures, to impose upon the parent state such limitations as the consensus of nations at the present day recognizes as restricting the exercise of the right to remove all the inhabitants of a designated territory and concentrate them in towns and military camps and to commit to decay and ruin the abandoned real and personal property or destroy such property and devastate such region.

"7. Adopting therefore a wide and liberal interpretation of the principle that the destruction of property in war where no military end is served is illegitimate, and that there must be cases in which devastation is not permitted, it should be said that whenever reconcentration, destruction, or devastation is resorted to as a means of suppressing an insurrection beyond control the parent state is bound to give the property of neutral foreigners such reasonable protection as the particular circumstances of each case will permit. It must abstain from any unnecessary and wanton destruction of their prop-

erty by its responsible military officers. When such neutral foreigners are included in the removal or concentration of inhabitants, the Government so removing or concentrating them must provide for them food and shelter, guard them from sickness and death, and protect them from cruelty and hardship to the extent which the military exigency will permit. And finally, as to both property and persons, it may be stated that the parent state is bound to prevent any discrimination in the execution of concentration and devastation orders against any class of neutral foreigners in favor of any other class or in favor of its own citizens.

"8. Subject to the foregoing limitations and restrictions, it is undoubtedly the general rule of international law that concentration and devastation are legitimate war measures. To that rule aliens as well as subjects must submit and suffer the fortunes of war. The property of alien residents, like that of natives of the country, when 'in the track of war,' is subject to war's casualties, and whatever in front of the advancing forces either impedes them or might give them aid when appropriated, or if left unmolested in their rear might afford aid and comfort to the enemy, may be taken or destroyed by the armies of either of the belligerents; and no liability whatever is understood to attach to the Government of the country whose flag that army bears and whose battles it may be fighting.

"If in any particular case before this Commission it is averred and proved that Spain has not fulfilled her obligations as above defined she will be held liable in that case.

"9. It is the opinion of the Commission that the treaty of 1795 and the protocol of 1877 were in full force and effect during the insurrection in Cuba, and they will be applied in deciding cases properly falling within their provisions.

"10. As to the first clause of Article VII. of the said treaty, wherein it is agreed that the subjects and citizens of each nation, their vessels, or effects shall not be liable to any embargo or detention on the part of the other for any military expedition or other public or private purpose whatever, the Commission holds that whether or not the clause was originally intended to embrace real estate and personal property on land as well as vessels and their cargoes, the same has been so construed by the United States, and this construction has been concurred in by Spain; and therefore the Commission will adhere to such construction in making its decisions.

"11. But neither this particular clause nor any other provision of the treaty of 1795 will be so applied as to render either nation, while endeavoring to suppress an insurrection which has gone beyond its control, liable for damages done to the persons or property of the citizens of the other nation when found in the track of war or for

damages resulting from military movements unless the same were unnecessarily and wantonly inflicted."

Statement of the Spanish Treaty Claims Commission, April 28, 1903, S. Doc. 25, 58 Cong. 2 sess. 6.

Paragraph 9 was concurred in by all the Commissioners.

Commissioner Maury dissented from paragraphs 6 and 7 as misleading, being of opinion that the treaty between the United States and Spain of 1795 imposed duties more onerous than those imposed by international law, and that the question which the Commission should consider was the measure of diligence due from Spain under those stipulations. He also dissented from paragraph 8, holding that the Commission was bound by the judgment of the political department of the Government of the United States on General Weyler's concentration policy, and that all the cases involving that subject that had come before the Commission on demurrer seemed to come within the embargo clause of Art. VII. of the treaty of 1795. He concurred in paragraph 10. He dissented from 11, as being only a qualification of 10. (S. Doc. 25, 58 Cong. 2 sess. 8.)

Commissioner Chambers dissented from paragraphs 6, 7, 8, and 11. He maintained that the stipulations of the treaty of 1795 "should be so applied as to hold Spain liable, while suppressing the insurrection, for damages done to persons and property of American citizens, unless it be shown that in the employment of military force the acts which resulted in damages were necessary and justifiable according to the rules of civilized warfare;" that, as the Government of the United States had decided that the reconcentration in Cuba was not civilized warfare, the Commission was bound so to hold; and that, under the treaty of 1795, Spain should be held liable for the injuries and destruction that occurred in the depopulated and devastated regions during the continuance of the reconcentration. (S. Doc. 25, 58 Cong. 2 sess. 11.)

As to the position of the United States on the reconcentration in Cuba, see supra, §§ 908, 909.

8. Question of Compensation for Cable Cutting.

§ 1039.

During the war between the United States and Spain, neutral submarine cables were on several occasions cut by the United States forces in Cuba and the Philippines, in order to prevent the enemy from using them. Claims for damages were submitted by or on behalf of the companies whose cables had been cut, namely, the Eastern Extension Telegraph Company, the Cuba Submarine Telegraph Company, and the French Trans-Atlantic Cables Company. The position taken by the United States with reference to these claims was that, as a general proposition and as a matter of law, neutral telegraphic cables were exposed to the same vicissitudes in time of war as other neutral property; that this view found conventional confirmation in Article XV. of the treaty of Paris of March 14,

1884, for the protection of submarine cables, which stipulated that the convention should not be understood to affect the liberty of action of belligerents, but that it was preferable to consider the claims from the point of view of equity; wherefore the President submitted them to Congress with a recommendation that, as a matter of equity, they be favorably considered to the extent of the actual damage suffered.

Mr. Hay, Sec. of State, to Mr. Cambon, French ambass., No. 283, March 13, 1900, MS. Notes to French Leg. XI. 21. See, infra, § 1176.

As to the cases of cable cutting, see President McKinley, annual message, Dec. 5, 1898.

See message of Jan. 23, 1900, submitting to Congress the claim of the Cuba Submarine Telegraph Co. for £8,174 17s. 9d. and recommending its payment "as an act of equity and comity." (S. Doc. 102, 56 Cong. 1 sess.)

See message of Jan. 16, 1900, submitting the claim of the Eastern Extension Company for £912 5s. 6d. in similar terms. (S... Doc. 78, 56 Cong. 1 sess.)

For favorable report on the Cuban claim, see H. Rept. 221, 56 Cong. 1 sess.

Property of a neutral, permanently situated within the territory of an enemy, is, from its situation, liable to damage from the lawful operations of war, and no compensation is due for such damage.

There is no ground to support the claim for indemnity of the British Eastern Extension Australasia and China Telegraph Company for cutting the cable at Manila during the war with Spain.

Syllabus, Griggs, At. Gen., Feb. 1, 1899, Op. 315.

In the course of his opinion the Attorney-General said: "The obvious difference between a cutting within and a cutting without the territorial waters . . . goes to the foundation of the rule authorizing the destruction of property because it is within the territory."

See, also, opinion of Griggs, Attorney-General, Dec. 6, 1899, advising that there could be no objection to submitting all the claims to Congress (22 Op. 654).

By the act of April 9, 1906, the Secretary of the Treasury was directed to pay to the French Trans-Atlantic Cable Company the sum of $77,712 "for expenses incurred in repairing said company's cables and property damaged by the United States military forces in 1898, during the war between the United States and Spain."

On April 13, 1906, President Roosevelt transmitted to the Senate and House of Representatives a report of Mr. Root, Secretary of State, with reference to the claim of the Cuba Submarine Telegraph Company, and said: "I renew the recommendation which I made to the Congress on December 11, 1903, that as an act of equity and comity, provisions be made for the reimbursement to the company of the actual expenses incurred by it in the repair of its lines and property."

Mr. Root, in his report, dated April 11, 1906, stated that the claim was before the 56th and 58th Congresses, but that, "while it received

the favorable consideration of the committee of the one or the other House, no conclusive action was taken on it." The claim, he observed, was similar to that of the Eastern Extension Company, in which the Attorney-General had held that there was no legal ground of liability; but he recommended "that the papers be submitted to Congress for that body's consideration whether as an act of equity and comity, reimbursement to the company of its actual expenses incurred in the repair of the cables may not be provided for."

Message of April 13, 1906, S. Doc. 325, 59 Cong. 1 sess.

XI. *BOMBARDMENTS.*

1. Greytown.

§ 1040.

As to the bombardment of Greytown, see further infra, § 1168.

Claims of French Subjects.

"Sundry French subjects, residents of Greytown, in the prosecution of trade, were damaged in their property by the act, on the 13th of May [July], 1854, of the *Cyane*, of the Federal Navy, against that town, in consequence of a difference which has arisen between the Government of the United States and the local authorities of the place. Unconnected with the causes which brought about that act, they still abstain from raising the question of its expediency, and are satisfied, through my mediation and with the approval of the Emperor's Government, to apply to the Government of the United States and solicit, from its sense of equity, an indemnity for the losses inflicted upon them by the act of the *Cyane*, which they could not avoid, as that vessel having appeared at Greytown on the 11th, laid down its ultimatum on the 12th, and destroyed the town on the 13th of the month. It was, therefore, physically impossible for the foreign traders to protect the goods which they held in their dwellings or stores from the bombardment and conflagration of the town.

"My reason for not transmitting now the vouchers with which the French merchants of Greytown had backed the claims committed to me, must be an earnest to you of the care taken by the Government of the Emperor that the amount of those claims shall be strictly confined to the amount of losses actually sustained. After those documents had been sent to me, I transmitted them to the Government of the Emperor, and, upon his order to that effect, the steamer *Acheron* was despatched to Greytown, with directions to the commander to institute an inquiry into the nature and the amount of losses incurred on the 13th of May [July] by the French subjects. This investigation was made on the spot and on data supplied at once

by the parties complainant, by the other residents of the town, and by the foreign consuls. I can not, therefore, for the present, submit to you, sir, the documents which vouch for the claims of the French traders of Greytown, and which are now in the hands of the minister of foreign affairs. I confine myself to asking, with them and for them, that the equitable sense of the Government of the United States shall recognize their right to an indemnity, on its part, for the losses which they have borne, through the act of a vessel of the Federal Navy, remarking, at the same time, that the ground of an indemnity being once admitted, the investigations which have been respectively made by the consul of the United States and the other consuls, and by the commander of the *Acheron*, will supply an adequate basis for an accurate estimate of the damage to be repaired.

"I would beg of you, sir, to consider my letter in the twofold light of a petition and reclamation, as I do not consider myself at liberty to utter an opinion as to a fact brought about by a difference originating between two sovereign states. Neither do I deem it necessary to vindicate the universally admitted right of neutrals, exposed to acts of war, to be respected by belligerents: especially before you, sir, who, in your note of the 28th of July, with which you honored me, and which, in France as well as the United States, was received with the most serious consideration, have written these words: 'It is a generally received rule of modern warfare, so far at least as operations upon land are concerned, that the persons and effects of noncombatants are to be respected.' Now if the property of the noncombatant enemy is entitled to protection, *a fortiori* must it be so with the property of foreigners, the subjects of a friendly power, residing for purposes of trade in a town the destruction of which may be said to have preceded its siege."

Count Sartiges, French min., to Mr. Marcy, Sec. of State, Jan. 13, 1857. S. Ex. Doc. 9, 35 Cong. 1 sess. 2.

Mr. Marcy's note to Count Sartiges.

"The undersigned, Secretary of State of the United States, has laid before the President the petition or reclamation of persons styling themselves French subjects, residents at Greytown, presented through the medium of the Count de Sartiges, the envoy extraordinary and minister plenipotentiary of the Emperor of the French, by the approval of his Government.

"Upon full consideration of the subject embraced in the note of the Count de Sartiges, the President has not been able to find any grounds of right, or even equity, upon which such a reclamation can be sustained. The losses for which indemnity is sought resulted from the bombardment of Greytown, on the 13th of May [July], 1854, by the United States sloop of war *Cyane*. The appeal is not

made in the name of the French Government, yet by its approval the French minister has presented the case to the notice of this Government. On this account it has received the most respectful consideration; but such consideration could not be given to it without bringing into view questions of international law, which can only be appropriately discussed on a direct issue between independent powers.

"The claim to indemnity in this case is not placed distinctly on the ground of right, nor is the justice or propriety of the conduct of the United States towards the community at Greytown called in question.

"Should this point be raised by any party having a right to bring it into discussion, there would be no difficulty in justifying the bombardment on well-settled principles of international law, and by memorable examples in the conduct of the most enlightened nations.

"The President, in his annual message to Congress of the 4th of December, 1854, presented his views on that subject, and a reference to that document will render it unnecessary to reproduce them in a reply to the note of Count de Sartiges.

"In disposing of the present application, the United States are not called on to vindicate their course towards those who were members of the community Greytown; for the provocation and the propriety of the chastisement, so far as that community is concerned, are not to be brought into discussion; but the manner of inflicting the punishment and the consequences in regard to foreign residents, are supposed to furnish grounds for an equitable claim upon this Government for their losses on that occasion.

"It is presumed that there will be no attempt to maintain that individual *members* of an organized political body, in a case like this, can be allowed to separate themselves from the collective community, and claim rights and immunities which do not belong to the whole association. It would be preposterous to hold that the associated body deserved the punishment inflicted upon it, and the individuals composing it are entitled to indemnity for their sufferings. If there were persons in Greytown when it was bombarded who did not belong to the political organization there established, and who suffered in consequence of that bombardment, they can only resort for indemnity, if entitled to it, to that community. It was to that community they committed their persons and property, and by receiving them within its jurisdiction it assumed the obligation of protecting them. Nothing can be more clearly established than the principle that a foreigner domiciled in a country can only look to that country for the protection he is entitled to receive while within its territory, and that if he sustains injury for the want of that protection, the country of his domicil must indemnify him. It

is scarcely necessary to refer to cases to establish this position; a few, however, will be alluded to for that purpose.

"In 1852 a British subject, by the name of Mather, was maltreated at Florence by an officer belonging to an Austrian garrison stationed at that place. The British Government sought satisfaction from the government of Tuscany, which resisted the demand, and denied its liability, upon the ground that the injury was inflicted by an Austrian officer, and that Austria was therefore the party which committed the outrage, and ought to make the required satisfaction.

"Great Britain replied that the obligation to indemnify rested on the government of the country wherein the wrong was done, and that she could not rightfully resort to Austria for redress, without assuming that Tuscany was a dependency of the Austrian Empire.

"Though Tuscany was most reluctantly forced to tolerate an Austrian garrison at Florence, over which it could exercise no control, yet it ultimately recognized its liability for the outrage within its territory, and made the satisfaction demanded by the British Government.

"The questions which arose out of the bombardment of Antwerp in 1830, are still more clearly illustrative of the principle under consideration. While Antwerp was under the Dutch Government, foreign merchants brought their merchandise to that place with the intention of reshipping it. They were required to deposit it in a Government warehouse which was under the charge of Dutch officials. Civil commotions soon after arose, and in defending the city against the insurgents the warehouse and the merchandise in it were destroyed by the Dutch troops. This political struggle ended by severing Antwerp from the Kingdom of the Netherlands, and it became thereafter a part of Belgium. The governments of the respective merchants whose property was destroyed by the bombardment claimed indemnity for these losses from the Kingdom of Belgium. The ground of the claim was, that the injury was inflicted on a territory which, at the time the reclamation was made, had become a part of Belgium; but Belgium attempted to evade it by alleging that the Dutch Government received the property, had it in possession, and destroyed it; and from Holland, and not from Belgium, indemnity must be sought. The question as to the liability of the respective Governments for the neutral property thus destroyed was much discussed. The fact that the Dutch authorities received the property, deposited it in a Government warehouse, and *destroyed* it, was not disputed.

"Upon this question the British minister of foreign affairs demanded the opinion of the attorney-general of England, who decided 'that the Dutch Government was not liable for the disasters occasioned by the bombardment.' This conclusion was adopted by all the powers whose citizens had property destroyed at Antwerp. The

ministers of France, Great Britain, Prussia, and the United States, under instructions from their respective Governments, made a joint application to the Government of Belgium for indemnity, and placed its liability solely upon the ground that the obligation to indemnify for such losses rested upon the country within which the injury was inflicted.

"While Murat was temporarily at the head of the Government of the Two Sicilies in 1807, American ships and their cargoes were wrongfully seized and condemned at Naples. After the restoration of the former government, which had been temporarily overthrown, the United States demanded compensation from it for these ships and cargoes. As the injury was done under the authority of Murat, who received the avails of the illegal confiscations, the Neapolitan Government at first denied its liability, and alleged that reparation must be sought from the wrongdoers, and not from the then Government of the Two Sicilies, which was suspended when the injury was perpetrated by the intrusive government of Murat. The United States did not, for a moment listen to this evasive objection to their demand, but maintained that, as the injury was done within the territory of the Kingdom of the two Sicilies, the duty of affording indemnity was devolved upon the existing government, and that it alone was responsible for the injury.

"In the very memorable bombardment of Copenhagen by the British in 1807, enormous losses were undoubtedly sustained by the citizens of other nations residing in that city. If it were possible to conceive a case where foreign assailants would be bound to compensate the merchants of neutral powers for losses sustained in the country of their domicil, that of Copenhagen was such a case. There was no previous declaration of war against Denmark—no ground for the hostile attack upon the capital of that country; this is admitted by an eminent British historian, who would fain find an excuse for the conduct of his Government.

"The undersigned, after diligent search, has not been able to discover a single case of reclamation made upon Great Britain for the losses sustained on that occasion by foreign merchants or domiciled traders at Copenhagen. Were there any principle of international law which would involve Great Britain in a responsibility for such injuries, numerous claims would have been urged upon her, but it does not appear that indemnity, in any instance, was ever sought from her, or that any appeal was ever made to her sense of equity by the foreign sufferers or their governments to repair the losses resulting from that bombardment.

"There can be no question that a vast amount of property of foreign residents has been destroyed in the recent bombardment of Canton by the British forces, but it is believed that no principle

will be found to sustain a claim upon the British Government for indemnity.

"If the foreign merchants who have suffered by this attack upon Canton shall be indemnified by Great Britain it will furnish a precedent, the first that can be found, to countenance the appeal to this Government made in behalf of those who represent themselves to have been foreign traders at Greytown when it was bombarded.

"The cases referred to fully warrant the conclusion of the President on the question raised by the application of the French traders presented through the Count de Sartiges. The fact that they inconsiderately placed their property in the custody of those who did not protect it, and are unable to remunerate them for its loss, furnishes no pretence for resorting to any other power for indemnity.

"The principle which seems to be invoked to sustain the reclamations in this case, if it were ever adopted as a rule of international law, would be most dangerous to the tranquility of the world. A very brief illustration of its effects will justify this conclusion. If it exists as a rule of international law it is most strikingly applicable to the cases which have been referred to, particularly to the destruction of the property of neutrals at Copenhagen and Canton.

"Under such a rule all nations whose subjects or citizens sustained losses by the bombardment of these cities could apply for redress to the power which they might regard as the offending party, and as a necessary consequence they would have the right, and be bound by the obligations of duty towards their subjects, to discuss and pass judgment upon the conduct of the belligerents, in order to determine the question of responsibility.

"The party which, upon such an inquisitorial investigation, should be found most in the wrong, would be required to indemnify the sufferers. Claims depending upon such an issue would never be admitted, nor could they be enforced without a resort to hostilities.

"A principle that would tolerate such an inquisition into the conduct of belligerents by powers not parties in the original controversy could not fail to be a fruitful source of international complications.

"The undersigned has thus far considered the case as it would stand if the claimants were what they represent themselves to be, merely foreign residents of Greytown, and if Greytown was then, in fact, what the note of the Count de Sartiges assumes it to have been, a sovereign state. He speaks of the difficulty between that place and the United States as 'a difference originating between two sovereign states.'

"Taking this view of the establishment at Greytown, though it is not one in which the Government of the United States is inclined to concur, it will be proper to consider the relation and connection

which the applicants had with it in the character of a sovereign state. If it should be made to appear that they were constituents of the Greytown community, and not foreign resident traders, it will be impossible to find any foundation for their claims against the United States. It is admitted that the people at Greytown assumed to be an independent state; they had a constitution and a government, with executive, legislative, and judicial departments, and this political organization was in practical operation when Greytown was bombarded; actual residence conferred the right of suffrage. Those who took any part in organizing that government, or who subsequently held office under it, or exercised the right of suffrage, can not be allowed to deny its existence as a responsible government or object to being dealt with as members of that political society. Their former citizenship was merged in that which they acquired by this new political association, and while this association lasted, and they remained in it, they could not be citizens or subjects of any other state. They owed allegiance to the government of Greytown, and not to any other country, and the duty of protecting them devolved upon that government alone; they could rightfully look to no other power for security or indemnity, nor could they reasonably expect that any other would voluntarily interpose in their behalf if their proper guardians failed in duty to them.

"Their relation to the country of their birth while at Greytown, under these circumstances, can not be distinguished from that which a resident of foreign birth bears to this country, who has become a regularly naturalized citizen of the United States. Having become such a citizen, the duty of protection, if he needs and deserves it, belongs to this country and not to that of his nativity.

"The names of the persons who make reclamation for losses at Greytown, in the assumed character of French subjects resident there, are not given in the note of the Count de Sartiges, but they have been obtained from other sources, and their political relation to what they regarded and still regard as the government of Greytown is well ascertained. Almost every one of them was a member of the political organization established at that place; they enjoyed the franchises of citizens; had the right of voting at elections and exercised it; and several of them held high and responsible offices under that government. No persons could be found there who had taken a more active part in public affairs, or were more directly responsible for the conduct of that political community towards the United States, than most of those who now seek reclamation in the character of French subjects. They certainly can not expect to be indemnified by this Government for the losses resulting from the just chastisement brought upon themselves by the conduct of the community of which they were members; nor is it believed that they can enlist in their

behalf the sympathy of the country of their birth, by attempting to renounce their actual citizenship, and recover that which they had cast off on becoming constituents of the Greytown government.

"It is confidently believed that when the actual relation of these claimants to the political community of Greytown is fully disclosed to the French Government, it will not consider them entitled even to its friendly interposition.

"If it should be found, on further examination, that there were a few persons (and, if any, the number must be very small) who could be fairly regarded as domiciled French subjects in Greytown at the time of the bombardment, and who sustained losses by that act, it is very clearly established by the views herein presented that they can have no claim against the United States. They deliberately placed themselves and their property under the protection of the community of Greytown. By receiving and subjecting them to its jurisdiction, that community assumed the duty of protection; and if the conduct of their chosen protectors towards a foreign power has involved them in losses, to these protectors and to them only can they look for redress. The practice of nations has settled this doctrine, and a different rule would require, in prosecuting hostilities in an enemy's country, a discrimination between citizens and domiciled foreigners, which could never be made, and in the practice of nations has never been attempted.

"The undersigned is not aware that the principle that foreigners domiciled in a belligerent country must share with the citizens of that country in the fortunes of the war has ever been seriously controverted or departed from in practice.

"No power assailing an enemy's country is required to discriminate between the subjects of that country and foreigners domiciled therein, nor can the latter, with any better right than the former, claim indemnity in any case, except from the country under whose jurisdiction they have placed themselves.

"It is possible that applicants to this Government for indemnity on account of losses occasioned by the bombardment may attempt to avoid the conclusiveness of the objections herein presented by considering Greytown as a mere municipality under the sovereignty of a tribe of Indians, called the Mosquitoes. Nothing favorable to the pretensions of the claimants would be gained by such an hypothesis. If it be assumed that this tribe had sovereign authority over a territory, including Greytown, the argument which has been presented to show that the United States are not responsible for the property destroyed by the bombardment will lose none of its force or applicability by the transfer of the sovereignty of that place to the Mosquitoes.

"Those who were a part of, or participated in, the municipal government of Greytown can hardly be allowed to assume the character

of foreign residents; and if they, or others, could invest themselves with that character, their condition as claimants against the United States would not be improved. They were under the protection of the sovereign power of the country, and if that power appertained to the tribe of Mosquito Indians and not to the association at Greytown, as before assumed, they could only look to the Mosquitoes for the redress of wrongs from which the government of the country wherein they voluntarily placed themselves was bound to shield them. International law opens to them no other source of reclamation. The obligation to protect, and, in the event of a failure, to indemnify, would devolve upon Greytown in one case, and upon the Mosquito Indians in the other.

"Regarding the Mosquitoes as possessing the sovereignty over Greytown, it was for them to complain of the proceedings of the United States towards the people at that place, and to make reclamation, if any was due, for injuries to foreigners whom they had received within their jurisdiction, and whom they were consequently under obligation to protect.

"The Mosquitoes seem to be well satisfied with the treatment received by Greytown from the United States, for they have not complained of it, nor asked for any indemnity for either their citizens or foreign residents who sustained losses by the bombardment. If the sovereign power of a country acquiesces in and apparently approves of the chastisement by a foreign power of those under its protection, it certainly will not be concluded that the sufferers by that chastisement are entitled to indemnity from that foreign power for losses thereby sustained.

"The strength of the positions herein taken are not impaired by the fact that in some cases the claimants might be turned over for redress to a feeble power. It should be recollected that in this instance it was to such a power, without anything in its character or composition to justify confidence, that the applicants committed their property, and they can not reasonably ask to have a well-settled principle of international law changed in order to meet the exigency of their case.

"The undersigned has discussed the case upon the basis on which the applicants have placed it. They have assumed that Greytown was a sovereign state at the time it was bombarded, and that they were there as foreign merchants engaged in trade. It is not presumed that they will shift their position, and adopt that which the United States have heretofore taken and still maintain in regard to the character of Greytown. Though the people at that place had adopted the form and arrangements of a political organization, their character and conduct did not, in the opinion of this Government, entitle them 'to stand before the world in the attitude of an organ-

ized political society.' During the period of their association they had earned for themselves no better character than that 'of a marauding establishment, too dangerous to be disregarded and too guilty to pass unpunished.'

"If the subjects or citizens of foreign states chose to become dwellers among such an assemblage, and entrust their property to such a custody, they can have no just cause to complain, nor good grounds for the redress of injuries resulting from the punishment inflicted upon the offending community. In this aspect of the case, the situation of these foreigners would not be unlike that of a person who should indiscreetly place his property on board of a piratical ship. If that ship were captured and the property destroyed or lost, the owner could have no pretence of claim against the captors. It was his fault that he inconsiderately exposed it to such a contingency.

"Though an issue is not made in respect to the right of the United States to inflict the punishment they did upon the people of Greytown, it is assumed that there was a harshness in the proceeding which commends the present application to the equitable consideration of this Government. This view is not only not sustained, but is directly opposed by the facts of the case.

"Before the arrival of the *Cyane* in the harbor of San Juan notice had been given to the whole population at Greytown, by the United States commercial agent, that this Government claimed satisfaction of that community for injuries and insults, and that if it was withheld a United States vessel of war would be sent to inflict proper chastisement; but no steps were taken to avert it. After the *Cyane* arrived the demand for satisfaction was repeated, and a formal proclamation issued by the commander of that ship, stating that if nothing was done by way of rendering satisfaction within a specified period, the place would be bombarded. It is true that only twenty-four hours were allowed by the proclamation to comply with that demand. It, however, should be recollected that the United States commercial agent had made a similar previous demand, which had been treated with open contempt, and 'further violence to American citizens and their property publicly threatened.' At the same time the proclamation was published, 'foreigners generally and those favorable to the United States were notified that a steamer would be in readiness on the morning of the day of the bombardment to carry such as were disposed to a place of safety.' Not only was this proffer of means for security declined by those who now claim to have been foreign traders there, but they made no appeal to the commander of the *Cyane* for his favorable consideration of their case, nor for that discrimination between themselves and the other dwellers at Greytown which they now wish to have made. Had there been just grounds for such discrimination, it is fair to presume they would

have asked for it, and that, if practicable, it would have been granted. As they did not claim it when it might have been available they can not, with good grace, do so now, to sustain extravagant demands for their losses. They then chose to share the common fate which awaited the guilty community in which they lived, and the undersigned has not been able to discover any principle of international law, or rule of equity, which places them in any better condition in regard to redress from the United States than that of all other residents of Greytown.

"The French Government having consented that its much respected diplomatic representative here should be the medium of preferring the claims referred to, the undersigned has, pursuant to the wishes of the President, given the application a more deliberate consideration on that account than would otherwise seem to be due to it, and has shown in a satisfactory manner, as he believes, that neither upon the ground of right nor justice, nor by any considerations addressed to its sense of equity, is this Government obliged or required to make compensation for the losses occasioned by the bombardment of Greytown."

Mr. Marcy, Sec. of State, to Count Sartiges, French min., Feb. 26, 1857, MS. Notes to French Leg. VI. 301; S. Ex. Doc. 9, 35 Cong. 1 sess. 3.

See, also, Mr. Marcy, Sec. of State, to Mr. Molina, Costa Rican min., Oct. 20, 1854, MS. Notes to Cent. Am. I. 67.

See, as to the bombardment of Greytown, S. Ex. Doc. 8, 33 Cong. 1 sess.; S. Ex. Doc. 85, 33 Cong. 1 sess.; S. Rept. 464, 44 Cong. 1 sess., on Perrin's case.

See, also, infra, § 1168.

"I have examined the claim which you commended to the attention of this Department of Mr. Troutman Perrin, for damages sustained in the bombardment of Greytown in 1854, by Com. Hollins. It would be a sufficient answer that Mr. Perrin at the time the injuries were sustained was a French subject, and that his Government has acquiesced in the refusal of the United States to grant any indemnity for the losses of French subjects on that occasion. The British Government, upon the advice of the law officers of the Crown, declared to Parliament its inability to prosecute similar claims. In 1857, Lord Palmerston applied the decision in the case of Greytown as a precedent for refusing compensation to British merchants whose property in a Russian port had been destroyed by a British squadron during the Crimean war. (See note in Lawrence's Wheaton, last ed., page 173; Dana's Wheaton, p. 145.) The Governments of Austria and Russia have applied the doctrine involved in the Greytown case to the claims of British subjects injured by belligerent operations in Italy in 1849 and 1850. (See note page 49, vol. 2, Vattel, Guillamin & Co.'s ed. 1863.) We have applied the same principle in declining

to make reclamations for citizens of the United States, whose property was destroyed in the bombardment of Valparaiso by a Spanish fleet, and in resisting the claims of subjects of neutral powers, which sustained injury from our military operations in the Southern States during the recent rebellion. It will probably be found a sufficient answer to the reclamation of many of our citizens who have sustained losses from belligerent operations, on both sides, during the recent occupation of Mexico by French troops. The principle affirmed is that one who takes up a residence in a foreign place and then suffers an injury to his property by reason of belligerent acts committed against that place by another foreign nation must abide the chances of the country in which he chose to reside, and his only claim, if any, is a personal one, against the government of that country, in which his own sovereign will not interest himself. The only discrimination suggested in Mr. Perrin's case is on account of the very temporary nature of his sojourn at Greytown. I think this can not affect the principle, which is too valuable in the present circumstances of this country to allow us to waive or impair it. By no allowed construction of the laws could this claim be paid out of any fund under the control of the Department, and the considerations I have stated forbid its recommendation to Congress."

Mr. Seward, Sec. of State, to Mr. Sumner, U. S. Senate, Feb. 26, 1868, 78 MS. Dom. Let. 144.

"The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Baron Gerolt, envoy extraordinary and minister plenipotentiary of the North German Union, of the 17th ultimo, relative to the claim of George Philip Bescher for the destruction of his property at Greytown, Nicaragua, by an armed force from the United States sloop of war *Cyane*, Captain Hollins, on the 13th of July, 1854.

"This claim is advanced on the ground that before the bombardment by the *Cyane* notice was expressly given by Mr. J. W. Fabens, the commercial agent of the United States at Greytown, that the house and property of the firm of Wiedmann and Bescher, which, as is alleged, were covered by the flag of the Hanseatic consulate, would be respected in every way.

"In reply the undersigned has the honor to state that, after the most diligent search, no proof of any such notice has been found. The official reports of Mr. Fabens to this Department and of Captain Hollins to that of the Navy are silent upon the subject. The dispatches of both these officers in regard to the bombardment and its attendant circumstances are full and explicit, and it is improbable that they would have omitted to mention so important a fact as the pledge referred to, if any such pledge had been given.

"The only person mentioned by Captain Hollins whose property was directed to be exempted from destruction was that of one De Barwell, a Frenchman, as the captain had learned that he had protested and held himself aloof, as far as possible, against any cooperation with the townspeople or pretended authorities of San Juan.

"The undersigned has also reverted to the correspondence between General Cass and Mr. Schleeden, to which Baron Gerolt refers, but he has not found therein any warrant for the baron's statement that it appeared therefrom that the investigation of the matter had not been completed.

"The undersigned can not acknowledge any substantial difference between the claim of Mr. Bescher and those of the French subjects adverted to by Mr. Marcy in his note to Mr. de Sartiges of the 26th of February, 1857. A minister of the United States on his return home had been assaulted, and insulted, and property of citizens of the United States had been robbed at Greytown. The *Cyane* was sent thither to demand redress for these injuries. This redress not having been given, the town was destroyed, partly by bombardment, and the destruction was completed by a force of marines landed for the purpose.

"How much soever this Government may regret that unoffending neutrals should have suffered under these circumstances, they must look for redress, if anywhere, to the community where they chose to take up their abode and whose conduct occasioned the measure which led to their losses.

"Under these circumstances, the undersigned would prefer to decline any special negotiation with reference to the case of Mr. Bescher."

Mr. Fish, Sec. of State, to Baron Gerolt, Prussian min., April 15, 1870, MS. Notes to Pruss. Leg. VIII. 188.

See, also, Mr. Fish, Sec. of State, to Mr. Luttrell, April 28, 1876, 113 MS. Dom. Let. 197.

When the Greytown bombardment was under discussion in the House of Commons on June 19, 1857, Lord Palmerston, then first minister, said: "It is undoubtedly a principle of international law, that when one government deems it right to exercise acts of hostility against the territory of another power, the subjects and citizens of third powers who may happen to be resident in the place attacked, have no claim whatever upon the government which, in the exercise of its national rights, commits these acts of hostility. For instance, it was deemed necessary for us to destroy the town of Sebastopol. There may have been in that town Germans, Italians, Portuguese, and Americans. But none of these parties had any ground upon which to claim from the British and French Governments compensation for

losses sustained in consequence of those hostilities. Those who go and settle in a foreign country must abide the chances which may befall that country, and if they have any claim, it must be upon the government of the country in which they reside; but they certainly can have no claim whatever upon the government which thinks right to commit acts of hostility against that state. Therefore, we were advised, and I think rightly, that British subjects in Greytown had no ground upon which they could call upon the Government of this country to demand from the Government of the United States compensation for the injuries which they suffered in the attack upon that town. We may think that the attack was not justified by the cause which was assigned. But, as an independent state, we have no right to judge the motives which actuated another state in asserting their rights and vindicating wrongs which they supposed its citizens or subjects had sustained, and there was nothing in the relations between Great Britain and Greytown which gave us a right exceptional to the application of that general rule of international law. . . . Government is there (in Greytown) administered by a self-elected, self-constituted municipality of Americans, English, French, Spaniards, and Germans. They are acting upon their own responsibility, and they, and not England, must be responsible for the consequences of everything they may do. I believe the real state of the case was that there was a dispute between two rival American transit companies, the one patronized by the self-constituted government of Greytown, the other protected by the Government of the United States; and that out of the rivalship and quarrels of those two companies arose the transaction to which the noble lord has adverted. Undoubtedly communications have passed between the British and American Governments with a view to ascertain what the intentions of the American Government were; but we found that they rested upon the rule of international law to which I have referred, and the right which the law of nations gave them to take measures which they, in their own judgment, deemed necessary. The American Government have determined not to give compensation to any parties. . . . Her Majesty's Government, therefore, acting under the advice of those who are most competent to give an opinion upon the subject, and deeming the advice in accordance with international practice, have foregone demanding any compensation of the United States for those subjects of Great Britain who have been so unfortunate as to have been injured by the bombardment of Greytown."

Hansard's Parl. Debates, 3d series CXLVI. 41; inaccurately quoted in Lawrence's Wheaton (1863) 174.

On a subsequent occasion, July 7, 1857, a member of the House inquired "whether it is the intention of Her Majesty's Government to

introduce any measure enabling them to grant compensation to British merchants whose property at Uleaborg, in the Gulf of Bothnia, was destroyed on the 2nd of June, 1854, by the boats of a squadron under the command of Admiral Plumridge."

Lord Palmerston said "that the proceedings in this matter must be regulated by the principle which he had stated to be an international principle when a question arose some time ago as to the losses sustained by British subjects at Greytown. He then stated the principle of international law to be that persons who were domiciled in a foreign country must abide by the fate of that country in peace and war, and that therefore no demand could properly be made upon the American Government for losses sustained by British subjects in Greytown in consequence of hostilities which took place between the United States and Granada. The same principle applied to the case to which the honorable gentleman now referred. There were certain British subjects, and probably the subjects of other states, who were domiciled or had property in the Russian territory. Those persons must take the chance of the protection of the Russian Empire, and if by any circumstance the place where their property was situated became the scene of hostile operations no claim could possibly be set up by those persons, whatever country they might belong to, against the government whose forces carried on the hostilities by which they had been made to suffer."

Hansard's Parl. Debates, 3d. series, CXLVI. 1045; inaccurately quoted in Lawrence's Wheaton (1863), 175.

2. VALPARAISO.

§ 1041.

See, also, infra, § 1170.

"The general principle of public law, sanctioned by the express assent of the principal nations of Europe, and which this Government has asserted on many occasions, from the bombardment of Greytown down to its latest operations in the suppression of the recent rebellion, is that the citizens of foreign states who reside within the arena of war, have no right to demand compensation from either of the belligerents for the losses or injuries they sustain.

"This rule has doubtless some limitation. It is not to be construed as proclaiming immunity to a belligerent for every outrage which may be perpetrated by those in his service, simply because they occurred during the time and upon the theater in which hostilities were prosecuted. The injury, it may be conceded, must result from such military or naval measures as by the code of civilized warfare and the modern practice of nations are recognized as legitimate. There

appears to be nothing in the circumstances of the bombardment of Valparaiso, so far as is known to us, which should take it out of this category. It was an act of what may be deemed extreme severity. With the question how far it was justifiable, as between the belligerents, we can have nothing to do. The most that a neutral power can ask in behalf of its citizens or other non-combatants who may be exposed to injury from an operation which, like the bombardment of a town, when once begun, must necessarily be indiscriminating in its effects, is to require that a reasonable time should be granted to them to withdraw their persons and property from the peril. The granting of even this can hardly be a matter of obligation if it would defeat or endanger the main object of the attack.

"In the case in question, as it seems to me, from such information as we have, not only was reasonable notice given by the Spanish admiral to foreign residents and non-combatants to withdraw their persons and property from exposure, but pains appear to have been taken to confine the fire of his fleet to the Government buildings and public property of Chili.

"I am induced to think, therefore, that Americans domiciled in Valparaiso have no ground for invoking the intervention of the Government to require of either Spain or Chili indemnity for their damages incurred in the bombardment of Valparaiso."

Mr. Seward, Sec. of State, to Mr. Stanbery, At. Gen., Aug. 24, 1866, 74 MS. Dom. Let. 64.

"The question presented for my opinion is, Whether a case is made for the intervention of the United States on behalf of these citizens for indemnity against Spain or Chile? I do not see any ground upon which such intervention is allowable in respect to either of those Governments. The bombardment was in the prosecution of an existing war between Spain and Chile. Although, under the circumstances, it was a measure of extreme severity, yet it can not be said to have been contrary to the laws of war, nor was it unattended with the preliminary warning to non-combatants usual in such cases. It does not appear that in carrying on the bombardment any discrimination was made against resident foreigners or their property. On the contrary, there was at least an attempt to confine the damage to public property. Then, as to the Chilean authorities, it does not appear that they did or omitted any act for which our citizens there domiciled have a right to complain, or that the measure of protection they were bound by public law to extend to those citizens and their property was withheld. No defence was made against the bombardment, for that would have been fruitless, and would have aggravated the damage, as Valpariso was not then fortified, and no

discrimination was made by those authorities between their own citizens and foreigners there domiciled. All shared alike in the common disaster. The rule of international law is well established, that a foreigner who resides in the country of a belligerent can claim no indemnity for losses of property occasioned by acts of war like the one in question."

Stanbery, At. Gen., 1866, 12 Op. 21, in response to a request of Mr. Seward, Sec. of State, for an opinion on the claims of Wheelwright & Co., and Loring & Co., "American commercial houses . . . domiciled for commercial purposes at Valparaiso," for losses of merchandise in the conflagration caused by the bombardment of the city by the Spanish fleet.

A tribunal of arbitration in Chile published certain rules of decision, among which was the following: "Bombardment is permissible as long as there is resistance of a rifle." The Department of State declared this rule to be "susceptible of various interpretations, according to the circumstances to which it is sought to be applied, and altogether too vague in its terms to admit of discussion."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 33, Oct. 27, 1885, For. Rel. 1885, 625.

3. Goods in Public Warehouse.

(1) Antwerp, 1830.

§ 1042.

In 1830, during the revolt of the Belgian provinces against the authority of the King of the Netherlands, the city of Antwerp was bombarded by the Dutch forces. This act was excused by the Government on the ground of a breach by the insurgents of a suspension of hostilities which had been agreed upon for the protection of the city. During the bombardment the public warehouse was destroyed in which were stored the goods of various foreigners. Some years later, after the Kingdom of Belgium was established, claims were put forward by the Governments of Austria, Brazil, France, Great Britain, Prussia, and the United States for indemnity for such of their citizens or subjects as had suffered loss by the transaction. President Jackson, in his annual message of December 5, 1836, said: "The claims of American citizens for losses sustained at the bombardment of Antwerp have been presented to the Governments of Holland and Belgium and will be pressed, in due season, to settlement."[a]

[a] Messages and Papers of the Presidents, vol. 3, p. 237.

"In the years 1829 and 1830, while the present Kingdom of the Netherlands and Belgium were under one government, merchandise to a large amount, belonging to merchants of the United States, was shipped from this country to Antwerp, which, being intended for reexportation, was, conformably to the law of the country, deposited in the entrepôt or public storehouse appointed for the reception of goods of that description. The revolution having broken out in August, 1830, in October of that year the city, being then in the occupation of the Belgians, was, in consequence of the alleged violation of an armistice which had been entered into by the municipal authorities, bombarded by the Dutch forces under General Chasse, who had possession of the citadel in the vicinity, and the entrepôt, with the merchandise it contained, including that belonging to the citizens of the United States, was destroyed. Had the contest, in the course of which this bombardment took place, terminated favorably to the Netherlands, no doubt is entertained that the United States would have had a just claim upon the Government of that country to the indemnification of their citizens for the loss which they had sustained. The fact that the conflict had a different termination can not impair the right of this Government or its citizens to indemnification; but from which of the two countries, or in what proportion from both, the satisfaction is to come it would have been most gratifying to the President to have had determined by themselves. He has accordingly for a long time forborne, notwithstanding the importunity of the sufferers, to urge their claims which appeared to him so just, in the hope that some mutual and voluntary arrangement for their liquidation would have been made ere this between the Governments of Belgium and the Netherlands. Actuated by the same feeling, he might have been induced still longer to delay the application which he now thinks it his duty to make to his Netherlands' Majesty, had not the subject been recommended to his early attention by the House of Representatives at its recent session. You will address a note to the minister of foreign affairs expressing the President's views, as they have been communicated to you in this despatch. The justice of the claim preferred in behalf of our citizens on this occasion is so obvious, that the President anticipates its ready acknowledgment by His Majesty's Government; and cherishes the confident expectations, that some arrangement will be speedily consummated by which the losses of the innocent sufferers may be fully repaired."

Mr. Forsyth, Sec. of State, to Mr. Davezac, chargé d'affaires to the Netherlands, Sept. 10, 1836, MS. Inst. Netherlands, XIV. 24.

"It is not intended that you should enter at present into any argument upon the question, but that you should simply present the subject as it is stated in that dispatch [supra]. A communication of the same

import has been made to the Belgian Government, through Baron Behr. If you can prevail upon the Government of the Netherlands to acknowledge the validity of the claim, by promising to use its influence with Belgium to procure its liquidation, an object which you may probably accomplish, you will have gained a point which is considered of some importance. Unless an arrangement satisfactory to the United States, should in the meantime have been made, for securing redress to the sufferers, the chargé d'affaires who may be appointed to represent this Government at Brussels will be directed to press the matter there; and if it should be thought expedient to urge the claim at the same time upon the Netherlands, you will then receive such further instructions as may be deemed requisite." (Mr. Forsyth, Sec. of State, to Mr. Davezac, Sept. 10, 1836, MS. Inst. Netherlands, XIV. 26.)

"The claims of American citizens for losses sustained at the bombardment of Antwerp have been presented to the Governments of Holland and Belgium, and will be pressed, in due season, to settlement." (President Jackson, annual message, Dec. 5, 1836, Richardson's Messages, III. 237.)

"I am directed by the President to call your attention in a special manner to the question of the claims of our citizens to indemnification for losses incurred by the destruction of the entrepôt at Antwerp during the bombardment of that city by the Dutch in the month of October, 1830, which you will regard as one of the first and most interesting objects of your mission. You will therefore make yourself thoroughly acquainted with the nature of these claims, and of the grounds upon which the United States are entitled to indemnity.

"The subject was brought to the notice of the Belgian government by Mr. Legaré in a note addressed to the minister of foreign affairs on the 27th of February, 1836, in which, without pressing upon that government an immediate discussion of the subject he protested against a report, which had been made by a committee of the Chamber of Representatives, upon the subject of indemnity for the losses sustained on the occasion alluded to, being interpreted in any manner as compromising the rights of the government or citizens of the United States, and reserving to this Government the liberty of adopting at any future time whatever measures it might deem necessary for the enforcement of those rights. You will no doubt find a copy of this note upon the records of the legation. This question having been recommended to the attention of the President by a resolution of the House of Representatives, in the session of 1835–1836, a note was addressed to Baron Behr, the chargé d'affaires of Belgium in this country, on the 5th of September, 1836, with a request that he would [illegible] government, expressing the views of the President in regard to these claims, and stating that the subject would be specially given in charge to the representative about to be appointed from this country to the Belgian court. A copy of this note to Baron

Behr is herewith transmitted. This matter has also been brought before the government of the Netherlands by Mr. Davezac in pursuance of instructions given to him by this Department, of which a copy is enclosed, but at the last dates no answer has been received to the note which he addressed to the minister of foreign affairs of that country. In neither instance was application made until ample time had been allowed those governments to make some voluntary and mutual arrangement (which would have been most gratifying to the President) for the liquidation of claims so just. Policy as well as justice prescribes to Belgium the course she ought to pursue, and the forbearance of the United States in pressing these claims, notwithstanding their urgency, and the sufferings of our citizens interested, furnishes a powerful reason for their speedy settlement by the Belgian Government, and imposes additional obligation upon the President, who greatly regrets the circumstances which have heretofore occasioned such unexpected delay, to adopt the most prompt and efficient measures for their satisfactory adjustment. It is the President's wish therefore that you should ascertain whether any measures have been taken by Belgium towards the accomplishment of an object deemed by him of the greatest consequence in the preservation and promotion of those feelings of amity which subsist between the two nations, and to urge upon that government such speedy action on the subject as the equity of the claims, and the length of time which has elapsed since the injuries were sustained clearly demand."

Mr. Forsyth, Sec. of State, to Mr. Maxey, chargé d'affaires to Belgium, June 12, 1837, MS. Inst. Belgium, I. 24.

See, also, Mr. Forsyth, Sec. of State, to Mr. Bronson, M. C., March 29, 1838, 29 MS. Dom. Let. 389; Mr. Forsyth, Sec. of State, to Messrs. Donnell & Sons, Feb. 24, 1840, 30 MS. Dom. Let. 487.

"Your correspondence with the Belgian Government on the subject of the claims of our citizens for indemnification for the loss of property by the destruction of the entrepôt at Antwerp, which has been conducted in accordance with the instructions of your government, has not been viewed with unconcern, and when taken in connection with the rejection of two successive treaties, both of which were sought by Belgium, demands grave consideration. The whole subject has been called for in Congress by two resolutions, copies of which are transmitted for your information.

"There is no doubt that the duty or obligation of indemnity, whatever it is, for the losses at Antwerp, falls upon Belgium. The Belgians, as a civilized people, must be considered at all times under some form of civil government, and however often they may see fit to change this form, these changes cannot affect their just responsibility to any foreign state, its citizens or subjects. Succeeding governments

necessarily take upon themselves, so far at least as foreign nations are concerned, the obligations of the governments which preceded them, whether those obligations were created by treaty or by the general principles of national law. It is on this ground that the restored governments of Europe have made indemnities to foreign states for excesses committed on the property of citizens or subjects of these states by the revolutionary governments. The treaties of indemnity entered into and carried into effect by the United States on one side, and France, Spain, and the Two Sicilies, respectively, on the other, are all founded on this universally received idea. The subjects of foreign states in this respect are on a different footing from domestic subjects. It rests in the discretion of each government to decide how far it will indemnify its own citizens for wrongs and injuries inflicted by revolutions, taking into its consideration both the general principles applicable to such cases, and its own ability. But national obligations are perpetual until discharged, and demand at all times a full and adequate compensation.

"The Belgians saw fit to change their government which, so far as foreign nations are concerned, they had a right to do. But in doing this they shook off no national responsibility. The moment the authority of the King of the Netherlands ceased over the Belgians, that moment every one of his obligations towards foreign nations, so far as that part of his Kingdom was concerned, devolved on the new government that succeeded him.

"The American property in the entrepôt at Antwerp was in the custody of the Government. Its owners under the circumstances had no control over it. A commotion broke out, which shortly ended in the severance of Belgium from the Kingdom of the Netherlands. The pen of history will hardly record the transactions of this outbreak as the rise, progress and termination of a civil war. Before it had reached that point, the end of the rising was accomplished, and the division of the countries decided. Suppose the suppression of the rising had been as sudden as its triumph, would any one in such case say that open and flagrant war, a regular controversy between hostile and established governments, had existed in the Netherlands? Certainly no one would have thought of opposing such an argument to the responsibility of the actual government.

"In your correspondence you have urged the claim, even supposing there was an existing civil war, by arguments not yet answered. But if they should be, or could be, answered, it still remains to be shown that the popular rising which separated Belgium from the Netherlands ever assumed the settled character of civil war. On the contrary, the true view of the transaction is, as it appears to this government, that the Belgian people by the force of numbers, and the power of unanimity, changed their government without war, without

more violence than attends other movements which have often occurred, and which whether successful or unsuccessful have never been held to create a state of flagrant public hostilities."

Mr. Webster, Sec. of State, to Mr. Maxcy, chargé d'affaires to Belgium, Feb. 26, 1842, MS. Inst. Belgium, I. 34.

Similar claims were put forward by the Governments of Austria, Brazil, France, Great Britain, and Prussia.

The Belgian Government denied its liability on the ground (1) that the injury was due to an unavoidable incident of war, (2) that as the act was committed by the Dutch forces the Dutch Government was alone responsible for it, and (3) that if any indemnity should be made to the citizens or subjects of the states in question, "a distinction would be made between natives and foreigners, which would be contrary to international law."

These contentions were not accepted by the foreign governments, and, in respect of the last, Lord Palmerston said:

"With reference to the last argument advanced by the Belgian Government, Her Majesty's Government have to observe, that it is for the Belgian Government alone to decide whether it shall or shall not indemnify its own subjects for losses sustained by them on this or any other occasion. But whatever may be the decision of the Belgian Government on that point, the Government of Her Majesty can not admit such decision as an argument for a denial of justice to British subjects; and as bearing upon this matter it must not be forgotten that whatever losses Belgian subjects may have sustained in the course of the contest which led to the independence of Belgium, the successful issue of that contest was in itself to those Belgian subjects some compensation for the losses so sustained; but foreigners who had no interest in the struggle, can not find in its issue compensation for losses sustained during its continuance; and it would be especially unjust if the subjects of those powers, who by their timely and effectual interference, enabled the Belgian people to attain that independence, with a far smaller amount of loss of life and property than would have been incurred if the Belgians had been left to their own means, should remain without compensation for losses occasioned by wanton acts of violence which were committed by the Belgians themselves, and which had no tendency whatever to accomplish the independence of the country." (30 Brit. & For. State Papers, 233.)

With reference to Lord Palmerston's use of the phrase "wanton acts of violence," it should be observed that the Dutch Government excused its bombardment of the city on the ground of a breach by the insurgents of a suspension of hostilities which had been agreed on for the protection of the city.

"I have the honor to acknowledge the receipt of your letter of the 12th instant, inquiring whether the Government of the United States will have any agency in collecting the amount due under the recent act of indemnity for property destroyed during the Belgian revolution of 1830, or whether each claimant must prosecute his own claim.

"The terms of the law providing indemnity have not prescribed any such agency, but the Department is always prepared, upon application from the parties interested, to transmit documents relating to such claims to the representative of the United States at Brussels, with a request that he would interpose his exertions in their behalf. As it is understood that your agent will proceed to Belgium on your account, I now enclose at your request the documents you ask for, which have been on file in this Department."

Mr. Webster, Sec. of State, to Messrs. Donnell & Sons, Aug. 15, 1842, 32 MS. Dom. Let. 403.

See, also, Mr. Legaré, Sec. of State, to Mr. Tolert, May 11, 1843, 33 MS. Dom. Let. 171; Mr. Calhoun, Sec. of State, to Mr. Hilliard, June 7, 1844, MS. Inst. Belgium, I. 48.

2. Messina, and Elsewhere.

§ 1043.

During the revolution which, following the establishment of a provisional government at Palermo, broke out at Messina on January 29, 1848, against the Government of the King of Naples, the revolutionists carried by storm the Fort Real Basso, confining the royal troops to the citadel of Fort Salvador. While the Neapolitan forces were thus shut up they fired from time to time in various directions, and some of their shots set fire to the Porto Franco, in which there were goods belonging to British merchants. In a note to Prince Cariati, Neapolitan minister for foreign affairs, March 9, 1848, Lord Napier, British minister at Naples, called attention to this incident, and, alleging that the Porto Franco was "intentionally and wantonly set on fire by a bombardment directed upon it by the citadel in the absence of all provocation or necessity which could justify such a measure," reserved "the right to demand compensation for all losses and prejudice in their persons and property which British subjects may have incurred thereby." Prince Cariati replied, March 14, 1848, and, while questioning the allegation that the warehouse was set on fire "wantonly or inconsiderately," assured his lordship "that, when the facts shall have been ascertained, the King's Government, animated by sentiments of fairness and good will towards the subjects of Her Britannic Majesty, will act according to the strictest justice, and does not doubt that from the relations of friendship and good will which exist between the two Governments, every question will be settled to the mutual satisfaction of both parties."

39 Brit. and For. State Papers, 775-777.

"An hon. member asked me a question yesterday with respect to our claims on Naples, and it so happens that there has arrived,

within a day or two, a despatch giving an account of the state of those claims. We have made a request to the Court of Naples to have an indemnity for certain British residents at Messina, whose goods were destroyed in the bombardment of that place. The Neapolitan minister of foreign affairs said, he was quite willing to agree to the principle which had been laid down, I suppose by the Queen's advocate, he says by the Crown lawyers of Great Britain, namely, 'that compensation should be awarded for the loss of such property as was destroyed without sufficient necessity, whether wantonly, designedly, or by pillage.' But it so happened that there were other representatives besides that of England at the conference. There were the ministers of Prussia, France, and Austria. What do they say? 'The ministers of France and of Prussia said, that they could not adopt this principle without reservation. They said that the property of foreigners placed in the warehouses of a free port had always been considered to be under the guarantee of the government to whose protection it was confided; and the compensation granted by the Belgian and Bavarian Governments for the destruction of property lodged in free ports at Antwerp and on the Rhine proved clearly that such a principle was generally recognized by European powers.' It appears, then, that the principle we proceeded upon was not only not extravagant, was not only not pushed beyond the usual law of nations, but within its range. And 'Count Walewski also cited a case which occurred in Paris during the insurrection of the 23rd of June, 1848, when indemnity was claimed by the Neapolitan, and conceded by the French Government for losses suffered by a Neapolitan subject upon that occasion.' It thus appears when a claim was made for losses suffered at Paris, that the French Government, as a government that knows the law of nations and willing to do justice to foreigners, conceded that claim."

Speech of Lord John Russell, House of Commons, June 25, 1850, Hansard, Parliamentary Debates, CXII. 700–702.

XII. *ACTS OF INSURGENTS.*

1. Opinions of Publicists.

§ 1044.

"Are or are not governments responsible for losses and injuries experienced by foreigners in times of internal disturbances or of civil war? This question has been a long time discussed and is finally resolved in the negative. . . .

"To admit in this case the responsibility of governments, that is to say, the principle of indemnity, would be to create an exorbitant and pernicious privilege, essentially favorable to strong states and

injurious to feebler nations, and to establish an unjustifiable inequality between nationals and foreigners. On the other hand, in sanctioning the doctrine which we combat, we should do, although indirectly, a deep injury to one of the constituent elements of the independence of nations, that of the territorial jurisdiction; just here, indeed, is the real bearing, the true significance of the recourse so frequently taken to the diplomatic channel for the purpose of resolving questions whose nature and the circumstances in which they are produced place them within the exclusive domain of the ordinary tribunals."

Calvo, Droit Int. III. § 1280.

Pradier-Fodéré states that the Spanish-American republics all have adopted the principle that damages caused by factions give no ground for any indemnity whatever in favor of foreigners, the governments of the two parties not being obliged to accord to foreigners a larger measure of protection than is given by their laws to citizens, either as to their persons or their goods. He states that the same principle has been introduced into their conventional law, and cites article 30 of the treaty between Peru and the Argentine Republic of March 9, 1874, that, "as a consequence of the established principle of equality, in virtue of which the citizens of each of the high contracting parties shall enjoy in the territory of the other the same rights as nationals, . . . the damages caused by factions or by individuals, and in general by accidents of any nature whatsoever, will not give rise to any right of special indemnity, the governments of the two republics being obliged to accord to each others' nationals, only the same protection of person and property as is accorded by the laws to their own citizens." The same provision, says Pradier-Fodéré, is found in article 28 of the treaty between Colombia and Peru of February 10, 1870; but it is added that diplomatic intervention may take place when the protection due to foreigners shall not have been given, either because their claims have not been examined, or because they were rejected with manifest injustice; and besides that, diplomatic intervention shall be admissible only when all legal remedies shall have failed. He states that article 10 of the treaty between Peru and Bolivia of November 5, 1863, stipulates that the citizens of the contracting parties shall not claim indemnities "for casual accidents occurring without the fault of the constituted authorities." Continuing, Pradier-Fodéré says:

"As to states in Europe, they have always invariably repelled in a more or less express manner the principle of indemnity and diplomatic intervention, although they have sought to impose it on the republics of South America when they could do so. Different states have, it is true, at times seemed to admit the system of pecuniary aids in favor of the victims of internal troubles and of civil wars, but in taking this

step they have generally declared that they intended to perform an act of spontaneous liberality and not to place themselves under any obligation, and that the sums given by them were accorded only on the ground of personal assistance, on the ground of misfortune and not of the right of the person, and not on the ground of indemnity. 'If the state is not subject to any legal obligation,' it is declared in the preamble of the French decree of December 24, 1851, 'it is conformable to the rules of equity and of sound policy to repair unmerited misfortunes and efface, as far as possible, the reminders of our civil discords.'

"To sum up, the generally admitted rule, according to which in principle states need not indemnify foreigners for losses suffered during a civil war, rests on the following very serious conditions: Foreigners who settle in a country to carry on their business, submit themselves by that act to the same laws and to the same tribunals as citizens of the country, and the government can not be held responsible towards them for the consequences of an outbreak or of a civil war, without making such responsibility an unjustifiable inequality between foreigners and nationals. Every sovereign state has the right indeed to compel respect for the order established in its territory, even by the employment of arms, and it does not rest, in respect of damages which result from resorting to force, under obligations more extensive as to foreigners than as to its own nationals. To demand this would be to do injury to the territorial jurisdiction of a sovereign state; it would introduce into international relations a privilege favorable to strong states, injurious to weak states.

"These considerations apply, however, only to states which are capable of fulfilling their international obligations. When, on the contrary, the state which is engaged in civil war no longer offers a guarantee of power capable of making itself obeyed, when the circumstances of the contest and the loosening of passions render impossible the performance of the duty of protection towards foreigners, when the latter are menaced with becoming the victims of the violence of an excited populace, respect for the right of sovereignty and jurisdiction ought not to prevent foreign states from caring for the safety of their citizens. 'The state whose subjects inhabit the territory where civil war prevails is under an obligation to protect its citizens abroad, and the dangers to which they are exposed in consequence of revolution and of civil war increase those obligations instead of diminishing them. So long as it may hope for and obtain from the state which is involved in civil war or in revolution an efficacious protection, it contents itself with diplomatic measures; when those measures become insufficient it takes such measures as may be necessary itself to protect its nationals: it masses troops on the frontier and sends its fleets to cruise along the coasts, in

order to punish infractions of the law of nations or to gather up its subjects in case of need. The state which is involved in civil war is bound to permit this protection and cannot see in it an act of war, if it is incapable of discharging itself the duties of protection towards foreign subjects."

Pradier Fodéré, Traité de Droit International Public, I. 343, § 205; citing Calvo; and Funck-Brentano and Albert Sorel, Précis du Droit des Gens (1877), I. cap. 12, p. 228.

As to the intervention of the French admiral, Baudin, in the insurrection at Naples in May, 1848, to protect his countrymen from the depredations of the lazzaroni, see Hansard, Parl. Debates, CXII. 398, 700.

"Let us suppose that a country is agitated by revolution and by civil war, and that the government, in order to repress the disorder, employs the means of repression requisite to safeguard the interests of the state and which are not absolutely forbidden by international law. If by this act foreigners suffer an injury, the government cannot be declared responsible, nor be held to make indemnity for the damages suffered by them. If a government neglected to do everything necessary to protect the property and goods of foreigners, and if it did not endeavor to repress the violence and offences of its citizens, it would be bound to answer for the consequences of its culpable negligence: but if the injury resulted from *force majeure*, there would exist no legal responsibility. The action of a government could not be paralyzed by the necessity of protecting the rights of foreigners."

Fiore, Droit Int. Public, Paris (1885), C. Antoine's translation, I. § 675.

"When a government is temporarily unable to control the acts of private persons within its dominions owing to insurrection or civil commotion it is not responsible for injury which may be received by foreign subjects in their person or property in the course of the struggle, either through the measures which it may be obliged to take for the recovery of its authority, or through acts done by the part of the population which has broken loose from control. When strangers enter a state they must be prepared for the risks of intestine war, because the occurrence is one over which from the nature of the case the government can have no control; and they cannot demand compensation for losses or injuries received, both because, unless it can be shown that a state is not reasonably well ordered, it is not bound to do more for foreigners than for its own subjects, and no government compensates its subjects for losses or injuries suffered in the course of civil commotions, and because the highest interests of the state are too deeply involved in the avoidance of such commotions to allow the supposition to be entertained that they

have been caused by carelessness on its part which would affect it with responsibility towards a foreign state."

Hall, Int. Law (5th ed.), 222–223, citing Bluntschli, § 380 bis; Calvo, §§ 292–295.

"2. Foreign subjects living or possessing property in the country rent by civil war may no longer complain to their governments of the injuries which their interests may have undergone by reason of the acts of the forces in the field. They can not do so at least as long as those forces keep themselves within the limits set by the usage of war. Up to the recognition, the depredations committed by the rebels to the detriment of foreign subjects, resident or transient, may be made the object of reclamations against the legitimate government, and the latter will find its responsibility engaged if it does not show that it has done everything possible to prevent them."

Pillet, Les Lois actuelles de la Guerre (Paris, 1901), 29.

"1. Independently of cases where indemnity may be due to foreigners in virtue of the general laws of the country, foreigners have a right to indemnity when they are injured in their person or property in the course of a riot, an insurrection, or a civil war; (*a*) when the act through which they have suffered is directed against foreigners as such, in general, or against them as subject to the jurisdiction of any given state; or (*b*) when the act from which they have suffered consists in the closing of a port without previous notification at a seasonable time, or the retention of foreign vessels in a port; or (*c*) when the damage results from an act contrary to law committed by an agent of the authority; or (*d*) when the obligation to make indemnity is established, in virtue of the general principles of the laws of war.

"2. The obligation is likewise established when the damage has been committed (No. 1 (*a*) and (*d*)) on the territory of an insurrectionary government, either by said government or by one of its functionaries. Nevertheless, demands for indemnity may in certain cases be set aside when they are based on acts which have occurred after the state to which the injured party belongs has recognized the insurrectionary government as a belligerent power, and when the injured party has continued to maintain his domicile or habitation in the territory of the insurrectionary government. So long as this latter is considered by the government of the injured party as a belligerent power, claims contemplated in line 1 of article 2 may be addressed only to the insurrectionary government, not to the legitimate government.

"3. The obligation to make indemnity ceases when the injured parties are themselves the cause of the events which have occasioned the injury. There is especially no obligation to indemnify those who have

entered the country in contravention of a decree of expulsion, or those who go into a country or seek to engage in trade or commerce, knowing, or who should have known that disturbances have broken forth therein, any more than those who establish themselves or sojourn in a land offering no security by reason of the presence of savage tribes therein, unless the government of said country has given the immigrants assurances of a special character.

"4. The government of a federal state composed of several small states represented by it from an international point of view, can not invoke, in order to escape the responsibility incumbent on it, the fact that the constitution of the federal state confers upon it no control over the several states, or the right to exact of them the satisfaction of their own obligations.

"5. The stipulations mutually exempting states from the duty of extending their diplomatic protection must not include cases of a denial of justice, or of evident violation of justice or of the *jus gentium*."

"RECOMMENDATIONS.

"The Institute of International Law recommends that states refrain from inserting in treaties clauses of reciprocal irresponsibility. It thinks that such clauses are wrong in excusing states from the performance of their duty to protect their nationals abroad and their duty to protect foreigners within their own territory.

"It thinks that states which, by reason of extraordinary circumstances, do not feel able to insure in a sufficiently effective manner the protection of foreigners on their territory, can escape the consequences of such a state of things only by temporarily denying to foreigners access to their territory. . . .

"Recourse to international commissions of inquiry and international tribunals is, in general, recommended for all differences which may arise because of damages suffered by foreigners in the course of a riot, an insurrection, or a civil war."

Text of a resolution on the responsibility of states for damages suffered by foreigners during riots, insurrections, or civil war, adopted by the Institute of International Law at the session of Sept. 10, 1900. (Annuaire de l'Institut de Droit International, XVIII, 253–256.)

2. DENIALS OF LIABILITY.

§ 1045.

A claim was made against the Government of Brazil on account of the detention of the American brig *Toucan* at Porto Alegre, Brazil, in 1836. "If he [the master] was detained by the insurgents at Porto Alegre, as he was duly apprised before he left Rio Grande that that place was in their power, it is considered that the Imperial Gov-

ernment can not be held accountable so long as the insurgent domination lasted."

Mr. Forsyth, Sec. of State, to Mr. Hunter, chargé d'affaires to Brazil, No. 45, March 13, 1839, MS. Inst. Brazil, XV. 57.

For a further and fuller statement of this case, see Moore, Int. Arbitrations, V. 4615–4617.

In 1857 the United States demanded of the Mexican Government an explanation of the firing into the American schooner *Major Barbour* by the Mexican war steamer *Democrata*, on October 12, 1856, in the harbor of Coatzacoalcos. The Mexican Government stated that the *Democrata* was at the time when the aggression occurred in a condition of revolt against the authorities of the Republic, and that the shots fired were evidently intended for the Mexican man-of-war *Hidalgo*, which was lying near the Mexican schooner, and that, at the first intimation of the revolt of the *Democrata*, the Government issued a circular to the diplomatic corps disavowing any responsibility for any acts the vessel might commit while in a state of mutiny. The United States stated that it was entirely satisfied with these explanations.

Mr. Appleton, Act. Sec. of State, to Mr. Benjamin, M. C., June 13, 1857, 47 MS. Dom. Let. 141.

A claim was presented to the Government of Spain for losses sustained by a citizen of the United States at Puerto Plata during an insurrection against the Spanish Government in Santo Domingo in 1863. The Spanish Government replied that every possible measure had been taken for the protection of foreigners in Santo Domingo, but that the Spanish troops were obliged by the insurgents to abandon Puerto Plata, and that Spain, under the circumstances, was not liable for losses caused by the insurgents. The Department of State seems to have acquiesced in this decision, and, after a lapse of thirty years, declined to reopen the case.

Mr. Rockhill, Acting Sec. of State, to Mr. Lithgow, Sept. 18, 1896, 212 MS. Dom. Let. 540.

"The declaration contained in the law passed by the last Congress that 'the nation is not liable for the damages and injuries sustained by foreigners in time, or on account of war, but in such case they shall have the same rights and remedies as natives,' has not, as was easily to be foreseen, received the acquiescence of the European governments nor of that of the United States of America, which, far from adhering to it, have protested against the law, declaring that in all cases that may arise they will insist on all their rights. The principle, however justifiable it may be, not receiving the consent of the civilized powers in a condition to give to their protests the sanction of force, and

adopting opposite principles, the nation has to submit to the consequences of that sanction.

"Besides, to enable us to insist on the declaration of this law, it would be necessary for us to give entire reality to the hypothesis, that when a people asks to be inscribed on the list of nations it is because it has complete capacity to organize its public administration, and above all that of justice, in such a manner as to give the greatest security possible to the property and persons of those who may come within its jurisdiction; because it cannot be pretended that foreigners will come to participate in the insecurity and violences so frequent in the ferocious civil wars endemic in our present social state. A contrary course will draw after it better consequences, instead of reducing the foreigner to the insecure and humiliating condition of those who live at the mercy of the first revolutionist who may present himself, as still is the case with natives. It is more becoming us to learn from the scrupulous respect we owe to the person and property of the stranger, according to the general notions of public right, the respect due to our fellow-citizens, and thus give to our society the respectable character to which it aspires."

Message of President Murillo to the Colombian Congress, February 1, 1866, Dip. Cor. 1866, III. 511.

See, as to a law of Ecuador of 1888, supra, § 1.

"I have to acknowledge the receipt of your letter of the 5th ultimo, making claim against the Government of China, for property destroyed in the year 1861 by rebels against its authority. It is a well-established principle of international law maintained by this Government in the consideration of claims of its citizens against foreign states and of foreigners against the United States, that no government can be held responsible for the acts of rebellious bodies of men, committeed in violation of its authority, where it is itself guilty of no breach of good faith or of no negligence in suppressing insurrection. Even were your claim a just one, the fund to which you refer is not applicable to its payment, and, having been paid into the Treasury, a Congressional appropriation is required to withdraw any portion of it."

Mr. Seward, Sec. of State, to Mr. Smith, July 9, 1868, 79 MS. Dom. Let. 69.

Mr. Charles Francis Adams, in a conversation with Earl Russell, in which the subject of Great Britain's recognition of the belligerency of the Confederate States was discussed, remarked that, "at any rate, there was one compensation, the act had released the Government of the United States from responsibility for any misdeeds of the rebels toward Great Britain."

Mr. Adams, Min. to England, to Mr. Seward, Sec. of State, June 14, 1861, Dip. Cor. 1861, 87, 89.

On the night of October 28, 1862, the American ship *Alleghanian*, bound from Baltimore to London, was set on fire and sunk in Chesapeake Bay by a party of men belonging to the Confederate navy. The cargo of the ship consisted of guano belonging to the Peruvian Government, which presented to the United States a claim for its value. In a note of January 9, 1863, Mr. Seward denied the liability of the United States. The United States had, he said, employed all the diligence and energy which the Government could exercise for the purpose of suppressing the insurrection. "This Government," said Mr. Seward, "was in no wise informed or cognizant of the crime before its commission, although it was extraordinarily vigilant and active in military and naval operations on the waters and shores of the Chesapeake," and "its agents hastened to arrest and defeat the criminal enterprise as soon as it came to their knowledge. . . . This Government now disavows and condemns the transaction, and it is persistently engaged in the effort to arrest and inflict upon the depredators the ample punishment which the laws of the land award against those who commit piracy either upon the open seas or in the waters of the United States."

Mr. Seward, Sec. of State, to Mr. Barreda, Peruvian min., Jan. 9, 1863, Moore, Int. Arbitration, II. 1622.

The guano in question was subsequently recovered in a damaged condition. Sales were made of it amounting to upwards of $25,000, of which the Peruvian Government received one-half, the rest going to the salvors. (Moore, Int. Arbitrations, II. 1624.)

"France, by recognizing the insurgents as belligerents, may be expected to have accepted all the responsibility of that measure, and to be content to regard her subjects domiciled in belligerent territory as identified with belligerents themselves. There can be no question as to the applicability of this rule to domiciled merchants, and the reasons for its applicability to that class seem to be sufficient for it to embrace all aliens who reside in an enemy's country for the purpose of carrying on business of any kind."

Mr. Seward, Sec. of State, to Mr. Dayton, min. to France, Jan. 12, 1864, Dip. Cor. 1864, III. 17.

Exception was taken by the Prussian Government to a draft of a claims convention which restricted the admission of losses and damages to those caused by persons in the service of the United States and excluded those inflicted by the Confederate authorities. Mr. Seward replied that the United States regarded as too well established to admit of discussion the rule which limited the responsibility of the Government to cases in which it had "either committed a tortious act," or had "by its acquiescence or approval sanctioned or adopted it," or had "inexcusably neglected proper and available measures to prevent it." Mr. Seward affirmed that a government was

not liable for injuries committed by insurgents, provided it adopted "expedient and available measures to suppress the rebellion." No nation, he declared, could permanently exist if it were to consent to such an enlargement of its responsibilities as the Prussian Government seemed disposed to exact. "Law-abiding neutrals," said Mr. Seward, "whether domiciled in the country which becomes a theater of civil war, or residing abroad, have under the law of nations, when not modified by treaty, exactly the same claims for indemnity against the government concerned, as citizens of that country have, and no other or greater rights to indemnity. It is enough that the government honestly, diligently, and energetically puts forth proper efforts for the suppression of the insurgent enemy, and in that way gives the best protection it can afford to the lives and property which are threatened by it.

"The undersigned does not propose to follow the baron at large in his inquiries concerning the action of the Government of the late Two Sicilies, and of Bavaria, in cases which the baron represents to be parallel with the present. It is apparent that no one, or several states, either by exaction of unjust claims, or by submission to them, can establish principles of law against other independent nations.

"The undersigned would find no difficulty in referring the Prussian Government to numerous cases in which the leading powers of Europe, such as Great Britain, Austria, and Russia, have accepted and adopted the principles upon which the United States now stand. The undersigned, however, does not think it would be compatible with the national independence and sovereignty of the United States to admit that their position is, or can be a subject of debate.

"The baron refers to transactions which have heretofore occurred between the United States and Mexico, and the South American republics.

"The undersigned is not now to vindicate all or even any of the proceedings of the United States in regard to those republics throughout their brief but very eventful history. It is proper, however, to say, that in those proceedings the United States have held the government in each of those republics responsible only for the injuries committed, or inexcusably allowed by itself, or by some preceding government, which for the time was in actual possession and exercise, whether legally or not, of the supreme power of the state. The undersigned must explicitly deny that the late rebels against the United States either were advanced to or suffered by the people of the United States to assume sovereignty here or that they ever in fact established a government, or political authority, or power over, or within the territory of the United States. They were for a short period treated as lawful insurgents and nothing more."

Mr. Seward, Sec. of State, to Baron Gerolt, Prussian min., Jan. 9, 1866, MS. Notes to Prussian Leg. VII. 130.

John H. Hanna, a British subject, having claimed from the United States the value of a number of bales of cotton destroyed by the Confederate military authorities prior to 1863, the mixed commission, under Article XI. of the treaty of Washington of May 8, 1871, held that the United States could "not be held liable for injuries caused by the acts of rebels over whom they could exercise no control, and which acts they had no power to prevent."

Moore, Int. Arbitrations, III. 2982, 2985.

"I acknowledge the receipt of your despatch (No. 127) of May 16, 1871, with enclosures relating to injuries inflicted upon George Waldmann by the orders of a military officer in rebellion against the Government of Bolivia. Mr. Waldmann asks the interposition of this Government to obtain remuneration from that of Bolivia. It must be anticipated that the Bolivian Government would receive such an application in the same manner as we would receive an application from a foreign power whose subject, while residing in the United States, had been injured by troops acting under the orders of one of the chiefs of the late rebellion. It would of course be repelled; and what we would not ourselves allow, we can not ask from another government in a parallel cause. There is even less reason for favoring Mr. Waldmann's reclamation than would exist in the case of a foreigner suffering injury from our rebels. The latter in coming to the United States had a right to expect the continuance of internal peace and good order. The American citizen who seeks his fortune in Bolivia is bound to know that its history warrants no such anticipation. He must be supposed to have balanced the advantages and the hazards of a course, which this Government did not advise or encourage."

Mr. Davis, Acting Sec. of State, to Mr. Markbreit, min. to Bolivia, No. 55, July 7, 1871, MS. Inst. Bolivia, I. 145.

By the agreement between the United States and Spain of February 11–12, 1871, it was agreed to submit to arbitration all claims of citizens of the United States against the Government of Spain for wrongs and injuries committed against their persons and property "by the authorities of Spain in the island of Cuba or within the maritime jurisdiction thereof," since the commencement of the then existing insurrection. In the case of Wilson *v.* Spain, the advocate for the Spanish Government demurred on the ground that the memorial alleged "no case of wrong or injury by the authorities of Spain," but only pretended and alleged "wrongs and injuries by the bodies of insurgents in arms against the authorities of Spain and endeavoring to overthrow the government thereof in the Island of Cuba." The demurrer was sustained, and the claims dismissed.

Moore, Int. Arbitrations, III, 2981–2982.

"As it appears from your letter that the grievance was committed by the insurgents [in Cuba] in 1875, it does not seem probable that the Spanish Government is liable, and, as that insurrection is regarded as having failed, there would seem to be no responsible government which would be liable." (Mr. Hay, Sec. of State, to Mr. Rush, May 18, 1899, 237 MS. Dom. Let. 171.)

"Although, as a general rule, governments, our own among them, do not hold themselves accountable for acts of insurgents," yet, where an American citizen, who had suffered by the acts of insurgents in Hayti, stated that his partner, a Haytian citizen, was to be remunerated for his losses, the American minister at Port au Prince was instructed to use his good offices to obtain for the American citizen a share of the indemnity.

Mr. Evarts, Sec. of State, to Mr. Langston, min. to Hayti, No. 62, March 24, 1879, MS. Inst. Hayti, II, 188.

By Article II. of a decree of August 19, 1885, the Colombian Government declared that claims against the Republic growing out of subsidies, forced loans, expropriations, or losses caused in the rebellion, preferred by foreigners who had not lost their neutrality, should be decided by international mixed commissions, constituted in accordance with special agreements entered into with the various legations, and that, in case any interested nation should not desire to enter into such an agreement, its claim should be submitted to the decision of the judicial authorities in the usual way. On February 17, 1886, however, President Nuñez issued a decree which seemed to look to the submission of all claims to the Colombian authorities, and a resolution was adopted by the national council of delegates to the effect that the executive power should reject all claims for damages by acts of rebels. The minister of the United States at Bogota protested against this decree, and on April 26, 1886, Mr. Bayard, as Secretary of State, approved his action. In a report of Mr. Bayard to the President, on February 19, 1887, in relation to claims of citizens of the United States growing out of the burning of Colon by insurgents on March 31, 1885, Mr. Bayard stated that negotiations with Colombia for the establishment of a mixed commission had begun, and adverted to Colombia's acknowledgment in the case of the Panama riot of 1856, of special liability to the United States arising out of her privilege and obligation in connection with Art. XXXV. of the treaty of 1846, to preserve peace and good order along the transit route.

[illegible] report of Mr. Bayard to the President, Feb. 19, 1887, see H. Ex. Doc. No. 3, 49 Cong. 2 sess.; S. Doc. 261, 57 Cong. 1 sess. 119–120.

See, also, S. Ex. Doc. 261, 57 Cong. 1 sess. 18–50, 79, 80–81, 88–89,

For an allegation of claimants that the president of the state of Panama about the middle of March, 1885, withdrew all Government military forces from Colon, together with the entire police force, thus inviting the lawless and evil-inclined people to commit the depredations complained of, see Mr. Bayard, Sec. of State, to Mr. Scruggs, min. to Colombia, Sept. 3, 1885, S. Doc. 264, 57 Cong. 1 sess. 44.

For the text of the decree of August 19, 1885, see For. Rel. 1885, 281; S. Doc. 264, 57 Cong. 1 sess. 72.

See more fully, as to the insurrection of 1884–85, supra, § 344.

As to a decree of the Colombian Government denouncing as rebellion the purchase of stolen property from revolutionists, and requiring the purchasers as a penalty to pay the entire value to the lawful owners of the property, see Mr. Hay, Sec. of State, to Mr. Hart, min. to Colombia, No. 337, Jan. 19, 1901, MS. Inst. Colombia, XIX, 130.

"As a general rule of international law, a government is not responsible for the consequence of acts of rebellion against its authority, and no special case of exception can be determined in advance of the establishment of some competent governmental authority in Colombia." (Mr. Bayard, Sec. of State, to Mr. Busche, Clark & Lynde, April 9, 1885, S. Doc. 264, 57 Cong. 1 seess. 10; to Mr. Isaacs, April 10, 1885, ibid.; to Mr. Robinson, April 10, 1885, id. 11.)

The British minister at Bogota, in a letter to a British merchant at that place, August 25, 1887, stated that his Government, after consulting the law officers of the Crown, had decided that there was not "sufficient ground for contending that the destruction of Colon was so directly due to any default on the part of the Colombian Government as to justify a demand for compensation on behalf of those British subjects who, like yourself, have unfortunately incurred losses through the fire." (S. Doc. 264, 57 Cong. 1 sess. 163.)

Wharton, in an editorial comment, states that "a sovereign is not ordinarily responsible to alien residents for injuries they receive on his territory from belligerent action, or from insurgents whom he could not control, or whom the claimant government had recognized as belligerents."

Wharton, Int. Law Digest, II. 576, § 223.

"Whether a nation is responsible for spoliations by insurgent authorities which for a time obtain possession of part of its territory depends upon the question how far such authorities were, in international law, capable of binding the nation by their acts." (Wharton, Int. Law Digest, II. 577, § 223, citing Mr. Seward, Sec. of State, Report Mar. 30, 1861, MS. Report Book, Dept. of State.)

"I have received your letters of July 9, 1887, and the 3d instant, urging upon this Department the renewed presentation of the claim of D. G. Negrete to the Government of Spain.

"When presenting the case to the Spanish Government, my object was to obtain information of its position as to the claim, I stated for this purpose the claim and its nature, but I reserved the final question of my duty as to pressing it until I should be made cognizant

of the facts on both sides. I now find that the Spanish Government denies its liability, and, aside from the technical bar of failure to lay the case in due time before the Commission, presents the important question of the conditions under which a government is liable to indemnify foreigners for losses arising from insurrections within its borders. The attention of this Department has been frequently turned to this question, which is to be determined by principles of international law applicable equally to cases in which the United States Government is the claimant for injuries thus suffered by its citizens, and to cases in which it is proceeded against by other Governments for similar injuries to foreigners within its borders. The principles which have been accepted by this Department, I now proceed to state.

"The measure of diligence to be exercised by a government in the repression of disorder is not that of an insurer, but such as prudent governments are, under the circumstances of the case, accustomed to exercise. To adopt the rule as stated in the Code of Justinian, and as imported from the code into all modern jurisprudence, and accepted, therefore, by Spain, as well as by the United States, the law requires '*diligentiam qualem diligens paterfamilias suis rebus adhibere solet;*' remembering that '*paterfamilias*,' in the sense in which it is here used, represents one whose relations to his family under the old law served to illustrate the relations of the government to the state. The decisive word in this rule is '*solet*.' It appeals to *custom*. The maxim is, that the diligence good governments are *accustomed* to exercise under the circumstances must be exercised in each case; and every government is liable to foreign powers for injuries to them or their subjects from lack of such customary diligence in the preservation of order.

"What then is the custom which thus becomes the guide? Recently, in considering a claim against the United States not dissimilar to that you now ask to have pressed against Spain, I have had to show how custom depends on conditions; so that the degree of diligence customary and reasonable in a newly and sparsely settled region of country where the police force is weak and scattered, where armed forces cannot be maintained and where custom throws on the individual, in a large degree, not merely the preservation of order but the vindication of supposed rights, is very different from the degree of diligence customary in a center of population under a well-organized police, and in which armed forces could be promptly summoned in support of the law. There are eras of revolt against which no government could protect itself except by maintaining a standing army which would not only be a menace to free institutions but would impose on the community burdens which in themselves might be the cause of revolts far more serious than those it was intended to prevent. Such a period marked the beginning of the

late civil war in the United States, when this Government found itself without the means of immediately suppressing the insurrection in which the property and persons of foreigners as well as of citizens were involved. When foreign governments complained of the injuries their subjects had thus sustained, they were informed 'this insurrection is one of those calamities against which no prudent government could guard, except by measures more detrimental than the evil they are intended to remedy.' And we further said, 'It is the duty of foreigners to withdraw from such risks and if they do not, or if they voluntarily expose themselves to such risk, they must take the consequences.' Such was the position taken by this Government during the late civil war; it was assumed by me, so far as concerns voluntary self-exposure by foreigners to the risks of an unsettled community, in my correspondence with the Chinese minister at this capital in reference to the injuries inflicted on Chinese subjects in Wyoming and Washington Territories by mob violence. Mr. Fish, in his instructions to Mr. Foster of August 15, 1873, when discussing our claims against Mexico for injuries there sustained by American citizens from insurrectionary violence, said the rule sustaining such claims 'should not always apply to persons domiciled in a country, and rarely to such as may visit a region notoriously in a state of civil war.' It was on this ground that Mr. Seward on Jan. 9, 1863, held that the United States Government was not liable for loss to Peruvian citizens caused by the destruction of their property on board a ship in the Chesapeake Bay, in 1862, such destruction being caused by a sudden attack of insurgents which could not by customary and due diligence have been averted by the Government of the United States.

"The standard of liability thus set up by the United States, in response to claims from abroad, it can not refuse to accept when claims are made by it on foreign states. The power of Spain promptly to repress insurrections in Cuba can not justly be assumed to be greater than that of the United States to repress the insurrection which culminated in the late civil war. The ability and duty of Spain to have at all times a military force at hand in Cuba so large as to enable it to protect property wheresoever attacked by insurgents, can not be assumed to be greater than that of the United States, in 1885, to have a military force stationed throughout its territories and on its western coast sufficient to protect Chinese laborers and miners at every remote point to which they might choose to resort. If the absence, from such scenes of unexpected disorder, of an adequate military force did not render the United States liable for injury to those foreigners, neither can the absence of an adequate military force, at the time of the destruction of Mr. Negrete's property in Cuba, of itself suffice to render Spain liable. The mere

fact that an insurrection occurred is not proof of negligence, and indeed, the fact that an insurrection maintains itself for any considerable length of time is *prima facie* proof of *vis major* which throws upon the party alleging particular negligence the burden of proving it. Nor can the Department refuse to apply to citizens of the United States visiting foreign lands where insurrections for the time prevail, or the local government is powerless to suppress sudden tumults, the rule that it applied to foreigners who visited portions of our territory where insurrections for the time prevailed, or when the local government was without the power to repress sudden tumults. Spain can not be held to a greater degree of liability to foreigners for losses incurred by reason of lawlessness in Cuba, than is the United States for similar disorders within its jurisdiction; nor can the United States claim for its citizens resorting voluntarily in foreign lands, immunities which it will not concede when claimed against itself. We hold that foreigners who resort to localities which are the scenes of lawless disorder in this country do so at their own risk, and must apply the same rule to our own citizens in foreign lands.

"It is a matter of notoriety that when Mr. Negrete visited Cuba, and there purchased an estate, that island was in a state of insurrection. I have no information as to the price he paid for the property nor from whom he bought it, nor the conditions of the sale; nor what influence the existence of the insurrection had upon the price. It is, however, notorious that estates in the district exposed to insurrection were from that cause and naturally greatly depreciated in value. So far as the information before me goes, Mr. Negrete voluntarily incurred the risks incidental to his purchase and naturally contemplated by him and all others who make investments in countries in an insurrectionary state and therefore has no right to call on this Government to demand from Spain indemnity for his losses so incurred."

Mr. Bayard, Sec. of State, to Mr. Sutphen, Jan. 6, 1888, 166 MS. Dom. Let. 509.

"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." (Mr. Bayard, Sec. of State, to Mr. Muruaga, Spanish min., June 28, 1886, For. Rel. 1887, 1007.)

January 16, 1891, the Chilean minister at Washington informed the Department of State that a division of the Chilean navy had revolted, and added: "My Government has declared the revolted squadron outlawed, and instructs me to inform you that it is not

answerable for the acts of the rebels in regard to foreigners or citizens."

In acknowledging the receipt of this note, the Department of State said: "It is proper that this Government should reserve the right to consider upon the facts and the law any case that may arise involving the declaration which you communicate."

Señor Lazcano, Chilean min., to Mr. Blaine, Sec. of State, Jan. 16, 1891, For. Rel. 1891, 313; Mr. Blaine, Sec. of State, to Señor Lazcano, Chilean min., Jan. 20, 1891, ibid.

Tevfik Pasha, minister of foreign affairs, in a note to Mr. Terrell, February 24, 1896, maintained that in the disturbances at Harpoot and Marash "the local authorities and imperial troops" made every effort for the protection of the property and lives of Americans, who had made acknowledgment of the measures taken for their safety, and that Turkey consequently was not obliged to indemnify them for their losses. He denied that any pillage was committed in the houses of the American missionaries. He also advanced that a government is not responsible for damage necessarily done in defending itself against an insurrection.

The United States replied that this doctrine of irresponsibility went much beyond "the very generally stated principle of international law that a government is not liable for damage to local interests of foreigners by the acts of uncontrollable insurgents," and "would appear to expand that doctrine to include irresponsibility for acts of the Government in repressing insurrection;" and that, in either case, it wholly ignored "the responsibility of Turkey for spoliations and injuries committed by its authorities or agents themselves upon the persons and property of American citizens," of which spoliations and injuries there was declared to be abundant proof. The Turkish answer was therefore pronounced to be "entirely inadmissible.

Referring, on another occasion, to affidavits from Harpoot establishing the complicity of the Turkish soldiers in the burning and plundering of the American college in that city, the United States said: "That the premises of American citizens were inadequately guarded, fired upon by Turkish shot and shell, pillaged by Turkish soldiery, and left for hours to the unchecked ravages of fire, seems to be fully established, and in the face of such evidence the plea advanced in Mavroyeni Bey's [Turkish minister at Washington] note on behalf of the Ottoman Porte is utterly untenable, to say nothing of the almost conclusive proof of collusion between the garrison and the attacking Kurds. No room is discernible for the application of the limited and jealously qualified rule of international law relative to the irresponsibility of a government for the acts of uncon-

trollable insurgents. The negligence of the authorities and the acts of their own agents are here in question, not the deeds of the Kurds, nor still less of the supposed Armenian rebels on whom the Porte seems to seek to throw the responsibility of these burnings and pillagings."

Mr. Olney, Sec. of State, to Mr. Terrell, min. to Turkey, Oct. 17 and Oct. 28, 1896, For. Rel. 1896, 892, 893.
See, also, For. Rel. 1896, 880, 883, 886, 898.

A citizen of the United States, who, at the beginning of the Brazilian insurrection in September, 1893, was carrying on business on an island in the harbor of Rio de Janeiro, sought to make a claim against the Government of Brazil for the destruction of some of his property, including certain lighters and small boats, and the breaking up of his business. It appeared that his place of business was directly in range of much of the firing between the opposing forces and was several times alternately occupied by the Government and the insurgents. He made no attempt to show what part of the damage was caused by the Government and what by the insurgents, but sought to make a claim for the entire damage caused by the revolution. The Department of State said: "It is a principle of public law too well settled to require the citation of authorities that a sovereign is not responsible for injuries done to alien residents by insurgents whom he can not control. There is no allegation that the Brazilian Government was able to prevent the acts of the insurgents in this case. The Department cannot therefore present a claim for damages done by them."

Mr. Olney, Sec. of State, to Mr. Thompson, min. to Brazil, No. 315, Jan. 29, 1896, MS. Inst. Brazil, XVIII, 171.
See Mr. Hay, Sec. of State, to Sir M. Herbert, British ambass., personal, Jan. 27, 1903, For. Rel. 1903, 482.

"Your dispatch, No. 2517, of the 19th instant, has been received. You therewith forward copy of a letter received by you from three Cuban landowners, American citizens, and residents of Sancti Spiritus, making inquiries concerning the protection of their property from seizure or destruction by insurgents. In particular the writers state that they have learned that the insurgents have forbidden the removal of cattle from the farms, and ask if they have the right to apply to the Spanish authorities for the protection of their property, in conducting their cattle to the nearest market, and, in case of refusal, under what circumstances and in what form they can make protest for damages.

"It is a generally accepted principle of international law that a sovereign government is not ordinarily responsible to alien residents for injuries that they may receive within its territories from insur-

gents whose conduct it can not control. Within the limits of usual effective control law-abiding residents have a right to be protected in the ordinary affairs of life and intercourse, subject, of course, to military necessities, should their property be situated within the zone of active operations. The Spanish authorities are reported to be using strenuous endeavors to prevent the class of spoliations which the writers apprehend, and notification of any particular apprehended danger from the insurgents would probably be followed by the adoption of special safeguards by the authorities. In the event, however, of injury, a claim would necessarily have to be founded upon averment and reasonable proof that the responsible officers of the Spanish Government, being in a position to prevent such injury, have failed to use due diligence to do so.

"It is impossible to give more precise instructions upon the hypothetical case presented. Should injury be actually suffered, and the facts be fully represented, this Department would be in a position to determine its duty, if anything, in the premises."

Mr. Uhl, Act. Sec. of State, to Mr. Springer, United States vice-consul-general at Havana, July 1, 1895, For. Rel. 1895, II, 1216.

"The general position is that the responsibility of an established government for acts committed by rioters or insurgents depends upon the failure of the constituted authorities to exercise due diligence for protection of alien property when in a position to protect it and the imminence of danger is known."

Mr. Olney, Sec. of State, to Messrs. Lauman & Kemp, Jan. 13, 1896, 207 MS. Dom. Let. 146.

"This Department cannot, of course, assume any degree of constructive responsibility which might be imputed to this Government by directing that any American property in Cuba be placed under the protection of the local consul, but timely notice of the existence and value of such property and of apprehended injury thereto may be furnished to the consul, who would be expected to make the necessary representation to the local authorities in support of the request of the parties for protection." (Ibid.)

It having been represented that General Bosch, commanding the Spanish forces at Manzanillo, Cuba, had willfully withdrawn all protection from an American plantation, and that in the matter of protection he discriminated against American-owned property, the Spanish Government replied: "The Government of His Majesty, ever faithful to the strictest principles of justice, has given definite instructions, with which the governor and captain-general of Cuba complies, so that, with the exigencies of the military operations, the properties of nationals and foreigners may be alike protected, without distinction of nationalities. In conformity with this uniform line of

conduct, I can assure your excellency that the properties of American citizens in Cuba shall be guarded in the same manner as the properties of other Spaniards and foreigners, without difference of any kind, which would not answer certainly to the cordial relations which unite both countries and Governments. At the same time that information upon the subject of this note is asked, the strict orders given by His Majesty's Government in regard to the defense and custody of private properties will be renewed."

Duke of Tetuan, min. of state, to Mr. Taylor, min. to Spain, Sept. 8, 1896, For. Rel. 1896, 703.

"To illustrate these conditions, the insurgent chiefs assert the military power to compel peaceable citizens of the United States within their reach to desist from planting or grinding cane, under the decreed penalty of death and of destruction of their crops and mills; but the measure is one of sheer force, without justification under public law. The wrongs so committed against the citizens of a foreign state are without an international forum of redress to which the Government of the United States may have recourse as regards its relation to the perpetrators. The acts are those of anarchy, and in default of the responsibilities of *de facto* statehood in the case, there remains only the territorial accountability of the titular sovereign within the limits of its competency to repress the wrongs complained of."

Report of Mr. Olney, Sec. of State, to the President, Dec. 7, 1896, For. Rel. 1896, lxxxii.

See, also, id. lxxxv.

It having been reported that the Cuban insurgents had threatened with destruction the works of the Juragua Iron Company, Limited, an American concern, unless the company should pay within a certain time an indemnity of $1,000,000 and dues amounting to $3,000 a month on ore exported, the Government of the United States requested the Spanish Government to "give immediate and complete protection to the company's property against any attempt on the part of the insurgents to carry out the above-mentioned threat." The Spanish Government replied that the matter had been referred to the minister of ultramar, the minister of state "pointing out to him the advisability of instructing the authorities of the island of Cuba to watch as carefully as possible over the property of said company."

Mr. Olney, Sec. of State, to Mr. Taylor, min. to Spain, Dec. 15, 1896, For. Rel. 1896, 701; Duke of Tetuan, min. of state, to Mr. Taylor, Jan. 11, 1897, For. Rel. 1896, 704.

February 18, 1897, Mr. Taylor, minister of the United States at Madrid, acting under instructions of his Government, requested pro-

tection for the railway property of the Ponupo Mining and Transportation Company, in Cuba, against threats of the insurgent chief Cebero to destroy it.

The Duke of Tetuan, minister of state, replied, March 5, 1897, that he had communicated the request to his colleague, the minister of war, who would "promptly issue the necessary orders for the due protection of the line in question from any harm from the part of the insurgents," and that he had no doubt that the measures taken by the Spanish military authorities, in concert with those which the American Government would "surely take against the agents of the rebel chief in the United States," would succeed in frustrating his hostile design against the property of the American company.

In a subsequent note of March 20, 1897, the Duke of Tetuan stated that the company had been protected since the beginning of the insurrection, and that the manager of the company had expressed regret that any complaint had been made.

For. Rel. 1897, 520–522.

In a note to the Spanish minister at Washington, July 6, 1897, Mr. Sherman, Secretary of State, referred to a communication received from the consul-general of the United States at Havana, relating to the sugar estate Victoria, by which it appeared that protection had been withdrawn from that estate because the stoppage of operations during the past two crops had left it without the means to pay the guard necessary to its protection. In this relation Mr. Sherman referred to "an additional and special feature of hardship" imposed by a "constructive decision" of the captain-general of the island. The bando in regard to the maintenance of protective guards at the cost of the property applied in terms only to such estates as might resume the production of sugar, and therefore might require an additional guard for the protection of the mills and the laborers. It seemed, however, to have been applied to the Victoria estate, which had not resumed the production of sugar, because certain tenant farmers on the estate had cut and sold cane to another mill, presumably authorized to grind. Such an application of the bando was declared by Mr. Sherman to be obviously unjust. "This Government," said Mr. Sherman, "can not admit that the responsibility of Spain for the protection of American property within the sphere of Spanish control is to be measured by any other test than that of actual ability so to protect it. To be able to protect and yet to refuse protection upon a self-formulated pretext can not, in the view of this Government, exempt that of Spain from its just liabilities in the premises should injury to American rights result from the removal of protection."

Mr. Sherman, Sec. of State, to Mr. Dupuy de Lôme, Spanish min., July 6, 1897, For. Rel. 1897, 516.

In a note to Mr. Dupuy de Lôme of July 29, 1897, Mr. Adee, Acting Secretary, stated that the troops which had protected the Victoria estate were withdrawn by order of the military commander at Sagua on the 9th of July. Continuing, Mr. Adee said: "Inasmuch as the terms of General Weyler's bando, under which the protection is withdrawn, require that the estate, if left without a garrison, shall be abandoned by all persons residing or being thereon, the effect of this determination of the authorities is not only to deprive the property of citizens of the United States of the protection due to them, but it amounts to the condemnation of this valuable property to abandonment, dilapidation and possible destruction, against which this Government is constrained to remonstrate, not merely in the present case, but in all others where the same state of facts may be ascertained to exist." (For. Rel. 1897, 519.)

In a note to the Spanish minister at Washington, August 11, 1897, Mr. Sherman, Secretary of State, referred to the case of the sugar estate called Natalia, near the town of Calabazas. The estate, which was owned by three American citizens, was said to have been completely abandoned by military order early in 1897, and since that time to have fallen a prey to the Spanish soldiers, principally the local guerrillas of Calabazas. Although complaint had been made, the soldiers had been in no way restrained, but had continued to despoil and impress the property on the estate, carrying off everything that was portable and even demolishing certain structures. It was also alleged that a Spanish battalion had been temporarily quartered on the estate, not as a guard, but because the place was convenient for encampment. It was also asserted that this would result in the complete destruction of the property by the insurgents when the Spanish force should have been withdrawn. On the strength of these allegations, Mr. Sherman said: "It appears therefore from this complaint that it is not a question of expropriation for organized military operations for which the treaty of 1795 provides, but of wanton depredation and pillage of private property by the soldiery, in violation not only of the treaty rights of an American citizen, but of the ordinary rules of war. This seems to call for a searching inquiry on the part of your Government, punishment of the offenders if discovered, stringent orders to prevent the recurrence of such acts of spoliation, and full compensation to the injured party."

Mr. Sherman, Sec. of State, to Mr. Dupuy de Lôme, Spanish min., Aug. 11, 1897, For. Rel. 1897, 520.

By Art. VII. of the treaty of peace between the United States and Spain, signed at Paris, Dec. 10, 1898, the contracting parties "mutually relinquish all claims for indemnity, national and individual, of every kind, of either Government, or of its citizens or subjects, against

the other Government, that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war," the United States on its part engaging to "adjudicate and settle the claims of its citizens against Spain relinquished in this article."

By the act of March 2, 1901, Congress provided for the appointment of five commissioners, who were to "adjudicate said claims according to the merits of the several cases, the principles of equity and of international law."

In the discussions before the commission, certain treaty stipulations were constantly invoked.

By Art. VI. of the treaty between the United States and Spain, of 1795, it was stipulated that each party should "endeavor, by all means in their power, to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction by sea or by land, and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects which may have been taken from them within the extent of their said jurisdiction, whether they are at war or not with the Power whose subjects have taken possession of the said effects."

By Art. VII. of the same treaty it was "agreed that the subjects or citizens of each of the contracting parties, their vessels or effects, shall not be liable to any embargo or detention on the part of the other, for any military expedition or other public or private purpose whatever."

In addition to these there was the protocol of 1877, in relation to judicial procedure. The Commission announced, after hearing argument, the following general conclusions:

"1. Under Article VII. of the treaty of Paris the United States assumed the payment of all claims of her own citizens for which Spain would have been liable according to the principles of international law. It follows, therefore, that the sole question before this Commission is that of the primary liability of Spain, which is not in any way enlarged by the agreement of the United States to adjudicate and pay such claims.

"2. Although the late insurrection in Cuba assumed great magnitude and lasted for more than three years, yet belligerent rights were never granted to the insurgents by Spain or the United States so as to create a state of war in the international sense which exempted the parent government from liability to foreigners for the acts of the insurgents.

"3. But where an armed insurrection has gone beyond the control of the parent government, the general rule is that such government is not responsible for damages done to foreigners by the insurgents. If,

however, it be alleged and proved in any particular case before this Commission that the Spanish authorities by the exercise of due diligence might have prevented the damages done, Spain will be held liable in that case.

"4. This Commission will take judicial notice that the insurrection in Cuba which resulted in intervention by the United States and in war between Spain and the United States passed, from the first, beyond the control of Spain and so continued until such intervention and war took place."

Statement of the president of the Spanish Treaty Claims Commission, Mr. William E. Chandler, Nov. 24, 1902, concurred in by Commissioners Diekema and Wood. S. Doc. 25, 58 Cong. 2 sess.

Commissioners Maury and Chambers dissented as to paragraphs 1, 2, and 4. (S. Doc. 25, 58 Cong. 2 sess. 10, 12.)

The propositions were repeated by the Commission in a statement of April 28, 1903, without change of form, except that the second sentence of proposition 3 was transposed to the foot of proposition 4; and all the propositions were reaffirmed on December 5, 1903.

The Venezuelan Government is not liable under international law to pay damages for the acts of unsuccessful revolutionists whom it could not by the exercise of due diligence control.

Ralston, umpire, case of Sambiaggio, Italian-Venezuelan Mixed Commission, protocol of February 13, 1903, Ralston's Report, 666; case of Guastini, id. 730, 747; and other cases, id. 753, 769, 810, 816.

This ruling was followed by Duffield, umpire, case of Van Dissel & Co., German-Venezuelan Mixed Commission, protocol of February 13, 1903, Ralston's Report, 565, 573; also, by Plumley, umpire, case of Aroa Mines Co. (Limited), British-Venezuelan Mixed Commission, protocol of February 13, 1903, Ralston's Report, 344, 350; and case of Henriquez, Netherlands-Venezuelan Mixed Commission, protocol of Feb. 28, 1903, Ralston's Report, 896; and also in another case, id. 903.

It was also held by the American-Venezuelan Mixed Commission, under the protocol of Feb. 17, 1903, in Jarvis' case, in an opinion delivered by Bainbridge, the American commissioner, that the Venezuelan Government could not be held liable for the payment of bonds issued by unsuccessful revolutionists in payment of services rendered them. (Ralston's Report, 115.)

3. Assertions of Liability; Grants of Compensation.

§ 1046.

The mere "revolutionary state" of a part of Mexico can not be accepted by the United States as a defense to a claim on Mexico for injuries inflicted on citizens of the United States in Mexico in violation of treaty engagements.

Mr. McLane, Sec. of State, to Mr. Butler, min. to Mexico, June 20, 1834, MS. Inst. Mex. XV. 27; Wharton, Int. Law Digest, II. 576, § 223.

"Unfortunately, many of the nations of this hemisphere are still self-tormented by domestic dissensions. Revolution succeeds revolution; injuries are committed upon foreigners engaged in lawful pursuits. Much time elapses before a government sufficiently stable is erected to justify expectation of redress. Ministers are sent and received, and before the discussions of past injuries are fairly begun fresh troubles arise; but too frequently new injuries are added to the old, to be discussed together with the existing government after it has proved its ability to sustain the assaults made upon it, or with its successor, if overthrown. If this unhappy condition of things continue much longer, other nations will be under the painful necessity of deciding whether justice to their suffering citizens does not require a prompt redress of injuries by their own power, without waiting for the establishment of a government competent and enduring enough to discuss and to make satisfaction for them." (President Jackson, annual message, Dec. 7, 1835, Richardson's Messages, III. 147, 151.)

For claims for damages for injuries inflicted by insurgents, which have been decided by claims commissions, see the cases of Captain George Hughes *v.* Mexico, Moore, Int. Arbitrations, III. 2972; Daniel N. Pope *v.* Mexico, id. III. 2972–2973; Dr. Charles Easton *v.* Peru, id II. 1629; Miller *v.* Mexico, id. III. 2974; Eigendorff *v.* Mexico, id. III. 2974; Cummings *v.* Mexico, id. III. 2976; Crothers *v.* Mexico, id. III. 2977; Vesseron *v.* Mexico, id. III. 2975; Walsh *v.* Mexico, id. III. 2978; Silva *v.* Mexico, id. 2979; Wilson *v.* Spain, id. III. 2981; John H. Hanna *v.* United States, id. III. 2982–2990; Case of the Montijo, id. II. 1421 et seq.; Lovett *v.* Chile, id. III. 2990; Venezuela Steam Transportation Co. *v.* Venezuela, id. II. 1693 et seq.

"I have the honor to inform you that by a decree of this government, dated the 27th ultimo, the payment is ordered of the claims for damages caused by the sacking of Callao in November, 1865, by the revolutionary forces of Colonel Prado. The awards have been made by a mixed commission appointed by the diplomatic corps resident in Lima, and the minister for foreign affairs of Peru.

"Two citizens of the United States are among the claimants and will be paid directly by this government. No expenses have been incurred by this legation in the prosecution of the claims."

Mr. Brent, chargé at Lima, to Mr. Fish, Sec. of State, No. 252, March 14, 1871, MS. Desp. from Peru.

In April, 1871, the American steamer *Montijo* was seized by revolutionists in Colombia. On the 21st of the following June Mr. Fish instructed the American minister at Bogota to apply for reparation in the case. The seizure was, he said, a piratical act for which it was expected that the authors would be held to be judicially accountable, and in this relation he specially referred to Article VIII. of the treaty between the United States and New Granada of December 12, 1846, which provided that vessels belonging to citizens of the contracting parties should not be liable to seizure for any military expedition

or for any other purpose without the allowance of compensation. When such an act, therefore, was committed in the waters of Colombia by unauthorized persons, the obligation of that Government to make amends might, said Mr. Fish, be regarded as unquestionable. The case was subsequently referred to arbitration, and an award was made in favor of the claimants. In the course of his decision the umpire said: "It was, in the opinion of the undersigned, the clear duty of the President of Panama, acting as the constitutional agent of the Government of the Union, to recover the *Montijo* from the revolutionists and return her to her owner. It is true that he had not the means of doing so, there being at hand no naval or military force of Colombia sufficient for such a purpose; but this absence of power does not remove the obligation."

Moore, Int. Arbitrations, II, 1421, 1444; For. Rel. 1871, 230; For. Rel. 1872, 146.

In this case an amnesty was granted to the offenders by the President of the State of Panama; but, while this circumstance was much insisted upon in the argument before the arbitrators as a ground of liability, it was not the ground upon which the United States directed that the claim be presented to the Colombian Government. The umpire referred to the amnesty in his decision, but stated that the other ground, as above quoted, was a "stronger reason" for holding Colombia liable.

In the case of Messrs. Ulrich and Langstroth, who claimed compensation from Mexico for forced loans exacted from them by insurgents at Monterey, Mr. Fish said: "There is no doubt of the accountability of the Mexican Government pursuant to public law. If a country receives strangers within its limits, it thereby incurs a liability to protect them from violence, not only on the part of its own authorities, but ordinarily also from violence on the part of insurgents. This latter ground of liability may be regarded as continuing at least until the government of a neutral country, whose citizens may be aggrieved in the course of the hostilities, shall recognize the insurgents as entitled to belligerent rights. There was no such recognition by this Government at the time when the claimants adverted to sustained the injuries of which they complain. This, however, though the general rule, is subject to obvious exceptions. Perhaps the rule should not always apply to persons domiciled in a country, and rarely to such as may visit a region notoriously in a state of civil war, or even to such part of a country as may virtually be dominated by savage tribes. The rule of the law of nations is that the government which refuses to repair the damage committed by its citizens or subjects, to punish the guilty parties, or to give them up for that purpose, may be regarded as virtually a sharer in the injury and as responsible therefor."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 21, Aug. 15, 1873, MS. Inst. Mexico, XIX. 18.

Mr. Fish added that it was not, however, necessary to rely on public law only for reparation in the case, since it might, as he argued, be claimed under articles 8 and 14 of the treaty of 1831. (Ibid.)

"Your despatch No. 72, of the 23d ultimo, has been received.

"The elaborate note of Mr. Lafragua to you of the 13th ultimo, which accompanied it, in answer to your application for amends to Messrs. Ulrich and Langstroth, for what are called loans which were forced from them by Mexican insurgent authorities in Nueva Leon, has been read with the attention due to the pains which must have been taken to prepare that paper and with the interest which could not fail to be excited by the elevation of its sentiments and the clearness of its expression.

"It has not, however, by its reasoning convinced me that the Mexican Government should be exempt from accountability for those acts. This exemption is claimed, in the first place, because that government did its best towards protecting the inhabitants in the disaffected region generally from the violence of the insurgents, and therefore should be absolved from accountability for any particular acts of theirs against individuals.

"If it be allowed that the efforts of that government on the occasion adverted to were exemplary, leaving nothing to be desired, an admission warranted indeed by its ultimate triumph, the assumption that victory exonerated it from any obligations which it had previously incurred in the insurgent region, can not be acquiesced in.

"It may, in general, be true that when foreigners take up their abode in a country, they must expect to share the fortune of the other inhabitants and can not expect a preference over them. While, however, a government may construe, according to its pleasure, its obligation to protect its own citizens from injury, foreign governments have a right and it is their duty to judge whether their citizens have received the protection due to them pursuant to public law and treaties. It may be the abstract right of a government to exclude foreigners entirely from its territories. This right, however, has rarely been exercised in modern times. Whenever it is waived, this step imparts to the government, to whom the foreigners may owe their allegiance, the right of seeing that the duty of the other government towards them is fulfilled. An acknowledgment of this right is not, under the circumstances, as Mr. Lafragua seems to suppose, tantamount to making unjust and invidious discriminations in favor of foreigners and against citizens. It can not be acknowledged, as Mr. Lafragua maintains, that diplomatic interference in such cases necessarily annihilates or trenches upon the peculiar functions of the judiciary of a country. In cases of a denial of justice the right of

intervention through the diplomatic channel, is allowed, and justice may as much be denied when, as in this case, it would be absurd to attempt to seek it by judicial process, as if it were denied after having been so sought.

"As the principle for which I contend is deemed to be of universal application, the remarks of Mr. Lafragua towards showing the superior advantages which strong nations would derive from its recognition are not deemed germane.

"The possibility that the privilege would be abused by an exaggeration of the loss sustained by the aggrieved party, can not be admitted as even a plausible argument against it. The right of the accountable government to scrutinize the loss claimed to have been experienced and to require all legal reasonable proof of its amount, is unequivocally acknowledged.

"The reference which Mr. Lafragua makes to the late civil war in this country, apparently for the purpose of implying that that, with respect to this government, was the same as the insurrection in Nueva Leon was in respect to the Government of Mexico, is not conceived to strengthen his case. It is true that this government has not confessed its liability for the injuries to foreigners by persons claiming authority in the South during the rebellion. The reason for this disavowal is believed to be as strong as that for the accountability of Mexico in the other case. Belligerent rights had tacitly at least been granted to the insurgents not only by this government but by those of the principal European nations. This is a concession which may be allowed to carry with it an acknowledgment that the party, in whose favor it may be made, is both competent and willing to do justice to the citizens or subjects of the grantor, and indeed may of itself be allowed to exempt the other party from such accountability. This Department is not aware that the Mexican Government ever acknowledged the belligerent rights of the insurgents in New Leon. It is believed to be certain that they were never acknowledged by any foreign government.

"Mr. Lafragua proceeds to assert that if foreigners are to be indemnified for losses sustained during a rebellion, the obligation to indemnify citizens of the country would be equally strong. In regard to this, however, every government must be its best and only judge and I will not presume to offer an opinion upon the subject.

"Although the treaty of 1831 technically requires citizens of the United States to seek redress for injuries in Mexico through the courts, this stipulation is believed to be applicable to injuries received in a state of peace, and not to such as may have been inflicted during such an insurrection as occurred in Nueva Leon. In regard to the Mexican law of 1832, which Mr. Lafragua quotes, it may be remarked that, in holding insurgents accountable for damages, it acknowledges

a just principle, but, if such damages are not obtained or may not be obtainable by a foreigner who may sustain them, it is conceived to be the duty of the government which has expressly and impliedly engaged to protect him to assume the responsibility.

"Issue may be taken in respect to the assertion of Mr. Lafragua that the irresponsibility of a government for the acts of insurgents is acknowledged both in Europe and in the United States. In support of his assertion, he refers to Calvo's work on international law, which, though generally remarkable for both clearness and fulness, requires scrutiny upon a point which, as a Spanish American, he may be regarded as deeply interested in maintaining.

"The passage from Lord Stanley's speech on the Pacifico case, which Calvo quotes, does not appear to give the support to the position of Mr. Lafragua which he seems to suppose. His Lordship says he does not believe that governments are obliged *to the full extent of the term* to indemnify foreigners who may have suffered damage by superior force. This government coincides in opinion with his lordship. There are cases in which there may be no accountability on the part of the government. The loans exacted from Mr. Ulrich and Mr. Langstroth are not, however, regarded as a case of that character. The position taken by Austria and Russia in respect to the damages sustained by British subjects from the effects of the insurrection in Tuscany in 1848, and particularly at Leghorn, to which Calvo refers, are not believed to strengthen the position of Mr. Lafragua. It is true that Calvo in this instance does not state the case with sufficient fulness to enable it to be easily understood. If, however, from an expression in the paper of Count Nesselrode, which is referred to, it may be inferred that the damages were sustained in the recovery by the Tuscan government by force of arms, of its possession of Leghorn, such a case also is entirely different from the exaction of the forced loans in the one under consideration.

"Mr. Lafragua's reference to the case of the Spanish consul and his fellow subjects at New Orleans in 1851 is equally unfortunate. It is true that Mr. Webster, in his note to Mr. Calderon, while acknowledging the accountability of this Government for the injury to the consul, denies it for those two individual Spaniards. This undoubtedly was the correct position in that case. There was no rebellion or even insurrection at New Orleans. The injuries committed there were acts of a mob too powerful for the time being for the police to restrain. Calvo, however, is signally mistaken that the Spanish consul only was indemnified for his losses. The other Spanish subjects also were fully indemnified, though the obligation of this Government to take that course was not acknowledged. The appropriation for the purpose was made by the act of Congress approved 31st August, 1852. Laws, vol. 10, p. 89.

"The reference which Mr. Lafragua makes to the negotiation of the treaty of 1868 between the United States and Mexico, or even to the proceedings of the commission under that treaty, is not regarded as pertinent to the occasion. The Department is not disposed to question the correctness of the reports of Mr. Romero to his government. There is no record here, however, of the conversation between Mr. Seward and that gentleman, to which reference is made, and, if there were, such a record would not merit consideration as an infallible interpreter of the meaning of that instrument. This must speak for itself, and be construed by the commissioners and arbiter appointed for that purpose.

"It may be repeated that this government has not acknowledged its accountability for injuries to foreigners by insurgents during the late civil war in this country. In this it is regarded as justified by the magnitude of that conflict and especially by the fact that the foreigners who were so injured are citizens or subjects of countries who acknowledged the insurgents as belligerents.

"It is believed, however, for the reasons assigned, that the Mexican Government is morally and legally bound to restore the sums extorted from Messrs. Ulrich and Langstroth, and you will inform the minister for foreign affairs that this opinion is still entertained here and you may leave with him a copy of this paper."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 54, Dec. 16, 1873, MS. Inst. Mexico, XIX. 48.

The positions herein taken were reaffirmed in a subsequent instruction, in which, however, special emphasis was laid on Art. 8 of the treaty of 1831, which stipulated that the effects of the citizens of the contracting parties should not be liable to detention for any public or private purpose whatever, without corresponding compensation. It was contended that this rendered Mexico liable for the repayment of the forced loan. (Mr. Cadwalader, Acting Sec. of State, to Mr. Foster, No. 111, Sept. 22, 1874, MS. Inst. Mex. XIX. 121.) See, however, supra, § 1036, where a different view is taken by Mr. Evarts, as Secretary of State, as to the interpretation of the treaty of 1831 so far as concerns forced loans.

See, supra, § 913.

Mr. Fish was correct in his surmise as to the facts in the case of Tuscany and of the claims growing out of the taking of Leghorn. Calvo, in his work on international law, says: "Are governments responsible for losses and injuries suffered by foreigners in times of domestic trouble or civil war? This question has long been discussed and finally resolved in the negative." In this relation, he cites the opinion of Baron Gros, when on a special mission to Greece in 1849; a statement of Lord Stanley, in the House of Lords, to the effect that all that governments can be expected to do "is to protect, by all the means in their power, the nationals and foreigners residing on their

territory against acts of spoliation or of violence;" a passage from Rutherforth's Institutes, and two editorial utterances of the London newspapers, the *Morning Post* and the *News*, in 1862. He subsequently refers to the claims of British subjects arising out of the "political disturbances" in Tuscany and in the Kingdom of Naples in 1849, and in this relation quotes the notes of Prince Schwartzenberg, of April 14, 1850, and Count Nesselrode, of May 2, 1850. Calvo states that the Austrian and Russian notes "brought an end to the claims of England, who renounced her reclamations." These statements do not appear to be well founded. The English claims against Naples grew out of the bombardment of Messina, in Sicily, by the King of the Two Sicilies, whose seat of government was at Naples. The troubles in Sicily grew out of the refusal of the King to grant reforms. Early in January, 1848, a proclamation was issued at Palermo calling the people to arms, and by January 15 the authority of the titular government was overthrown and a provisional government was established at Palermo. A revolt broke out at Messina January 29. The revolutionists seized the fort Real Basso, and on April 13, 1848, the Sicilian chamber met under the presidency of the Marquis of Torrearsa, declared the downfall of the Bourbon dynasty, and proclaimed a constitutional monarchy. On May 12 an armistice was concluded between the belligerent parties, which lasted till the following August, when, the Sicilians refusing to accept any terms, the King of Naples sent an expedition of 14,000 men with two frigates and twenty steamers against Messina. On the arrival of the expedition the city was summoned to surrender, and, on its refusing to do so, was bombarded, and at the end of four days was forced to capitulate. The war continued, and in the following March the King again offered terms to the government at Palermo, if it would lay down its arms and restore the united kingdom of the Two Sicilies. Through the interposition of the British and French admirals another armistice was concluded. This armistice was terminated on March 28, 1849, the Palermo government having rejected the proffered terms. The claims put forward by Great Britain were for acts of war of the recognized government of Naples. In a speech made in the House of Commons, June 25, 1850, nearly two months after the Austrian and Russian notes, Lord John Russell stated that a dispatch had just been received on the subject of the British claims, and that the Neapolitan minister of foreign affairs had stated that he was willing to agree that compensation should be awarded for the loss of such property as was destroyed without sufficient necessity, whether wantonly, designedly, or by pillage. As to the claims arising in Tuscany, it appears that early in 1849 a demand was made in that country for a constitution, the movement being sympathetic with that at Rome, where, early in February, a republic was proclaimed.

The Grand Duke of Tuscany abandoned his dominions, and a republic was proclaimed, first at Florence and then at Leghorn. On February 27, 1849, Sir G. Hamilton, British minister at Florence, wrote: "There is now no opposition to the provisional government." It was treated with by the Duke of Savoy as a de facto government. The Grand Duke had, however, placed himself in the hands of Austria, and on May 3, 1849, the Austrian forces crossed the frontier. On the 11th of May they took Leghorn by assault. When Great Britain subsequently presented claims to the Grand Duke, he turned to Austria, who had committed the acts of war complained of, and also invoked the services of Russia, Austria's ally in the suppression of the Hungarian insurrection, as arbitrator. Lord Palmerston, in a speech in the House of Commons on June 4, 1850, referred to the statements made in the Austrian and Russian notes as being "an argument, and nothing more." Calvo also states that the Spanish Government was "fully satisfied" with the "restricted reparation" accorded by the United States to the Spanish consul in the case of the New Orleans riot of 1851, overlooking the fact that indemnity was also paid to the private subjects of Spain as an act of grace.

Calvo, Droit International (5th ed.), III. 142, secs. 1280–1292; 40 Br. & For. State Papers, 775–777; Hansard, Parliamentary Debates, CXI. 717, 719, CXII. 700–702.

"Another ground of objection to the complaint in this case is that the wrongs were committed by persons in revolt against the Mexican Government. The inadequacy of this excuse has been repeatedly shown, and especially in the cases of Messrs. Ulrich and Langstroth. If the authority of that government is for a time usurped by others, that government must be held accountable for the acts of the usurpers, unless the revolt shall attain such proportions and be so long continued as to warrant a recognition of the parties as belligerents. Such was the case during the temporary usurpation of the Emperor Maximilian in that country. His government was not recognized by this, and though persons bearing his commission in many instances inflicted injury on citizens of the United States, application was neither made to him for redress nor has the existing Government of Mexico been held accountable.

"Mr. Lafragua acknowledges that the rebels who made the attack on the Batopilas mine were pardoned, but says that the pardon contained a reservation in favor of the claims of those whom they may have injured. By this he at least intimates that, if the aggrieved wish for reparation, they must seek it through the Mexican courts. Such a course, however, under the circumstances, can only be regarded as a virtual repudiation of the promise of protection to citizens of the United States stipulated in the treaty of 1831."

Mr. Fish, Sec. of State, to Mr. Foster, min. to Mexico, No. 241, July 15, 1875, MS. Inst. Mexico, XIX. 210. The Mexican Government denied its liability, and no definite conclusion was reached.

The Colombian Congress recognized the responsibility of the general government for the seizure and occupation of the Magdalena steamers by insurgents during the revolution on the coast in July and August, 1875, and voted an appropriation of $100,000 as indemnity to the owners. The steamers were owned by an international company, composed of American, Colombian, English, and German citizens. The company was represented by one of its agents, and no diplomatic action was taken in the matter by any of the foreign representatives.

Mr. Scruggs, min. to Colombia, to Mr. Fish, Sec. of State, No. 166, May 18, 1876, MS. Desp. from Colombia.

"The Venezuelan Government is not understood to have granted belligerent rights to the insurgents who seized Mr. Hancox's steamers [i. e., the steamers of the Venezuela Steam Transportation Company, an American corporation, of which Mr. Hancox was president], and, as no such rights were recognized by this Government, Venezuela must be held accountable for the seizure and forcible employment of these vessels by any persons within her jurisdiction, whether on behalf of insurgents or of the existing government."

Mr. Davis, Act. Sec. of State, to Mr. Pile, min. to Venezuela, No. 70, July 28, 1873, United States and Venezuelan Claims Commission (1895), 453.

See Mr. Fish, Sec. of State, to Mr. Pile, No. 63, May 29, 1873, supra, § 913.

For a full history of this case of the seizure of the vessels of the Venezuela Steam Transportation Company, see Moore, Int. Arbitrations, II. 1693.

See, also, S. Ex. Doc. 28, 42 Cong. 2 sess.; S. Ex. Doc. 139, 50 Cong. 1 sess.; S. Ex. Doc. 143, 50 Cong. 1 sess.; S. Misc. Doc. 168, 50 Cong. 1 sess.

Mr. Evarts, in a report from the Committee of Foreign Relations of the Senate, Aug. 1, 1888, said: "It is evident that the contending parties, factions, and forces in Venezuela, preceding and at the time of the events affecting all these vessels, were none of them legitimate in the sense of the constitution of Venezuela, but all were struggling with varying success for the practical possession of the government of the country, with little, if any, regard to its written constitution, and there seems to be just as good ground for taking the organization of the party of the 'Blues,' so called, as the legitimate government at that time, as the forces and managers of the party of the 'Yellows.' Under these circumstances it appears to the committee that the fact that the steamer *Hero* was seized by parties claimed to be in rebellion by the party with whom diplomatic communication was from time to time kept up by the representatives of the United States, furnishes no reason, if any such has ever been set up by

Venezuelan authorities, why the present government of that country should not be responsible for it and the damages consequent thereon." (S. Report 1964, 50 Cong. 1 sess.; Moore, Int. Arbitrations, II. 1706; see, also, H. Report 3880, 50 Cong. 2 sess.)

By a joint resolution of Congress in June, 1890, the President was authorized to take such measures as in his judgment might be necessary promptly to obtain indemnity from Venezuela. A treaty of arbitration was concluded January 19, 1892, under which an award was made in favor of the United States of upwards of $140,000. (Moore, Int. Arbitrations, II. 1693 et seq.)

In a note of March 27, 1883, Señor Rafaèl Seijas, then Venezuelan minister of foreign affairs, maintained that the claim for indemnity was incompatible with the position maintained by the United States in the cases of the New Orleans riot of 1851 and the bombardment of Greytown, in which, as he affirmed, the United States maintained that it was "not responsible for damages caused by revolutions." A similar principle had, he said, acquired even greater force from the embodiment in the XIVth amendment to the Constitution of the United States of the provision against the payment of the debts of the Confederate States. The French minister of foreign affairs, in explaining to the Chambers the claims convention between the United States and France of January 15, 1880, had, said Señor Seijas, stated that the French Government would have desired a provision for the payment of losses caused by the acts of the Confederates, but that the resolute attitude maintained by the United States, intrenched behind its own jurisprudence, had checked the effort to obtain such an indemnity.

Replying to these representations, Mr. Frelinghuysen, April 18, 1884, described the New Orleans riot as "the spasmodic ebullitions of a mob made up chiefly of citizens and residents of Spanish birth," and adverted to the fact that the losses were all adjusted and paid within two years. He also pointed out that the principle maintained by the United States in the Greytown case was that the responsibility for acts of war rested on the territorial sovereign, rather than on the power making war upon it. Mr. Frelinghuysen further referred to the action of the United States after the close of the civil war in creating the Southern Claims Commission, which sat for five years and awarded many millions of dollars, and to the treaties with Great Britain in 1871 and France in 1880 for the adjustment of claims. In all these instances the only condition exacted was that the claimant should not have been disloyal to the United States. As to the constitutional and municipal legislation of the United States, to which Señor Seijas had adverted, it was, said Mr. Frelinghuysen, "aimed at two classes of possible demands," "first, payment for emancipated slaves," and "second, debts contracted by the so-called

Confederate government abroad for ships, materials of war, and money to forward and facilitate the purposes of the rebellion."

Señor Seijas to Mr. Baker, March 27, 1883, S. Ex. Doc. 143, 50 Cong. 1 sess. 62; Mr. Frelinghuysen to Mr. Baker, No. 292, April 18, 1884, id. 81, 83–85.

In an instruction to the American minister at Caracas, in relation to the claim of the Venezuela Steam Transportation Company, Mr. Frelinghuysen stated, as the "few and simple" facts of the case, that the claimant company in 1869 obtained a concession for the navigation of the Orinoco; that four steamers, thus "invited," were constructed and sent to Venezuela; that "an insurrection against the Government was then in progress," carried on by a faction called the "Blues;" that the insurgents "seized, by force of arms, three of the vessels and used them against the established Government;" that the fourth "was seized by the governor of the State of Guayana and used in the service of the established Government;" that "two of the vessels were recovered by Captain Potter, commander of the United States man-of-war *Shawmut*, General Sandoval making the surrender or delivery to Captain Potter;" that "the other two were never recovered;" that, soon afterwards, "and when peace had been so far restored in that country as to secure to the regular Government substantial ascendency, that Government summarily took away from the transportation company the concession for the navigation of the Orinoco," and gave it to a Venezuelan, to the exclusion of the vessels of the company; and that "the damages and losses to the company consequent upon these illegal and wrongful acts and breaches of good faith constitute the grounds of their claim." This claim Mr. Frelinghuysen pressed upon the Venezuelan Government.

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 292, April 18, 1884, S. Ex. Doc. 143, 50 Cong. 1 sess. 81.

Wharton cites this instruction as authority for the proposition: "A government is liable internationally for injury inflicted on aliens through its negligence in permitting insurgents to destroy the property of such aliens and by its subsequent implied ratification of the conduct of such insurgents, there being no redress offered in the courts of such government." (Wharton, Int. Law Digest, II. 581, § 223.)

Mr. Bayard, referring to Mr. Frelinghuysen's instruction of April 18, 1884, supra, "as setting forth fully and clearly the facts as they are here recognized, as well as the position of this Government in the premises," said: "Under the circumstances of this case, I can do no less than instruct you to inform the Government of Venezuela that the Government of the United States regards with great dissatisfaction

the continued delay of the former Government in the payment of a debt for which Venezuela is bound by the principles of international law. This debt is not based on a contract, but on a wrong done in part, and in part permitted by the Government of Venezuela, to the property of citizens of the United States invested in Venezuela on its invitation. For the wrong so done the Government of Venezuela is clearly and unmistakably responsible, and the Government of the United States must insist upon redress."

Mr. Bayard, Sec. of State, to Mr. Baker, min. to Venezuela, No 70, May 12, 1885, S. Ex. Doc. 143, 50 Cong. 1 sess. 93.

The Khedive of Egypt, by a decree of November 4, 1882, announced his purpose to appoint a special commission to pass upon the claims growing out of the insurrection which began on June 10th in that year. Of this insurrection the bombardment of Alexandria by a British fleet was one of the incidents; and it gave rise to numerous claims of foreigners for the loss or destruction of property.

By a khedival decree of January 13, 1883, provision was made for the appointment of an international commission for the purpose of deciding definitively upon the claims growing out of the insurrection. The second article of this decree excluded indemnity for indirect damages, and for losses of money, jewels, plate, works of art or of antiquity, notes or obligations, rents or crops; but the commission was permitted to allow indemnity for the loss of jewels, plate, and works of art or of antiquity if in a store for sale or let out to third persons; provided that the existence of the things lost should, save in exceptional cases to be determined by the commission, be proved by books of account or written documents having a certain date.

It was provided that the owners of crops which were threshed out or in the barn, and which were directly taken or destroyed by the rebels, might be indemnified.

The United States objected to that part of article 2 of the decree which, with the exceptions specified, excluded claims on the ground of the nature of the property destroyed; but, as it was represented that the motive of the clause was to exclude fraudulent claims, and that the objection would be an obstacle to the immediate organization of the commission, the United States decided to accept the decree, reserving, however, the right to present, diplomatically, claims falling in the excluded category, should it afterwards be deemed expedient to do so.

For the text of the decree of November 4, 1882, see 73 Br. & For. State Papers, 236; and for the decree of Jan. 13, 1883, 74 id. 1091.

For the correspondence of the United States in relation to the decree of Jan. 13, 1883, see Mr. Frelinghuysen, Sec. of State, to Mr. Pomeroy, Nov. 10, 1882, and Dec. 28, 1882, MS. Inst. Egypt, XVI. 286, 291, enclosing copies of the following correspondence with the British

minister at Washington: Mr. West to Mr. Frelinghuysen, Nov. 25, 1882; Mr. Frelinghuysen to Mr. West, Dec. 1, 1882 (afterwards withdrawn); mem. of Mr. West, Dec. 3, 1882; Mr. Frelinghuysen to Mr. West, Dec. 4, 1882, MS. Notes to Gr. Br. XIX. 147; Mr. West to Mr. Frelinghuysen, Dec. 21, 1882; Mr. Frelinghuysen to Mr. West, Dec. 23, 1882.

See, also, Mr. Frelinghuysen, Sec. of State, to Mr. Pomeroy, March 2, 1883, MS. Inst. Egypt, XVI. 306; Mr. Bayard, Sec. of State, to Mr. Garland, At. Gen., March 21, 1885, 154 MS. Dom. Let. 544 (as to the claim of Judge Barringer).

June 11, 1885, the prefect of Arequipa, Colonel San Roman, then commanding the Caceristforces in that section, which were acting in opposition to the government at Lima recognized by the foreign powers,[a] made a requisition on Mr. Victor H. MacCord, the general manager of the southern railroads, for a locomotive and train of cars to convey troops to a point on the Mollendo division of the railroad, placing the train under the command of Sergeant-Major Valdez. While the train was in charge of that officer, the engineer detached the locomotive and ran off with it to Mollendo, which was then in the possession of the Iglesias forces. Although MacCord was in no way responsible for this occurrence, it having been the result of the treachery of the engineer and the carelessness of the guard, he was thrown into prison, and was threatened by the prefect that if the Iglesias forces made use of the locomotive he would be shot. A short while afterwards he was taken out of prison, placed before a file of soldiers, and asked whether he wished to say anything, as he was about to be shot. After a conference among the officers he was, however, taken back to prison and ordered to pay a fine of 10,000 soles. Declining to do this, he was deprived of food and drink and left standing in a damp cell, all the furniture, and even a stone on which he had been sitting, being removed. Finally, some of the commercial houses in the city having raised the funds necessary to pay the fine, he was released. He immediately made a protest, June 16, 1885, before the acting British vice-consul at Arequipa, against the arbitrary and abusive treatment to which he had been subjected. In this protest he reserved the right to make a claim before the higher authorities and the tribunals of justice of the country, and if necessary to resort to diplomatic intervention. The papers were not submitted to the American legation at Lima till May, 1888, owing to the fact that the Peruvian Government had seized the railroads of which MacCord was manager, for which reason his employers deemed it prudent to avoid any issue with the government concerning his personal maltreatment. It appears that at the time of the outrage MacCord was a consular agent under an appointment made by Mr. Partridge, United States

[a] Supra, § 54, pp. 158–159.

minister to Peru, February 10, 1883, and that he was recognized as such at Arequipa, February 20, 1883. He was subsequently appointed United States consular agent at Mollendo.

The Department of State, on receiving the papers from the legation at Lima, directed the American minister "to present the case to the Peruvian Government, requesting an explanation." In these instructions no reference was made to the claimant's having been consular agent at Arequipa.[a]

When the case was presented, the Peruvian Government took the ground (1) that, as the acts complained of were committed by "a chief in arms against the government then recognized as legitimate by all nations," responsibility therefor, if any existed, did not rest upon the Peruvian nation, and (2) that responsibility could attach to the authors of the acts only after proof was duly made before the national tribunals and as the result of their judgment.[b]

The American minister, Mr. Buck, in his reply, stated at the outset that there was "no adequate judicial remedy in Peru for a claimant, since such local law bars recourse against the Government through the courts." He also referred to the treaty between the United States and Peru of 1870, which declared that the contracting parties should give "full and perfect protection to the persons and property of the citizens of each other, of all classes;" that such citizens should "not be liable to imprisonment without formal commitment under a warrant signed by a legal authority, except in cases *flagrantis delicti*;" that they should in all cases be brought before a legal authority for examination within twenty-four hours after arrest, and if not so examined should be forthwith discharged; and also that they should not be called on "for any forced loan or extraordinary contribution for any military expedition, or for any public purpose whatever," nor be liable to any embargo, or to be detained with their goods or effects without being allowed a full and sufficient indemnification which should be agreed on and paid in advance. Mr. Buck adverted to the claim made by Peru against the United States in the case of the ship *Alleghanian*, for the destruction of property on board by Confederate forces in the Chesapeake Bay in 1862, although the Confederates had then been generally recognized as belligerents. He also referred to the payment by the United States of claims for losses by the New Orleans riots in 1851; to the letters of Mr. McLane, Secretary of State, June 20, 1831, and the instructions of Mr. Fish to Mr. Foster of August 15, 1875, and December 16, 1873. But, said Mr. Buck, whatever opinions might be held on the general question, there were special circum-

[a] Mr. Rives, Act. Sec. of State, to Mr. Buck, min. to Peru, June 23, 1888, For. Rel. 1888, II. 1369.

[b] Mr. Alzamora, Peruvian min. of for. rel., to Mr. Buck, United States min., Aug. 28, 1888, For. Rel. 1888, II. 1372.

stances in the case that appealed with irresistible force to equitable consideration. By the act of December 2, 1885, signed by Generals Caceres and Iglesias, the contending governments were by mutual agreement merged into the provisional government then established, of which the existing government was the successor. The present constitutional government, therefore, existed by consent of the people of Peru, as the duly elected successor of the Iglesias and Caceres government, and should therefore be responsible for the acts of the officials of both. In June, 1885, neither the Caceres government nor the Iglesias government exercised supreme control over all the national territory; but on June 3, 1886, as the result of the arrangement of December, 1885, General Caceres, to whose government Colonel Roman belonged, was installed as the constitutional president of the Republic. This was done after due ascertainment of the popular will and by the proclamation of the Peruvian Congress, assembled in fulfillment of the arrangement of December, 1885.

Mr. Buck, min. to Peru, to Mr. Alzamora, min. of for. rel., Sept. 3, 1888, For. Rel. 1888, II. 1372.

"Your note of the 3d ultimo to Mr. Alzamora is generally approved, but, for your guidance in the future, it is proper that the Department should state some qualifications of the doctrines you have announced on the subject of the liability of a government for the acts of insurgents whom it could not control, and for the violence of mobs.

"In respect to the latter, it is the doctrine of this Department that a government can not be held to a strict accountability for losses inflicted by such violence. This subject has recently been discussed in the correspondence between this Government and that of China, in relation to the outrages inflicted upon Chinese subjects at Rock Springs and other places in the United States by bands of lawless men. While the United States have paid a considerable sum towards the relief of the unfortunate victims of these outrages, yet this has been done as an act of generosity and friendship, and not in pursuance of an acknowledged liability. The position of the Government was the same in reference to the attacks on the Spanish consulate in New Orleans, in 1850, to which you advert in your note to Mr. Alzamora as affording an acknowledgment of the liability of a government for acts of mob violence towards foreigners. A full discussion of that incident will be found in the note of Mr. Bayard to Mr. Cheng Tsao Ju, of the 18th of February, 1886, published in Foreign Relations for that year.

"In regard to the question of the liability of a government for the acts of insurgents whom it could not control, it may be admitted that there is some contrariety in the opinions the Department has heretofore expressed. But, while you cite to Mr. Alzamora the contention

of his Government in regard to the liability of the United States for the destruction of a Peruvian ship by insurgents in the Chesapeake Bay, in 1862, it must also be remembered that the position the United States took on that subject was that such destruction having been effected by a sudden attack of insurgents which could not, by due diligence, have been averted, the Government of the United States was not bound to make indemnity.

"On the whole, the Department has to commend the industry and care exhibited in the preparation of your note."

Mr. Rives, Act. Sec. of State, to Mr. Buck, min. to Peru, Oct. 8, 1888, For. Rel. 1888, II. 1377.

For the case of the *Alleghanian*, see Moore, Int. Arbitrations, II. 1621–1624. This case, as was stated in the note of Mr. Buck to Mr. Alzamora, supra, related to the destruction of Peruvian property on board of a ship, and not to the destruction of a Peruvian ship. The *Alleghanian* was an American vessel and had on board at the time of her destruction guano belonging to the Peruvian Government. The claim was afterwards presented by the Government of Peru to the mixed commission between the two countries under the convention of January 12, 1863, and was dismissed on the ground that, as it was a claim of the Government of Peru and not of a "citizen" of that country, it was not embraced by the terms of the convention. It appears that after the sinking of the ship the guano was recovered in a damaged condition and was sold at Baltimore for $25,962.40, of which the Peruvian Government received one-half, the rest going to the salvors.

The Peruvian Government, in replying to Mr. Buck's note of the 3d of September, assumed a new ground. Declaring that it insisted upon the principle that it was "not responsible for revolutionary acts nor for the damages occasioned as the inevitable effect of operations of war, even if done by its own forces" it excused "the fine imposed by the Prefect San Roman" as one "emanating from legitimate authority," and in this relation contended that the fine was imposed, not upon MacCord personally, but upon the railroad company, which was alleged to have acted in accord with the enemies of the prefect, and intimated that MacCord was himself a party to the escape of the locomotive.[a]

To this note Mr. Buck replied November 14, 1888, maintaining Mr. MacCord's entire innocence and the responsibility of the Peruvian Government;[b] and here the discussion was rested till 1891, when Mr. Hicks, Mr. Buck's successor at Lima, was instructed to call the matter to the attention of the foreign office and request an answer.[c]

[a] Mr. Alzamora, min. of for. rel., to Mr. Buck, United States min., Nov. 6, 1888, S. Ex. Doc. 4, 53 Cong. 3 sess. 23.

[b] S. Ex. Doc. 4, 53 Cong. 3 sess. 24.

[c] Mr. Blaine, Sec. of State, to Mr. Hicks, min. to Peru, Nov. 6, 1891, S. Ex. Doc. 18, 53 Cong. 3 sess. 5. See, also, S. Ex. Doc. 4, 53 Cong. 3 sess. 27. See S.

June 27, 1896, Mr. Olney, Secretary of State, instructed Mr. McKenzie, then United States minister at Lima, to press the case upon the Peruvian Government. After reviewing the facts, and reciting the treaty stipulations quoted in Mr. Buck's note to Mr. Alzamora of Sept. 3, 1888, Mr. Olney said: "Upon the first presentation of the claim Peru denied all liability on the ground that the injuries were done by persons in insurrection against the Government, which was at the time recognized as legitimate by the United States. That position has, however, been completely abandoned. The acts of Colonel San Ramon have been recognized as emanating from legitimate authority. In fact, he was continued in charge of the prefecture of Arequipa by the Government, which followed the agreement of December 2, 1885, between Generals Caceres and Iglesias, and his official conduct in that capacity was commended." Mr. Olney pronounced "utterly untenable," upon the evidence in the case, the charge that the railroad had given aid to the Iglesias party, as well as the intimation that MacCord had connived at the escape of the locomotive, and declared that, even had the fine been legally imposed on the company, "Mr. MacCord could not, with any show of justice or propriety, have been imprisoned and subjected to unusual harshness and threatened with death, for the company's failure to pay it." "Even had the country been under martial law, MacCord would have been entitled," said Mr. Olney, in conclusion, "to at least a regular trial by court-martial. Without trial, with no evidence of criminality adduced against him, in defiance of natural justice, of international law, and treaty obligation, this American citizen was cast into prison, subjected to unusual harshness, and threatened with death, in order to extort from him the payment of a fine illegally assessed against the railroad company, which, even had it been rightfully imposed, MacCord was under no obligation to pay. The liability of Peru to make to Mr. MacCord a proper indemnity for this treatment is too well established by the facts and too well settled upon principles of international law to admit of further controversy or discussion. The only question which this Government can regard as an open one is that of the amount of indemnity and the time and mode of payment. Upon this this Department would be glad to have an expression from the Peruvian Government."[a]

Mr. McKenzie was subsequently advised that the amount of Mac-

Rept. 927, 53 Cong. 3 sess., Feb. 14, 1895, submitting a resolution requesting that the investigation of the claim be continued; and S. Mis. Doc. 107, 53 Cong. 3 sess., containing the text of the resolution.

[a] Mr. Olney, Sec. of State, to Mr. McKenzie, min. to Peru, June 27, 1896, S. Doc. 7, 55 Cong. 1 sess. 4–7. See, also, S. Rept. 1001, 54 Cong. 1 sess.; and, for a statement of MacCord's attorney, and certain other papers, S. Doc. 64, 54 Cong. 1 sess.

Cord's claim was $50,000;[a] and he was also instructed to urge a settlement.[b] The Peruvian Government, after twice requesting an opportunity to study the case, stated that the department of justice had "ordered the immediate initiation in Arequipa of the corresponding judicial summary regarding the occurrences of 1885," and that, as soon as the "judicial proceedings," which were "indispensable for the due repression of acts denounced as punishable and for the exact knowledge of the same" by the foreign office, were ended, a decision would be made in regard to the demands of the United States.[c] Mr. Olney replied that, as the case had been pending for many years, and both the facts and the law relating to it were thoroughly understood by both Governments, there was no occasion or excuse for further delay on the part of Peru in settling the claim. Mr. McKenzie was therefore instructed to say that the United States was "unable to perceive any further cause for holding this case under consideration." The claim, it was added, was, in the judgment of the United States, "clearly made out and should be paid," and any further delay could but have the "appearance of a desire to evade or postpone the performance of an undeniable obligation."[d]

By a protocol, signed at Washington, May 17, 1898, it was agreed to refer to the Rt. Hon. Sir Samuel Henry Strong, P. C., chief justice of the supreme court of the Dominion of Canada, "the question of the amount" of the indemnity to be paid to the United States on account of the claim. His award fixed the indemnity at $40,000.

See President McKinley, annual message, Dec. 5, 1898, For. Rel. 1898, LXXX.

July 20, 1885, a force of sixteen armed and uniformed men, belonging to the party of General Cáceres, proceeded to the farm of J. H. Hayball, a citizen of the United States, residing in Peru, and seizing him demanded of him twenty horses, the same number of rifles, and a large amount of ammunition. He did not possess the rifles or ammunition, and, standing on his rights as an American citizen and American consular agent at Chimbote, refused to give up his horses. His animals to the number of eighty were then seized; his store was pillaged, and his orchard laid waste, and he was forced to provide for his captors during the night. Of his animals all but twenty-eight were subsequently returned to him, but on the 4th of the following month eight more horses were taken from him in a similar manner.

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[a] S. Doc. 7, 55 Cong. 1 sess. 13.

[b] S. Doc. 7, 55 Cong. 1 sess. 16.

[c] Dr. Riva Agüero, min. of for. rel., to Mr. Neill, chargé, Dec. 28, 1896, S. Doc. 7, 55 Cong. 1 sess. 19.

[d] Mr. Olney, Sec. of State, to Mr. Neill, chargé, Dec. 28, 1896, S. Doc. 7, 55 Cong. 1 sess. 22.

Mr. Hayball went to Chimbote to complain to the commander of the whole force. Redress was promised him, but the promise was not fulfilled. He was also made to pay his land tax for the year then current, and was afterwards made to pay it over again by the representative of the other party. Mr. Hayball submitted his case to the Department of State, which instructed the American minister at Lima to demand "a suitable redress, both for the insult to this Government in the person of its consular agent, and for the personal injuries to the claimant." In 1901 the Government of Peru paid to the United States the sum of 8,000 soles in settlement of the claim, with a declaration that the payment of the money was to be considered as a proof of good will and was not to be considered as a precedent.

For. Rel. 1901, 427–430.

The Venezuelan Government is liable, under her admission in the protocol, for all claims for injuries to or wrongful seizures of property by revolutionists resulting from the recent civil war.

Duffield, umpire, German-Venezuelan mixed commission, protocol of February 13, 1903, case of Kummerow and other cases, Ralston's Report, 526, 549–559, 562, 574.

Followed by Gutierrez-Otero, umpire, Spanish-Venezuelan mixed commission, protocol of April 2, 1903, case of Padrón and other cases, Ralston's Report, 923, 931.

Filtz, umpire, French-Venezuelan mixed commission, protocol of Feb. 27, 1903, held, in the case of Acquatella, Bianchi, et al., without assignment of reasons, that the Venezuelan Government was liable for the acts of revolutionists. (Ralston's Report, 487.)

It was held, however, by Duffield, as umpire of the German-Venezuelan mixed commission, in the case of Van Dissel & Co., that damages were not allowable under international law for the acts of revolutionists, and he so ruled in a case not arising in the particular civil war, as to which the Venezuelan Government had in his opinion admitted its liability by the terms of the protocol. (Ralston's Report, 565, 573.)

4. Indemnity for Acts of Successful Revolutionists.

§ 1047.

It was assumed that the course of the Diaz administration in refusing to recognize claims based on forced loans, notwithstanding that the illegality of such loans had been declared by the supreme court of Mexico, would "not be applied to such loans enacted by the officers of Diaz, prior to his elevation to the presidency and for the purpose of that advancement." This assumption was made because it was supposed that the objection usually urged that the regular Government was not accountable for acts of insurgents would not

"be pleaded in this case, as the insurgent has become the regular government." The legation was therefore directed to urge a recognition and payment of the claim.

Mr. Evarts, Sec. of State, to Mr. Foster, min. to Mexico, No. 615, April 4, 1879, MS. Inst. Mexico, XIX. 556.

In 1881, a quantity of guano at Mollendo, Peru, belonging to an American firm, was seized by the Government of General Caceres, which was then established in the city of Arequipa. An application was at the time made for relief to the Government at Lima, but, as Mollendo was then in the power of General Caceres, that Government was unable to take any steps towards protecting the guano, and eventually the whole of it was disposed of by the forces of General Caceres for the benefit of his government. At that time, General Caceres was the head of one of the contending governments in Peru, none of which was recognized as exercising supreme control over the whole of the national territory. Subsequently, however, General Caceres was installed and recognized as constitutional president of the Republic. On these facts, the American legation at Lima was instructed to insist upon an indemnity for the loss of the guano. It was not intended, said the Department of State, to question the principle that a sovereign is not ordinarily responsible for the acts of insurgents whom he could not control, but the present case rested on entirely different grounds. "The guano which was seized was appropriated to sustain a cause which has become national by the voluntary action of the people of Peru, its chief representative being at the present time the duly elected and installed constitutional executive of the Republic."

Mr. Bayard, Sec. of State, to Mr. Buck, min. to Peru, No. 84, Aug. 13, 1886, MS. Inst. Peru, XVII. 228.

The American minister withheld the presentation of the case in accordance with the wishes of the claimants while they were endeavoring to effect a private settlement, and his action was approved, with an instruction not to take further action till he should have been specifically instructed so to do. (Mr. Bayard to Mr. Buck, No. 100, Oct. 18, 1886, MS. Inst. Peru, XVII. 249.)

As to the recognition of the Caceres government, see supra, § 54.

June 8, 1893, Mr. Gresham, Secretary of State, enclosed to Mr. Young, minister to Honduras, the memorial of Mrs. Oteri, a citizen of the United States, preferring a claim against the Government of Honduras in connection with her steamer, the *Joseph Oteri, Jr.* She claimed (1) $22,889.95 for losses resulting from the detention of the steamer during the fruit season by Honduran insurgents under command of Colonel Nuila, at the port of Ceiba, and (2) $19,954.30 for damages resulting from the subsequent denial to the steamer of en-

trance into Honduran ports. All the acts complained of took place in July, 1892. As appears by decree of September 5, 1899, the Honduran Government settled the claim for $2,500 in gold. The decree recited that it was a fact capable of proof that Colonel Nuila detained the steamer and used it in his expedition to Trujillo with the consent of the captain and other officers, and that it consequently was only natural that the authorities of the titular government should afterwards exclude the steamer from entering the ports of the country. The decree, however, further declared that, as the new government of the country arose out of the revolutionary movement begun by Col. Nuila at Ceiba, it was possible to treat the matter "from a benevolent standpoint," and that the sum in question was paid "not as an indemnity for damages, but as payment for services lent by the steamer."

For. Rel. 1899, 352–354.

In December, 1894, the commander of a revolutionary force in Peru demanded of William Fowks, an American citizen engaged in business at Tumbez, the sum of 400 soles for the use of the insurgent forces. The money was refused, and the insurgent commander then cast Mr. Fowks into prison and kept him there without food, water, or bed for twenty-four hours, when he yielded. Fearing further exactions Mr. Fowks, after his release, left Peru. In 1896 he presented to the Department of State a claim against Peru for the 400 soles extorted from him and for indemnity for his imprisonment and sufferings and consequent losses. It appeared that during the revolution Tumbez was held by the regular government forces, but was abandoned by them on the approach of the insurgent forces. The revolution, which lasted about six months, was successful, and resulted in the establishment of the government whose cause it asserted. From the date of Fowks's imprisonment till the inauguration of the provisional government the revolutionary forces occupied Tumbez, though the rest of the department in which it is situated was in the hands of the government forces. The commander of the insurgent forces, which occupied Tumbez and imprisoned Fowks, was Colonel Seminario, a nephew of the person who became second vice-president of Peru and a member of the Peruvian Congress. The insurgents at the time when Fowks was imprisoned had not been recognized by the United States. By Article XV. of the treaty between the United States and Peru of 1887, which was in force at the time of the occurrence in question, the contracting parties engaged "to give full and perfect protection to the persons and property of the citizens of each other . . . who may be dwelling or transient in the territories subject to their respective jurisdiction." The same

article also provided that the citizens of the one country should not be liable within the territory of the other to imprisonment without formal commitment under a legal warrant, except in cases *flagrantis delicti*, and that when detained in prison they should be treated with humanity and without unnecessary severity. By Article II. of the same treaty it was further stipulated that they should not be called on for any forced loan or extraordinary contribution for any military expedition without being indemnified in advance. "For the treatment to which Mr. Fowks was subjected, in violation of express provisions of treaty and of the principles of international law, the Peruvian Government is," said the Department of State, "responsible." The Department referred to the correspondence in the MacCord case, and demanded for Mr. Fowks reimbursement of the money extorted from him, with interest at the rate of six per cent per annum, and an indemnity for his imprisonment and ill treatment, for which $5,000 was suggested as a reasonable amount. The Department held that a claim which Mr. Fowks sought to make for reimbursement of himself and his partners for the alleged enforced abandonment of their business in Tumbez was not valid. In 1901 the Peruvian Government, "without entering into any discussion as to the bases of said claim, or performing any act which might serve to establish a precedent either for or against analogous cases," offered to pay the sum of 3,000 soles silver in full settlement of the claim, embracing the forced loan and damages for imprisonment. This offer was accepted and the claim thus adjusted.

Mr. Hay, Sec. of State, to Mr. Dudley, min. to Peru, Nov. 21, 1898, For. Rel. 1901, 430; Mr. Dudley to Mr. Hay, No. 466, April 8, 1901, id. 432–434.

As the revolution in Venezuela of 1899, led by General Cipriano Castro, proved to be successful, its acts, under a well-established principle of international law, are to be regarded as the acts of a de facto government.

Bainbridge, commissioner, delivering the opinion of the commission in Dix's Case, United States & Venezuelan Mixed Commission, protocol of Feb. 17, 1903, Ralston's Report, 7, 8, citing Shrigley *v.* Chile, United States & Chilean Mixed Commission, 1892, Moore, Int. Arbitrations, IV. 3712. This view was affirmed by Mr. Barge, umpire of the commission, in Heny's Case, Ralston's Report, 22.

It was also followed by Plumley, umpire, case of the Bolivar Railway Co., British Venezuelan Mixed Commission, protocol of Feb. 13, 1903, Ralston's Report, 388, where it is stated that the responsibility dates from the time the revolution began; and in the case of the Puerto Cabello & Valencia Railway Co., Ralston's Report, 455, 458.

Also, by Gaytánde Ayala, umpire, in the cases of Bovallius and Hedlund, Swedish Venezuelan Commission, protocol of March 10, 1903, Ralston's Report, 952.

5. Payment of Duties to Insurgents.

§ 1048.

See, also, supra, §§ 21, 989.

In reply to an inquiry made by the British minister on the 31st of December, 1860, as to what position the United States proposed to take with regard to the action of the authorities of South Carolina in assuming to regulate foreign commerce and exact duties on imports at Charleston, the Department of State said that the payment of duties to a person who was not an officer of the United States and authorized by its laws to receive them would be a mispayment, and that the clearance which might be obtained contrary to those laws could not be regarded as valid by the Federal authorities, but that the question whether the state of things existing at Charleston would or would not be regarded as a sufficient reason for not exacting the penalties which might be incurred by British subjects was a question which must be reserved till it arose practically. Each case, said the Department, would no doubt have its own peculiarities, and no general assurance could be given concerning the intentions of the President. "Any uncertainty on such a subject is in itself," said the Department, "an evil which ought to be removed if it could be. But the reliance which your lordship can not but feel on the justice of this Government will no doubt quiet all apprehension of ultimate wrong to British subjects, if such wrong can possibly be avoided."

Mr. Black, Sec. of State, to Lord Lyons, British min., Jan. 10, 1861, MS. Notes to Great Britain, VIII. 383.

It may be superfluous to say that no claim for the repayment of duties thus exacted was ever made by the United States.

"If customs duties are demanded of merchants by the insurgents, and they should be compelled to pay them, this should be done under protest. The Colombian Government must understand that in no instance of such compulsory payment will this Government acquiesce in another payment of the same duties to the regular authorities."

Mr. Hunter, Act. Sec. of State, to Mr. Scruggs, min. to Colombia, Sept. 11, 1875, MS. Inst. Colombia, XVII. 2.

"I have the honor to call your attention to the inclosed copy of a decree of the President of the United States of Colombia, which I am informed by our consul at Barranquilla, under date of the 24th April, was published in the Official Gazette of the 12th February last, and is dated the 10th of the same month.

"By Article I. of this decree the payment of custom-house dues in any place incidentally occupied by rebel forces not only does not

exempt the respective importers of the goods which have already paid duties to the insurgents from their obligations to the national treasury, but will be a reason for adding to such obligations 50 per cent of the amount of duties illegally paid, if immediate payment is refused, and the collectors are further instructed to proceed immediately to a collection of such dues, as also of the extra 50 per cent in case of delay, and are required to make a report to the treasurer of all such importers as have paid duties to the rebels.

"Our consul at Barranquilla informs me that on the 17th April the foreign consuls in Barranquilla protested collectively to the military commander of the city against the decree in question. The reply of the general is herewith inclosed. It does not appear from the consul's dispatch whether this decree has been enforced and the duty been actually collected, but it is probable that now that the rebellion is partially overcome all means of raising revenue have been adopted, and I desire, in anticipation of the protests of our merchants, to express the views of this Government on the subject.

"The question as to how far a government is responsible to its citizens and foreigners within its borders for losses occasioned by insurgents may perhaps be open to argument, but there can be no question that no government has the right to inflict a punishment (for this double tax, with superadded penalty, amounts to a punishment) on neutral and peaceful merchants who have been compelled by military force to contribute against their will to the revolutionary funds or supplies, as if such merchants were voluntarily aiding and abetting the rebellion.

"A government is bound to use all proper measures to protect the denizens within its borders from revolutionary acts, and in case it fails to insure such protection, it can not with any justice hold the citizens of foreign nations responsible for its own weakness and failure to protect them, by imposing on them a penalty or fine for the very occurrences which the government itself was bound to avert. Such a course of action as is authorized by the decree of the 10th February would be especially objectionable as being a retroactive revenue measure at ports admitted to have been beyond the control of the Government at the time the rebel dues were paid. Should an attempt be made to justify it on the ground of being in effect a fine for illicit trading with ports assumed to be embargoed, as mentioned in the President of Colombia's decree of the 9th April, I must again use the arguments in my note of the 24th ultimo to those decrees, and contend that a blockade must be efficient to be recognized, and that executive measures relative to ports over which the Government has no control can only be considered as nugatory."

Mr. Bayard, Sec. of State, to Mr. Becerra, Colombian min., June 1, 1885, For. Rel. 1885, 269.

A remonstrance against the decree of Feb. 10 was also made by Mr. Scruggs, United States minister at Bogota. The Colombian minister of foreign affairs, adverting to the circumstance that no American names were on the list of persons fined under the decree, intimated that it never was intended to be enforced against neutral foreigners, and he afterwards stated that it would be revoked. (For. Rel. 1885, 221–222, 229–230.)

The reply of the Colombian general, Señor Acevedo, of April 20, 1885, to the consul's protest of the 17th of the same month, intimated that payment under compulsion would be considered as an excuse. (For. Rel. 1885, 272.)

Dec. 3, 1885, Mr. Becerra, the Colombian minister at Washington, informed the Department of State "that the Colombian Government by a decree issued *ad hoc* has declared that only the importers who freely and voluntarily paid the imposts levied on their imports to the rebels who succeeded in getting possession of some of the said ports of entry, are obliged to make the payment over again, together with a penalty; bona fide importers, who were compelled to pay under duress, are in consequence free from all responsibility." (For. Rel. 1885, 280.)

The Department of State, replying to this note, said: "The present decree limits the above liability, restricting it to cases where the importers freely and voluntarily paid duties to the rebels.

"Referring to the terms of my note of June 1, respecting the first decree, the Government of the United States assumes, in respect of this supplementary decree, that no unreasonable proof will be required of the involuntary character of the payments to the insurgent agents. It is well known that in times of armed insurrection, when forced loans and arbitrary extortion are resorted to, the usual forms of protest are not permitted, and the parties levied upon are almost invariably constrained to submit, rather than run the danger of incurring by a show of resistance double burdens and greater loss.

"Even under the normal operation of Colombian laws a protest against such levies may entail a penalty. This was the case with the decree against which my note of June 1 last remonstrated, for it assumed to add 50 per cent in the case of those merchants who should refuse payment to the agents of the constitutional Government of duties already paid by them to the insurgents when in sole control.

"In the disorganized and unprotected condition of society at the Colombian ports in question during the period referred to, it would be indeed surprising to learn that any American importer there had been permitted to make or file formal protest against the payment of customs duties to the rebel authorities. Under such circumstances the rational and necessary presumption is that they yielded to *vis major* and paid under duress, unless the contrary be distinctly shown.

"We trust that the manifest justice and reasonableness of this will be borne in mind, in executing the Colombian decree now announced by you, which, regardless of all rational presumption, seems to throw upon the sufferers the burden of proof that positive coercion was resorted to against them." (Mr. Bayard, Sec. of State, to Mr. Becerra, Colombian min., Dec. 11, 1885, For. Rel. 1885, 281.)

The titular government has no right to collect taxes on property which have already been paid to a revolutionary government which

had gained control over the portion of the national territory wherein the property is located, and taxes so collected must be returned.

Plumley, umpire, case of the Santa Clara Estates Company, British-Venezuelan mixed commission, protocol of Feb. 13, 1903, Ralston's Report, 397.

See, also, opinion of Ralston, umpire, case of Guastini, Italian-Venezuelan mixed commission, protocol of Feb. 13, 1903, Ralston's Report, 730.

XIII. *NEUTRAL RIGHTS AND DUTIES.*

1. Violation of Neutral Rights.

§ 1049.

In numerous cases damages have been obtained from belligerents for spoliations, in violation of the rights of neutrals.

"I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries, contrary to the law of nations or to existing treaties, and that on the forwarding hither of well-authenticated evidence of the same, proper proceedings will be adopted for their relief."

Mr. Jefferson, Sec. of State, to Messrs. Duke & Co., Aug. 21, 1793, 4 Jefferson's Works, 51.

It is estimated that under Art. VII. of the Jay treaty, citizens of the United States recovered $11,650,000 from the British Government on account of violations of the rights of neutral American commerce.

Moore, Int. Arbitrations, I. 344.

Under the claims convention with France of April 30, 1803, indemnity for French spoliations was made to a large amount; while, under the convention of July 4, 1831, indemnity was obtained for later spoliations to the amount of 25,000,000 francs.

Moore, Int. Arbitrations, V. 4431, 4460; as to the Spanish indemnities of 1819 and 1834, see id. 4496, 4533; as to the Danish indemnity of 1830, see id. 4549; as to the Neapolitan indemnity of 1832, see id. 4575.

2. Failure to Perform Neutral Duties.

§ 1050.

By Art. VII. of the treaty with Great Britain of Nov. 19, 1794, commonly called the "Jay treaty," the United States set the example of undertaking to make pecuniary indemnity for the failure to perform the duties of neutrality, by agreeing to refer to a mixed commis-

sion the claims of British subjects for "loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States." Under this stipulation awards were made against the United States to the amount of $143,428.14.

The example thus set was followed at Geneva, in the proceedings of the tribunal of arbitration under the treaty of May 8, 1871, which awarded to the United States the sum of $15,500,000 on account of the depredations of the *Alabama* and certain other Confederate cruisers fitted out in British jurisdiction. The United States demanded compensation for the following classes of losses and expenditures, so far as they grew out of the acts of the cruisers, viz: 1. "Direct losses growing out of the destruction of vessels and their cargoes." 2. "The national expenditures in the pursuit of those cruizers." 3. "The loss in the transfer of the American Commercial Marine to the British flag." 4. "The enhanced payments of insurance." 5. "The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion." It was denied by Great Britain that a submission of all the claims to arbitration carried with it the right of the arbitrators to take into consideration all the elements of loss, and it was insisted that the tribunal had no right, under the terms of the treaty, to take classes three, four, and five into consideration in its estimate of damages. The United States denied this proposition, and contended that the tribunal was invested with power to decide the question of the extent of its jurisdiction. The tribunal, without deciding that question, held that "these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation or computation of damages between nations, and should, upon such principles, be wholly excluded from the consideration of the Tribunal, in making its award, even if there were no disagreement between the two Governments as to the competency of the Tribunal to decide thereon." And in regard to the second of the above items of loss, the Tribunal, in its award, decided thus: "Whereas, so far as relates to the particulars of the indemnity claimed by the United States, the costs of pursuit of the Confederate cruizers are not, in the judgment of the Tribunal, properly distinguishable from the general expenses of the war, carried on by the United States: The Tribunal is therefore of opinion, by a majority of three to two voices, that there is no ground for awarding to the United States any sum by way of indemnity under this head."

Moore, Int. Arbitrations, I. 315, 343; J. C. B. Davis, Notes, Treaty Vol. (1776–1887), 1334; Moore, American Diplomacy, 49, 50.

For the Geneva award, see infra, § 1330.

It is maintained by Sir W. Harcourt (Historicus, 161, 162) that when neutral rights have been invaded by one belligerent to the injury of another, the latter, "who, though he may have sustained injury, has suffered the violation of no right, has no definite or lawful claim upon the neutral for reparation. He may urge upon the neutral, by way of remonstrance, the duty of obtaining redress for him at the hands of the offender; this, however, is only a duty of imperfect obligation. He can not demand at the hands of the neutral, as of right, compensation for the injury he may have sustained, nor can he impose upon the neutral the duty of obtaining for him any remedy beyond that which may be had over persons or things which may be *infra præsidia*, and consequently within the neutral jurisdiction." To this effect is cited The Anne, 3 Wheat. 435; Story, J.; 1 Kent Com. 116, 119, 121. But Judge Holmes (in his note to 1 Kent Com. 117) says: "The text does not seem to bear out the conclusion just stated. In the well-known case of the *General Armstrong*, the United States made a claim against Portugal for not preventing the destruction of a United States privateer by British vessels, when lying in a Portuguese harbor, during the war of 1812. The case was submitted to Louis Napoleon, then President of the French Republic, who held that Portugal was excused, even admitting the principle that a neutral might be liable under such circumstances, by the alleged facts that the garrison was feeble, and that the American commander had not applied in proper time to the local officers for protection, but had resisted the attack with arms, thus himself violating the neutrality of the territory. Wheaton, Lawrence's note, 217; Wheaton, Dana's note, 208. In 1 Pistoye et Duverdy, Traité des Prises Maritimes, 107, a contrary doctrine to that of Historicus is laid down."

On general principles, as is above shown, a neutral may, by failure to perform the duties of neutrality, make himself liable to a belligerent who suffers from such failure.

In 1779 Captain Landais, of the *Alliance*, of the squadron under John Paul Jones, captured three British vessels and carried them into Bergen, Norway, then under the Danish crown. On demand of the British minister they were seized by the Danish Government and restored to their owners on the ground that, as Denmark had not acknowledged the independence of the United States, the prizes could not be considered lawful. In a note to M. Bernstorf, Danish minister of foreign affairs, December 22, 1779, Franklin asked that the order of restoration be repealed, or that, if it had been executed, the value of the prizes, which was estimated at £50,000, should be paid by Denmark to the United States. M. Bernstorf answered evasively, though in substance he pleaded duress as an excuse for the order, which had been carried into effect. The United States continued to press the claim for indemnity, but without success. By the act of March 28, 1806 (6 Stat. 61), Congress appropriated $4,000 to be paid to Landais as prize money on account of the captures. The settlement of claims against Denmark, made by the convention of March 28, 1830, was construed by the United States as not embracing the claim on account of the Bergen prizes. By the act of

March 21, 1848 (9 Stat. 214), Congress authorized the Secretary of the Treasury to pay the legal representatives of Jones and of the officers, seamen, and marines their just proportions of the value of the prizes, after deducting from Landais's share what he had received under the act of 1806.

Moore, Int. Arbitrations, V. 4572.
Lawrence's Wheaton (3d ed.), note 16, p. 41; House Report, 380, 25 Cong. 2 sess.; H. Ex. Doc. 264, 28 Cong. 1 sess.

In May, 1814, Mr. W. G. Miller, agent of the United States at Buenos Ayres, made to that Government an unsuccessful application for indemnity for the capture within its waters in 1812 of the ship *Hope*, Obed Chase, master, by the British frigate *Nereus*. The application was renewed in November, 1827, by Mr. Forbes, chargé d'affaires of the United States at Buenos Ayres, under instructions of December 21, 1826. The minister of foreign relations promised to take the case into consideration. Mr. Forbes's attention was again called to the matter on April 29, 1830. On June 30, 1840, Mr. Forsyth, as Secretary of State, brought the case to the attention of General Alvear, minister of Buenos Ayres at Washington. Mr. Forsyth, who seems to have been under the impression that the claim had not previously been presented, said he presumed that the proposition would not be contested that it was the duty of the Buenos Ayres Government for the time being, as a neutral power, "to have prevented the capture referred to, and that, by failing so to do, it became accountable to the suffering parties." General Alvear apparently did not reply to Mr. Forsyth's note, and on December 28, 1841, Mr. Webster stated that a further communication would be made to him. The claim seems eventually to have been allowed to lapse.

Mr. Brent, Acting Sec. of State, to Mr. Verplanck, M. C., April 26, 1830, 23 MS. Dom Let. 331; Mr. Brent, Act. Sec. of State, to Mr. Forbes, chargé d'affaires to Buenos Ayres, No. 12, April 29, 1830, MS. Inst. U. States Ministers, XIV. 70; Mr. Forsyth, Sec. of State, to General Alvear, June 30, 1840, MS. Notes to Argentine Leg. VI. 7; Mr. Webster, Sec. of State, to Mr. McKeon, M. C., Dec. 28, 1841, 32 MS. Dom. Let. 134.

The destruction of the American armed brig *General Armstrong* by a British man-of-war, in the harbor of Fayal, in 1814, gave rise to a long-continued correspondence, which resulted, in 1851, in an agreement to refer the claims growing out of it to "the arbitrament of a sovereign, potentate, or chief of some nation in amity with both the high contracting parties." The President of the French Republic (afterwards Napoleon III.) was selected as the arbiter. His decision was adverse to the United States. Congress afterwards made an appropriation for the relief of the claimants.

Moore, Int. Arbitrations, II. 1071.

XIV. *DEFENSES.*

1. Part Payment.

§ 1051.

Such payment, when on account, only bars *pro tanto*, but the acceptance by claimants from the Government of a sum smaller than that claimed in full of their demand, without protest or objection, is a valid and binding compromise of the demand, and a bar to a suit therefor against the Government.

United States *v.* Child, 12 Wall. 232; United States *v.* Justice, 14 id. 535.

2. Limitation and Prescription.

§ 1052.

"It appears from the correspondence of Mr. Livingston with the minister for foreign affairs, that the recognition of the claims of our citizens was at first objected to on the ground that a certain 'Law of Public Credit' of Ecuador required all claims against that Republic to be presented prior to the 18th of May, 1848. This objection, however, seems to have been subsequently waived; but as Mr. Livingston intimates that it may hereafter be renewed, it is proper that you should be apprized of the views of the Department upon the subject.

"This Government can never allow any claims of our citizens which it may think proper to present to another government, to be rejected on account of a municipal law of the foreign government like that in question.

"The claims of our citizens against the Government of Ecuador are based upon acts committed by authorities of the late Republic of Colombia, contrary to the law of nations. No law of the Republic of Ecuador can sever or weaken obligations to redress injuries thus inflicted. It is essential to the dignity of a state that it should consult its own convenience in preferring complaints of this character. This by no means implies a necessity for trenching upon the just prerogatories [prerogatives] of the debtor government. On the contrary, the delay may and often does spring principally from a regard to the circumstances of the debtor government itself. This has been emphatically our own case with reference to Ecuador. That country, ever since the dissolution of the Colombian Confederacy, had had so little stability in its government and had been so constantly the scene of sanguinary and impoverishing civil wars, that we felt reluctant even to mention our demands. As soon, however, as those tokens of adversity there became mitigated enough to warrant the steps, we dispatched a chargé d'affaires thither chiefly for the purpose of prosecuting the claims. Consequently, the reference of that Government

to the law adverted to as a bar to them can be viewed in no other light than as an ungenerous requital and in fact be construed as a notice to our representative that he had arrived too late. An acquiescence by us in the position assumed, would subject us to the imputation of sacrificing the rights of our injured citizens to a mistaken forbearance towards their aggressors. If, therefore, the law referred to should again be mentioned as an impediment to the adjustment of the claims, you will in a firm, decided yet respectful manner declare that it can never be acknowledged as such by this Government."

Mr. Clayton, Sec. of State, to Mr. Van Alen, min. to Ecuador, No. 1, July 10, 1849, MS. Inst. Ecuador, I. 12.

Even admitting that a government may fix a limitation of time for the presentation of international claims, this would afford no justification for fixing a time unreasonably brief, and the tacit consent of a claimant government to such a measure can not be deduced from the fact that it did not expressly object to it.

Mr. Hay, Sec. of State, to Mr. Dudley, min. to Peru, No. 190, March 28, 1899, MS. Inst. Peru, XVIII. 159.

There is no statute of limitation as to international claims, nor is there any presumption of payment or settlement from the lapse of twenty years. Governments are presumed to be always ready to do justice, and whether a claim be a day or a century old, so that it is well founded, every principle of natural equity, of sound morals, requires it to be paid.

Mr. Crallé, Act. Sec. of State, to Mr. Crump, Oct. 30, 1844, MS. Inst. Chile, XV. 56

"It was the wish of this Government that the private property of both Mexicans and foreigners in Mexico should be unharmed by the forces of the United States in that country or should not be taken for their use without a just compensation. This intention was exemplified in numerous instances of redress when injuries were committed by volunteers and others. Probably it would also have been fulfilled in the case which Baron Gerolt has been instructed to present, if the complainant had not neglected to appear at the time and place appointed for the investigation. This Government has a right to consider this as a waiver of the cause of complaint, which could scarcely at this late period be examined with any prospect of reaching the whole truth in regard to it."

Mr. Marcy, Sec. of State, to Baron Gerolt, Prussian min., June 15, 1854, MS. Notes to Prussian Leg. VII. 15.

See Mr. Blaine, Sec. of State, to Mr. Amadore, March 10, 1881, 136 MS. Dom. Let. 472.

"I recommend that some suitable provision be made, by the creation of a special court or by conferring the necessary jurisdiction upon some appropriate tribunal, for the consideration and determination of the claims of aliens against the Government of the United States which have arisen within some reasonable limitation of time, or which may hereafter arise, excluding all claims barred by treaty provisions or otherwise. It has been found impossible to give proper consideration to these claims by the Executive Departments of the Government. Such a tribunal would afford an opportunity to aliens other than British subjects to present their claims on account of acts committed against their persons or property during the rebellion, as also to those subjects of Great Britain whose claims, having arisen subsequent to the 9th day of April, 1865, could not be presented to the late commission organized pursuant to the provisions of the Treaty of Washington."

President Grant, annual message, Dec. 7, 1875, For. Rel. 1875, I. XIII.

"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 therein 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."

Mr. Bayard, Sec. of State, to Mr. Muruaga, Span. min., Dec. 3, 1886, For. Rel. 1887, 1015, 1022.

"When by treaty or diplomatic arrangement a tribunal is constituted for the settlement of international claims, a party who neglects to present his case to the tribunal, before which it is cognizable, and delays subsequent action until the evidence on both sides must necessarily have more or less passed out of reach, will be required to present, by affidavits, a very strong and plain case accounting for such delay and laches, in order to induce the Department to interpose."

Mr. Bayard, Sec. of State, to Mr. Sutphen, Jan. 6, 1888, 166 MS. Dom. Let. 509.

It may be observed that treaties or diplomatic arrangements by which tribunals are constituted for the settlement of international claims usually contain a stipulation by which all claims not presented to such tribunals are expressly barred.

Delay in the presentation of a claim to the Department of State till lapse of time and change of circumstances have rendered it impossible to establish all the facts in the case with the certainty that contemporaneous investigations alone can afford, is a good ground for refusing to present the claim to the foreign government against which it is asserted.

Mr. Bayard, Sec. of State, to Messrs. Morris and Fillette, July 28, 1888, 169 MS. Dom. Let. 263.

"While international proceedings for redress are not bound by the letter of specific statutes of limitations, they are subject to the same presumptions, as to payment or abandonment, as those on which statutes of limitation are based. A government can not any more rightfully press against a foreign government a stale claim which the party holding declined to press when the evidence was fresh than it can permit such claims to be the subject of perpetual litigation among its own citizens.

"It must be remembered that statutes of limitations are simply formal expressions of a great principle of peace which is at the foundation not only of our own common law, but of all other systems of civilized jurisprudence. It is good for society that there should come a period when litigation to assert alleged rights should cease; and this principle, which thus limits litigation when wrongs are old and evidence faded, is as essential to the administration of justice as is the principle that sustains litigation when wrongs are recent and evidence fresh. 'Rules for the application of such limitations,' said Mr. Justice Swayne in Wood *v.* Carpenter, 101 U. S., 139, 'are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They

promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar. The bane and antidote go together.'

"In the English common law, long before statutes of limitation took formal shape, this principle of peace was applied in the rulings that indebtedness, which has existed for so long a period as to enable its payment or its extinguishment to be logically inferred, is to be presumed to have been paid. What this period is varies, so it has always been held at common law, with extraneous conditions. In newly-settled communities, or in communities in which men come and go on comparatively brief business errands, the period in which a debt is presumed to be still alive is much shorter than it would be in a community of persons of continuous residence, of settled business habits, and with facilities which enable the vouchers of the past to be carefully guarded, and witnesses of past transactions to be, within the ordinary limits of life, appealed to. When the question is one of diplomatic negotiation, then the circumstances of the nations interested, as well as of individual claimants, is to be taken into consideration; the fact of intermediate war, for instance, when it does not extinguish a claim, operates to excuse delay in pressing it. But, in all cases, when the rule to be applied is not one of statute, but of common or public law, then the question of the presumption of the effect on indebtedness of lapse of time is one to be settled by taking into consideration not merely the general principle of peace above stated, but all the conditions which would divert the application of that principle to the particular case."

Note of Dr. Francis Wharton, Wharton's Int. Law Digest, § 239 (Appendix), III. 972.

"Great lapse of time is known to produce certain inevitable results, among which are the destruction or the obscuration of evidence, by which the equality of the parties is disturbed or destroyed, and, as a consequence, renders the accomplishment of exact or even approximate justice impossible. *Time itself is an unwritten statute of repose*. Courts of equity constantly act upon this principle, which belongs to no code or system of municipal judicature, but is as wide and universal in its operation as the range of human controversy. A stale claim does not become any the less so because it happens to be an international one, and this tribunal in dealing with it can not escape the obligation of an universally recognized principle,

simply because there happens to be no code of positive rules by which its action is to be governed."

Findlay, commissioner, delivering the opinion of the commission in the case of Ann Eulogia Garcia Cadiz *v.* Venezuela, No. 47, United States and Venezuelan Commission, convention of Dec. 5, 1885, Moore, Int. Arbitrations, IV. 4199, 4203.

See, also, to the same effect, the able and exhaustive opinion of Little, commissioner, speaking for the same commission, in the case of John H. Williams *v.* Venezuela, No. 36, Moore, Int. Arbitrations, IV. 4181.

3. Effect of War.

§ 1053.

"It was, among other causes, for the aggressions upon our commerce under the orders in council, that the United States made war upon Great Britain; and, having negotiated a peace without stipulation for indemnity in that particular, her case is widely distinguishable from that of France. If we were now to prefer a claim against France for the many millions of which the citizens of the United States were despoiled by her previous to the year 1800, and for which no provision was made by the treaty of that year, there might be some analogy in the cases, and, consequently, more force in the argument."

Mr. Van Buren, Sec. of State, to Mr. Rives, minister to France, July 20, 1829, H. Ex. Doc. 147, 22 Cong. 2 sess. 18, 22.

See, as to the limited war with France of 1798, Mr. Gallatin to Mr. Monroe, Oct. 14, 1816, 2 Gallatin's Writings, 14.

"Mr. Gallatin having been applied to in 1827, to advocate a claim for indemnity of an American citizen on the British Government arising out of the capture and condemnation of vessels and cargoes in 1809, and consequently prior to the war of 1812, wrote to the Secretary of State: 'You will perceive by the inclosed copy of the Treasury answer that this is one of the numerous cases of vessels condemned by the British courts either under illegal decrees or under false pretenses, and for which no indemnity was obtained by the treaty of peace. You may remember that at Ghent we made a kind of protocol for the purpose of preserving the rights of the United States and of their citizens, notwithstanding that omission. The claim may at any time be made, though certainly not with any expectation that it will be entertained by Great Britain. I am not aware that this has ever been done. However desirous to be useful to our citizens, I would not venture on a step of this kind before the subject had been fully examined and the President had decided thereon.' (Mr. Gallatin to Mr. Clay, April 3, 1827, MS.)"

Lawrence's Wheaton (1863), 878.

With reference to a claim against Great Britain for a tract of land in the Province of Quebec, the claim being based on certain transactions which took place between the years 1784 and 1806, the Department of State, after holding that diplomatic intervention was not admissible on the merits, declined to reconsider the subject, not only because of the decision previously made, but also because any diplomatic intervention was "rendered inadmissible" by the treaty of Ghent. "While it is true," said the Department, "that that treaty contains no stipulation expressly barring claims that arose prior to its signature, it is equally true, as a principle of law, that a failure to insert in it a stipulation preserving such claims had the effect of rendering them inadmissible as subjects of further diplomatic action. Such has been the position uniformly maintained not only by this Department, but also by the treaty-making power itself. By the convention between the United States and Great Britain, concluded on February 8, 1853, for the general settlement of the claims of the citizens or subjects of the one country against the Government of the other, the jurisdiction of the commission organized thereunder was expressly limited to claims arising out of transactions of a date subsequent to December 24, 1814. This provision merely recognized the principle, which has been repeatedly applied by this Government, that claims growing out of transactions that occurred during or prior to the war of 1812 were barred by the failure to revive and perpetuate them by the treaty of peace."

Mr. Day, Sec. of State, to Mr. Grout, July 4, 1898, 230 MS. Dom. Let. 169.

"It is well known that the only indemnity which it is in the power of Mexico to make in satisfaction of the just and long-deferred claims of our citizens against her, . . . is a cession to the United States of a portion of her territory. . . . A state of war abrogates treaties previously existing between the belligerents, and a treaty of peace puts an end to all claims for indemnity for tortious acts committed under the authority of one government against the citizens or subjects of another, unless they are provided for in its stipulations. A treaty of peace which would terminate the existing war, without providing for indemnity, would enable Mexico . . . to relieve herself from her just liabilities."

President Polk, annual message, Dec. 7, 1847, S. Ex. Doc. 1, 30 Cong. 1 sess. 7.

The statements contained in this passage are not, if considered as a general enunciation of doctrine, to be received in an absolute sense, although they were correct as statements of the law touching the claims against Mexico. When the war between the United States and Mexico began, a convention between the two countries, concluded in 1839, for the adjustment of claims, remained in part unexecuted; and the claims of citizens of the United States for "grievous

wrongs perpetrated by Mexico" were recited by President Polk in his special message of May 11, 1846, as one of the causes that justified and required the adoption by Congress of measures for carrying on war. (S. Doc. 337, 29 Cong. 1 sess. 5.)

It is generally laid down by publicists that claims which form the ground or cause of war perish with it unless they are provided for in the treaty of peace. The treaty of Ghent has been held to have put an end to previous claims against Great Britain for spoliations on American commerce under the orders in council; but these claims formed one of the causes of the war of 1812, and the British plenipotentiaries at Ghent refused to entertain them.

"The mere fact of war can never extinguish any claim. If, indeed, claims for indemnity be the professed ground of war, and peace be afterwards concluded without obtaining any acknowledgment of the right, such a peace may be construed to be a relinquishment of the right, on the ground that the question has been put to the arbitrament of the sword, and decided."

Mr. Webster, speech on the French Spoliation Claims, Jan. 12, 1835, Webster's Works, IV. 162.

By Silas Wright and others, who opposed the payment of the French spoliation claims, it was maintained that there was a state of war between the United States and France in 1798 which had put an end to the claims, but without regard to the view that was taken as to whether there existed in 1798 an actual state of war, it was on all sides admitted that the hostilities related to the claims which were under discussion.

"Private rights, the prosecution of which is interrupted by war, are revived by peace, although nothing may be said upon the subject; for a peace is a return to a normal state of things, and private rights depend not so much on concessions, like public ones, as on common views of justice. And here we include not only claims of private persons, in the two countries, upon one another, but also claims of individuals on the government of the foreign country, and claims—private and not political—of each government upon the other existing before the war. The effect of a treaty on all grounds of complaint for which the war was undertaken is to abandon them."

Woolsey, Int. Law (1901), §§ 160, 161.

The preponderant view of the authorities above cited is that the question, whether claims arising prior to a war are put an end to by the conclusion of a treaty of peace which is silent in regard to them, depends upon the relation of the claims to the war and its causes.

Hall, referring to the effects of a treaty of peace, says that "it puts an end to all pretensions, and draws a veil over all quarrels, out of which the war has arisen. It has set up a new order of things, which forms a fresh starting-point, and behind which neither state

may look. War consequently can not be renewed upon the same grounds."

Halleck says that "a treaty of peace does not extinguish claims unconnected with the causes of war."

Bluntschli declares that "all the former differences are blotted out by the conclusion of peace, and all the former offences are forgotten. A new war can be provoked only by new causes."

Hall, Int. Law, 4th ed., 583; Halleck, Int. Law, ed. 1861, 853, citing Grotius, Wheaton, Kent, and Wildman; Bluntschli, Le Droit Int. Codifié, Paris ed. 1870, by Lardy, art. 714.

The declaration of Bluntschli above quoted has been cited as authority for the proposition that a treaty of peace puts an end to all claims antedating the war, even though they had no connection with its cause, but it is doubtful whether it should be so construed.

"The treaty of peace does not extinguish claims founded upon debts contracted or injuries inflicted previously to the war, and unconnected with its causes, unless there be an express stipulation to that effect."

Wheaton, Lawrence's edition (1863), 877.

This is an exact reproduction of the language of Vattel, Book IV., chap. 11, § 22.

Wharton, in his International Law Digest, II. 673, § 240, says: "The effect of a war, followed by a treaty of peace, is to extinguish such claims by the citizens of one of the belligerents against the government of the other, as are not provided for by the treaty of peace." He gives no authority for this statement, except a reference to § 337 of his work, which relates to a different subject. Immediately after the statement above quoted, he says: "War and subsequent peace extinguish prior treaty obligations not relating to sovereignty," a proposition that certainly can not be maintained. Such a rule would place in the category of treaties abrogated by war the class which has above all other been conceded not to be affected by war, namely, treaties securing rights of private property. (See, supra, § 779.)

4. Question of Claimant's Character or Conduct.

§ 1054.

By Article IX. of the treaty between the United States and Spain of February 22, 1819, the contracting parties mutually renounced all claims for damages or injuries suffered prior to the signature of the treaty. By Article XI. the United States undertook to make satisfaction to its own citizens to an amount not exceeding $5,000,000, and a commission was appointed to carry this stipulation into effect. Among the claims submitted to this commission was that of Richard W. Meade for nearly half a million dollars for compensation for supplies furnished to the Spanish Government and for damages for un-

lawful arrest and imprisonment. The commissioners were at first inclined to reject Mr. Meade's claim altogether, on the ground that, as the largest part of it was for supplies furnished to the Spanish Government to enable it to carry on the war with Napoleon, it was inadmissible because of its contractual and unneutral origin. But, before rejecting the claim, they decided to address an inquiry on the subject to John Quincy Adams, who was then Secretary of State and who had negotiated the treaty on the part of the United States. Accordingly, in a letter of March 5, 1822, they stated that they had before them several claims for indemnity growing out of the breach of contracts by which citizens of the United States had stipulated to perform for Spain acts which, as citizens of a neutral state, they could not perform without transgressing the acknowledged belligerent rights of other nations with which Spain was engaged in open war, and which would have subjected them to the just application of the laws of war "and justified, nay, probably required," the United States to abandon them to the "fate of war, without making any reclamation" in their behalf. The commissioners said that they felt inclined to reject all such claims, and that nothing would operate to change their opinion except a clear communication that such a construction would violate the intention of the high contracting parties. Mr. Adams, on March 9, 1822, replied that it was not understood or intended by the United States, nor, as he believed, by Spain, that claims arising from contract should be excluded from the benefit of the treaty, and that "no very subtle or punctilious scrutiny" had been made of the "absolute obligation" of the United States to interpose in behalf of the claimants. It was, said Mr. Adams, the need of the claimant and not the legal classification of his claim for which the assistance of the Government had been solicited, and the question whether among the contracts provided for there were some upon which the United States, but for the treaty, must have eventually abandoned the claimants to the fate of war, was never a subject of inquiry. "Those claims, it is presumed, were," said Mr. Adams, "not the less valid against Spain, nor were their prospects of real satisfaction by Spain in any other manner believed to be different from the rest."

Moore, Int. Arbitrations, V. 4502–4505.

Objection having been made to the payment of an indemnity to a citizen of the United States, who had been wrongfully arrested in Venezuela, on the ground that he was not a person of pure moral character, as was shown by his subsequent arrest in the United States, the Department of State replied that, apart from the fact that the charge made in the United States was dismissed by the examining magistrate, which implied that it lacked foundation, it could not be

admitted that the incident could be allowed to affect the consideration of what was due to the claimant by reason of the injury which he had previously suffered in Venezuela.

Mr. Frelinghuysen, Sec. of State, to Mr. Baker, min. to Venezuela, No. 318, July 8, 1884, MS. Inst. Venezuela, III, 382.

In the case of Bernard Campbell, a citizen of the United States, who made a claim against Hayti, on account of being beaten by Haytian soldiers and thrown into the sea because he refused to serve in the Haytian navy, the Haytian Government denied liability on the ground that there was evidence tending to show that Campbell knew when he left New York that he was to serve the insurgent government which, at the time of denial of liability, had become the established government. With reference to the contention of the Haytian Government, the Department of State said: "Even if it is admitted as a fact that Campbell knew that he was expected to serve in the insurgent navy, and when he arrived at Cape Haytien refused to do so, this does not relieve the Haytian Government from liability for the brutal treatment which he is shown to have received at the hands of the Haytian soldiers."

Mr. Olney, Sec. of State, to Mr. Smythe, min. to Hayti, No. 142, April 2, 1896, MS. Inst Hayti, III, 506.

XV. *POWER TO SETTLE.*

1. Governmental Control.

§ 1055.

Among the cases submitted to the commissioners under the treaty between the United States and Spain of February 22, 1819, was the celebrated claim of Richard W. Meade against Spain for $491,153.33, which was demanded chiefly as compensation for supplies furnished to the Spanish Government, but partly as damages for unlawful arrest and imprisonment. Mr. Meade secured the diplomatic interposition of the United States in respect of his claim, but, pending the negotiation of the treaty, he informed the Secretary of State that it had been intimated that, if he would advance a further sum of money to the Spanish Government, he might obtain a grant of land in Florida sufficient to cover all his demands. The Secretary of State informed him that if the cession of the Floridas was made, all grants after a certain time would be declared to be null and void. Mr. Meade then, on January 17, 1819, filed his claims with the Department of State. Previously, however, he had sought from the King of Spain the appointment of a commission to examine and liquidate his claims, and on May 7, 1819, such a commission was

appointed. This commission, after examining the original documents which Meade had submitted, rendered, May 19, 1820, an award in his favor for $373,879.83, which included his unliquidated contract claims, with interest to the date of liquidation, and a gross sum as damages for his arrest and imprisonment. The ratification of the treaty of February 22, 1819, was delayed for two years. This delay necessitated the resubmission of the treaty to the Senate, in order that the period for the exchange of ratifications might be extended, and Meade, availing himself of the opportunity, sought to have the treaty amended so that it might not include his claim. The treaty was not amended, and, when the commissioners were appointed to carry Article XI. into effect, Meade presented a memorial in which he asked that his claim might be treated as liquidated, and that an award might be made for the amount allowed by the Spanish commission. The commissioners declined to grant this request, holding that they were bound by the treaty, as well as by the act of Congress passed to carry it into effect, to ascertain the "validity and amount of claims." They therefore decided that the original documents must be produced before them. Meade had already written to the Spanish minister at Washington in regard to obtaining the documents, but had received an unfavorable response. May 13, 1823, however, Mr. Nelson, newly appointed minister of the United States to Spain, was instructed to apply for the papers, but, owing to the blockade of Cadiz by a French squadron, his arrival at his post was delayed, and he was unable to apply to the Spanish Government till December 19, 1823. The Spanish Government promised to comply with the request, but stated that there would be delay in furnishing the documents, owing to the great quantity of them and to the confusion then existing in the public offices. This reply was received in Washington only a few days before the expiration of the commission, and on May 29, 1824, Meade's claim was rejected for want of sufficient evidence to establish its validity. Efforts were subsequently made by Meade and his heirs to obtain compensation from the United States, and the claim, after having been made the subject of many Congressional reports, was referred to the Court of Claims by a joint resolution of Congress of July 25, 1866, "for adjudication thereof, pursuant to the authority conferred upon said court by any existing law to examine and decide claims against the United States, referred to it by Congress." The Court of Claims held, Nott, J., dissenting, that it had no power under the existing laws defining its jurisdiction to reopen the case. This judgment was affirmed by the Supreme Court.

Meade *v.* United States, 2 Nott & Huntington, 224; Meade *v.* United States, 9 Wall. 691; Moore, Int. Arbitrations, V. 4502–4506.

Horace Binney, in an opinion of December 28, 1821, said: "If the United States have extinguished Mr. Meade's claims upon Spain by virtue of their own sovereign power, call it the exercise of eminent domain, or the taking of private property for public use, or by any other name, the conclusion is not to be resisted that they owe him a *just satisfaction*, that they are bound to *repair his damages*, to *make good his losses*, to make him *restitution*, to *indemnify* him, or make him whole. It would be in violation of the spirit as well as the letter of the rule to impose upon him anything less than indemnity and satisfaction; to require him to participate with others in the division of an inadequate sum, and to apply to his case a scale that may be well enough graduated for claims which, under all circumstances, are subject to national control, but is a wholly unfit measure of claims surrendered by virtue of eminent domain, and by that surrender become a *public debt*." (Am. State Papers, For. Rel. VI. 793.)

"No arrangement was made, under the treaty of peace with Spain [of 1898] or otherwise, for the presentation of the claim to the Spanish Government. Under all the circumstances, the Department is not prepared to take any further action with reference to the claim." (Mr. Hay, Sec. of State, to Mr. Chandler, June 26, 1900, 246 MS. Dom. Let. 112.)

See Mr. Adams, Sec. of State, to Mr. Nelson, min. to Spain, April 28, 1823, Am. State Papers, For. Rel. V. 417.

In the case of Alexander McLeod, who was arrested in New York on charges of murder and arson in connection with the destruction of the steamer *Caroline*, and whose release was afterwards demanded by the British Government, the complainant, after his discharge, and after his case had been disposed of in the diplomatic correspondence between Mr. Webster and Lord Ashburton in 1842, sought to prosecute a claim against the United States before the mixed commission in London under the treaty of 1853. The umpire dismissed the claim on the ground that the entire matter had been ended as a subject of international discussion by the correspondence of 1842.

Moore, Int. Arbitrations, III. 2424, 2425.

For the case of the Caroline, see supra, § 217.

The case of McLeod is cited by Commissioner Maury, of the Spanish Treaty Claims Commission, under the act of Congress of March 2, 1901, in a separate opinion concurring in the decision of the Commission dismissing the claims of individual seamen growing out of the destruction of the United States battle ship *Maine* at Havana, February 15, 1898. Mr. Maury maintained that Art. VII of the treaty of peace between the United States and Spain of Dec. 10, 1898, had the effect of putting an end to all such claims in the character of international demands. He cited S. Rep. 885, 55 Cong. 2 sess. vii.; S. Doc. 62, 55 Cong. 3 sess., pt. 1, p. 209, 260; Grotius, bk. 3, ch. 20, sec. 17; Burlamaqui, vol. 2, ch. 14, sec. 7; Hall, Int. Law, 4th ed. 583; Wheaton, pt. 4, ch. 4, sec. 3; Halleck, vol. 1, ch. 9, sec. 10, 3rd London ed.; Vattel, bk. 4, ch. 2, sec. 19; Bluntschli, secs. 708–710; Calvo, Droit Int. t. 3, sec. 1550; t. 5, secs. 31–37, p. 370; Eyston *v.* Studd, Plowd. 465; United States *v.* Kirby, 7 Wall. 482, 486, 487;

Hilton *v.* Guyot, 159 U. S. 113, 163; Martens, Causes Célèbres, vol. 1, p. 47; Moore, Int. Arbitrations, vol. 3, pp. 2424, 2425; Webster's Works, vol. 6, pp. 271–303; Wharton, Int. Law Digest, vol. 3, sec. 315 b; H. Ex. Doc. 418, 25 Cong. 2 sess.; S. Doc. 94, 16 Cong. 1 sess.; Gray *v.* United States, 21 Ct. Cl. 394; Williams *v.* Heard, 140 U. S. 529; Burnand *v.* Rodocanachi, L. R. 7 App. Cas. 333.

"Mr. Carvallo appears to think that the Government of the United States, having made this claim a public question between itself and the Government of Chile, ought not to be influenced by the opinions and wishes of the claimants, as to the course to be pursued in settling it. But while the Government of the United States no doubt ought to reserve, and certainly will reserve to itself the right of pursuing such a course as a wise regard to the public interests requires, yet having originally taken up the subject at the instance of the claimants, and for their benefit, it would be altogether inexpedient to pursue it, without the attempt at least to obtain their consent beforehand to the measures adopted. A contrary course would be imprudent in itself, and might lay the foundations for an onerous demand upon Congress. The high character and unquestioned probity of the principal claimant makes this course, which would always be that of prudence, almost incumbent on this Department upon the present occasion."

Mr. Everett, Sec. of State, to Mr. Carvallo, Feb. 23, 1853, MS. Notes to Chile, VI. 65.

"There is an important misapprehension in Mr. Carvallo's note which it is necessary to correct. The undersigned has never said that it was 'indispensable to obtain the consent of the claimants in order to make a convention;' but that it was inexpedient to take an important step without attempting at least to obtain their consent; and this remark was qualified by saying that the Government of the United States reserved to themselves the right of pursuing such a course as was required by a wise regard to the public interests."

Mr. Everett, Sec. of State, to Mr. Carvallo, Mar. 3, 1853, MS. Notes to Chile, VI. 75.

Where a grossly inadequate sum is offered by a foreign government in payment of a claim admitted by it to be due to a citizen of the United States, the government of the United States may fix a sum whose payment it demands as an ultimatum.

Mr. Frelinghuysen, Sec. of State, to Mr. Osborne, Oct. 18, 1883, MS. Inst. Arg. Rep. XVI. 287. See further, same to same, April 21, 1884, id. 313.

"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 citizen, the claim may in some sense be regarded as private, but when the claim is taken up and pressed 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 claimant. Several instances wherein 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. For the claims within its jurisdiction the commission stands in the place of the diplomatic departments of the two countries, and the respective agents and counsel represent, not the claimants, but their respective governments, and it is of the utmost importance to frankness, fair and upright dealing between the two nations, that the agents and counsel should not in any manner be interested in the cases which they present or defend. The commission is not a judicial tribunal adjudging private rights, but an international tribunal adjudging national rights."

Mr. Frelinghuysen, Sec. of State, to Messrs. Mullan & King, Feb. 11, 1884, 149 MS. Dom. Let. 653.

In the case of the steamer *Haytian Republic*, whose release was demanded and obtained by the United States from the Haytian authorities in December, 1888, a claim was made by the United States in behalf of the owners for an indemnity. In May, 1892, the Haytian Government conveyed directly to the owners an offer of settlement on condition that the United States should have nothing to do with it. The offer was accepted by the owners, and the minister of the United States at Port au Prince was kept in ignorance of what was done, while a pretense of diplomatic negotiations was kept up by the Haytian foreign office. When the facts became known, the American minister was instructed to inform the Haytian Government that the United States had heard of its proceedings with painful surprise, and considered them highly discourteous and derogatory to the friendly relations of the two Governments. As the settlement accepted by the owners had not been carried out, the American minister was authorized to use his "unofficial good offices" in their behalf, but to take no further official action in the matter unless so directed by the Department of State.

Mr. Foster, Sec. of State, to Mr. Durham, min. to Hayti, No. 67, Aug. 4, 1893, MS. Inst. Hayti, III. 272.

It was held to be comparatively unimportant, as affecting the foregoing instruction, whether the suggestion of a private settlement originated

with the Haytian Government or with the owners of the vessel (Mr. Foster to Mr. Durham, No. 70, Aug. 12, 1892, MS. Inst. Hayti, III. 277.)

As to the case of the *Haytian Republic*, see S. Ex. Doc. 69, 50 Cong. 2 sess., and particularly pp. 171, 198, 241, et seq.

Nov. 29, 1886, Mr. Moret, Spanish minister of foreign affairs, informed Mr. Curry, the American minister at Madrid, that the council of ministers had decided to settle the claim of Antonio Maximo Mora, a naturalized citizen of the United States of Cuban origin, against the Government of Spain, growing out of the embargo of his property in Cuba, by paying the sum of $1,500,000. This sum, said Mr. Moret, was to be paid by a charge on the Cuban budget, and the minister of ultramar would include it in the budget of 1887–88; but, as the colonial budget was not in a condition to support such a sum at one time, the government had reserved the determination of the most practicable mode of payment, of which due information would be given.

Mr. Curry, Dec. 7, 1886, under instructions of his government, accepted this offer.

The Cuban budget of 1887–88 contained a provision for the payment of the claim, but, when the sittings of the Cortes were suspended in July, 1887, the budget had not been passed. In the following December, the appropriations of the preceding year were renewed, and the budget of 1887–88 was left without action; and when, in April, 1888, the colonial budget for 1888–89 was submitted to the Cortes, the provision for the payment of the claim was omitted.

April 24, 1888, Mr. Curry asked for the reason for this omission.

Mr. Moret, May 12, 1888, replied that, in view of the debate which took place in the Chamber of Deputies in the preceding December and January, the government was convinced that the chamber would not vote the money unless the "totality" of American claims was settled, including those of Spain against the United States. The government, said Mr. Moret, did not assume to alter what had been agreed on, but must consider the moment which might be opportune to put the matter before the Cortes.

Mr. Rives, Acting Secretary of State, referring to this correspondence, June 23, 1888, declared that the Department of State noted with satisfaction "that its confidence that the Spanish Government would not repudiate the arrangement which was deliberately concluded in its name and by its authority has not been misplaced."

In consequence of the opposition manifested in the Cortes to the settlement which had been made, Mr. Moret was transferred to the ministry of the interior, and was succeeded in the ministry of foreign affairs by the Marquis de la Vega de Armijo.

In a note of Aug. 7, 1888, the Marquis de la Vega de Armijo stated that his Government intended to satisfy, as far as lay in its power, the Government of the United States, and expressed confidence that the Cortes would vote the money if the payment of the Mora claim "coincided" with the payment of the claims of Spain. This seemed to be the programme of the Cortes, for a resolution introduced by Señor Lastres, in February, 1888, repudiating the Mora settlement, was defeated by a vote of 170 to 47.

Mr. Bayard, Secretary of State, Sept. 17, 1888, declared that "so far as the minister's note declares the inviolability of the settlement arrived at in the Mora case, and its removal from the sphere of discussion, it is satisfactory to this Government, and fulfills the expectations that had been confidently entertained in regard to the observance by the Spanish Government of the agreement heretofore concluded." Mr. Bayard was not indisposed to include the "payment" of the Mora claim with the "settlement" of other claims, if this could be done within a reasonable time; but he declared that the "sum agreed to be paid" in the Mora case might "fairly be treated as a debt due and withheld by Spain from the United States, upon which interest should justly be computed from the time the agreement was concluded."

Again, on Dec. 18, 1888, Mr. Bayard declared that the claim had been "conclusively adjusted for a specific sum and only awaits payment by the Spanish Government."

Mr. Blaine, Secretary of State, May 20, 1889, adopted Mr. Curry's language, that by the settlement "the Mora case was raised from the debatable and negotiable ground it had previously occupied to the height of an international compact, binding upon both Governments." In the same paper Mr. Blaine said "that by the most formal and sacred of international compacts the faith and honor of the Spanish Government have been directly pledged to its actual payment at a particular time, in a declared manner, and in a specified amount." The President, said Mr. Blaine, was "unwilling to allow the execution of the absolute settlement of the Mora case to be made dependent upon the further settlement of other claims."

Mr. Foster, Secretary of State, Dec. 20, 1892, writing to Mr. Snowden, American minister at Madrid, referred to a joint resolution introduced in the Senate by Mr. Dolph, and said that, unless something definite was done, "there was great probability that the joint resolution would be passed, or some action taken by Congress looking to the enforcement of the Mora claim."

Again, Feb. 2, 1893, Mr. Foster, writing to Mr. Snowden with regard to a remark made by the latter to the Spanish minister of foreign affairs as to the possible conclusion of a "convention for the adjustment of the Mora and such other claims as Spanish subjects

may have against our Government," said: "The Mora claim has been regarded by this Government as already a liquidated and adjusted claim, only awaiting an appropriation by the Spanish Cortes for its final payment. It should not, therefore, be placed in the category of unadjusted claims."

Mr. Gresham, Secretary of State, writing to Mr. Taylor, Mr. Snowden's successor at Madrid, July 14, 1893, said: "Of course, this Government, as above stated, could not recognize parliamentary difficulties in the way of securing an appropriation for the Mora claim, as in any way relieving Spain from her distinct and unconditional obligation to pay that claim." Mr. Gresham also referred to a resolution, introduced at the last session of Congress, authorizing and requesting the President "to take such measures as in his judgment may be necessary to consummate the aforesaid agreement by the collection of the amount agreed upon with interest from the time the said amount should have been paid under the aforesaid agreement." Mr. Gresham observed that, unless the Spanish Government speedily changed its attitude, "a similar resolution, perhaps one more peremptory," would be introduced, with a strong probability of its passage, at the next session. "The Spanish Government," declared Mr. Gresham, "agreed to indemnify the United States for the flagrant wrong done to Mr. Mora, by the unconditional payment of a sum of money. The justice of the demand could not fairly be questioned, and now nothing short of full and prompt payment will be acceptable to this Government."

In a telegram to Mr. Taylor, Dec. 21, 1893, Mr. Gresham declared that "the claim stood on an unconditional promise of payment."

Mr. Taylor, in an interview with Mr. Moret, who had again become minister of state, Dec. 29, 1894, presented the following as the "conclusions" of his Government, which he said he believed to be "irrevocable:"

1. That, when the proposition of settlement was accepted, "an international convention was completed which precludes the discussion of all questions except that of payment.

"2. That the unconditional promise to pay carried with it the obligation to pay in a reasonable time, which had long ago expired, seven years have now elapsed since such unconditional promise had been made.

"3. That my Government will not consent 'that payment shall depend upon the willingness of the Cortes to make the appropriation.'

"4. That it will not consent 'that payment shall await the final adjustment of claims asserted by Spain against us.'"

Mr. Gresham, Feb. 14, 1894, said: "This presentation of the conclusions of this Government is approved."

Feb. 26, 1894, Mr. Moret replied, in an elaborate memorandum, to Mr. Gresham's letter of July 14, 1893, to Mr. Taylor, a copy of which Mr. Taylor had left with him. In this memorandum Mr. Moret denied that there was ever any illegal confiscation of property in the case, or any offense against an American citizen, or any flagrant injustice of any kind. The judgments against Mora were legal. The question was not "one of those matters of strict justice which require immediate reparation." This was so, even though "the only practical and proper thing that remains refers to the carrying out of the agreement of 1886." It was also an error to say that the Spanish Government profited by the proceeds of the Mora property. Moreover, the agreement to pay the claim was *conditional*, not unconditional. The matter was to be concluded by means of a bill in the legislature. And the Cortez would no doubt provide for the payment of the claim, if the payment should "coincide" with the payment of the claims of Spain.

Mr. Gresham, on receiving this memorandum, telegraphed to Mr. Taylor that the agreement was "unconditional," that all departments of the Spanish Government were bound by it, and that no one department could nullify it.

Further discussing the subject, in a dispatch to Mr. Taylor, June 5, 1894, Mr. Gresham declared that the question "whether, however, the Spanish Government did or did not" receive the income from Mora's estates, was "immaterial to the rights of this Government or the obligations of Spain."

Delay in the payment of the money continued; and at length by a joint resolution of Congress, approved March 2, 1895, the President was requested "to insist upon the payment of the sum agreed upon between the governments of Spain and the United States in liquidation of the claim of Antonio Maximo Mora against the Government of Spain, with interest from the time when the said amount should have been paid under the agreement."

Instructions in accordance with the resolution were sent to the American legation in Madrid, and representations in a similar sense were made to the Spanish minister at Washington, urging an immediate payment on account and an arrangement for the early payment of the remainder, should Spain be unable to pay the full amount at once. The insurrection in Cuba had now become flagrant. On July 20, 1895, the Spanish minister at Washington handed to the Secretary of State the text of a resolution of the council, approved by the Queen Regent, stating that, "in view of the facts shown of record and of the conclusions formulated by the ministers on the subcommittee of reference," it had been decided to notify the United States that Spain, "in fulfillment of the engagement contracted by the notes exchanged on the 29th of November and 7th of December, 1886," was prepared

to proceed to the payment of a million and a half of pesos in three instalments, the form and date of payment to be determined by agreement. August 10, 1895, an agreement, signed by Mr. Olney, Secretary of State, Mr. Dupuy de Lôme, the Spanish minister, and two representatives of the claimant, and other persons interested in the claim, was concluded at Boston, for the payment, on or before Sept. 15, of a million and a half Spanish gold pesos, "in full discharge and satisfaction not only of the principal sum agreed to be paid in liquidation of the Mora claim, so called, but of any and every amount that might be claimed to be due as interest on said principal sum." This sum, amounting to $1,449,000 American gold, was duly paid by a draft on London for £295,412 16s. 11d.

Señor Moret to Mr. Curry, Nov. 29, 1886, For. Rel. 1894, App. I. 368; Mr. Curry to Mr. Moret, Dec. 7, 1886, id. 368; Messrs. Shipman, Barlow, et al., to Mr. Bayard, March 7, 1888, id. 369; Mr. Curry to Mr. Bayard, No. 315, April 25, 1888, id. 370; Mr. Moret to Mr. Curry, May 12, 1888, id. 372; Mr. Rives to Mr. Curry, No. 305, June 23, 1888, id. 373; Mr. Curry to the Marquis de la Vega, June 30, 1888, id. 375; Marquis de la Vega to Mr. Curry, Aug. 7, 1888, id. 376; Mr. Bayard to Mr. Strobel, No. 323, Sept. 17, 1888, id. 377; Mr. Bayard to Mr. Belmont, min. to Spain, No. 4, Dec. 18, 1888, id. 378; Mr. Blaine to Mr. Palmer, No. 3, May 20, 1889, id. 388; Mr. Foster to Mr. Snowden, No. 53, Dec. 20, 1892, id. 412; same to same, No. 95, Feb. 2, 1893, id. 416; Mr. Gresham to Mr. Taylor, No. 16, July 14, 1893, id. 419; same to same, telegram, Dec. 21, 1893, id. 427; Mr. Taylor to Mr. Gresham, No. 94, Dec. 30, 1893, id. 429, 430, 431; Mr. Gresham to Mr. Taylor, No. 95, Feb. 14, 1894, id. 434; Memorandum of Señor Moret, Feb. 26, 1894, id. 439; Mr. Gresham to Mr. Taylor, tel., March 20, 1894, id. 443; Mr. Gresham to Mr. Taylor, No. 134, June 5, 1894, id. 446; joint res. of March 2, 1895, For. Rel. 1895, II. 1163; Mr. Uhl, Acting Sec. of State, to Mr. Taylor, No. 341, June 6, 1895, id. 1162; Mr. Olney to Mr. Taylor, tel., June 11, 1895, id. 1163; Mr. Olney to Señor Dupuy de Lôme, No. 11, June 24, 1895, id. 1167; agreement of Aug. 10, 1895, id. 1171; acknowledgment of settlement of claim, Sept. 14, 1895, id. 1176.

"I beg to acknowledge yours of the 5th instant, relative to the case of Frazer *vs.* Dexter, pending in the Supreme Court District of Columbia.

"The claim has been loosely spoken of in diplomatic correspondence and otherwise, as the claim of Antonio Maximo Mora against the Government of Spain. Nevertheless, that description of the claim is to be regarded rather as identifying it than as showing its true legal character. It was in fact the claim of the United States against Spain, prosecuted as such and paid as such. The money was paid by draft in favor of the Secretary of State of the United States, and the proceeds are now deposited in the subtreasury of the United States to the order of the Secretary. During the course of

the negotiations, which ended in the final settlement of the claim, I had frequent consultations with the parties in interest. I consulted with them not because I was obliged to, but because I desired that any settlement made should be satisfactory to them. In several letters to me on the subject, the counsel of Mora and his assignees admitted more than once that, while they appreciated the privilege of being conferred with as to the terms of settlement, all the right and all the discretion in the matter were vested in the Government of the United States. The only action of Congress on the subject, that I am aware of, is the joint resolution of March 2, 1895, 28 Stats. at Large, 975."

Mr. Olney, Sec. of State, to the Attorney-General, Oct. 7, 1895, 205 MS. Dom. Let. 212.

XV. *NATIONAL NEGLECT OR SALE OF CLAIM.*

§ 1056.

"Should the Government of the United States, either by its neglect in pressing a claim against a foreign government or by extinguishing it as an equivalent for concessions from such government, impair the claimant's rights, it is bound to duly compensate such claimant."

Wharton, Int. Law Digest, § 220, II. 566.

The controversies between the United States and France, arising from the wars growing out of the French revolution, have elsewhere been narrated. (Supra, § 821.) These controversies, as has been seen, gave rise to many claims against France on account of acts of spoliation committed against American citizens and their commerce. By the act of July 7, 1798, Congress, on the ground of wrongful acts by France, declared that the Government of the United States was exonerated from the stipulations of the treaties between the two countries, which were not to be regarded in the future as legally obligatory on the Government or citizens of the United States. The treaties thus declared to be at an end included the treaty of alliance and the treaty of commerce of 1778, to which the controversies between the two countries had chiefly related. In 1800, when the two governments came to negotiate for the restoration of amicable relations, France declined to admit that the treaties of 1778 could be considered as having been terminated by the act of the United States alone. France, said the plenipotentiaries of that government, would either recognize the treaties as being in full force, and in that case would agree to make indemnity for any infractions of them, or would recognize the condition of things which had existed from 1798 to 1800 as constituting a state of war, and in that case would make a treaty of peace and decline to grant indemnities, since the rights of

war acknowledged "no obligation to repair its ravages." As the American plenipotentiaries were not authorized either to recognize the treaties of 1778 or to abandon the claims, an agreement on this basis was impossible, and it became necessary either to postpone the subject or to abandon the negotiations. The American plenipotentiaries assumed the responsibility of the former alternative, and on September 30, 1800, signed a convention. By Article II. of this convention it was declared that, as the plenipotentiaries of the contracting parties had been unable to agree either upon the question of the treaties or "upon the indemnities mutually due or claimed," the two governments would negotiate on those subjects "at a convenient time," and that until they had come to an agreement the treaties should "have no operation." The Senate of the United States approved the convention, with the proviso that Article II. should be "expunged" and the duration of the convention limited to eight years. The convention as thus amended was returned to Paris for exchange of ratifications. Bonaparte, as First Consul, inserted in his act of ratification the proviso that, by striking out Article II., "the two states renounced the respective pretensions, which are the object of the said article." The ratifications were exchanged at Paris on July 31, 1801. When the convention was received in the United States, the President, in view of the form of the French ratification, deemed it prudent to submit it again to the Senate, although he did not regard "the declaratory clause as more than a legitimate inference from the rejection by the Senate of the second article." The Senate, on December 19, resolved that it considered the convention "as fully ratified," and returned it to the President for promulgation. It was proclaimed on the 21st of December.

The convention of 1800, after providing for the restoration of certain captured property, stipulated (Article V.) that debts contracted by one of the two nations with individuals of the other should be paid, but that this clause should not extend to indemnities claimed on account of captures or confiscations. By the convention of April 30, 1803, concluded in connection with the Louisiana purchase, it was provided that these debts with interest at six per cent should be paid to an amount not exceeding 20,000,000 francs The claims which were excluded from payment became known as the "French Spoliation Claims." It was maintained by the claimants that the condition of things existing between the United States and France from 1798 to 1800 did not constitute a state of war; that the claims against France for spoliations consequently remained in full force, except so far as they had been relinquished by the United States; that the United States had in fact relinquished them in the consideration of a release by France from the obligations of the treaties of 1778; and that the United States, having sold the claims for a valuable consideration,

had itself become liable for their payment. A bill passed by Congress for the relief of the claimants was vetoed by President Polk on August 8, 1846. A similar measure was vetoed by President Pierce on February 17, 1855. At length, by an act approved January 20, 1885 (23 Stat., 283), the claims were referred to the Court of Claims, which was authorized to report such conclusions of fact and law as in its judgment might affect the liability of the United States. This resulted in the filing of petitions embracing nearly 3,000 vessels and involving between 5,000 and 6,000 cases. Under the act of 1885 the Secretary of State sent abroad special agents, who by their researches obtained a mass of documents and information of much historical interest as well as of great value in determining the merits of the individual cases.

Davis, Notes, Treaty Volume (1776–1887), 1300–1309; Moore, Int. Arbitrations, V. 4425–4437.

As to French spoliations after 1803, see Moore, Int. Arbitrations, V. 4447 et seq.

As to Spanish spoliations, see Moore, Int. Arbitrations, V. 4487, 4533.

As to Danish spoliations, see Id. 4549; as to Neapolitan, Id. 4575.

"The argument by which it is maintained that they [the French spoliation claims] should be paid by the United States may be briefly stated thus: (*a*.) The claims were valid claims against France, because they are founded upon torts committed in violation of the canons of international law, in a time of peace. (*b*) The United States relinquished these claims to France upon condition that France should surrender to them its national claims against them for alleged infractions of the treaties of 1778 and 1788, and should consent to the abrogation of those treaties. (*c*) Therefore, the United States, having appropriated to itself a benefit resulting from the losses of its citizens, should make compensation to the sufferers.

"The argument of the other side may be stated thus: (*a*.) They were the cause of a war between France and the United States, by which they were expunged in the course of the operation of the ordinary rules of international law; but even admitting the contrary, those claims which were not recognized by the treaty of 1803 could not have been enforced against France without violating established canons of international law. (*b*.) No bargain was made with France respecting the guarantee. (*c*.) Therefore, the conclusion which is drawn from that alleged fact is incorrect.

"The points in dispute, therefore, relate (1) to the fact whether there was or was not a recognized state of war; (2) whether the relinquishment of the guarantee in the 11th article of the treaty of 1778 was an element in the conclusion of the treaty of 1800; (3) whether that agreement of guarantee had an appreciable money value."

Davis, Notes, Treaty Vol. (1776–1787), 1309.

For Mr. Clay's report of 1826, with accompanying correspondence, see Am. State Pap. For. Rel. VI. 3.

The Court of Claims, in opinions rendered by Judge John Davis, on May 17 and May 24, 1826, held that the United States was liable for the payment of the claims. It was conceded that the Supreme Court of the United States, in the case of Bass *v.* Tingy, 4 Dallas 37, had held that the state of things between the United States and France from 1798 to 1800 constituted "partial warfare, limited by the acts of Congress." The Court of Claims observed, however, that all the measures relied upon as evidence that war existed were taken prior to the instructions given by the United States to its plenipotentiaries to France on October 22, 1799, which did not recognize a state of war as existing or as having existed; that France herself, as shown by her various declarations, did not regard the difficulties between the two countries as amounting to war, and that the opinion of Congress, as gleaned from the statutes, was to the same effect. The court cited the opinions of Pickering, Madison, Clay, and Chief Justice Marshall that the claims were valid as against France and were relinquished by the United States for a valuable consideration. This view, said the court, was sustained by forty-five reports in Congress favorable to the claims as against only three adverse reports, all of which were made prior to the publication of the correspondence by Mr. Clay in 1826. The validity of the claims had also, said the court, "been recognized by Clinton, Edward Livingston, Everett, Webster, Cushing, Choate, Sumner, and many other of the most distinguished statesmen known to American history, and while opponents have not been wanting, among the most eminent of whom were Forsyth, Calhoun, Polk, Pierce, Silas Wright, and Benton, still the vast weight of authority in the political division of that Government has been strenuous in favor of the contention made here by the claimants."

Gray, Adm'r., *v.* United States, 21 Ct. Cl. 340, 368–405.

See, also, Cushing *v.* United States, 22 Ct. Cl. 1.

By the act of January 20, 1885, no provision was made for an appeal to the Supreme Court. It has been held by the Supreme Court, in a case involving the question of who were the "next of kin," under the act of March 3, 1891, making an appropriation to pay certain claims, that the payments were directed by Congress by way of gratuity or grace, and that the next of kin intended were those living at the date of the act. (Blagge *v.* Balch, 162 U. S. 439, 16 S. Ct. 853, reversing 157 Mass. 144, 31 N. E. 764. See, also, Jones' Admr. *v.* United States, 137 U. S. 202.)

No legal liability attaches to the United States for the surrender of a private claim unless it thereby gains a national advantage. (The Jane, 23 Ct. Cl. 226.)

As the relinquishment of the United States was of claims for depredations on American commerce by French cruisers, it did not embrace the seizure and confiscation by the French army in 1796 of goods in a British warehouse in the neutral city of Leghorn. (Field, Admr., *v.* United States, 27 Ct. Cl. 224.)

A condemnation by a French tribunal in Santo Domingo, within the jurisdiction of Spain, was disposed of by the treaty between the United States and Spain of 1819. (The Hope, 27 Ct. Cl. 122.)

3. Right to Withdraw or Abandon.

§ 1057.

A government does not, by abandoning the claim of one of its citizens against a foreign government, necessarily become liable to make good the claim. "The argument of abstract right is strong; but as the justice obtainable from foreign nations is at all times, and under every state of things, very imperfect, and as the only alternative in cases of denial of justice is the abandonment of the claim or war, a nation by abandoning the claim, after exhausting every specific expedient for obtaining justice, neither partakes of the injustice done nor makes itself responsible to the sufferer; for war, even if it eventually obtains justice for that sufferer, secures it by the sufferings of thousands of others equally unmerited and which must ultimately remain unindemnified. And mere inability to obtain justice can not incur the obligation it is unable to enforce."

6 J. Q. Adams's Memoirs, 383.

"The diplomatic abandonment of the claims by their own government, especially if accompanied by the characterization contained in the proposed preamble, could not fail to prove a serious obstacle to the success of any efforts which the parties, whose claims have heretofore been presented, might make to secure redress through the judicial tribunals, a source from which, under the most favorable circumstances, the claimants would seem to have little to hope for."

Mr. Fish, Sec. of State, to Mr. Logan, Dec. 20, 1875, MS. Inst. Chile, XVI. 171.

"While this Department is at all times ready to lend the good offices of its representatives abroad for the presentation of all valid claims founded on justice and equity of its citizens upon foreign governments in accordance with its established regulations, and also to assist in the promotion of American interests in all proper cases and by those methods known and approved internationally, yet it is not unmindful of the concurrent obligation imposed by our professions of amity and comity with other nations, as well as by the injunctions of our own self-respect, upon which we invite those nations confidently to rely, which should secure such previous scrutiny and

examination of the law and facts upon which such claims are based by their proponents as shall, *prima facie*, assure both parties of their justice. . . .

"To discriminate against speculative and unjust claims by our citizens upon foreign governments and in favor of those founded in justice and equity, will cause our recommendations to have that weight which we desire, and create confidence in our international action."

Mr. Bayard, Sec. of State, to Mr. Jarvis, min. to Brazil, No. 40, Sept. 6, 1886, 42, withdrawing the claim of James C. Jewett against the Government of Brazil.

"In view of the previous exercise of the Department's good offices on your behalf in this matter, and the apparent failure to establish the allegations of claim then made, it is not thought that your case is a proper subject for further diplomatic action." (Mr. Wharton, Asst. Sec. of State, to Mr. Jewett, June 28, 1889, 173 MS. Dom. Let. 474.)

"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."

Report of Mr. Bayard, Sec. of State, to the President, on the case of A. H. Lazare, Jan. 20, 1887. For. Rel. 1887, 620. See, also, Moore, Int. Arbitrations, II. 1794–1800; S. Ex. Doc. 64, 49 Cong. 2 sess.

It is part of the sovereign right of a government if, at any time before the consummation of a transaction relating to the claim of a citizen against a foreign government, it becomes satisfied of the falsity or injustice of the claim, to abandon all further action on behalf of the claimant.

United States *v.* La Abra Silver Min. Co., 29 Ct. Cl. 432.

XVI. *DAMAGES.*

1. Measure of Damages.

§ 1058.

The probable or possible profits of an unfinished voyage afford no rule to estimate the damages in a case of marine trespass.

The Amiable Nancy, 3 Wheat 546; La Amistad de Ruse, 5 id. 385.

The prime cost or value of the property lost, and, in case of injury, the diminution in value by reason of the injury, with interest thereon, affords the true measure of damages in such a case.

The Amiable Nancy, 3 Wheat. 546.

The liability of France, in a French spoliation case, is limited to the value of the property at the time of the illegal seizure or condemnation, and can not be augmented by subsequent transactions between owners and insurers.

The John Eason (1902), 37 Ct. Cl. 443.

A party whose house was destroyed in Florida, so as to give him a claim for its loss, can not receive, in addition, indemnity for extraordinary expenses incurred by him in taking up his residence in another place.

Cushing, At. Gen. 1854, 6 Op. 530.

By the Geneva tribunal the distinction between immediate and remote (or consequential) damages was maintained; the latter being held not to be properly chargeable.

See supra, § 1050.

A British vessel, wrecked on the Chinese coast, was purchased by an American citizen. The day before the purchase, however, "the vessel had been gutted by Chinese marauders, who, it is alleged, had access to the vessel through the neglect of the Chinese Government. Now, supposing that such neglect imposed on the Chinese Government a liability to make good to the owners of the vessel the losses thereby sustained by them, which, however, we have no reason on the facts to assume, yet we must recollect that the petitioner bought the vessel as she was at the time of purchase and can only claim for damages subsequently accruing."

Mr. Bayard, Sec. of State, to Mr. Denby, min. to China, No. 42, Feb. 5, 1886, MS. Inst. China, IV. 118.

On this and other grounds, it was held that there was no claim against the Chinese Government on the part of the American purchasers. (Ibid.)

2. INTEREST.

§ 1059.

The rule of the common law that interest is not payable on claims against the Government, unless express provision be made for such payment, has been followed in the United States. This is, however, merely a rule of municipal law enforced by the Government against its citizens or subjects, and is not obligatory as between government and government.

As to the practice of international commissions in the allowance of interest, see Moore, Int. Arbitrations, I. 287, 339, 374; II. 1317, 1445; IV. 3545, 3734, 4323, 4324, 4327; V. 4613.

"Interest, according to the usage of nations, is a necessary part of a just national indemnification."

Davis, Notes, Treaty Vol. (1776–1887), citing Wirt, At. Gen., 1 Op. 28; Crittenden, At. Gen., 5 Op. 350; Geneva Award, 4 Papers relating to the Treaty of Washington, 53.

By the fifth article of the convention of 1818, certain differences were referred to the Emperor of Russia, who awarded "That the United States of America are entitled to a just indemnification, from Great Britain, for all private property carried away by the British forces; and as the question regards slaves more especially, for all such slaves as were carried away by the British forces, from the places and territories of which the restitution was stipulated by the treaty, in quitting the said places and territories." A convention was subsequently formed at St. Petersburg between the United States and Great Britain, July 12, 1822, "for the purpose of carrying into effect this award of His Imperial Majesty." A question arose as to the payment of interest on the indemnity awarded, and Great Britain appealed to the terms of the convention of 1822 as relieving her from such payment. It was held that "just indemnification" involved not merely the return of the value of the specific property, but compensation in the nature of damages for the wrongful detention of it; but since this, if not impracticable, would be a work of great labor and time, interest, according to the usage of nations, was a necessary part of the indemnification. It was further held that in case of conflict between the award and the terms of the convention of 1822, the latter should give way to the former.

Moore, Int. Arbitrations, I. 361; Wirt, At. Gen., 1826, 2 Op. 28.

When a fund awarded to a claimant is invested by the Department in United States securities, on which interest has accrued between investment and payment, such interest is not payable to the claimant.

Mr. Bayard, Sec. of State, to Messrs. Coudert Brothers, Oct. 7, 1885, 157 MS. Dom. Let. 306, affirming Mr. Frelinghuysen's ruling in letter to same persons of Feb. 26, 1885.

"Under section 3659 of the Revised Statutes, all funds held in trust by the United States and the annual interest accruing thereon, when not otherwise required by treaty, are to be invested in stocks of the United States bearing a rate of interest not less than five per centum per annum. There being now no procurable stocks paying so high a rate of interest, the letter of the statute is at present inapplicable, but its spirit is subserved by continuing to make investments of this nature in current stocks bearing the highest interest now paid. The statute, however, makes no provision for the disposal of such accretions. It

being contrary to the general rule of this Government to allow interest on claims, I recommend the repeal of the provision in question, and the disposition, under a uniform rule, of the present accumulations from investment of trust funds."

President Cleveland, annual message, Dec. 8, 1885, For. Rel. 1885, xiv. See Mr. Bayard, Sec. of State, to Messrs. Coudert Brothers, Oct. 16, 1885, 157 MS. Dom. Let. 375.

By article 6 of the agreement between the United States and Spain, of February 12, 1871, for the arbitration of claims, it was stipulated that the expenses of the arbitration would be "defrayed by a percentage to be added to the amount awarded." In distributing the moneys received from Spain on the awards as they were rendered, the Secretary of State, pending the final act of the Commission in adding a percentage to the total amount of its awards, retained 5 per cent of the moneys so received. The reason for this was stated in a circular letter of the Secretary of State to the claimants, which said: "Five per centum of the amount due in each case will be reserved for the present, to meet the expenses of the commission, until a payment to cover such expenses shall have been made by Spain in conformity with the provision in that regard of said agreement of February 12th, 1871." In another letter, addressed to the plaintiff in the present case, the Secretary of State said: "It is hoped that no great delay will occur in receiving the payment from Spain, which will liberate this reserve for expenses, and the Department will expect to keep this reserve invested in interest-bearing securities of the United States, to cover the delay in its distribution to the claimants." Subsequently the reserve was paid over by another Secretary of State to the claimants without interest. Held, that a writ of mandamus would not lie to compel the payment of the interest; that, as the money was withheld from the claimants by the United States, the case fell within the rule that the United States does not pay interest on claims against it, except in pursuance of statutory authority; and that no claim for interest could be founded "upon the language of any notification or circular or letter which issued from the Department of State," since "no binding contract for the payment of interest was thereby created."

Angarica *v.* Bayard (1888), 127 U. S. 251. See Angarica *v.* Bayard, 4 Mackey, 310.

XVII. *PAYMENT.*

§ 1060.

"I am under the impression that the payment by diplomatic agents, either directly or through this Department, to claimants on foreign governments of moneys which may be recovered from such govern-

ments in satisfaction of claims, is, to say the least, irregular, and imposes responsibility where it does not properly belong."

Mr. Clayton, Sec. of State, to Mr. Shields, May 19, 1849, MS. Inst. Venezuela, I. 77.

"In revising Wharton's Digest you may care to have the result of my examination of the subject mentioned in volume 2, p. 701, sec. 245, which I made yesterday, in pursuance of your kind permission.

"Secretary Clayton not only directed Mr. Shields to remit to the Treasury Department moneys which he might receive from the Venezuelan Government in satisfaction of private claims to be by that Department distributed among those who might be legally entitled to the same, but he very clearly indicated that this was the only correct practice, and leaves it to be inferred that it should be followed by all diplomatic officers in the future.

"The impression created by the extract printed in Dr. Wharton's Digest is that this practice was inaugurated in 1849 by Mr. Clayton and continued.

"As a matter of fact Mr. Shields was authorized by instruction of October 15, 1849, to pay moneys received and to be received from the Venezuelan Government in a certain case to the assignees of the claimants, who were then in Venezuela, and Mr. Shields reports in his last dispatch, dated January 6th, 1850, that 'the receipt for this payment as well as the receipts for payments to the parties interested of the amounts realized in all the other cases of indemnity brought to a close during my term of service, are left on file in the archives of the legation.'

"On February 28th, 1852, the Department instructed Mr. Steele, who was Mr. Shields' successor, to remit to the attorney of the claimant in the case of the *Constancia* any money which he might receive from the Venezuelan Government on account of the claim in that case. Throughout the correspondence, during Mr. Webster's and Mr. Cass's administrations (and also Mr. Marcy's), it is made clear that the practice of paying by diplomatic agents directly to claimants on foreign governments of moneys recovered from such governments in satisfaction of claims was approved.

"I have not learned when this practice was changed by the Department, but I am satisfied that Mr. Clayton's plan of having the proceeds of foreign claims forwarded to the Treasury Department, as set forth in his instructions to Mr. Shields, was never insisted upon; indeed, it was wholly impracticable. Having been received at the Treasury, such moneys could not have been distributed to the parties in interest without an appropriation by Congress." (Letter of E. I. Renick, sometime chief clerk of the Department of State, to Mr. Moore, Assist. Sec. of State, May 27, 1898, MS.)

A minister who collects from a foreign government, under instructions from his government, a sum due a citizen of the United States, is not entitled to make any charge for expenses of collection, even though he act at the time under a power of attorney from the claimant.

Mr. Marcy, Sec. of State, to Mr. Peden, Apr. 10, 1856, MS. Inst. Arg. Rep. XV. 91.

"I have received your No. 149, of the 5th instant, from which it appears that the National Bank of Hayti refuses to pay the second installment, amounting to $7,375, of the indemnity awarded to Richard Allen, an American citizen, alleging that the same has been attached by a Mr. Devot.

"If the order upon the bank to which you refer was in terms payable to the diplomatic representative of the United States, it was not attachable, and the action of Haytian court violates diplomatic privilege.

"If the money was deposited in the bank in such way as to become lawfully attachable, the Government of Hayti simply fails to fulfill its obligation to pay the money to the Government of the United States.

"While we do not expect the Haytian Government to apply arbitrary constraint to her courts, yet if, instead of delivering the money directly to the legation, she has placed it for the time being in such a position that the courts may lawfully take cognizance thereof, her liability remains the same, and she is absolutely bound to make good the payment to our legation under any circumstances, since the debt of Hayti is one to the United States as a Government and not to the claimant as an individual.

"You will apprise the minister for foreign affairs of these views and express the Department's confidence that the amount now due and payable on account of Mr. Allen's indemnity may be immediately turned over to you."

Mr. Olney, Sec. of State, to Mr. Terres, chargé, June 21, 1895, For. Rel. 1895, II. 816.

The foregoing views were duly presented to the Haytian Government; but, on June 15, previously to their reception at Port au Prince, "an arrangement was made between Messrs. Devot and Allen by which the former agreed to raise the attachment," and the money "was duly turned over to this legation by the National Bank of Haiti." (Mr. Terres, chargé, to Mr. Olney, Sec. of State, July 9, 1895, For. Rel. 1895, II. 816.)

Mr. Adee, Act. Sec. of State, to Mr. Terres, chargé, Aug. 2, 1895, said: "Your communication to the Haytian secretary of foreign affairs of the views of this Government . . . was . . . timely, and will doubtless tend to a better understanding of the subject in the future." (For. Rel. 1895, II. 817.)

As Henry de la Francia, the original claimant, was dead at the time of the passage of the supplementary act of 1848 (9 Stat. 736), authorizing the Secretary of State to settle his claim for advances, etc., and as the claim was assets belonging to his estate, the avails of which were to be accounted for as such, it was advised that the amount awarded should be paid only to an administrator duly appointed and authorized to receipt for the estate. As, however, it

appeared that a competent court had decided Joseph de la Francia to be the sole distributee entitled to the amount from the administrators, the Secretary was advised to take a receipt from him or his attorney also. It was also held that under a power of attorney executed by Joseph de la Francia to James Bowie, the latter had authority to substitute Isaac Thomas in his stead; but that Thomas could not legally substitute William Cost Johnson in his stead.

Johnson, At. Gen., 1849, 5 Op. 135, 137.

It was further held that the receipt and acquittance in blank, purporting to have been signed by Isaac Thomas, if authentic, gives authority so to fill it up as to make it a full discharge and acquittance of all title to the sum awarded to said Joseph de la Francia by the Secretary of State. (Ibid.)

Where money is due from the Government to the heirs of one deceased, and there is a dispute as to the legal descent, such dispute should be decided by the court rather than by the executive officers.

Crittenden, At. Gen., 1853, 5 Op. 670.

The provision in the statutes of the United States (10 Stat. 170), declaring that "all transfers and assignments hereafter made of any claim upon the United States. . . . shall be absolutely null and void," does not apply to a claim against the Chinese indemnity fund under the control of the Department of State.

Hubbell *v.* United States, 15 Ct. Cl. 546.

The Government can not be held liable as a trustee for money received from a foreign power, in pursuance of a treaty for the satisfaction of claims of American citizens, unless the trust be declared by treaty or statute.

Great Western Ins. Co. *v.* United States, 19 Ct. Cl. 206.

By a clause in the diplomatic and consular appropriation act of February 26, 1896 (29 Stat. 32), "all moneys received by the Secretary of State from foreign governments and other sources, in trust for citizens of the United States or others, shall be deposited and covered into the Treasury." The Secretary of State is also to determine the amounts due to claimants from each of said trust funds, and to certify the same to the Secretary of the Treasury, who shall, upon the presentation of the certificate of the Secretary of State, pay the amount so found to be due. The Secretary of State has held that this statutory provision makes the funds in question trust funds, which he is in law bound to distribute to claimants according to their legal or equitable rights, as shown at the time of distribution.

Mr. Rockhill, Assist. Sec. of State, to Mr. Shands, Oct. 26, 1896, 213 MS. Dom. Let. 398.

As to the exemption of the Secretary of State from the control of the courts in the exercise of his discretion respecting funds received on international claims, see Frelinghuysen *v.* Key, 110 U. S. 63; La Abra *v.* United States, 175 U. S. 423, 458.

See, also, Hoar, At. Gen. (1869), 13 Op. 19.

With reference to the case of Annie W. Frazer *v.* James E. Dexter et al., No. 16774, equity, then pending in the supreme court of the District of Columbia, Mr. Olney, in a letter to the Attorney-General, expressed the opinion that the case should be dismissed, so far as the Secretary of State and the United States were concerned. "My view," said Mr. Olney, "is that it can be dismissed, because the Mora money is held by the United States as sovereign and not as trustee or stakeholder for any person or persons; that the suit, though formally against the Secretary of State, is really against the United States, and that the disposition to be made of the money is a political question, to be decided by the political department of the Government and not by the judicial. At all events the judicial department can have no cognizance of that question until the political department shall have decisively acted. In support of this view, permit me to call your attention to the case of the United States *v.* The La Abra Mining Company et al., reported in the 29th volume of the Court of Claims, page 432. On page 459 you will find a citation by the counsel of the United States of some pertinent cases decided by the Supreme Court of the United States."

Mr. Olney, Sec. of State, to the Attorney-General, Oct. 2, 1895, 205 MS. Dom. Let. 145.

XVIII. *NONPECUNIARY REDRESS.*

1. Cession of Territory.

§ 1061.

As a rule cessions of territory, by way of indemnity, have been made at the close of a war as part of the arrangement by which peace was secured. Such was the case with cessions of territory made by Mexico to the United States in 1848 and by Spain to the United States in 1898. An example of the cession of territory in time of peace by way of satisfaction of claims may be found in the territorial transfers made to the United States by Spain in 1819, under the so-called Florida treaty.

2. Apology.

§ 1062.

In the case of the outrage by the *Leopard* on the *Chesapeake*, President Jefferson, as has been seen, issued a proclamation excluding British ships of war from the ports of the United States, and forbidding persons to visit them from the shore. As this made it necessary for them to resort to Halifax for water, provisions, and other conveniences, the British Government treated it as a grievance and refused to negotiate as to reparation until the proclamation was withdrawn. Mr. Rose, special envoy sent by Great Britain to the United States in 1807, argued that "if, when a wrong is committed, retaliation is immediately resorted to by the injured party, the door to pacific adjustment is closed, and the means of conciliation are precluded." Mr. Madison subsequently agreed that if reparation should be "tendered spontaneously" by Great Britain, the President would, on receipt of this act of reparation, revoke the proclamation. The negotiations were continued in 1809 by Mr. F. J. Jackson, the new British minister in the United States, but, owing to Mr. Jackson's conduct, Mr. Madison asked for his recall and afterwards dismissed him. Mr. Foster, Mr. Jackson's successor, on November 1, 1811, informed Mr. Monroe (1) that he was instructed "to repeat to the American Government the prompt disavowal by His Majesty (and recited in Mr. Erskine's note of April 17, 1809, to Mr. Smith) on being apprized of the unauthorized act of the officer in command of his naval forces on the coast of America, whose recall from a highly important and honorable command immediately ensued, as a mark of His Majesty's disapprobation;" (2) that he was "authorized to offer, in addition to that disavowal on the part of His Royal Highness, the immediate restoration, as far as circumstances will admit, of the men who, in consequence of Admiral Berkeley's orders, were forcibly taken out of the *Chesapeake* to the vessel from which they were taken; or, if that ship should be no longer in commission, to such seaport of the United States as the American Government may name for the purpose;" and (3) that he was "also authorized to offer to the American Government a suitable pecuniary provision for the sufferers in consequence of the attack upon the *Chesapeake*, including the families of those seamen who unfortunately fell in action, and the wounded survivors." Mr. Monroe, replying to Mr. Foster, on the 12th of November, said: "It is much to be regretted that the reparation due for such an aggression as that committed on the United States' frigate the *Chesapeake* should have been so long delayed; nor could the translation of the offending officer from one command to another be regarded as constituting a part of a reparation otherwise

satisfactory. Considering, however, the existing circumstances of the case, and the early and amicable attention paid to it by His Royal Highness the Prince Regent the President accedes to the proposition contained in your letter, and, in so doing, your Government will, I am persuaded, see a proof of the conciliatory disposition by which the President has been actuated. The officer commanding the *Chesapeake*, now lying in the harbor of Boston, will be instructed to receive the men who are to be restored to that ship."

See Mr. Rose, Brit. min., to Mr. Madison, Sec. of State, March 17, 1808, Am. State Papers, For. Rel. III. 218; Mr. Madison, Sec. of State, to Mr. Pinkney, April 4, 1808, id. 221; Mr. Foster to Mr. Monroe, Nov. 1, 1811, id. 499; Mr. Monroe to Mr. Foster, Nov. 12, 1811, id. 500.

For a fuller statement of the case of the *Chesapeake* and the *Leopard*, see supra § 318.

In November, 1851, the city authorities of Greytown made a demand upon the captain of the steamer *Prometheus*, then in the service of the American Atlantic & Pacific Ship Canal Company, an American corporation, for $123 in payment of port charges. As the jurisdiction of the authorities was disputed by the company, the captain declined to comply with the demand, and a police officer was sent on board the vessel and levied an attachment upon her. The captain, however, refused to obey the writ, and was about to leave the harbor when the commander of the British man-of-war *Express* fired one or two blank cartridges, and then a round shot across the steamer's bows and another across her stern. It was stated that one of the shots passed very near to persons on the steamer. The *Prometheus* then returned to her anchorage, and the charges were paid. It appeared that the commander of the *Express* acted on the requisition of the British consul. When a report of the incident was received at Washington, Mr. Webster, who was then Secretary of State, on December 3, 1851, instructed Mr. Abbott Lawrence, American minister in London, to lay the facts before the British Government, and to say that if the firing was done by authority of that government it was a violation of the Clayton-Bulwer treaty, which precluded either government from exercising dominion over the Mosquito coast. Nor could the United States, said Mr. Webster, consent to the collection of port charges at Greytown by British men-of-war. Mr. Webster added that the occurrence had created equal surprise and regret, and had caused the President to give immediate orders for the dispatch of an armed vessel to Greytown. On January 10, 1852, Lord Granville, replying to Mr. Lawrence's representations, entirely disavowed the act of violence committed by the commander of the *Express*, and said: "Under these circumstances Her Majesty's Government have no hesitation in offering an ample apology for that which they consider to have been an infraction of treaty engagements; and Her Majesty's

Government do so without loss of time, and immediately upon the receipt of the official intelligence . . . , inasmuch as, in their opinion, it would be unworthy of the government of a great nation to hesitate about making due reparation, when the acts of their subordinate authorities had been such as not to admit of justification."

S. Ex. Docs. 6 and 30, 32 Cong. 1 sess.; 41 Br. & For. State Papers, 757, 767.

As to the case of the *Trent*, see infra, § 1265.

3. Salute to the Flag.

§ 1063.

In the case of the *Virginius*, the reparation demanded by the United States embraced a salute to the flag. Such a salute was conceded by Spain, in case it should be found that the *Virginius* was at the time of her seizure entitled to fly the flag of the United States. Subsequently, on its having been found by the Attorney-General of the United States that the papers of the *Virginius* were obtained on a false affidavit of the United States ownership, the demand for the salute was dropped.

For the case of the Virginius, see supra, § 309.

As to the salute of the flag in the case of the French consul at San Francisco, see supra, § 714.

As to the salute to the Brazilian flag in the case of the seizure of the Confederate cruiser *Florida* by an American man-of-war in Brazilian waters, see infra, § 1334.

In the case of the attack by a mob on the Spanish consulate at New Orleans, an incident connected with the Lopez expedition, the United States engaged to salute the flag of Spain when her new Spanish consul was brought to New Orleans. (Supra, § 704.)

O